



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for damage or compensation under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's 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 tenant pursuant to section 72.

The landlords and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage or compensation under the *Act*, *Regulation* or tenancy agreement?

Are the landlords authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order?

Are the landlords authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on February 1, 2017 on a month-to-month basis. Rent in the amount of \$1,400.00 was payable on the first of each month. Water, sewer, garbage collection and electricity were not included in rent. The tenant remitted a security deposit in the amount of \$700.00, which the landlords still retain in trust. At the start of the tenancy, the parties completed an inspection and the landlord recorded the deficiencies of the unit on the back of the signed tenancy agreement.

November 28, 2017, the parties entered into a new tenancy agreement as the tenant had obtained pets. Rent in the amount of \$1,500.00 became payable on the first of each month. The tenant continued to be responsible for water, sewer, garbage collection and electricity. The landlords collected a pet deposit in the amount of \$750.00, which they still retain in trust.

Prior to the tenancy, the landlords had the water line to the garage decommissioned. At some point during this tenancy the tenant configured a method to obtain water service in the garage. Specifically, the tenant ran a garden house through a basement window, across the driveway, to a tap in the garage.

The parties were alerted to a potential water leak by way of the November water bill. The bill reflected a higher consumption and message to “check for a leak or running toilet.” Because the tenant did not pay the November water bill promptly, the amount was transferred to the landlords’ property tax bill. The tenant eventually paid the outstanding November water bill amount to the landlords and at some point removed the attached garden hose. Following this payment, the tenant stopped paying the water bills and they began to accrue.

The tenant ended the tenancy with written notice. On May 31, 2018, the parties completed an inspection and the landlord recorded the deficiencies on a proper condition inspection report. The tenant did not sign or obtain a copy of the report. The tenant vacated the rental unit May 31, 2018 and provided her forwarding address August 27, 2018.

Landlords’ Claim

The landlords seek compensation in the amount of \$5,992.00, including the following;

#	Item	Amount
1	Water Bill	\$3,323.50

2	Kitchen Sink Repair	\$17.11
3	Dump	\$6.05
4	Cleaning	\$137.50
5	Bathroom Sink Repair	\$2.88
6	Washing Machine Repair	\$618.64
7	Bulbs and Repairs	\$27.84
8	Repairs	\$11.73
9	Repairs	\$11.05
10	Repairs	\$113.83
11	Repairs	\$25.41
12	Repairs	\$18.47
13	Repairs	\$37.99
14	Labour	\$1,640.00
	Total Claim	\$5,992.00

The landlords also seek to recover the \$100.00 filing fee for this application from the tenant.

1. Water Bill

The landlords testified that on an undisclosed date, the tenant connected a garden hose to a decommissioned water line without their consent. As a result, an underground water leak ensued and caused increased water consumption which led to a higher water expense. The landlords testified that despite a warning from the utility company and prompts from the landlord to check for leaks, the tenant did not immediately do so. The landlords testified that the water leak eventually ceased with the disconnection of the garden hose. It was the landlords' position that the leak and increased consumption costs were caused by the actions and neglect of the tenant. The landlords seek reimbursement of the outstanding accrued water bill in the amount of \$3,323.50. The landlord has provided a copy of the water bill in this amount.

The tenant denied all liability for the water leak. It was the tenant's position that the cause of the leak was due to the landlords' installation of an improper underground water pipe. To support this claim, the tenant has provided copies of text messages between her and the landlord. The tenant argued that she did check for leaks and it was the landlords who were negligent when they failed to take action to address the issue when they became aware of it. The tenant did not dispute that the leak ceased with the removal of the garden hose. The tenant testified that she did not pay the remaining water bills as she was not responsible for leaking pipes under the Act; the landlord was.

2. Kitchen Sink Repair

The landlords testified that the kitchen sink plumbing had been disconnected during the tenancy and therefore required repair. Specifically, the landlord testified that the hose clamp and rubber seal over the air fitting had been removed. The landlords provided a photograph and receipt, dated May 31, 2018 in the amount of \$17.11. The tenant testified that she “never touched” the kitchen sink plumbing.

3. Dump

The landlords testified that the tenant left items on the front lawn of the rental property which required disposal. The landlords provided photographs and a receipt dated June 1, 2018 in the amount of \$6.05. The tenant did not provide a response specific to the dump fee.

4. Cleaning

The landlords acknowledged that the tenant did some cleaning but testified that the unit required further cleaning, in particular the windows, window tracks, blinds and walls. The landlords provided a cleaning receipt dated June 6, 2018 in the amount of \$137.50. The tenant testified that she hired people to assist her with cleaning. She testified to cleaning the carpets and walls herself.

5. Bathroom Sink Repair

The landlords testified that because the bathroom sink had been pulled away from the wall, it leaked and required repair. The landlords provided a receipt dated May 31, 2018 in the amount of \$2.88. The landlords provided a photograph. The tenant did not provide a response in relation to the bathroom sink.

6. Washing Machine Repair

The landlords testified that the washing machine power button had been pried out of the control panel which made the machine unusable. They also indicated the stove was missing a control knob. The landlords provided photographs and a receipt dated June 4, 2018 in the amount of \$618.64. The tenant did not provide a response in relation to the washing machine or stove control knob.

7. – 13. Repairs and Bulbs

During the hearing, the landlords referred to items 7 to 13 on their monetary order worksheet as small repairs needed to “fix the house.” The tenant did not provide a response specific to the bulbs, but she did testify that the landlords completed most of the repairs and clean up they are now claiming compensation for, before she had the opportunity to complete them herself.

