Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCT-S, FFT

Introduction

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

- a monetary order for unpaid rent and utilities, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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.

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.

As Tenant NC (the tenant) confirmed that they received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on August 18, 2018, I find that the tenants were both duly served with this package in accordance with section 89 of the *Act.* Since the landlord's agent (the landlord) confirmed that they had received copies of the tenants written and photographic evidence, I find that this evidence was served in accordance with section 88 of the *Act*. The landlord testified that they sent the tenants copies of their written and photographic evidence by regular mail. The tenant testified that they received this regular mail package on November 19, 2018, and had less time to review that evidence than was set out in the information contained in the original dispute resolution hearing package. Although the landlord may not have served this evidence to the tenants in accordance with the Residential Tenancy Branch's (the RTB's) Rules of Procedure, I find that the landlord's written and photographic evidence

was supplied to the tenants in sufficient time to enable them to properly prepare for this hearing and in accordance with section 88 of the *Act*.

At the hearing, the parties clarified that the landlord had chosen to cash the tenants' $2,000.00 cheque provided to the landlord for the payment of their August 2018 rent. The landlord said that they cashed this cheque in partial satisfaction of a monetary award granted to them on July 24, 2018 by another arbitrator appointed pursuant to the *Act* (see reference to that decision above). The parties agreed that the previous decision involved cross-applications from the tenants to cancel the landlord's One Month Notice to End Tenancy for Unpaid Rent (the 1 Month Notice), and the landlord's application for an Order of Possession based on the 1 Month Notice and a monetary award for unpaid rent. The parties agreed that a $3,150.00 monetary Order was issued by the arbitrator in the previous decision for unpaid rent owing up until July 31, 2018, which did not include any of the amounts currently claimed by the landlord in the application before me. The previous arbitrator's decision noted that they were dismissing the landlord's claim for damage with leave to reapply as the arbitrator found that portion of the landlord's application premature. The $3,150.00 monetary award was issued on the basis of a settlement reached between the parties at the July 24, 2018 hearing.

The landlord's original application was for a monetary award of $15,000.00. However, in the landlord's Monetary Order Worksheet they submitted and in sworn oral testimony from landlord, the landlord's claim was lowered to $4,755.82. I have made this change to the requested monetary award accordingly.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid utilities and/or loss of rent? Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The parties signed a fixed term Residential Tenancy Agreement (the Agreement) on November 25 and 27, 2017, for a tenancy that was to run from December 1, 2017 until June 30, 2018. Monthly rent was set at $2,000.00, payable in advance on the first of

each month, plus all utilities. The landlord continues to hold the tenants' $1,000.00 security deposit.

Both parties participated in a joint move-in condition inspection of the rental unit on December 1, 2017, and the landlord provided the tenants with a copy of the report of that inspection.

The parties agreed that the tenants abandoned the rental unit on July 31, 2018, without agreeing to participate in a joint move-out condition inspection. The tenants provided the landlord with their forwarding address on July 31, 2018. As the landlord applied to retain the security deposit on August 14, 2018, the landlord was within the 15-day time period established by section 38 of the *Act* for applying to retain that deposit.

The landlord entered into written evidence a copy of the joint move-in condition inspection report and a copy of the landlord's report of the condition inspection the landlord undertook in the tenants' absence on July 31, 2018.

The landlord's revised claim for a monetary award of $4,755.82 included the following items listed in the landlord's written evidence submission:

Item	**Amount**
Loss of Rent for August 2018	$2,000.00
Late Rent Fee for August 2018	25.00
Recovery of Filing Fee for this Application	100.00
Recovery of Mailing Costs	21.42
Unpaid Water Bill (April 1, 2018 to June 30, 2018)	153.12
Recovery of Pro-Rated Water Bill for July and August 2018, plus Water Turn-off Charge ($92.78 + $50.00 = $142.78)	142.78
Cleaning and Yard Cleanup (10 Hours)	350.00
Invoice for Repairs	1,963.50
Total Monetary Order Requested	**$4,755.82**

At the hearing, both parties supplied photographs to support their positions with respect to the landlord's claim for damage arising out of this tenancy. The landlord's photographs showed a range of cleaning deficiencies and damage for which the landlord was claiming. The tenants asserted in their sworn testimony and through the

photographs that they submitted that the landlord's claim for cleaning and claim for repairs for damage arising out of this tenancy was inflated and excessive.

