



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Landlord TT" did not attend this hearing, which lasted approximately 66 minutes. Landlord CT ("landlord") and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had permission to represent landlord TT as an agent at this hearing.

The tenants confirmed receipt of the landlords' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' application.

Issues 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 the tenants' security deposit?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 13, 2017 and ended on August 14, 2018. Monthly rent in the amount of \$1,300.00 was payable on the 20th day of each month. A security deposit of \$650.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. No move-in condition inspection report was completed for this tenancy. A move-out condition inspection report was completed by the landlords only, without the tenants present. No Residential Tenancy Branch ("RTB") form called the "Notice of Final Opportunity to Schedule a Condition Inspection" was provided to the tenants by the landlords. A forwarding address was provided by the tenants to the landlords by way of text message on August 18, 2018, which the landlords received. The landlords did not have any written permission to keep any part of the tenants' security deposit. The landlords filed this application to keep the security deposit on August 31, 2018.

The landlords seek a monetary order of \$6,154.82 plus the \$100.00 application filing fee.

The landlords seek \$3,041.92 to replace the laminate flooring in the master bedroom, second bedroom and hallway in the rental unit. The landlord stated that there was a long scratch that stretched through all three of the above areas because the tenants dragged a door and other items on the flooring. They provided photographs and an estimate for \$2,716.90 for the damage. The landlord said that the replacement has not been done yet, despite new tenants moving in, because the landlords could not afford it but it would be done in the future. She stated that the old flooring has been discontinued, so she chose a new flooring. She claimed that she added 12% taxes on to the above estimate of \$2,716.90 to get the total of \$3,041.92.

The tenants dispute the landlords' claim, stating that they will only pay \$100.00 to have the small scratch under their bed to be buffed out and polished. They said that there was no long scratch, as claimed by the landlords. They claimed that this was reasonable wear and tear and that the flooring already had boards moving and shifting during the tenancy. They stated that the landlords chose expensive oak flooring

because they want to renovate the unit with the tenants' money, in order to sell it in the future.

The landlords seek \$861.84 to replace the kitchen countertop, due to a burn mark caused by the tenants. They provided photographs and an estimate ranging from \$769.50 to \$884.93 for the damage. The landlord said that the replacement has not been done yet, despite new tenants moving in, because the landlords could not afford it but it would be done in the future. She claimed that she added 12% taxes on to the above estimate of \$769.50, which was the lowest range amount, to get the total of \$861.84.

The tenants dispute the landlords' claim, stating that they will only pay \$100.00 to have the burn mark repaired. They claimed that no move-in or move-out condition inspection reports were done with the landlords to show the condition of the countertop before they moved in and after they moved out. They said that the landlord knew about the burn mark when the tenants told her that their son fell and dropped a pot and the landlord said not to worry about the burn mark. They explained that replacement of the entire L-shape counter is not required for the one small mark.

The landlords seek \$603.66 to replace the master bedroom window because the tenants' dog scratched and damaged it. They provided photographs and an estimate for \$538.99. The landlord said that the replacement has not been done yet, despite new tenants moving in, because the landlords could not afford it but it would be done in the future. She claimed that she added 12% taxes on to the above estimate of \$538.99 to get the total of \$603.66.

The tenants dispute the landlords' claim to replace the master bedroom window. They said that the window area already had flaking paint and dirt and there were no scratches from their dog that caused damage. They stated that they were willing to fix any issues with the window before vacating but the landlords would not let them back in the unit to do so.

The landlords seek \$147.40 for paint and \$200.00 for labour to paint the bedroom and recreation room, due to the smoke smell and the writing on the walls. The landlords provided an invoice totalling \$422.13 for materials, of which \$147.40 included paint, and then wrote their own invoice charging \$25.00 per hour for 8 hours for a total of \$200.00, for the landlord to do the painting herself. She said that she was not a professional painter so her rate was lower than the professionals who charge \$40.00 per hour, but

she did not provide documentary proof of this higher rate. She claimed that the landlords intend to put the rental unit up for sale in the future, so this would affect the resale value, if the unit was not painted.

