



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDL MNRL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenants were duly served with the Application. All parties confirmed receipt of each others' evidentiary materials.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Unpaid Rent?

Is the landlord entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to recover the cost of the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in September of 2010. The new landlord took over this tenancy when he took possession of the home on August 30, 2017. The landlord testified that the previous landlord did not provide him with any documentation for the tenancy. Monthly rent was set at \$750.00, payable on the first of the month. The tenants moved out on September 16, 2017. Both parties confirmed that the no inspection reports were provided this tenancy. The landlord testified that the tenants failed to arrange a move-out inspection at the end of the tenancy, while the tenants testified that everything was “settled” with the previous owners before the new landlord took possession.

The landlord is seeking a Monetary Order for damages as outlined in the table below and in the landlord’s Application:

Item	Amount
Carpet Cleaning	\$78.25
Labour for Cleanup	360.00
2 Faucets (kitchen & bathroom)	89.96
Paint- basement	128.91
Painting accessories	90.00
Labour - painting	700.00
Shower Supplies	700.00
Labour	1,500.00
Loss of Rental Income – October 2017	1,180.00
Total Monetary Order Requested	\$4,747.12

The landlord testified that the tenants did not give notice until September 2, 2017, and failed to leave the home in reasonably clean and undamaged condition. As a result of the tenants’ actions the landlord was unable to re-rent the home until November 1, 2017 for \$1,100.00 per month. The landlord is seeking \$1,180.00 in lost rental income for the month of October 2017.

The landlord testified that the bathroom was damaged by the tenants, and as a result the landlord had to renovate the bathroom. The landlord testified that the faucets were replaced in both the kitchen and bathroom as the tenants damaged both faucets. The landlord submitted photos and documentary evidence in support of their claim.

The tenants testified that they had given written notice to end this tenancy to the previous landlord in August of 2017, while the new landlord testified that they were not given notice until September 2, 2017. The tenants testified that they did not confirm the move-out details with the new owner as they were under the impression that the previous owner would communicate the details to the new owner.

The tenants testified that the September 2017 rent was paid in full, even though they moved out before the end of the month. The tenants also feel that the landlord has not justified their loss of \$1,180.00 for October 2017 rent, especially when rent was set at \$750.00, and not \$1,180.00.

The tenants testified that they had cleaned the rental unit, but admit to the writing on the wall. The tenants testified that the previous owner was aware of the writing on the wall, and there was no issue with the damage. The tenants testified that they did not clean behind the stove as they were unable to move the appliance in order to do so.

The tenants dispute the claim for the bathroom renovations as they dispute causing any damage beyond wear and tear to the 2006 home. The tenants feel that the landlord has not justified the renovations to the entire bathroom. Furthermore, the tenants testified that the invoices were billed to a different address than the rental address, and the landlord has not provided sufficient evidence to support that the purchases were for the rental home. The landlord's father-in-law attended the hearing, and testified that he had paid for the items, and that the purchases were for the rental home.

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 order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants had caused damage in the amounts claimed by the landlord.

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

Both parties confirmed that no move-in or move-out inspection reports were completed for this tenancy. I have reviewed the evidentiary evidence submitted by both parties, as well as the testimony provided in the hearing. The tenants dispute the landlord's entire claim, although they did admit to the writing on the wall and failing to clean behind the stove. As stated above, the onus falls on the landlord to support the value of their loss, and that this loss stemmed directly from the other party's violation of the *Act* or agreement. In the absence of any move-in and move-out inspection reports, I have no way of ascertaining what damages occurred during this 7 year tenancy beyond what was agreed to by the tenants. On this basis, I dismiss the landlord's monetary claim for damages without leave to reapply, with the exception of the painting.

The tenants admit that they were responsible for the writing on the wall. It was undisputed that at the end of the tenancy the home was at least 10 years old, and that the tenants resided there

for 7 years. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of interior painting is 4 years. Even though the tenants admit to writing on the wall, I find that at the end of the tenancy the interior paint had exceeded its useful life of 4 years. Accordingly, I find that the landlord is not entitled to any compensation for losses associated with this damage as the interior paint has exceeded its useful life. The landlord's monetary claim for painting and associated costs is dismissed without leave to reapply.

The tenants admit that they did not clean behind the stove as they were unable to move the appliance. I am satisfied that the landlord had provided sufficient evidence to support that the tenants failed to leave the rental unit in reasonably clean condition. On this basis, I allow the landlord's monetary claim for carpet cleaning and the labour for cleaning in the amounts of \$78.25 and \$360.00.

Section 45 of the *Residential Tenancy Act* reads in part as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

While the tenants testified that they gave notice to the previous landlord, I am not satisfied that they provided sufficient evidence to support that they ended this tenancy in a manner that complies with the *Act*, as stated above. I, therefore, find that the tenants vacated the rental unit contrary to section 45 of the *Act*. I still must consider whether the landlord has sufficiently mitigated their damages. The landlord submitted a monetary claim for \$1,180.00 in lost rental income even though the tenants' rent was set at \$750.00. I find that the landlord did suffer a monetary loss of the rent for October 2017 due to the tenants' failure to provide adequate notice to the new landlords, but I am not satisfied that the landlord is entitled to \$1,180.00 for this loss. Accordingly, I allow a monetary claim of \$750.00 for loss of rental income for the month of October 2017.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their claim, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application.

Conclusion

The landlord is provided with a Monetary Order in the amount of \$1,238.25 as set out in the table below, and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Item	Amount
Carpet Cleaning	\$78.25
Labour for Cleanup	360.00
Loss of Rental Income – October 2017	750.00
Half of Filing Fee	50.00
Total Monetary Order	\$1,238.25

The remaining portion of the landlord's monetary claim is dismissed without leave to reapply.

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 17, 2018

Residential Tenancy Branch