



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Tenant GC and tenant RD attended the hearing. The landlord was represented by an agent and owner (collectively "the landlord"). Each party was each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each tenant confirmed receipt of the landlord's application and evidence. As neither tenant raised any issues regarding service of the application or evidence, I find that both tenants were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Tenants' Evidence

The tenants testified that they sent an evidence package to the landlord by registered mail. The tenants did not provide a date the package was sent or a tracking number. The landlord confirmed receipt of this package; however she claims that she did not receive this evidence package until Friday November 23, 2018. The landlord claims she did not have sufficient time to review the tenant's evidence. This same package was submitted to the Residential Tenancy Branch ("RTB") online on Friday November 23, 2018.

Rule 3.15 of the RTB *Rules of Procedure* establishes that the respondent's evidence must be received by the applicant and the RTB not less than seven days before the hearing. The evidence package was received just three days prior to the hearing. For these reasons, I have not relied on the tenants' evidence package to form any part of my decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?

Is the landlord authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the testimony of the parties, this tenancy began on November 1, 2005. The parties provided conflicting testimony in regards to the existence of a written tenancy agreement. The landlord submitted

there is a written tenancy agreement and has provided a copy of such. The tenants disputed this and contended that this document was created in an effort to support the landlord's claim. In any event the copy provided does not contain either of the parties' signatures.

During the hearing the parties agreed that rent in the amount of \$1,500.00 was payable on the first of each month. The parties further agreed that the tenants remitted a security deposit in the amount of \$750.00 at the start of the tenancy, which the landlord still retains in trust. The tenants vacated the unit on October 31, 2018 pursuant to a 2 Month Notice.

While the landlord testified that a move-in inspection report was completed and a copy given to the tenants, the tenants disputed this. A copy was not provided to the RTB as part of the landlord's documentary evidence package. The landlord testified that she conducted the move-out inspection on October 31, 2018, without the tenants' participation and created an excel spreadsheet of the deficiencies which she mailed to the tenants as part of her evidence package. The tenants agreed they did not participate in any move-out inspection and that the only form of move-out report received was the excel spread sheet.

The landlord seeks compensation in the amount of \$32,111.18, including the following;

Item #	Item	Amount
1	Cleaning	\$12,426.00
2	Garbage Disposal	\$2,659.93
3	Ivy Removal	\$750.75
4	Windows	\$1,263.00
5	Bedroom Wall Repair	\$5,633.33
6	Carpet Replacement	\$3,276.00
7	Linoleum Replacement	\$301.00
8	Window Coverings	\$1,250.00
9	Landscape Repair	\$2,625.00
10	Garage Doors	\$1,927.17
	Total Claim	\$32,111.18

The landlord also seeks to recover the \$100.00 filing fee for this application from the tenants

1. Cleaning

The landlord testified that it appeared the unit had not been cleaned in years. She testified that nicotine stained the walls, ceilings and window coverings. The carpets were stained with animal urine and the window sills were full of dirt. In support of her position, the landlord submitted photographs and a copy of a cleaning invoice in the amount of \$12,426.00. Tenant RD questioned the validity of the cleaning invoice as he claims the email listed on the invoice belongs to the owner. He also claimed the cleaning costs sought by the landlord were excessive. Tenant GC testified that prior to vacating, they washed the walls and steam cleaned the carpets. Tenant RD testified that at the end of the tenancy, he had his sister clean the unit for six days.

2. Garbage Disposal

The landlord testified that the tenants left a lot of garbage that had to be removed from the premises. The landlord has provided photographs and copies of disposal invoices totaling \$2,659.93. The tenants acknowledged some garbage was left behind however they contended that three of the invoices submitted by the landlord were actually already paid for by the tenants.

3. Ivy Removal

The landlord testified that as per the tenancy agreement, the tenants were responsible for maintaining the yard, which included trimming any ivy or trees on the property. The landlord testified that ivy had grown into the house and that the trees were completely overgrown. Photographs and an invoice for ivy removal in the amount of \$750.75 were included as part of the landlord's documentary evidence. The tenants denied it was their responsibility to maintain the ivy. They testified that despite their reports to the landlord, the landlord did not respond to the ever growing ivy onto the chimney and into the house. The tenants testified that they cut it back twice during their tenancy but once it reached 20 feet high, they were unable to maintain it.

