



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL-S, MNDCL-S, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlords requesting a monetary order for payment of rent revenue losses, repairs and other damages. The Landlords also request an order for payment of the filing fee and to retain the security deposit.

The Landlords and Tenant appeared for the scheduled hearing; the Tenant had a witness, HM, also testify. Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The Landlords explained that they were able to mitigate their losses by renting the rental unit by April 7, 2018; their claim for rent revenue losses is to be reduced for the month of April to reflect this. The Application is amended and this decision reflects that amendment.

Issues to be Decided

Are the Landlords entitled to a monetary order for payment of rent revenue losses, repairs and other damages, pursuant to section 67 of the Residential Tenancy Act ("Act")?

Are the Landlords entitled to retain the security deposit pursuant to section 38 of the Act?

Are the Landlords entitled to payment of the filing fee pursuant to section 72 of the Act?

Background and Evidence

This tenancy began March 1, 2017 and ended March 1, 2018 under a fixed term agreement. Rent was \$1,200.00 per month, payable on the 1st of each month. A security deposit of \$600.00 and pet damage deposit of \$200.00 was paid; the pet damage deposit was returned March 15, 2018. The Landlords explained that there was no move-in inspection report done when the pet was moved into the rental unit, and so they understood that the Tenant had to have that deposit returned at the end of the tenancy. A copy of the signed tenancy agreement was submitted into evidence. The Tenant provided the forwarding address on March 5, 2018 in writing to the Landlords.

The Landlords are claiming rent revenue losses for March and the first week of April 2018 in the total sum of \$1,500.00. The rental unit was rented to new tenants on April 7, 2018. The rent revenue loss was due to the condition of the rental unit at the end of the tenancy. The Landlords submitted photographs and video taken mainly March 10, 2018 to show that there was damage from pet urine along the laminate flooring, baseboards and drywall in the living room. It took time to get estimates and the work completed to repair the damage, and the Landlords are claiming for rent revenue losses during that period of time.

The Landlord also states that the following expenses were incurred to bring the rental unit up to an acceptable condition to be re-rented:

Handyman charges	\$1,113.52 (14 hours at \$70/hour)
Hardware store charges	\$190.50 and \$737.86 (materials and supplies)
Dumping fee	\$43.00

The expenses all relate to the costs of materials and labour for replacing the damaged drywall, baseboards and laminate flooring in the room, as well as the cost of disposing damaged materials. The Landlord states that he did some of the labour but did not charge for his time.

The Landlord stated that the floors were likely original to the home, which was built in 2013. Photographs and video were submitted into evidence to document the damage, which appears to show urine and moisture damage to the drywall and baseboards as well as to the underneath of the laminate floorboards. Receipts were provided as evidence of the expenses incurred to do the repairs. The total claim against the Tenant is \$2,084.88 for the repairs. The Landlords filed a dispute application on March 15, 2018, and claim that email communications between the parties from early March suggest that the Tenant had accepted responsibility for the damage. A text message and email from mid-March 2018 indicate that the Tenant was prepared to settle any claims by allowing the Landlords to retain her \$600.00 security deposit.

The Tenant states that when she moved in, the basement suite was not in a state of cleanliness as the walls had drawings on them which the Landlord had not cleaned off; this is not disputed. There was no move-in inspection report completed at the start of the tenancy. The Tenant states that there is no evidence that it was her dog that did the damage claimed; the Tenant states that the Landlords have a dog as well. The Landlords state that they took possession of the house in January of 2017, a couple of months before the Tenant moved into the basement, but they deny that their dog was ever in the basement suite.

The Tenant's witness, HM, stated that he stepped in to act as agent for the Tenant when communications began to break down between the Tenant and Landlords earlier this year. He states that he completely washed down and used bleach throughout the suite before the move-out inspection and that he attended that inspection in the Tenant's place at her request. The Landlord told him not to sign the Condition Inspection Report and that the Landlord would likely return the security deposit.