14. Labour

The landlords provided an invoice dated July 9, 2018 for their labour to conduct the necessary repairs in the amount of \$1,640.00. The tenant did not provide a specific response in relation to the landlords’ claim for labour.

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:

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.

Pursuant to section 32(3) of the *Act*, a tenant of a rental unit must repair damage to the rental unit that is caused by the actions or neglect of the tenant. 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. Water Bill

Upon review of the testimony and documentary evidence before me, I find the landlords have met their onus in proving a loss in the form of an outstanding water bill. I find the water leak does not relieve the tenant of her obligations under the tenancy agreement

as I find it more probable that the leak was a direct result of the tenant's action over that of the landlords. I make this finding on the basis that the leak occurred simultaneous to the tenant's access to the decommissioned water line. The tenant's claim that the leak was due to the landlords' installation of an improper underground water pipe was not supported with conclusive evidence. The *Act's* requirement for a landlord to conduct or pay for emergency repairs in the form of leaking pipes is not relevant to this matter, as the parties were not seeking an emergency repair or compensation for such a repair.

While I acknowledge the landlords have sustained a loss and have proven it was due to the actions of the tenant, I find the landlords have failed to fully mitigate this loss. The landlords may have prompted the tenant to check for a water leak, however the evidence shows the landlords knew the tenant had accessed the decommissioned water line, yet did nothing to prevent her from doing so. Further, after learning of a potential leak, the landlords failed to attend or send an agent to the property to investigate the matter. As a result, I reduce the monetary claim by 25 percent, and thereby grant the landlord an award in the amount of \$2,492.62. I consider this amount reasonable given the circumstances.

2. Kitchen Sink Repair

In the absence of a proper detailed move-in condition inspection report, I find the landlords have failed to substantiate their claim that the sink plumbing was damaged as a result of this tenancy. Because the damage described by the landlord was in reference to an air vent, I find the sink would have continued to function and therefore, could have existed prior to this tenancy, without the landlords' knowledge. For these reasons, I dismiss this portion of the landlords' claim, without leave to reapply.

3. Dump

Under the Residential Tenancy Policy Guideline, a tenant is responsible for the removal of garbage at the end of tenancy, unless an agreement exists to the contrary. Based on the undisputed testimony of the landlords, the photographs and receipt before me, I find the tenant left items on the front lawn of the rental property, after the end date of the tenancy, which required disposal. I find the landlord is entitled to \$6.05, the amount indicated on the receipt.

4. Cleaning

Section 37 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. A tenant is not responsible for cleaning to bring the premises to higher standard than that set out in the *Act*. The Residential Tenancy Policy Guideline sets out that a tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mold.

Based on the undisputed testimony of the landlords, I find that the tenant failed to clean the inside windows and window tracks. However I find the landlords have failed to substantiate their claim that the tenant left the remainder of the unit contrary to section 37 of the *Act*. The limited photographs before me show a reasonably clean unit. For these reasons, I award the landlords' a monetary award in the amount of \$68.75, which is equivalent to half the cleaning fee.

5. Bathroom Sink Repair

Based on the undisputed testimony of the landlords, the photograph and receipt before me, I am satisfied the tenant damaged the sink and failed to repair it prior to her vacancy. I find the landlords are entitled to \$2.88, the amount indicated on the receipt.

6. Washing Machine Repair

Based on the undisputed testimony of the landlords, the photographs and receipt before me, I am satisfied the washing machine and stove sustained damage during this tenancy and were not repaired prior to the tenant's vacancy. I find the landlords are entitled to \$618.64, the amount indicated on the receipt.

7. – 13. Bulbs & Repairs

The Residential Tenancy Policy Guideline sets out that a tenant is responsible for replacing light bulbs in the rental unit during the tenancy. Based on the undisputed evidence of the landlords I find the landlords are entitled to \$19.58 for the cost of replacement light bulbs, as indicated on the submitted invoice.

Residential Tenancy Branch Rule 7.3, states that evidence must be presented by the party who submitted it, or by the party's agent. Section 59 of the *Act* stipulates that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

I find the landlords failed to adequately present this portion of their application during the hearing. I further find this portion of their application too broad; in that it does not specifically identify the items the landlords are claiming compensation for. I find that the lack of these specific details made it difficult for the tenant to respond to these claims. I therefore dismiss this portion of the landlords' application for "repairs", without leave to reapply.

14. Labour

Based on my above findings that the tenant left some portions of the rental unit contrary to section 37(2) of the *Act*, I find the landlords are entitled to recover some labour costs. However, because the invoice submitted by the landlord is vague, in that it does not specify the repairs or particular dates labour was conducted, I find the landlords have failed to establish the actual amount required. In recognition of the tenant's infraction of section 37 of the *Act* and the landlords requirement to make some repairs, I grant the landlords a nominal award in the amount of \$400.00 (10 hours x \$41/hr).

15. Security Deposit and Filing Fee

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security and pet deposit in the total amount of \$1,450.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$2,158.52. As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$2,258.52.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$2,258.52 for the following items:

#	Item	Amount
1	Water Bill	\$2,492.62
3	Dump	\$6.05
4	Cleaning	\$68.75
5	Bathroom Sink Repair	\$2.88
6	Washing Machine Repair	\$618.64
7	Bulbs	\$19.58
14	Labour	\$400.00

15	Security Deposit	(\$1450.00)
	Filing Fee	100.00
	Total Claim	\$2,258.52

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: January 25, 2019

Residential Tenancy Branch