4. Windows

The landlord testified that four windows, original to the house would not open and had to be replaced. Specifically, the frames and hinges were broken and the aluminum frames bent. The landlord submitted an invoice in the amount of \$1,263.00. The tenants testified that the windows were old and likely needed replacement, but they were in working order throughout their tenancy. The tenants acknowledged a broken window downstairs but testified that they had it replaced at the cost of \$860.00.

5. Bedroom Wall Repair

The landlord testified that once the unit was empty of the tenants' belongings, it became apparent that one of the bedroom walls was rotted on the inside and had undergone some repair work presumably by the tenants. The landlord explained that he believed the growth of vines on the exterior of the unit led to the separation of the gutter from the roof which eventually led to water entering the bedroom wall for what he estimates, several years. Both the agent and owner testified that they were unaware of the water problem as it was not reported by the tenants. The landlord submitted photographs and an invoice in the amount of \$5,633.33. The tenants denied conducting any sort of repair to the bedroom.

6. Carpet Replacement

The landlord testified that the 13 year old carpets were heavily stained with dog urine at the end of tenancy and despite cleaning attempts; the carpets would not come clean and therefore required replacement. The landlord provided photographs and testified that an insurance estimate in the amount of \$3,276.00 was used to calculate the cost of replacement. The tenants denied staining the carpets and testified the photographs are not an accurate portrayal of the condition because they show the backside of the carpets only after they were removed.

7. Linoleum Replacement

The landlord testified that the 13 year old linoleum sustained a large black burn. The landlord provided photographs and testified that an insurance estimate in the amount of \$301.00 was used to calculate the cost of replacement. The tenants testified that the linoleum sustained a mark however it was the result of direct sunlight on a dark rug; not a burn mark as alleged by the landlord.

8. Window Coverings

The landlord testified that although smoking was prohibited, all window coverings were heavily smoke stained and required replacement. The landlords seek compensation in the amount of \$1,250.00. The tenants denied smoking was prohibited.

9. Landscape Repair

The landlord testified that the backyard was overgrown to the point the shed was not visible under brambles and vines. Photographs and an invoice in the amount of \$2,625.00 were provided by the landlord. The tenants testified that they mowed the lawn every weekend; however the vacant lot beside the unit full of blackberries and weeds continuously crept into the yard. The tenants provided a witness who testified to visiting on a regular basis and helping with the yard work.

10. Garage Doors

The landlord testified that the original wooden garage doors were damaged beyond repair. The landlord provided photographs and an invoice in the amount of \$1,927.17. The tenants testified that the wood around the garage door rotted, due to natural aging. The tenants testified that this was reported to the landlord throughout the tenancy, but the landlord failed to respond.

Analysis

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. In this case, the onus is on the landlord to prove, on a balance of probabilities, the following four elements:

- Proof that the damage or loss exists;
- 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;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

1. Cleaning

Subsection 37(2) of the *Act* specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

Upon review of the photographs and testimony of the parties I am satisfied that the tenants left the rental unit contrary to section 37(2) of the *Act*. The photographs support the landlord's claim that the tenants left the rental unit unclean. However I do not find the landlord is entitled to compensation in the amount of \$12,426.00 for cleaning. The landlord did not submit a professional invoice from a hired cleaner. The invoice submitted indicates 275 hours of cleaning at an hourly rate of \$40.00 with materials costing \$1,426.00. In the absence of corroborating evidence verifying the typical rate of a cleaner or receipts for the materials used, I grant the landlord a nominal award in the amount of \$400.00

2. Garbage Disposal

Under Residential Tenancy Policy Guideline #1, a tenant is responsible for the removal of garbage at the end of tenancy, unless an agreement exists to the contrary. As per the tenants' admission that some items were left behind and in the absence of documentary evidence proving three invoices were already paid by the tenants, I find the landlord is entitled to recover the cost of garbage disposal in the submitted invoice amount of \$2,659.93.

3. Ivy Removal

Residential Tenancy Policy Guideline #1 sets out that a tenant is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is also responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds. The landlord is responsible for major projects, such as tree cutting, pruning and insect control.

