



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with the Landlords' adjourned Application filed under the *Residential Tenancy Act*, (the "*Act*"), for a monetary order to recover unpaid rent, for compensation under the *Act*, for compensation for damages, for permission to retain the security deposit, and to recover the cost of the filing fee for this application. The matter was set for a conference call.

The one of the Landlords attended the hearing and was affirmed to be truthful in her testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution, the amendment to the application and Notice of Hearing had been personally served to the Tenants on October 4 and October 5, 2018. I find that the Tenants have been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The Landlord testified that the tenancy began on April 15, 2017, as a two-year fixed term tenancy. Rent in the amount of \$1,400.00 was to be paid by the first day of each month and the Landlord had been given a \$700.00 security deposit and a \$700.00 pet damage deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that, without written notice, the Tenants moved out of the rental unit on June 1, 2018. The Landlord testified that it took her approximately a week to confirm that the Tenants were not coming back and to declare the rental unit abandoned. The Landlords testified that she attempted to re-rent it as soon as possible but that it took them several weeks to clean and repair the damage left behind by the Tenants. The Landlords testified that she was able to secure a new renter of the unit as of August 1, 2018. The Landlord is seeking to be compensated \$2,800.00 for the loss of rental income for June and July 2018.

The Landlord testified that she conducted the move-out inspection on June 7, 2018, by herself as the Tenants refused to attend. The Landlord testified that there was a great deal of damage to the rental unit caused by the Tenant's and their dog. The Landlord submitted a copy of the move-out inspection report into documentary evidence.

The Landlord is claiming for:

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|--------------------------------|------------|
| • Lost rental income | \$2,800.00 |
| • Replacement locks | \$47.87 |
| • Cleaning | \$157.50 |
| • Lawn care and cleanup (June) | \$190.00 |
| • Lawn Maintenance (July) | \$100.00 |
| • Replace blinds and a mirror | \$239.64 |
| • Light bubs | \$104.62 |
| • Painting suplies | \$100.11 |
| • Screen repair | \$17.26 |
| • New weather strip on door | \$10.40 |

- New missing sink plug \$7.83
- New tub surround \$390.00
- New bathroom drywall \$65.57
- Drywall tape and mud \$30.67
- Repair labour \$1,911.00

The Landlord testified that the Tenants did not return the keys to the rental unit at the end of the tenancy. The Landlord testified that she had to have the locks on front and back doors of the rental unit replaced at the cost of \$47.87. The Landlord submitted a copy of the invoice for the purchase of new locks into documentary evidence.

The Landlord testified that the Tenants did not fully clean the rental unit at the end of the tenancy. The Landlord testified that she had a cleaning service come in to complete the cleaning at the cost of \$157.50. The Landlord submitted a copy of the invoice for the additional cleaning into documentary evidence.

The Landlord testified that the Tenants had left the lawns of the rental unit unmowed and that they had discarded garbage in the back yard. The Landlord testified that she paid \$190.00 for lawn care and cleaned up at the end of the tenancy. The Landlord submitted a copy of the invoice for the lawn care and clean up into documentary evidence.

The Landlord testified that the tenancy agreement included a clause that the Tenants were responsible for lawn care. The Landlord testified that she believes that the Tenants are responsible for the lawn care services to the rental unit for the period that the rental unit was empty as they had a fixed term tenancy agreement that included lawn care. The Landlord testified that she had to pay to have the lawns taken care of in July 2018 at the cost of \$100.00. The Landlord submitted a copy of the invoice for the lawn care services for July 2018, into documentary evidence.

The Landlord testified that the Tenants' dog had chewed and clawed at the window blinds throughout the rental unit and that due to the damage caused by the dog they needed to be replaced. Additionally, the Landlord also testified that there was a mirror missing for the bathroom at the end of tenancy, that she also had to replace. The Landlord testified that the blinds and the mirror had been five years when the tenancy ended. The Landlord testified that she paid \$239.68 to purchase new window blinds and a new mirror. The Landlord submitted a copy of the invoice for the purchase of window blinds and a mirror into documentary evidence.

The Landlord testified that the Tenants had returned the rental unit with over 20 light bulbs blown. The Landlord testified that she paid \$104.62 to purchase new light bulbs for the rental unit. The Landlord submitted a copy of two invoices for the purchase of light bulbs into documentary evidence.