The agent gave undisputed sworn testimony that the laminate flooring was replaced shortly before this tenancy began and had to be replaced again at a cost of about $800.00 because the flooring used was no longer being produced. The tenant maintained that the landlord told them when they moved into this rental unit that they had extra pieces of flooring stored. The tenants maintained that only a few of the laminate flooring pieces had been damaged and questioned why they should bear the cost of replacing the entire floor when only three sections of flooring had been damaged. The agent said that five pieces of flooring had been damaged and that replacing the entire laminate flooring in that room was the only way of repairing the damage caused by the tenants.

The landlord also noted that linoleum flooring was new when this tenancy began.

The landlord's claim included replacement of three blinds at an approximate cost of $250.00 including labour and materials. The landlord again provided undisputed sworn testimony that the blinds were purchased and installed shortly before this tenancy began. The tenant said that some of the damage to the blinds occurred because they were not properly sized and/or installed and that they kept hitting walls and a doorknob whenever they were adjusted.

The male tenant did not dispute the landlord's claim that the carpet in the lower level of this home was quite dirty at the end of this tenancy. Although the male tenant estimated the age of this carpet at 30 years, the landlord testified that it was installed in 2013.

During the hearing, the landlord did not dispute the tenants' written evidence and sworn testimony that the landlord cashed the tenants' $2,000.00 post-dated cheque for August 2018.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, invoices and receipts, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set

out below in generally the same order as the landlord presented them in their worksheet.

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/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 the balance of probabilities that the tenants caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy, which this tenancy became as of July 1, 2018, by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for August 2018, the tenants would have needed to provide their notice to end this tenancy before July 1, 2018, once the tenants decided to remain in the rental unit past June 30, 2018, the scheduled end date for their fixed term tenancy.

Instead, this tenancy ended on the basis of the settlement of the applications involving the landlord's 1 Month Notice. As the monetary settlement reached between the parties on July 24, 2018 only addressed unpaid rent owing for June and July 2018, the landlord's application for a monetary award for their loss of rent for August 2018 is properly before me.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. While there is undisputed evidence that the tenants did not pay any rent for August 2018, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant’s non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the sworn testimony and written evidence of the landlord, I find that the landlord has demonstrated that they were unable to rent the tenants' suite to new tenants until September 1, 2018. The landlord provided undisputed sworn testimony that they advertised the availability of the rental unit as soon as they received

confirmation at the July 24, 2018 hearing that the tenants would be vacating the premises by July 31, 2018. By that late date and with the repairs and work required to return this rental unit to its previous condition, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for August 2018. As such, I am satisfied that the landlord has discharged their duty under section 7(2) of the *Act* to minimize the tenants' exposure to the landlord's loss of rent for August 2018. As such, I allow the landlord's claim for the loss of rent for the month of August 2018.

As outlined above, the landlord did cash the tenants' post-dated cheque of $2,000.00 for August 2018, as the landlord believed incorrectly that they were authorized to do so in partial satisfaction of the monetary award of $3,150.00 granted them as a result of their settlement of the previous applications at the July 24, 2018 hearing and as allowed by the previous arbitrator who presided over that hearing. The previous arbitrator's decision made no mention of granting authorization to apply the tenants' August 2018 post-dated cheque towards the monetary Order attached to that decision. I find that the landlord's cashing of the tenants' $2,000.00 rent cheque for August 2018 is a credit towards the landlord's application for a monetary award for their loss of rent for August 2018, an issue considered in the context of the current hearing and not the previous decision. In other words, the landlord has already cashed the tenants' post-dated cheque for rent for August 2018, which I find the landlord is entitled to keep for loss of rent for August 2018.

As this tenancy ended on July 31, 2018, the tenants were not late in their payment of their August 2018 rent. For this reason, I dismiss the landlord's application for a $25.00 late fee for August 2018.

The only hearing related cost that the landlord is entitled to recover is their $100.00 filing fee, which I allow them to recover as they have been successful for the most part in their application. For this reason, I dismiss the landlord's application for the recovery of their hearing-related mailing costs without leave to reapply.

