



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **Landlord** – MNDL-S, MNRL, FFL
 Tenant – MNSD, MNDCT

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* (“Act”).

The landlord sought:

- a monetary order for unpaid rent and for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants’ security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants sought:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

The landlord and the tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant B.K. (the tenant) indicated that he would be the primary speaker for the tenants during this hearing.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged receipt of the Landlord’s Application for Dispute Resolution (Landlord’s Application) and an evidentiary package which were served to the tenants by way of registered mail. In accordance with sections 88 and 89 of the *Act*, I find that the tenants are duly served with the Landlord’s Application and an evidentiary package.

The landlord acknowledged receipt of the tenants' Application for Dispute Resolution (Tenants' Application) but stated that they did not receive any evidence from the tenants. In accordance with section 89 of the Act, I find that the landlord was duly served with the Tenants' Application.

The tenant stated that he might have sent the landlord his evidence.

Although the tenants' evidence was submitted to the Residential Tenancy Branch (RTB), Rule 3.3 of the RTB Rules of Procedure states that documentary evidence intended to be relied on at the hearing for a cross application must be received by the other party not less than 14 days before the hearing.

Based on a balance of probabilities, I accept the landlord's testimony that they did not receive the tenants' evidence as the tenant did not provide definitive testimony regarding the service of his evidence; however, I do find that there is one piece of evidence submitted by the tenants, which is a letter from the landlord to the tenants and is signed by the landlord on February 24, 2018. I find that the landlord is not prejudiced by the consideration of a document that they have written and signed. For the above reason I will consider this letter written by the landlord dated February 24, 2018.

I find that the tenants did not serve the landlord with their evidence and that the landlord may be prejudiced by this as they did not have a chance to respond to the tenants' evidence. For this reason tenants' evidence is not accepted for consideration, other than the letter from the landlord dated February 24, 2018.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage to the rental unit?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order?

Is the landlord entitled to recover the filing fee for the Landlord's Application from the tenant?

Are the tenants entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Are the tenants entitled to obtain a return of all or a portion of their security deposit?

Background and Evidence

Written evidence was provided that by the landlord this tenancy began on May 01, 2017, with a monthly rent of \$2,100.00, due on the first day of each month. The landlord testified that they continue to retain a security deposit in the amount of \$1,050.00. The tenancy agreement indicates that the tenants are responsible for 50% of the utilities.

The landlord also provided in written evidence:

- Various pictures taken from around the rental unit of damage, or the repairs of damage, allegedly caused by the tenants;
- A copy of a cheque in the amount of \$2,500.00 which indicates it is for the rent and shed;
- A list of damages to the rental from the landlord with amounts for all required repairs for the rental unit totalling \$4,515.00 and submitted to the Residential Tenancy Branch on June 12, 2018;
- A copy of an invoice dated June 15, 2018, for work done by a contracting company for repairs to the lower suite and exterior including painting the rental unit, unclogging the bathroom sink and most of the items that were on the list of damages with the same amounts for each of the items listed and indicating that all taxes are included in the prices;
- A copy of a move-in Condition Inspection Report signed by both parties at the beginning of the tenancy and completed on May 01, 2017. The report lists all items as in good condition other than some scratches to kitchen countertops;
- A copy of a move-out reminder dated May 15, 2018, for the tenants to complete a move-out condition inspection report when the tenants return from their holidays;
- A copy of a move-out Condition Inspection Report with the same list of items as above which the landlord states require repairs beyond normal wear and tear. The report also states that the tenants did not contact the landlord to conduct a move-out condition inspection report upon vacating;
- A copy of a gas utility bill in the amount of \$54.78 for the residential premises where the rental unit is located for April 2018;
- A copy of a gas utility bill in the amount of \$26.92 for the residential premises where the rental unit is located for May 2018;
- A copy of an electricity utility bill for the residential premises where the rental unit is located dated April 27, 2018, in the amount of \$133.00, for the period of March 2018;

