



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BLUE STAR INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Both tenants attended. The agent for the landlord ("the landlord") attended and confirmed that he had permission to speak on behalf of the landlord named in this application, at this hearing.

The tenants acknowledged service of the Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find the tenants were served with the Notice of Hearing and Application for Dispute Resolution under section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on November 1, 2016. At that time, SM Ltd was the landlord ("previous landlord"). The landlord submitted a copy of the tenancy agreement. Following the landlord's purchase of the property, the parties entered into a tenancy agreement, a copy of which the landlord also submitted in evidence. The month-to-month tenancy began on November 1, 2017 for monthly rent of \$895.00 payable on the first of the month. The agreement included an clause requiring the tenants to pay \$25.00 for each late payment.

The title of the tenancy agreement is, Manufactured Home Site Tenancy Agreement. However, the landlord testified that the tenants rented a residential home and not a manufactured home.

The parties agreed the tenants paid a security deposit of \$425.00 at the start of the tenancy. The parties consented to the application of the security deposit to outstanding rent for the month of March 2018.

The tenants acknowledge they owe the landlord \$470.00 for outstanding rent for March 2018, after the application of the security deposit to the rent. They also acknowledge owing \$875.00 for rent for the month of April 2018. The tenants acknowledged owing 2 late fees of \$25.00 for a total of \$50.00

The tenants therefore acknowledge owing the landlord rent of **\$1,370.00** calculated as follows:

ITEM	AMOUNT
Outstanding rent March 2018	\$425.00
Outstanding rent April 2018	\$895.00
Late fees	\$50.00
Total	\$1,370.00

The tenants dispute owing the landlord rent for the month of May 2018 as the vacated the unit in early April 2018. The landlord claims rent for the month of May 2018 as the unit could not be rented to another tenant until repairs were completed. He testified these repairs were necessary because of damage caused by the tenants.

The landlord testified that no condition inspection was conducted at the time of moving in by the previous landlord and the tenants. The landlord submitted evidence of his efforts to do a 'walk through' with the tenants when they vacated, but the tenants failed or refused to attend. The tenants said that they were not available at any of the times proposed by the landlord and that, in any event, they did not understand the significance of the inspection upon vacating.

Nevertheless, the landlord retained the services of an agent of the previous landlord who inspected the house on her own after the tenants vacated. The landlord submitted written evidence from her describing the condition when the tenants vacated compared with the condition when the tenancy began in 2016. The evidence supported the landlord's claim for damages and reiterated his description of the condition of the unit.

The landlord testified the tenants damaged the unit. He testified to the following conditions in the unit when the tenants vacated:

- There was garbage including an old freezer requiring hauling items to the dump;
- The front door was damaged and required replacing;
- The unit's blinds were ruined and had to be removed;
- There were multiple holes in the walls - larger than pin holes, but "nothing larger than a toonie" requiring filling, sanding, and painting;
- The wallpaper was torn from the walls, requiring repair and replacement;
- The bathroom vanity was damaged requiring repair and reassembly of drawers;
- Water damage caused an interior wall to warp requiring its repair;
- The kitchen island was damaged with a piece missing requiring its repair;
- The kitchen cupboards were damaged requiring their repair;
- The unit was filthy and required cleaning;
- The heater required repair;
- The stove required repair.

The tenants deny responsibility for any of the damage claimed by the landlord. They said the unit was "old and run down" when they moved in and they did no more than use it normally. Any damage occurred because of age, normal wear and tear, and not because of anything the tenants did or did not do. The tenants admitted the freezer left outside, a children's plastic swimming pool, and various other items were theirs, as well as some of the garbage.

The landlord submitted invoices in support of all his claims for cleaning expenses, removal of garbage and incurred costs for repairs of damages. He itemized his claim as follows:

ITEM	AMOUNT
Garbage removal	\$298.00
Blinds – replacement	\$306.00
Holes in wall	\$2,520.00
Wallpaper – removal and fixing walls – room # 1	1,629.00
Wallpaper – removal and fixing walls – room # 2	\$79
Vanity	\$270.00
Water staining	\$1,124.00
Kitchen island repair	\$246.00
Kitchen cupboards - repaired	\$2,728.00

Cleaning: 153.00 + 100.00 =	\$253.00
Front door, repairs and replacement	\$730.00
Heater repair	\$132.00
Stove repair	\$60.00
Rent for May 2018	\$875.00
Total	\$11,250.00

The landlord relies upon the following evidence in support of his claim for damages:

- The letter and report prepared by the agent of the previous owner in the absence of the tenants;
- Many photographs showing the condition of the unit;
- Invoices for the work performed and costs incurred.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I find the landlord has established that the claimed damage or loss occurred. I also find that the tenants caused some or all the damage for which compensation is claimed.

In considering the monetary amount or value of the damage or loss, the landlord did not provide evidence of the age of the home and its various components. The landlord did not submit any evidence as to the age of the items damaged. It is apparent from the photographs that the unit was an older home; I accept as reasonable the tenants' estimate that it is approximately 50 or 60 years old. It is also apparent that the house was in its original condition; that is, it had not

been renovated or updated, and the flooring, walls and fixtures seemed to be the same age as the house.

In determining damages related to repair and replacement costs for building elements, I have considered the *Residential Tenancy Policy Guideline 40. Useful Life of Building Elements*. This Guideline notes:

Useful life is the expected lifetime, or acceptable period of use, of an item under normal circumstances...if the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Based on policy guideline #40, I find all the items the landlord claims were damaged by the tenants, are beyond their useful life as set out in the *Guideline*. However, I find the tenants used the items, lived in the unit without telling the landlord it needed repairs, and caused damage beyond normal 'wear and tear'. I therefore find that, in practical terms, the items were serviceable and suitable for use.

