



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S (Landlord)
 MNDCT, MNSD (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlords filed their application May 11, 2018 (the “Landlords’ Application”). The Landlords applied for compensation for damage to the unit. The Landlords sought to keep the security deposit and sought reimbursement for the filing fee.

The Tenant filed his application May 28, 2018 (the “Tenant’s Application”). The Tenant applied for compensation for monetary loss or other money owed and for the return of the security deposit.

This matter originally came before me July 3, 2018. The matter was adjourned and an Interim Decision was issued July 9, 2018. This decision should be read in conjunction with the Interim Decision.

The Tenant appeared at the hearing with the Translator to assist. The Agent for the Landlords (the “Agent”) appeared at the hearing.

The Tenant confirmed he was requesting double the security deposit back if I found the Landlords breached the *Residential Tenancy Act* (the “Act”).

I explained the hearing process to the parties who did not have questions when asked. Both parties provided affirmed testimony.

I addressed service of the hearing package and Landlords' evidence in my Interim Decision. At this hearing, the Agent confirmed he received the Tenant's evidence.

I confirmed with the parties that H.L., B.L. and the business landlord should all be named as the Landlords in the Applications.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage caused to the unit?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?
4. Is the Tenant entitled to compensation for monetary loss or other money owed?
5. Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

The Landlords sought \$2,031.97 for cleaning and repairs to the rental unit upon the Tenant vacating.

The Tenant sought \$1,500.00 as compensation for the elevator in the building not working for three months during the tenancy. The Tenant sought the return of double the security deposit but agreed to the Landlords keeping \$487.50 of the security deposit.

A written tenancy agreement was submitted as evidence. It is between the Landlords and Tenant regarding the rental unit. The tenancy started April 6, 2016 and was for a fixed term ending April 30, 2017. Rent was \$1,950.00 per month. The Tenant paid a \$975.00 security deposit.

Both parties agreed the Tenant subsequently signed an addendum extending the tenancy to April 30, 2018. The parties agreed the Tenant vacated the rental unit April 30, 2018.

Both parties agreed on the following. The Tenant provided his forwarding address on the Condition Inspection Report on April 30, 2018. The Landlords did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree the Landlords could keep some or all of the security deposit at the end of the tenancy.

Both parties agreed on the following in relation to a move-in condition inspection. Someone for the Landlords and the Tenant did the inspection April 6, 2016. The unit was empty at the time. A Condition Inspection Report was completed and signed by both parties.

The Tenant testified that he did not receive a copy of the move-in Condition Inspection Report except as evidence on this hearing. The Agent testified that it is office procedure to email a copy of the report to tenants. He could not confirm that this was done in this case.

Both parties agreed on the following in relation to a move-out condition inspection. Someone for the Landlords and the Tenant did the inspection April 30, 2018. The unit was empty at the time. A Condition Inspection Report was completed and signed by the Tenant but not on behalf of the Landlords.

The Tenant testified that he received a copy of the move-out Condition Inspection Report for the first time June 19, 2018. The Agent testified that the Landlords usually provide a copy of the report to tenants.

A copy of the Condition Inspection Report was submitted as evidence. The Agent testified the report is accurate. The Tenant testified the report is accurate other than the notes under "other" which list seven issues with the rental unit upon move-out. The Tenant testified that this section was completed after he signed the report. The Agent did not know if this section was completed prior to or after the Tenant signed the report.

Upon a review of the Condition Inspection Report, I do not see any comments by the Tenant that indicate he disagreed with the report on move-in or move-out. I note that the section under "End of Tenancy" seems to suggest the Tenant agreed to the

deductions noted. However, the Agent took the position that the Tenant did not agree to deductions.

In relation to the Landlords' claim, the Agent pointed to two invoices submitted as evidence as the basis for the claim. The invoices include the following charges:

Invoice #1	
Repair fridge drawer panel	\$85.21
Repaint property and replace light bulb	\$1,080.00
Material	\$170.00
Tax	\$66.76
TOTAL	\$1,401.97
Invoice #2	
Bumper removal @ \$25/hour for 4 hours	\$100.00
Glue removal @ \$25/hour for 5 hours	\$125.00
House cleaning with two cleaners @ \$50/hour for 5.5 hours	\$275.00
Blinds cleaning	\$100.00
Tax	5%
TOTAL	\$630.00
TOTAL FOR BOTH INVOICES	\$2,031.97

The Agent testified as follows in relation to Invoice #1. The walls of the unit were not in good condition upon move-out. The Tenant put pictures, drawing boards and bumpers on the walls. These damaged the walls. The photos taken during the tenancy show this.

The Agent acknowledged that the walls of the unit were not perfect on move-in. The photos submitted show white patches on the walls. He said upon move-in the walls were in fair condition but were much worse upon move-out.

In relation to the cost of "materials", the Agent testified that this was for light bulbs and painting equipment.