I find the landlord has failed to meet her onus in proving the tenants had the responsibility of any landscape maintenance other than cutting the grass and clearing snow during this tenancy. Although the landlord has submitted a tenancy agreement and addendum which indicate such, these documents remain unsigned and the terms are disputed by the tenants. While I am satisfied that the standard terms of a tenancy apply pursuant to section 12 of the *Act*, I am not satisfied the parties agreed to the additional terms as outlined in the submitted addendum. For these reasons, I find the tenant was responsible for routine yard maintenance in the form of lawn mowing and clearing snow only. Maintenance of the flower beds, tree cutting, pruning and insect control were the responsibility of the landlord. Accordingly, I dismiss the landlord's claim for ivy removal in the amount of \$750.75 without leave to reapply.

4. Windows

In the absence of a condition inspection report indicating the condition of the windows at move in, I find the landlord cannot substantiate that any window damage was a direct result of this tenancy. The photographs do not depict the damage as described by the landlord. For these reasons I dismiss the landlord's claim for window replacement in the amount of \$1,263.00 without leave to reapply

5. Bedroom Wall Repair

Based on my previous finding that the landlord was obligated to maintain the flower beds and conduct the pruning, I find the landlord has failed to establish that it was the tenants' failure to prune the ivy that triggered a water leak in the bedroom. In regards to the landlord's claim that the tenant conducted repairs, I find the landlord has provided insufficient evidence to substantiate this claim. I dismiss the landlord's claim for compensation in the amount of \$5,633.33 for the bedroom wall repair, without leave to reapply.

6. Carpet Replacement

In the absence of a condition inspection report setting out the state of the carpet at the start of the tenancy and, in the absence of any written verification of the amount required to replace the carpets, I dismiss the landlord's claim for compensation in the amount of \$3,276.00 for carpet replacement, without leave to reapply.

7. Linoleum Replacement

Although the tenants acknowledged the linoleum floor sustained damage during their tenancy, the landlord failed to provide proof of the actual amount required to replace the floor. Further, pursuant to Residential Tenancy Policy Guideline #40 the floor had exceeded its useful life by three years. Therefore I find the landlord is not entitled to compensation in the amount of \$301.00 for linoleum replacement and dismiss this portion of the landlord's claim without leave to reapply.

8. Window Coverings

As per Residential Tenancy Policy Guideline #40, the tenant is expected to clean the internal window coverings at the end of the tenancy regardless of the length of tenancy where he or she, or another occupant smoked in the premises. Upon review of the parties testimony and submitted photographs, I am satisfied the tenants smoked in the unit and did not clean the window coverings as required. However, I find the landlord failed to mitigate her loss by at least attempting to remove the stains through cleaning. Based on the above and in the absence of a receipt or invoice validating the landlord's claim of \$1,250.00, I dismiss the landlord's claim for the replacement of the window coverings, without leave to reapply.

9. Landscape Repair

Upon review of the submitted photographs, I am satisfied that the tenants did not cut the lawn as often as claimed. The photographs depict an unkempt, overgrown lawn. However, because the invoice submitted by the landlord includes the trimming and removal of trees which exceeds the tenants' responsibility and the landlord failed to mitigate this cost with regular trimming and weeding as required under Residential Tenancy Policy Guideline #1, I dismiss the landlord's claim for compensation in the invoiced amount of \$2,625.00 without leave to reapply.

10. Garage Doors

Residential Tenancy Policy Guideline #1 defines reasonable wear and tear as the natural deterioration that occurs due to aging and other natural forces, where the tenants have used the premises in a reasonable fashion. Upon review of the submitted photographs I find the garage doors were in a bad state of repair; however I find the landlord has provided insufficient evidence to establish the state of the

garage doors is due to the action or neglect of the tenants. Rather, I find any damage as described by the parties occurred as a result of natural deterioration. Additionally, the doors were original to the unit estimated by the landlord to be built in 1990, which means they would have exceeded their allotted 10 year useful life. Accordingly, I dismiss the landlord's claim for compensation in the amount of \$1,927.17 for garage doors, without leave to reapply.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application for a total award of \$3,159.93.

Pursuant to Residential Tenancy Policy Guideline #17, if a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required under the *Act*, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit.

In this case the tenancy ended October 31, 2017 and the landlord has not returned or applied to retain the security deposit to date. Therefore in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$1,500.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,659.93.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,659.93 for the following items:

Item	Amount
Cleaning	\$400.00
Garbage Disposal	\$2,659.93
Filing Fee	\$100.00
Less Security Deposit	(\$1,500.00)
Total Claim	\$1,659.93

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: December 6, 2018

Residential Tenancy Branch