The tenants dispute the landlords' claim for painting, stating that the landlords never told them not to smoke. The landlord said it was in the written addendum to the tenancy agreement. The tenants claim that the landlords want to renovate the rental unit in order to put it up for sale.

During the hearing, the landlord withdrew her claim for a loss of rent of \$1,300.00 for August 2018. She said that the tenants failed to give at least one month's written notice to vacate, from July 15 to August 15, since their rent was due on the 20th of each month. She explained that the tenants provided their notice to vacate on July 22, 2018. She stated that she suffered a two-day rent loss because she re-rented the unit as of August 17, 2018, and she only claimed for a rent loss because someone from the RTB told her she could. I notified her during the hearing that she was not required to withdraw this claim, as I could make a decision about it, but she confirmed she did not wish to seek it.

Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, the landlords must satisfy 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 tenants 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 landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlords \$100.00 of the \$3,041.92 sought for the laminate flooring repair. The tenants agreed to pay the above amount during the hearing. I find that the landlords did not complete the above repair, they only provided an estimate rather than an invoice or receipt for work done, the landlords may not complete this repair in the future, and they had new tenants move in to the unit after the damage was caused. I also note that there was no move-in condition inspection report to show the condition of

the unit when the tenants moved in, nor was there a move-out condition inspection report where the tenants participated in the inspection with the landlords.

I award the landlords \$100.00 of the \$861.84 sought for the kitchen countertop replacement. The tenants agreed to pay the above amount during the hearing. I find that the landlords did not complete the above repair, they only provided an estimate rather than an invoice or receipt for work done, the landlords may not complete this repair in the future, and they had new tenants move in to the unit after the damage was caused. I also note that there was no move-in condition inspection report to show the condition of the unit when the tenants moved in, nor was there a move-out condition inspection report where the tenants participated in the inspection with the landlords.

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlords' application without leave to reapply.

I dismiss the landlords' claim for \$603.66 for the master bedroom window replacement. The tenants disputed this claim. I find that the landlords did not complete the above work, they only provided an estimate rather than an invoice or receipt for work done, the landlords may not complete this repair in the future, and they had new tenants move in to the unit after the damage was caused. I also note that there was no move-in condition inspection report to show the condition of the unit when the tenants moved in, nor was there a move-out condition inspection report where the tenants participated in the inspection with the landlords.

I dismiss the landlords' claim for \$147.40 for paint and \$200.00 for the labour to paint the bedroom and the recreation room in the rental unit. The tenants disputed this claim. I find that the damage complained of by the landlords is reasonable wear and tear during the tenancy. I also note that there was no move-in condition inspection report to show the condition of the unit when the tenants moved in, nor was there a move-out condition inspection report where the tenants participated in the inspection with the landlords. The landlord claimed that she painted because the tenants smoked in the unit and it affected the resale value of the home, but she confirmed the rental unit was not currently up for sale and the landlords did not provide any documents, to show that the resale value could be affected in the future. I also find that the landlord failed to show why she should personally be paid \$25.00 per hour for the labour to paint the unit, as she could not justify this amount, she is not a professional painter, and she did not provide documents to show that professional painters are paid \$40.00 per hour.

The landlords' claim for a loss of rent of \$1,300.00 for August 2018 is dismissed without leave to reapply, as the landlord confirmed during the hearing that she did not wish to pursue this claim.

As the landlords were mainly unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the tenants.

I find that the landlords continue to hold the tenants' security deposit of \$650.00. I find that the tenants are not entitled to double the value of their deposit because they did not provide their forwarding address in accordance with section 88 of the *Act*, since text message is not permitted, and therefore, the doubling provision has not been triggered.

Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain \$200.00 from the tenants' security deposit and return the remainder of \$450.00 to the tenants within 15 days of receipt of this decision. The tenants are provided with a monetary order in the amount of \$450.00.

Conclusion

I order the landlords to retain \$200.00 from the tenants' security deposit of \$650.00 in full satisfaction of the monetary order.

The remainder of the landlords' application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$450.00 against the landlords. The landlords must be served with this Order as soon as possible. Should the landlords 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: January 07, 2019

Residential Tenancy Branch