In relation to the cost of the painting, the Agent testified that only parts of the unit were repainted and that the cost of repainting the entire unit would have been much higher.

The Agent testified as follows in relation to Invoice #2. The Tenant put bumpers on the edge of walls and window sills in the unit. The photos submitted show the bumpers.

These took a lot of time for the cleaners to remove as they had to be peeled off. This is the reason the cleaning bill is so high. The paint came off with the bumpers. The cleaners also had to clean the oven and cabinets.

The Landlords submitted photos of the unit before, during and after the tenancy.

The Tenant agreed the Landlords can keep \$487.50 of the security deposit for the bumper removal, glue removal and some of the repair costs including the fridge repair and the light bulbs.

In relation to Invoice #1, the Tenant said he does not agree with the painting and material charges. He submitted that the Landlords should have painted the unit upon move-out in any event. The Tenant testified that the walls were not in good shape when he moved in.

In relation to Invoice #2, the Tenant disagreed with the cleaning costs and testified that he hired a company to clean the unit upon move-out. He said he paid \$250.00 for the cleaning services. He confirmed that the photos submitted by the Landlords of the unit upon move-out are of the unit after the cleaning company had cleaned it.

The Tenant submitted an invoice from the cleaning company he hired showing they performed carpet and house cleaning and charged \$250.00.

I asked why the Tenant signed the Condition Inspection Report, which indicates the unit was dirty in areas upon move-out, if he did not agree with it. The Translator said the Tenant may not have had those areas cleaned by the cleaners. The Translator also said the Tenant did not understand the Condition Inspection Report due to a language barrier.

In reply, the Agent questioned whether the Tenant actually had cleaners clean the unit upon move-out given the state of the unit. He pointed to the photos submitted in this regard.

In relation to the Tenant's application for \$1,500.00 in compensation, the Tenant testified as follows. The elevator in the building did not work at all February 14, 2017. A water pipe burst and impacted the elevator. After the repair, one or two of the elevators was working but would not stop on the floor of the rental unit. The elevators stopped on the floor above the rental unit and the Tenant had to use the stairs to get to his floor.

The Tenant had a young child at the time and he had to carry the stroller up and down the stairs. This went on for two and a half months. His elderly mother also had to use the stairs. This was an inconvenience. He could not enjoy the property. He communicated with the Landlords about this issue but the Landlords did not give satisfactory answers.

The Tenant sought \$500.00 in compensation for each month the elevator was not working.

The Tenant submitted emails that appear to support that on March 31, 2017 the elevators were still not fully functional.

The Tenant submitted a letter from a neighbour indicating the elevators did not work from February 14, 2017 to June 30, 2017.

The Agent testified as follows. It is not the Landlords who caused the breakdown of the elevators. The strata did what they could to ensure the elevators were repaired. The Landlords could not force the strata to speed up the timing of the repairs and the Landlords should not be responsible for this.

Analysis

Section 7 of the *Act* states:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 28 of the *Act* states:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 37 of the *Act* sets out the obligations of a tenant upon vacating a rental unit and states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

Section 21 of the *Residential Tenancy Regulation* (the “*Regulations*”) states:

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Policy Guideline 6 deals with entitlement to quiet enjoyment and states:

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Regulations*. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the parties, I find the Tenant did not extinguish his rights in relation to the security deposit under sections 24(1) or 36(1) of the *Act*.

The Tenant testified that he did not receive a copy of the move-in Condition Inspection Report except as evidence on this hearing. The Agent could not confirm that the Tenant was sent a copy of the report upon move-in. Therefore, I accept the Tenant's testimony on this point and find he was not sent a copy of the report. I find the Landlords extinguished their right to claim against the security deposit for damage to the rental unit pursuant to section 24(2)(c) of the *Act*.

Section 38(1) of the *Act* required the Landlords to repay the security deposit to the Tenant within 15 days of April 30, 2018. The Landlords were not entitled to claim against the security deposit because the Landlords had extinguished their right to do so. Given the Landlords did not repay the deposit, I find the Landlords failed to comply with section 38(1) of the *Act*. Therefore, pursuant to section 38(6) of the *Act*, the Landlords cannot claim against the security deposit and must pay the Tenant double the amount of the security deposit. The Tenant has agreed to the Landlords keeping \$487.50 of the deposit. Therefore, the amount to double is the remaining \$487.50. I find the Landlords must pay the Tenant \$975.00.

The Landlords are still entitled to claim for compensation for damage to the rental unit and I consider that now.