The witness states that he was talking with the Landlord one day before the tenancy had ended, and was told that there were plans to do renovations after the Tenant moved out as it was their first opportunity as owners to renovate the basement suite since purchasing the property. The Landlord states that he may have mentioned that they would be painting because drywall damage was noted in the entryway, which it was later discovered was from pet urine.

The Tenant denies that her pet is responsible for the urine damage and that she is not responsible for the costs of the repairs to renovate the suite, nor the rent revenue losses. It is her position that the Landlord is attempting to pass along his cost of renovating to her. The Landlords submitted a property inspection report from November 23, 2016 from their purchase which shows that the laminate and painted drywall in the basement was “acceptable” in condition. It is their position that the Tenant’s dog caused the damage.

Analysis

Under section 7 of the Act, a party who fails to comply with the Act, regulation, or tenancy agreement must compensate the other party for damage or loss that results. To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss

The Applicant bears the burden of proving their claim, on a balance of probabilities. The Tenant has a duty to leave the rental unit “*reasonably clean, and undamaged except for reasonable wear and tear*”, as per section 37 of the Act.

The evidence submitted satisfies me that there was moisture damage to the walls, baseboards and laminate flooring in the entryway and living room wall consistent with damage from pet urine; the expenses submitted appear to be reasonable to repair that damage. However, it is not clear how long that damage existed, and whether or not the Tenant’s pet was responsible for some or all of the damage claimed. The Tenant argues that the Landlords have a pet dog, which they claim did not go into the basement; there is no information as to whether the previous owners or any previous renters kept a pet in the basement suite prior to these Landlords taking possession in 2017.

The issue really becomes one of proof of liability. The Landlords’ have the burden of proving that the Tenant and her dog caused the damage, but without a Condition Inspection Report from the start of the tenancy, this becomes a significant challenge.

Given the nature of the text and email discussions between the parties, I find that the Tenant holds herself liable to some extent for the damage caused. In my view, she would not be offering to pay for any damage if she had felt her pet was not responsible at all. However, that does not imply that she agrees her pet did all of the damage or that some of it was not pre-existing. Given the evidence before me, I am prepared to hold the Tenant partially liable for the cost of the repairs.

Policy Guideline 40 provides for the useful life of building elements; it suggests a useful life of about 20 years for hardwood flooring and painted drywall before it will need to be replaced due to normal wear and tear. This serves as a guideline for depreciation of building materials when determining an award for the cost of replacement with new materials. As the Landlords state the home is about 5 years old, I am deducting $\frac{1}{4}$ of the cost of the repairs as the Landlords now have new materials that will last about 20 more years. The Tenant is held liable for $\frac{3}{4}$ (\$2,400) or **\$1,800.00** for the cost of replacing the flooring, baseboards and drywall that was damaged from pet urine. In addition, the Tenant is liable for the rent revenue losses while the repairs were underway in the sum of **\$1,500.00**. I find that it is reasonable to expect these repairs to take about a month, and that the Landlords mitigated losses by renting to new renters on April 7.

The Landlords ask to retain the security deposit in partial satisfaction of the claim. The Landlords applied for a dispute resolution within 15 days of the date the tenancy ended and the forwarding address was provided, in compliance with section 38(1) of the Act. The Tenant had previously agreed to allow her security deposit of \$600.00 to be used towards expenses. For these reasons, the Landlords shall retain the \$600.00 security deposit, which is applied to set-off the amount of the monetary order. In addition, the Landlords are awarded the filing fee of **\$100.00**. The final award is calculated as follows:

Item	Amount
Rent Revenue Losses	\$1,500.00
Repairs	1,800.00
Less: security deposit	(\$600.00)
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$2,800.00

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails

to make payment. Copies of this order are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant shall pay forthwith to the Landlords the sum of \$2,800.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 11, 2018

Residential Tenancy Branch