The Landlord testified that the Tenants' dog had scratched and clawed at the doors and the doorframes in the rental unit, causing extensive damaged that need to be repaired. The Landlord testified that she paid \$100.11 to purchase painting and plaster supplies to repair the doors and the doorframes throughout the rental unit. The Landlord submitted a copy of an invoice for the purchase of paint and plaster into documentary evidence.

The Landlord testified that the Tenants' dog had also clawed at the window screen in the living room, leaving a hold in the screen that needed to be repaired. The Landlord testified that she paid \$17.26 to purchase supplies to repair the screen. The Landlord submitted a copy of an invoice for the purchase of supplies to repair the screen into documentary evidence.

The Landlord testified that the Tenants' dog had chewed at the weather stripping off the front door of the rental unit. The Landlord testified that she paid \$10.40 to purchase a new weather strip for the front door. The Landlords testified that the weather stripping had been at least five years only when the tenancy ended. The Landlord submitted a copy of an invoice for the purchase of new weather stripping into documentary evidence.

The Landlord testified that there was a missing a sink plug from the kitchen at the end of tenancy. The Landlord testified that she paid \$7.83 to purchase a new kitchen sink plug for the rental unit. The Landlord submitted a copy of the invoice for the purchase of a new kitchen sink plug into documentary evidence.

The Landlord testified that the there was a crack in the tub surround at the end of tenancy and that when they went to replace the tub surround they noted that there had been extensive water damage and mould to the walls behind the tub surround. The Landlord testified that the crack must have been there for a long time due to the extent of water and mould damage found when they remove the cracked tub surround. The Landlord testified that the Tenants had not advised her that there was a repair needed for the tub surround and that she believes that had they told her if the needed repair, the water and mould damage would not have occurred. The Landlord testified that she paid \$390.00 for a new tub surround, \$65.57 for new bathroom drywall, \$30.67 for drywall

tape and mud. The Landlord submitted copies of three invoices for the purchase of the tub surround, drywall, drywall tape and mud into documentary evidence.

The Landlord testified that it cost her \$1,911.00 for labour to repair the damage to the rental unit. The Landlord submitted a copy of the invoice for the labour to repair the rental unit into documentary evidence.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities I find that:

I find that the parties entered into a two-year fixed term tenancy, beginning on April 15, 2017, in accordance with the *Act*. I also accept the undisputed testimony of the Landlord that the Tenants ended their tenancy early and moved out of the rental unit on June 1, 2018, without providing notice.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

Tenant's notice

45(2) A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

I find that the tenancy could not have ended in accordance with the *Act* until April 14, 2019. I find that the Tenants failed to comply with the *Act* when they ended their tenancy early and moved out of the rental unit on June 1, 2018.

I accept the Landlord's testimony that she attempted to rent the unit as soon as possible, after the needed repairs were complete, and was able to find a new renter for the rental unit as of August 1, 2018. I also accept that the Landlord suffered a loss of rental income for two months, for June and July 2018. Therefore, I find the Landlord has established an entitlement for the recovery the loss of rental income for June and July 2018, in the amount of **\$2,800.00**.

Additionally, I accept the undisputed testimony of the Landlord that the Tenants left the rental unit in an unclean and damaged state and that they failed to return the keys to the rental unit, to the Landlords, at the end of this tenancy. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean and undamaged at the end of the tenancy.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that the Tenants breached section 37 of the *Act* when they returned the rental unit to the Landlord uncleaned, damaged and failed to return the keys to the rental unit.

I accept the undisputed testimony of the Landlord that the Tenants did not return the keys to the rental unit at the end of tenancy. I also find that the Landlord has provided sufficient documentary evidence to show that she suffered a loss of \$47.87 due to the Tenants' failure to return the keys to the rental unit. Therefore, I award the Landlord the return of her costs for new locks in the amount of **\$47.87**.

I accept the undisputed testimony of the Landlord that the Tenants did not clean the rental unit, the yard or mow the lawns at the end of tenancy. I also find that the Landlord has provided sufficient documentary evidence to show that she suffered a loss of **\$157.50** for cleaning the interior of the rental unit and **\$190.00** for lawn care at the end of tenancy. Therefore, I award the Landlord the return of her costs for having the rental unit cleaned and the lawn care completed in the amount of \$347.50.