The Tenant agreed to the Landlords keeping \$487.50 of the security deposit for the bumper removal, glue removal and some of the repair costs including the fridge repair and the light bulbs. Therefore, the only remaining items in issue are as follows:

Invoice #1	
Repaint property and replace light bulb and materials	\$1,312.50 (with tax)
Invoice #2	
House cleaning with two cleaners @ \$50/hour for 5.5 hours	\$288.75 (with tax)
Blinds cleaning	\$105.00 (with tax)

Repaint property and materials

The cost of materials included the materials for painting and the light bulbs. I have grouped the “repaint property and replace light bulb” fee and “material” fee together given they are related. The total cost of these fees is \$1,312.50 with tax. However, the Tenant agreed the Landlords could keep some of the security deposit towards these fees as he agreed to the light bulb replacement. I calculate the amount the Tenant agreed the Landlords can keep to be \$161.77. I will only address the painting issue.

The photos taken prior to the Tenant moving into the unit show some of the walls were scuffed and some had large white patches on them that had not been painted.

The photos taken during the tenancy show markings on some of the doors and walls, pictures or stickers on some of the walls, a drawing board on one of the walls and the bumpers on the walls and side of the counter.

The photos taken upon move-out show markings on the wall in what looks like a closet area, one wall with a large white patch, the bumpers on the side of the counter and window sill, markings and patches on a number of walls and doors.

The Landlord submitted photos showing the walls before and after painting. The before photos show numerous white patches on the walls.

The Condition Inspection Report shows the living room walls and trim were “fair” on move-in with nail holes, paint patches and wall cracks. On move-out the report shows the walls were “in bad shape” and “poor”. The report shows the walls and trim in the dining room were “fair” with marks on move-in and “poor” with paint patches and stains on move-out. It shows the walls and trim in the bedroom were “fair” on move-in with patches, marks and nail holes and “poor” on move-out. The remaining areas seem to indicate the condition of the walls was “fair” on move-in and “fair” on move-out.

Based on the photos and Condition Inspection Report, I accept that the Tenant did cause additional damage to the walls. I also accept that some of this damage was beyond reasonable wear and tear. I note that the walls were damaged prior to the tenancy and I find that the Tenant should not be responsible for the entire cost of the painting. I agree the Tenant should be responsible for some of the cost and award the Landlords \$400.00.

House cleaning

The photos of the unit upon move-out show the bathroom, cabinets and appliances were dirty.

The Condition Inspection Report indicates the following areas were dirty on move-out: kitchen countertop; kitchen cabinets and doors; oven; dishwasher; bathroom cabinets and mirror; bathroom floor; and the toilet. The Tenant signed the report and did not indicate he did not agree with it.

Based on the photos and Condition Inspection Report, I find areas of the unit were dirty upon move-out. I accept the unit was not reasonably clean and therefore the Tenant breached section 37 of the *Act*. I accept the cost of the cleaning was \$275.00 based on two cleaners cleaning for a total of 5.5 hours at \$50.00 per hour. I am not satisfied the Landlords have proven that 5.5 hours of cleaning were required to bring the unit up to the standard of reasonably clean. Based on the photos, I accept that one and a half hours of cleaning would have been reasonable for each of the kitchen and bathroom for a total of three hours. Therefore, I award the Landlords \$157.50 for the cleaning.

Blinds cleaning

The photos show markings on the blinds upon move-out. The Condition Inspection Report shows the blinds were “fair” on move-in and that there was crayon on the blinds in the living room on move-out.

I accept that the Tenant is responsible for the markings on the blinds. I find this is beyond reasonable wear and tear and therefore the Tenant breached section 37 of the *Act* by leaving the blinds in this condition. I accept that cleaning the blinds cost \$105.00 and find this to be a reasonable amount. I award the Landlords the \$105.00 requested.

Tenant's application for \$1,500.00 in compensation

I accept the testimony of the Tenant that the elevator in the building did not stop at his floor for two and half months during his tenancy. I did not understand the Agent to dispute this. I accept the Tenant's testimony that this was inconvenient, particularly given the age of his child and mother.

Based on Policy Guideline 6, I find it appropriate to award compensation to the Tenant despite the elevator issue being a strata issue as the Tenant did suffer a loss by not having full use of the elevator. I do not accept that the Tenant is entitled to \$500.00 per month in compensation for the inconvenience. I consider the elevator issue to be a minor inconvenience. The Tenant had the use and enjoyment of the rental unit and all other areas of the building. I note that the Tenant did not apply for dispute resolution and compensation back in 2017 when this issue occurred and only filed the Application after the Landlords filed their Application. I find the Tenant is entitled to nominal damages in the amount of \$50.00 for each month the elevator did not work properly. I award the Tenant \$150.00 in total.

As the Landlords were partially successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlords must pay the Tenant \$975.00 for the return of double the security deposit plus \$150.00 as compensation for the elevator issue. In total, the Landlords must pay the Tenant \$1,125.00. However, the Tenant must pay the Landlords \$762.50 in compensation. Therefore, the Landlords must only pay the Tenant \$362.50.

Conclusion

The Landlords must pay the Tenant \$362.50. The Tenant is issued a Monetary Order in this amount. This Order must be served on the Landlords and, if the Landlords do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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

Dated: September 06, 2018

Residential Tenancy Branch