



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL, FFL

Introduction

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

- 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 pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Landlord T.R., Tenant B.E. and Tenant L.J. attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord T.R. (the landlord) stated that they were representing the interests of the landlords and Tenant B.E. stated that they would be the primary speaker for the tenants.

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

The tenant acknowledged receipt of the landlords' Application for Dispute Resolution (the Application) which was personally served to Tenant B.E. and the evidence which was left in the tenants' mailbox. In accordance with sections 71, 88 and 89 of the Act, I find that the tenants are duly served with the Application and evidence.

The tenant confirmed that they did not submit any evidence to the Residential Tenancy Branch or to the landlords.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order for unpaid rent and for damage to the rental unit?

Are the landlords entitled to retain all or a portion of the tenants' security deposit?

Are the landlords entitled to recover the filing fee from the tenants?

Background and Evidence

Written evidence was provided by the landlord showing that this tenancy began on October 01, 2017, with a monthly rent of \$2,700.00, due on the first day of each month with a security deposit in the amount of \$1,350.00 that the landlord confirmed they currently retain. An addendum to the tenancy agreement, signed by the landlord and the tenants, was also provided showing that the tenants are responsible for maintaining the lawn during the growing season.

The landlord also provided in evidence:

- A copy of a One Month Notice to End Tenancy for Cause (One Month Notice) dated April 13, 2018, with an effective date of June 30, 2018, which was amended from May 31, 2018;
- A copy of an e-mail from Tenant L.J. to the landlord on May 15, 2018, advising the landlord that the tenants will vacate the rental unit at the end of the month and will not be there for June 2018;
- A copy of a Condition Inspection Report signed by the landlord and the tenants at the move-in on October 01, 2017, which indicates that the rental unit was generally in good condition at the beginning of the tenancy with a few noted issues such as paint splatters, general wear and tear;
- A copy of a Condition Inspection Report signed by the landlord and Tenant L.J. at the move-out on June 08, 2018, which indicates many areas as dirty, damage to the walls, drywall needing to be repaired, the carpet replaced and grass to be cut;
- Copies of an e-mail exchange between the landlord and Tenant L.J. in which the landlord arranges to do move-out condition inspection and asks about all of the garbage/recycling left at the rental unit to which Tenant L.J. instructs the landlord to get rid of it for them and take it out of the deposit;

- Various pictures of the garbage outside the rental unit and other areas in the rental unit that need cleaning or repair including the floors, the dirty fire place and damaged walls;
- A copy of an estimate for the replacement of the carpet in the amount of \$1,300.00;
- A copy of an estimate for the cleaning of the rental unit in the amount of \$562.50;
- A copy of an estimate for the mowing of the lawn and some raking in the amount of \$120.00;
- A copy of an invoice dated June 12, 2018, for the cleaning of the fire place in the amount \$105.00;
- A copy of an invoice dated June 13, 2018, for the cleaning of the windows of the rental unit;
- A copy of an invoice dated July 11, 2018, for the painting of the rental unit which indicates \$250.00 for excessive repairs of the wall; and
- A copy of a Monetary Order Worksheet detailing the landlords' monetary claim as follows:

Item	Amount
Monthly Rent for June 2018	\$2,700.00
Home Depot Carpet Estimate	1,300.00
Window Cleaning	200.00
House Cleaning	300.00
West Coast Chimneys	120.00
Holes in Wall	200.00
Yard Services	150.00
Cleaning out garbage/recycling	200.00
Requested Monetary Order =	\$5,170.00

The landlord testified that the tenants did not give proper notice to move out of the rental unit and they are seeking \$2,700.00 from the tenants for unpaid rent owing for June 2018. The landlord confirmed that they have not replaced the carpet and the invoice submission for the carpet replacement is only an estimate. The landlord stated that they had the windows professionally cleaned inside and outside and referred to the invoice which is not an estimate but represents the amount spent by the landlord.

The landlord testified that they had an estimate for the cleaning of the rental unit in the amount of \$562.50, but that they cleaned the rental unit themselves. The landlord stated that they are seeking \$300.00 for their time to clean the rental unit. The landlord confirmed that they spent \$105.00 for the cleaning of the fireplace and not \$120.00 as indicated on the worksheet. The landlord submitted that they are claiming \$200.00 for the repair of excessive holes in the walls as shown on their painting invoice provided in evidence. The landlord confirmed that the evidence for the lawn work is only an estimate and not an invoice for work completed. The landlord submitted that they are seeking \$200.00 for disposing of the garbage and recycling left at the rental unit.

The tenant testified that they were evicted with a One Month Notice and that they moved out based on a One Month Notice. The tenant confirmed that Tenant L.J. requested for the effective date of the Notice to be extended which the landlord agreed to on the One Month Notice. The tenant agreed that the unit needed to be cleaned although not to the extent that the landlord claimed and that the landlord overestimated the amount claimed for cleaning. The tenant disputed the charges for cleaning of the windows as not necessary. The tenant disputed the fireplace cleaning for \$105.00 as they stated that they only used the fireplace once. The landlord disputed the amount required to repair the walls as he noted there was only a little damage with some abrasions.