As for the Landlord claim for the recovery of \$100.00 in lawn care for July 2018, a month that the Tenant was not living in the rental unit. The Landlord was advised in the hearing that there are no provisions in the *Act* which would provide compensation for this requested cost. As such, I dismiss this portion of the Landlords' claim in its entirety.

I accept the undisputed testimony of the Landlord that the Tenants had left over 20 light bulbs blown in the rental unit at the end of this tenancy. I find that the Landlord has provided sufficient documentary evidence to show that she suffered a loss of \$104.62 to purchase new lightbulbs for the rental unit. Therefore, I award the Landlord the return of her costs for new lightbulbs in the amount of **\$104.62**.

I accept the undisputed testimony of the Landlord that the kitchen sink plug was at the end of tenancy. I find that the Landlord has provided sufficient documentary evidence to show that she suffered a loss of \$7.83 in cost to have the missing sink plug replaced. Therefore, I award the Landlord the return of her costs for replacing the missing sink plug in the amount of **\$7.83**.

I accept the undisputed testimony of the Landlord that the Tenants' dog had damaged the doors, and the door trim throughout the rental unit. I find that the Landlord has provided sufficient documentary evidence to show that she suffered a loss of \$100.11 in cost to purchase painting supplies to repair the damage to the doors and the trim throughout the rental unit. Therefore, I award the Landlord the return of her costs for purchase painting supplies in the amount of **\$100.11**.

I accept the undisputed testimony of the Landlord that the Tenants' dog had damaged the window screen in the living room and had left a hole in the screen at the end of tenancy. I find that the Landlord has provided sufficient documentary evidence to show that she suffered a loss of \$17.26 in cost to have the screen repaired. Therefore, I award the Landlord the return of her costs for repairing the screen in the amount of **\$17.26**.

I accept the undisputed testimony of the Landlord that the Tenants' dog destroyed the window blinds throughout the rental unit and that there was a missing mirror at the end of this tenancy. I accept the Landlord's testimony that she paid \$239.64 to purchase new window blinds and a new mirror. However, I also accept the undisputed testimony of the Landlord that both the window blinds and the mirror had been five years old at the time this tenancy ended. In determining the suitable award, I must refer to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements. The guideline sets the useful life of window blinds and furniture at ten years. Therefore, I find that the window blinds and mirror were halfway through their expected life expectancy at the end of this tenancy. Accordingly, I find that the Landlord has proven the entitlement of the recovery of 50% of her replacement costs for these items, in the amount of **\$119.82**.

I accept the undisputed testimony of the Landlord that the Tenants' dog destroyed the weather stripping on the front door of the rental unit and that the weather strip at been at least five years old at the end of this tenancy. I also accept the Landlord's testimony that she paid \$10.40 to purchase new weather strip. However, the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements sets the useful life of weather stripping at five years. Accordingly, I find that the weather stripping had passed its useful life expectancy and I find that the Landlord is not entitled to the recovery replacement costs for that item.

I accept the undisputed testimony of the Landlord that there was a crack in the bathroom tub surround at the end of tenancy. I also accept undisputed testimony of the Landlord that the Tenants failed to report the need for repair of the crack in the tub surround to the Landlord during their tenancy, and that their failure to report led to extensive water damage and mould to the drywall under the tub surround.

Section 32 of the Act provides that both the landlord and the tenant have obligations to repair and maintain the rental unit and residential property.

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Pursuant to section 32, I find that a landlord has an obligation to repair and maintain the rental unit, except where the damage is the result of an action or neglect of a tenant. In most cases, a crack in an ageing tub surround would be the responsibility of the Landlord to repair, as the crack is most often the result of age, wear and tear or improper installation unless proven otherwise. However, a tenant may be found to be negligent where a tenant was aware of the need for a repair and failed to take reasonable actions to minimize the damage that may result from the need repair.

I also accept the Landlord's testimony and documentary evidence that it cost her \$390.00 to purchase a new tub surround, \$65.57 in new bathroom drywall, \$30.67 for drywall tape and mud.

Regarding the recovery of \$390.00 for the purchase of the new tub surround; pursuant to section 32 of the Act, in order for the Landlord to recover the cost of the new tub surround the Landlord must prove that the need for a new tub surround was due to the Tenants damaging the tub. I have reviewed the Landlord's testimony and documentary evidence, and I find that the Landlord had not provided any evidence to show that the crack in the tub surround was a result of the Tenants damaging the tub. Consequently, I dismiss this portion of the Landlords' claim.