- A copy of an invoice dated June 04, 2018, for the repair of a window in the amount of \$165.00 which consists of three hours of suite cleaning for \$105.00 and fireplace glass cleaning in the amount of \$60.00;
- A copy of an invoice dated June 10, 2018, for the repair of a window in the amount of \$850.00;
- A copy of a worksheet detailing the landlord's monetary claim of \$4,723.00 as follows;

Items	Amount
Driveway curb & lawn damaged	\$600.00
Gate door - 2 hinges broken	50.00
Concrete slab cracked	35.00
Laundry Rm linoleum floor ripped	850.00
Kitchen screen door ripped	120.00
Garburator cap missing	15.00
Two stove trays damaged	80.00
Holes in all walls - plastering, sanding & touch up paint	1,200.00
Bathroom towel rack missing	100.00
Bathroom sink blocked	160.00
Soap dispenser - one missing	50.00
Bathtub Damage	200.00
Living Rm wooden storage bench lid broke	450.00
Living Rm window seal broken	400.00
Fireplace glass not cleaned	60.00
Cleaning 3 hrs. - behind appliances, windows & blinds	105.00
One damaged blind	30.00
Two missing key	10
Requested Monetary Order	\$4,515.00

In addition to the above, the landlord is claiming \$208.00 for utilities for a total monetary claim of \$4,723.00.

The tenant submitted into evidence:

- A copy of a letter from the landlord dated February 24, 2018, in which the landlord acknowledges a threatening letter from the tenant and indicates that it was the tenant who requested to extend the tenancy by one month

until the end of May 2018, which was put into writing on January 24, 2018, and signed by both parties. The letter goes on to remind the tenants to conduct a condition inspection with the landlord and that the landlord will attempt to rent out the rental suite for May 01, 2018, provided it comes to the landlord as a request.

The landlord confirmed that they received the tenants' forwarding address on the tenants' Application. The landlord testified that they have incurred multiple losses due to damage caused by the tenants during the tenancy as well as unpaid utility bills. The landlord referred to the evidence submitted in the form of invoices and bills to support their claim.

The landlord submitted that they were aware that the tenants were going to go on vacation but that he thought they would be back at the rental unit after the vacation. The landlord stated that they advised the tenants multiple times verbally and in writing that they were required to do a condition inspection with the landlord at the end of the tenancy. The landlord maintained that they were not aware that the tenants did not intend on returning to the rental unit in May 2018 to complete a condition inspection. The landlord testified that he did not receive any notice in writing that the tenants wanted to cancel their tenancy for May 2018.

The tenant stated that they did not agree to the majority of the landlord's claims although he admitted driving over the curb/lawn as well as not cleaning the fireplace and item 7 on the landlord's list which is for two damaged stove trays in the amount of \$80.00. The tenant questioned whether the invoices provided by the landlord actually prove that the landlord paid the amounts indicated for damages to the rental unit.

The tenant submitted that he had given the landlord multiple written notices to end the tenancy and had requested the money that was paid for rent for May 2018 to be returned back from the landlord. The tenant admitted that he did not provide the letters to end the tenancy in evidence, which were provided to the landlord. The tenant stated that they had vacated the rental unit for April 30, 2018, and left their key in the mailbox at that time.

Analysis

Regarding the tenant's claim for the return of rent paid for May 2018, section 45 of the Act establishes that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the

landlord receives the notice, as long as the notice to end tenancy complies with section 52 of the Act.

I find that it is undisputed that the tenants and the landlord entered into an agreement for May 2018, with the tenants paying \$2,500.00 for the rent and for the deconstruction of a shed in the back yard of the rental unit. I further find that the tenants did not provide any evidence of their notice to end tenancy provided to the landlord and that I am not able to confirm that the tenants' notice to end tenancy for May 2018 was in compliance with section 52 of the Act. Therefore I dismiss the tenants' monetary claim for the return of May 2018 rent, without leave to reapply.