The tenant disputed the charges for mowing the lawn as they state that they did it at the end of October 2017, in April 2018 and three times in May 2018. The tenant stated that the onus was on the landlord to mow after May 2018. The tenant disputed the \$200.00 claim to move garbage and recycling as they stated there was none in the unit or in the yard and the recycling by the house was stacked neatly.

Analysis

Section 38 of the *Act* indicates that a landlord, upon receiving the tenant's forwarding address, must either repay the security deposit to the tenant or make an application for dispute resolution within 15 days of the tenancy ending. As the tenants moved out of the rental unit on May 31, 2018, and the landlord made their Application on June 11, 2018, I find that the landlord made their Application within 15 days of the tenancy ending pursuant to section 38 of the *Act*.

Sections 23 and 35 of the *Act* state that, at the beginning and the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must

complete a condition inspection report and both the landlord and the tenant must sign the condition report. I find that the landlord has completed the Condition Inspection report at the beginning and the end of the tenancy and has fulfilled their obligations under the *Act* and did not extinguish their right to retain the security deposit under the *Act*.

Section 7 (1) of the *Act* states that if a landlord or tenant does not comply with this *Act*, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results

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.

Section 45 of the *Act* establishes that a tenant may end a fixed term 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 and is the day before the day in the month that rent is payable under the tenancy agreement.

Having reviewed the evidence and testimony, I find it is undisputed that Tenant L.J. asked for an extension of the effective date of the One Month Notice from May 31, 2018, to June 30, 2018, which the landlord granted and amended the One Month Notice accordingly. I further find that it is undisputed that the tenants gave notice on May 15, 2018, to end the tenancy on May 31, 2018.

If the tenants changed their mind regarding the end date of their tenancy, they should have had the landlords' agreement in writing pursuant to section 44 (c) of the *Act* to end the tenancy earlier than the effective date on the One Month Notice. As this did not happen, I find that the tenants gave notice to end the tenancy in violation of the *Act* and that the earliest possible effective date of the tenants' notice is June 30, 2018, pursuant

to section 45 of the Act. Therefore, I find that the landlord is entitled to a monetary award in the amount of \$2,700.00 for unpaid rent owing for June 2018.

Section 37 of the Act states that at the end of the tenancy the tenant must leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

Having reviewed the evidence and testimony, I find that it is undisputed that the rental unit needed to be cleaned at the end of the tenancy and that there was garbage and recycling left behind for the landlord to dispose of as shown in the pictures and on the Condition Inspection Report. I find that the tenants have admitted to the rental unit needing to be cleaned on the Condition Inspection Report and in their testimony. I further find that that Tenant L.J. acknowledged the garbage and recycling left behind in their e-mail conversation.

In consideration of the above, I do note that there are no receipts provided which show any disposal fees paid which would support the amount requested for the cleaning of the rental unit and disposal of garbage/recycling. I also note that there is no documentation of the hours spent cleaning other than the estimate provided.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award nominal damages 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. Based on the above and the estimate provided to the landlord for the cleaning of the rental unit, I find that the landlord is entitled to nominal damages in the amount of \$300.00 for the cleaning of the rental unit and the disposal of the garbage/recycling.

Residential Tenancy Policy Guideline #1 states that:

The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy. The landlord is responsible for cleaning the outside of the windows, at reasonable intervals.

Having reviewed the evidence, affirmed testimony and based on a balance of probabilities, I accept the landlords' testimony that the windows needed to be cleaned; however, I find that the tenants were only responsible for the interior windows and the

balcony windows. Therefore, I find that the landlord is entitled to \$100.00 for half of the amount of the invoice for the cleaning of the windows to represent the inside portion.

Having reviewed the evidence and affirmed testimony, I find that there was damage to the walls beyond reasonable wear and tear and I accept the landlords' claim for \$200.00 for the excessive repairs of the wall completed by the painter.

Residential Tenancy Policy Guideline #1 states that the tenant is responsible for cleaning the fireplace at the end of the tenancy if they have used it. I find that the tenant confirmed that they did use the fireplace and that they are responsible for cleaning it. Therefore, I find that the landlord is entitled to a monetary award in the amount of \$105.00 to recover their loss for the cleaning of the fireplace.

Regarding the landlords' claim for the replacement of the carpet and the mowing of the lawn, I find that the landlord has not proven that they actually incurred a monetary loss for these items as they only provided estimates and did not prove the actual amount required to be compensated for those items. For the above reason, I dismiss the landlords' monetary claim for replacing the carpet and for mowing the lawn, 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. I find that the landlord is entitled to a total monetary award of \$3,405.00 for damage to the rental unit and for unpaid rent.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in their application, they may recover the filing fee related to this application.

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlords' favour under the following terms, which allows the landlord to recover lost rent for June 2018, to recover costs associated with damages to the rental unit, to retain the tenant's security deposit and to recover the filing fee for this Application:

Item	Amount
Monthly Rent for June 2018	\$2,700.00
Window Cleaning	100.00
House Cleaning/ Cleaning out garbage/recycling	300.00
West Coast Chimneys	105.00
Holes in Wall	200.00
Less Security Deposit	-1,350.00
Filing Fee	100.00
Total Monetary Order =	\$2,155.00

The landlord is provided with a Monetary Order in the above terms 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.

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 21, 2018

Residential Tenancy Branch