However, I find that the Tenants were negligent when they failed to report the crack in the tub surround to the Landlord. I find that the Tenants failure to report the crack in the tub surround resulted in extensive damage to the drywall behind the tub surround. Consequently, I find that the Landlord has proven the entitlement of the recovery of her cost to have the drywall replaced and the mould removed. Therefore, I award the

Landlord the return of her costs to purchase in new bathroom drywall, in the amount of **\$65.57** and drywall tape and mud in the amount of **\$30.67**.

I have reviewed the Landlord invoice for her Labour cost, in the amount of \$1911.00, and I find that the invoice covers all of the repair work completed in the rental unit. Based on my reasons above, I find that the Landlord is only entitled to the return of a portion of her labour cost to repair the rental unit, as not all of the work was required due to damage caused by the Tenants. As I have previously found that the Tenants damaged the doors and the door frames in the rental unit, I find that the Tenants are responsible for the labour cost to repair the door and door frames. Therefore, I award the Landlord the return of her labour costs to have the door patched and painted, in the amount of \$380.00 and her labour costs to have the door frames patched and painted, in the amount of \$375.00.

Additionally, as I have previously found that the Tenants are responsible for the mould and water damager caused in the bathroom, I find that the Landlord is entitled to the recovery of her costs associated with having the mould hazard removed and new drywall installed. Therefore, I award the Landlord the return of her labour costs to demo the bathroom and remove the mould, in the amount of \$265.00 and her labour costs to have new drywall install, in the amount of \$600.00.

However, as I have previously found that the Landlord did not provide sufficient evidence to prove that the Tenants had damaged the tub surround, I find that the Landlord is not entitled to the recovery of her labour costs to have the new tub surround installed. Consequently, I dismiss this portion of the Landlords' claim, in the amount of \$200.00.

Labour		<u>Requested</u>	<u>% awarded</u>	<u>Due</u>
Invoice	Doors Patched & Painted	380.00	100%	\$380.00
	Doorframes Patched & Painted	375.00	100%	\$375.00
	Bathroom Demo & Mould Hazard	265.00	100%	\$265.00
	Board install & Mud/Tape	600.00	100%	\$600.00
	Tub Surround Install	200.00	0%	\$0.00
		1,820.00		\$1,620.00
	Tax 5%	\$91.00		\$81.00
		\$1,911.00		\$1,701.00

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords has been partially successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this hearing.

<u>Awarded Item's</u>	<u>Requested</u>	<u>% awarded</u>	<u>Due</u>
Lost rental income	2,800.00	100%	\$2,800.00
Replacement locks	47.87	100%	\$47.87
Cleaning	157.50	100%	\$157.50
Lawn care and cleanup (June)	190.00	100%	\$190.00
Lawn Maintenance (July)	100.00	0%	\$0.00
Light bubs	104.62	100%	\$104.62
Screen repair	17.26	100%	\$17.26
New missing sink plug	7.83	100%	\$7.83
Painting supplies	100.11	100%	\$100.11
Replace blinds and a mirror	239.64	50%	\$119.82
New weather strip on door	10.40	0%	\$0.00
New tub surround	390.00	75%	\$292.50
New bathroom drywall	65.57	100%	\$65.57
Drywall tape and mud	30.67	100%	\$30.67
Repair labour	1,911.00		\$1,701.00
Filing fee			\$100.00
	\$6,172.47		\$5,734.75
	Security deposit held		-\$700.00
	Pet damage deposit held		-\$700.00
		Due	\$4,334.75

Pursuant to section 38, 67 and 72 of the *Act*, I grant the Landlords a monetary order in the amount of \$4,334.75. The Order is comprised of the \$5,734.75 awarded above, less \$700.00 that the Landlord is holding in a security deposit, and less \$700.00 that the Landlord is holding in a pet damage deposit for this tenancy.

Conclusion

I find for the Landlords pursuant to sections 38, 67 and 72 of the *Act*. I grant the Landlords a **Monetary Order** in the amount of **\$4,334.75**. The Landlords are provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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 21, 2019

Residential Tenancy Branch