Regarding the landlord's claim for damages, pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

As the tenant admitted to not cleaning the fireplace, I accept the landlord's claim of \$60.00 for the cleaning of the fireplace.

Having reviewed all documentary evidence and affirmed testimony I find that the landlord has not provided any receipts for the replacement of the keys or for the repair of the blinds and that they have not established a loss exists for these items. For this reason, the landlord's monetary claim for these items is dismissed, without leave to reapply.

Having reviewed all documentary evidence and affirmed testimony, I find that the landlord submitted a list of items as evidence of the damages on June 12, 2018, with the amounts of all of the damages as indicated on the worksheet above totalling \$4,515.00. I find that this list of damages appears to be estimates of the cost of the damages as all figures are perfectly round numbers. I further find that the primary invoice provided by the landlord for the majority of the items requiring repairs is dated June 15, 2018, and that all the amounts

on the invoice are perfectly matched with the list provided on June 12, 2018, but now includes all taxes.

Based on balance of probabilities, I find that it is not reasonable that the landlord would provide an estimate of costs to the RTB and then have a contracting company perform the repairs for the exact same amounts as previously estimated, with the taxes now included. I find that it would be unreasonable for the landlord to know exactly what the contractor is going to charge before getting the invoice. If the landlord did actually receive a quote with the amounts as shown on the worksheet, I find that it would be unreasonable to write the quote on a separate document rather than to just submit the initial quote provided.

I find that the fact that the invoice matches perfectly with the landlord's list of damages and does not breakdown the costs of materials, labour and taxes, in addition to the landlord having all the amounts for repairs calculated on June 12, 2018, with materials, labour and taxes included, prior to receiving the actual invoice on June 15, 2018, brings the validity of the invoice into question.

For the above reasons, I find that this invoice is not an authentic invoice for work actually completed by a contractor and that it does not prove any amounts paid to a contractor by the landlord for the repairs indicated.

Even If I accepted that the invoice was genuine, I find that one of the tests to determine a loss is proof of the actual amounts required to compensate for the claimed loss or to repair the damage. I find that there are no actual receipts for any of the materials in the invoice such as the drip pans, towel rack etc. and that the invoice does not prove how much the materials actually cost or breakdown the labour and the taxes. For these reasons I find that the invoice does not prove the actual amounts required to compensate the landlord for a loss.

I further find that, even if I accepted that the invoice was genuine and that the landlord had previously received the quotes for their own list, the landlord did not mitigate their losses as they just accepted the contractor's quote and did not require the contractor to prove how they arrived at the amounts quoted to them. I find that the invoice and the list of damages has inflated amounts for simple repairs such as \$80.00 for the two stove drip or pans or \$160.00 to unclog a sink, which are very simple repairs to make and there is no evidence the contractor is a licensed plumber. If the landlord paid someone these seemingly arbitrary amounts to purchase the items and to do these simple repairs, they did not minimize their losses as required under section 7 of the *Act*.

Although the tenant admitted to driving over the driveway and took responsibility for the stove drip pans, I find that the landlord has not demonstrated that they have met the test to prove that they have actually incurred a monetary loss for these items or any of the items claimed on the invoice in question. These items include repair to the driveway, repair to the lawn, replaced concrete slab, painting the rental unit, replacing the laundry room floor, repairing bathtub, replacing screen on kitchen door, unclog sink, replace towel rack, replace soap dispenser, two stove drip pans and a garburator cap.

Section 35 of the *Act* states that the landlord must offer the tenant at least two opportunities to inspect the condition of the rental unit with the tenant and complete a condition inspection report in accordance with the Residential Tenancy Regulations (the *Regulations*) before a new occupant occupies the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed day.