Section 32 of the *Act* requires the tenants to repair damage caused by the tenants' actions or neglect. The section states [*emphasis added*]:

- (2) *A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*
- (3) *A tenant of a rental unit **must repair damage** to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*
- (4) *A tenant is not required to make repairs for reasonable wear and tear.*

Residential Tenancy Policy Guideline 16 states that I may consider nominal damages as an award to the landlord in cases where the landlord has not established that an item has a remaining useful life under the *Guideline*. The *Guideline* states in part:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find the landlord mitigated his damages. That is, he took all reasonable steps to reduce the expenses of repairing the damage. For example, the landlord provided testimony that he had the kitchen cupboards repaired instead of replaced, to save expense.

I now consider each of the landlord's claims in turn.

Garbage removal

Pursuant to section 37 of the *Act*, at the end of the tenancy the tenants are required to remove their personal possessions and garbage. As evidenced by the landlord's testimony and the photographs, the tenants have failed to comply with this obligation. The landlord has met the burden of proof on a balance of probabilities that he incurred the expenses claimed for garbage removal.

I therefore award the landlord \$298.00 under this heading.

Blinds – replacement

Based on the evidence submitted and upon consideration of the likely age of the blinds, I award the landlord nominal damages in the amount of \$30.00.

Holes in wall

Based on the evidence submitted and upon consideration of the possible existence of the holes when the tenants rented the unit, I award the landlord nominal damages in the amount of \$250.00.

Wallpaper

Based on the evidence submitted and upon consideration of the likely age of the wallpaper when the tenants rented the unit, I do not award the landlord damages under these headings.

Vanity

Based on the evidence submitted and upon consideration of the likely age and possible condition of the vanity, I award the landlord nominal damages under this heading of \$20.00.

Water staining to a wall

Based on the evidence submitted and upon consideration of the likely age of the wall and the uncertainty about its condition when the tenants rented the unit, I do not award the landlord damages under this heading.

Kitchen island repair

Based on the evidence submitted and upon consideration of the likely age of the island and the uncertainty about its condition when the tenants rented the unit, I award the landlord nominal damages under this heading of \$25.00.

Kitchen cupboards

Based on the evidence submitted and upon consideration of the likely age of the cupboards and the uncertainty about the condition when the tenants rented the unit, I award the landlord nominal damages under this heading of \$270.00.

Cleaning

Pursuant to section 37 of the *Act*, at the end of the tenancy the tenant is required to leave the rental unit undamaged, reasonably clean and vacant which means removal of the tenant's personal possessions and garbage. Should the tenant fail to comply with this obligation, the landlord may seek recovery of losses associated to the tenant's violation.

I accept the landlord's testimony, supported by photographs and invoices, that he incurred the cleaning expenses claimed. I find the landlord is entitled to recover this cost. I therefore award the landlord the amount claimed for cleaning of \$253.00.

Front door, repairs and replacement

I find that the tenants are responsible for the damage to the front door requiring it to be repaired and then replaced. While the landlord did not provide evidence of the age of the door, I find it was a functioning exterior door during the tenancy. I therefore award the landlord nominal damages in the sum of \$350.00 under this heading.

Heater repair

I find the landlord has not met the burden of proof on a balance of probabilities with respect to this claim. I therefore deny the landlord compensation under this heading and dismiss this claim without leave to reapply.

Stove repair

Based on the evidence submitted and upon consideration of the likely age of the stove and the uncertainty about its condition when the tenants rented the unit, I award the landlord nominal damages under this heading of \$10.00.

Summary of award for compensation for repairs

I award the landlord **\$1,506.00** for repairs for compensation for repairs for damages calculated as follows:

ITEM	AMOUNT	AWARDED
Garbage removal	\$298.00	\$298.00
Blinds – replacement	\$306.00	\$30.00
Holes in wall	\$2,520.00	\$250.00
Wallpaper – removal and fixing walls – room # 1	1,629.00	0
Wallpaper – removal and fixing walls – room # 2	\$79	0
Vanity	\$270.00	\$20.00
Water staining	\$1,124.00	0
Kitchen island repair	\$246.00	\$25.00
Kitchen cupboards	\$2,728.00	\$270.00
Cleaning: 153.00 + 100.00 = \$253.00	\$253.00	\$253.00
Front door, repairs and replacement	\$730.00	\$350.00

Heater repair	\$132.00	0
Stove repair	\$60.00	\$10.00
Rent for May 2018	\$875.00	0
Total	\$11,250.00	\$1,506.00

Rent for May 2018

I accept the landlord's evidence that he lost rental income from the unit for the month of May 2018 because of repairs. However, I have found that the tenants are not responsible for all the repairs claimed by the landlord. I therefore do not award the landlord any compensation under this heading.

Filing Fee

As the landlord has been successful in his claim, I award \$100.00 as reimbursement of the filing fee.

Summary of award

I award the landlord a monetary order in the amount of **\$2,976.00** calculated as follows:

ITEM	Amount
Outstanding rent and fees	\$1,370.00
Damages claim awarded to the landlord	\$1,506.00
Recovery of filing fee for this Application to the landlord	\$100.00
Total monetary award in favour of landlord	\$2,976.00

Conclusion

The landlord is entitled to a monetary order in the amount of **\$2,976.00**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to be 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 *Residential Tenancy Act*.

Dated: November 06, 2018

Residential Tenancy Branch