Based on the landlord's undisputed written evidence and sworn testimony, I allow the landlord's application for a monetary award of $153.12 for the unpaid water bill covering the period from April 1, 2018 until June 30, 2018.

The landlord's application for a monetary award for the pro-rated amount of the subsequent water bill included July 2018, when the tenants were still residing in the rental unit, and August 2018, after the tenants had vacated the rental unit. As I find that the landlord is not entitled to recover the water bill for this property after the tenants

vacated the premises, I reduce the amount of the landlord's entitlement to recovery of the water bill for this subsequent period by half, from $92.78 to $46.39. I also allow the landlord's undisputed application for recovery of the $50.00 "water turn-off charge."

Paragraph 37(2)(a) of the *Act* establishes 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.”

In this case, the parties presented very different perspectives, written evidence, photographs and sworn testimony regarding the extent to which the premises were left reasonably clean and undamaged at the end of this tenancy.

The landlord testified that the premises were improperly cleaned and supplied photographs and sworn testimony regarding a range of damage that had to be repaired before the premises could be re-rented. The landlord gave undisputed sworn testimony as to the age of the damaged features of the rental unit, maintaining that almost all of these features were installed shortly before this tenancy began. The landlord maintained that what the tenants considered "clean" did not measure up to any reasonable standard of cleanliness that would be expected by a landlord at the end of a tenancy.

The tenants maintained that the rental unit was left reasonably clean and provided photographs of some of these areas of the rental unit to support their assertion. The landlord asked a number of questions of the tenants as to whether the tenants had cleaned specific areas of the rental unit at the end of this tenancy. While the tenants maintained that some of these areas of the rental unit were cleaned, they admitted that no steam cleaning or shampooing of the carpets occurred, some of the areas were not cleaned (e.g., the top of the kitchen cabinets, the blinds, the window tracks), nor were the walls cleaned. The male tenant said that they could not clean the walls effectively as the walls had water based paints and cleaning them simply removed paint from those walls. The tenants testified that holes in the walls were patched before they ended their tenancy.

When disputes such as this one arise, joint move-in and joint move-out condition inspection report or photographs taken by the parties when both were in attendance are very helpful. In this case, the tenants chose not to participate in a joint move-out inspection of the rental premises at the end of this tenancy. The only room-by-room comparison entered into written evidence is the joint move-in condition inspection report and the landlord's move-out condition inspection report. The move-out reports identifies

many areas where the condition of the premises at the end of this 8-month tenancy was considerably worse than the condition noted at the beginning of this tenancy when both parties inspected the premises and attested to the accuracy of the condition as outlined in the joint move-in condition inspection report. I find that a comparison of these reports is the best evidence available to consider the landlord's claim for damage and cleaning costs that were incurred. In making this determination, I confirm that I have also reviewed the photographs presented by both parties. As is often the case, the photographs are taken from different angles and levels of magnification, and reveal differing levels of detail, which makes direct comparisons difficult.

For the most part, I accept the landlord's evidence as the more credible account of the condition of the rental unit at the end of this tenancy. This evidence aligns closely with the written condition inspection reports submitted by the landlord in support of their claim.

Although I accept the landlord's claim that 10 hours of cleaning and yard cleanup were required at the end of this tenancy, I find that the $30.00 hourly rate invoiced by the landlord's agent for these activities is in excess of what would be a reasonable charge for the type of labour involved. For this reason, I allow the landlord a total of $200.00 for cleaning and yard cleanup, the latter of which was devoted to weeding the lawn, some of which may have been required by the landlord, and some as a result of watering restrictions in place, which may not have been as a result of any failure of the tenants to abide by the terms of their Agreement.

In considering the landlord's claim for $1,963.50 in the invoiced claim for repairs, I have taken into account that this invoice was also prepared by a close relative of the landlord. Although this may very well be the work that this close relative undertakes, an invoice based on estimates that the close relative provided calls into question the accuracy of the invoice submitted. This "invoice" provides a very general breakdown of costs for each item (e.g., replace laminate flooring in downstairs north bedroom; repairs to drywall; replace broken fridge door). It does not break any of these costs down into labour or supplies. In addition to the claim for "weeding" the yard included in the agent's own invoice, the repairs invoice for $1,963.50 includes $200.00 for "lawn repairs."