Section 17 of the *Regulations* provides that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times, and that if the tenant is not available at the first times offered, the tenant may propose an alternative time to the landlord. The *Regulations* goes on to state that the landlords must consider the tenants' proposed time before proposing a second opportunity to the tenants, different from the first opportunities described above, by providing the tenant with a notice in the approved form.

In addition to the above, I find that the landlord did not complete a condition inspection report with the tenants at the end of the tenancy which would confirm all of the items that the landlord is claiming and which would establish a loss exists. I find that, without the Condition Inspection Report completed at move-out, the landlord is not able to establish that the window required repair due to the actions of the tenants or that the suite needed to be cleaned.

Although the landlord states that they were not aware that the tenants were moving at the end of April 2018, I find that the letter from the landlord to the tenant on February 24, 2018, demonstrates that the landlord was aware that the tenants no longer wanted the rental unit for May 2018 and that the tenants had expressed this in writing to the landlord. I find that the landlord was aware that the tenants did not intend on occupying the rental unit in May 2018 and that they should have submitted two opportunities to the tenants in writing to complete the report in April 2018, before the tenants went on vacation.

I find that the landlord did not provide any evidence that they gave the tenants two opportunities to complete a condition inspection report before the tenants vacated the

rental unit. Although there is a letter from the landlord to the tenants dated May 15, 2018, regarding a final condition inspection taking place, I find that this letter is not on the approved form and is not in accordance with the Regulations.

For the above reasons, I find that the landlord has not established that they have met the test to establish a monetary loss due to the actions of the tenants in violation of the Act for the majority of the damages to the rental unit being claimed. Therefore, the landlord's application for all damages, other than for the fireplace being cleaned in the amount of \$60.00, is dismissed without leave to reapply.

I find that the landlord has provided two gas utility bills and one electricity bill that they have claimed for. Although the landlord is claiming for the total of the utility bills, I find that the tenancy agreement indicates that the tenants are only responsible for 50% of the utility bills. The tenants disputed that they owed for the utility bills; however, I find that the tenants did not provide any evidence that they actually paid the utility bills for the last months of the tenancy.

Therefore, I find that the tenants are obligated to pay 50% of the utility bills as per the tenancy agreement and I find that the landlord is entitled to a monetary award in the amount of \$107.35 ((April 2018 gas bill \$54.78 + May 2018 gas bill \$26.92 + March 2018 electricity bill \$133.00 = \$214.70) / 2) for the gas and electricity utility bills.

Section 36 (2) of the *Act* establishes that, unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the landlord did not provide any evidence that they attempted to schedule or that they attempted to complete a Condition Inspection Report with the tenants at the end of the tenancy, which is not in compliance with sections 35 (2) and 36 (2) the *Act*. I find that the landlord's right to retain all or a portion of the security deposit was extinguished when they failed to complete a Condition Inspection Report with the tenant at the end of the tenancy.

For the above reason, the Landlord's Application to retain all or a portion of the security deposit is dismissed, without leave to reapply.

As the landlord has not been successful in their application to keep the security deposit and for the majority of their monetary claim, I dismiss the landlord's request to recover the filing fee, without leave to reapply.

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

RTB Policy Guideline # 17 C 3. states that unless a tenant has specifically waived the doubling of the deposit, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*.

As I have dismissed the Landlord's Application to retain the security deposit due to the extinguishment of their right to keep it under the *Act* due to the incomplete condition inspection report, I find that the tenant is entitled to a monetary award of \$2,100.00 (\$1,050.00 X 2) for double the return of their security deposit.

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the tenants' favour under the following terms, which doubles the return of the security deposit less the amounts for the fireplace cleaning and the amounts for 50% of the utility bills:

Item	Amount
Return of the Security Deposit with doubling provision (\$1,050.00 X2)	\$2,100.00
Cleaning of Fireplace	-60.00
Electricity/Gas Utility Bills	-107.35
Total Monetary Order	\$1,932.65

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 16, 2018

Residential Tenancy Branch