Fully $1,000.00 of the landlord's $1,963.50 claim for repairs is to either replace or repair laminate flooring in the rental unit. Although the tenants maintained that the floor in the bedroom did not need to be replaced, I accept that this flooring was discontinued and had to be replaced rather than repaired with mismatching pieces of laminate. The RTB's Policy Guideline #40 establishes the useful life of certain building elements in

residential tenancies. In this case, the useful life of the laminate flooring equates to linoleum or carpet, which is estimated with a useful life of ten years (or 120 months). In this case, the landlord testified that the flooring in question was installed shortly before this tenancy began. If this flooring was installed in November 2017, by the end of this tenancy it was nine months old. The flooring was thus replaced 111 months before its expected useful life of 120 months ended. Based on this calculation, I allow the landlord a monetary award of $ 925.00 ($1,000.00 x 111/120 = $925.00) for the replacement of flooring damaged during this tenancy.

In considering the landlord's claim of $250.00 for the replacement of blinds, I note that the useful life of blinds is also ten years. However, I heard undisputed sworn testimony from the tenant that some of the damage to the three blinds may have been caused by their being inappropriately sized and due to their bumping into various features in the rental unit (e.g., the doorknob) which were somewhat beyond the tenant's control. The tenant also maintained that these blinds were not actually damaged to the extent that they needed to be replaced. Taking these factors into account, I allow the landlord a monetary award of $125.00 for the replacement of the blinds, half of the landlord's claim for these items.

As the tenants did not dispute the landlord's claim that they did not shampoo the carpets at the end of this tenancy and the carpets were dirty, I allow the landlord's claim of $120.00 to shampoo the carpets.

I find that the invoice produced by the landlord provides few details regarding the remaining $500.00 of the $1,963.50 invoice for repairs. While there may have been some drywalling required, the tenants gave sworn testimony that they patched all of the holes they made during this tenancy. The $100.00 claim for replacement of a broken fridge drawer was not accompanied by any receipt for the purchase of this item, nor any breakdown of how much of this claim was for labour and how much for the part itself. Few details were also supplied regarding the claimed $50.00 repair of tracks on the closet doors. Similarly, there was no breakdown as to labour and supplies for the $200.00 claim for the repair of the lawn, a claim which the tenants also objected to at this hearing. While I accept that there was damage incurred to these items, for which the tenants were likely responsible, I do not find that the invoice prepared by a close family member, without the attendance of that family to explain the details of the invoice or any breakdown as to labour and supplies, satisfies the landlord's burden of supplying sufficient evidence to demonstrate these aspects of the landlord's claim. Under these circumstances, I allow a somewhat nominal monetary award totaling $200.00 for all of these repair items listed in the landlord's claim.

I allow the landlord to retain the tenants' $1,000.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour in this decision.

Since the tenants expressed concern at the hearing that the landlord may continue cashing a series of post-dated cheques they provided at the landlord's request for rent, I order the landlord to refrain from cashing any of these cheques and to return them to the tenants.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to retain the $2,000.00 cheque already cashed by the landlord for August 2018 rent and the tenants' security deposit:

Item	**Amount**
Loss of Rent for August 2018	$2,000.00
Less Amount of Tenants' Post-Dated Cheque for August 2018 Rent already Cashed by the Landlord	-2,000.00
Unpaid Water Bill (April 1, 2018 to June 30, 2018)	153.12
Recovery of Pro-Rated Water Bill for July 2018, plus Water Turn-off Charge ($46.39 + $50.00 = $96.49)	96.39
Cleaning and Yard Cleanup (10 Hours)	200.00
Replacement and Repair of Flooring	925.00
Replacement of Blinds	125.00
Carpet Cleaning	120.00
Other Repairs	200.00
Less Tenants' Security Deposit	-1,000.00
Landlord's Filing Fee	100.00
Total Monetary Order	**$1,119.51**

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

I order the landlord to return any post-dated cheques received from the tenants in the landlord's possession as soon as possible. To ensure that a record of these returned post-dated cheques is kept, I suggest that the landlord return these to the tenants by registered mail or by some form of tracked message service, unless arrangements can be made to return these cheques to the tenants in person.

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 1, 2018

Residential Tenancy Branch