



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a Monetary Order for unpaid rent, 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 pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord, the landlord's assistant and the tenants attended the hearing and were each given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses. Tenant C.R. (the tenant) stated that they would be the primary speaker for the tenants in this matter.

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

The tenant acknowledged receipt of the Application for Dispute Resolution (Application) and evidence which were sent by way of registered mail on October 26, 2018, on January 16, 2019 and February 09, 2019. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the Application and evidence.

The tenant confirmed that they did not submit any evidence for consideration.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent, for damage to the rental unit and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenants' security deposit?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

Written evidence was provided showing that this fixed term tenancy began on October 15, 2017, with a monthly rent of \$1,600.00, due on the 15th day of each month with a security deposit in the amount of \$800.00 that the landlord confirmed they currently retain. The tenancy agreement has a signed addendum which indicates that the tenants are responsible for 25% of the total amount of the water bills charged quarterly.

The landlord also provided in evidence:

- A copy of a notice from the tenants on September 19, 2018, advising the landlord that they will vacate the rental unit for October 15, 2018;
- Copies of pictures taken from within the rental unit showing wall damage, base board damage, mould in bathroom, dirty items and pictures of lint screen of dryer before and after the tenancy;
- A copy of a Condition Inspection Report completed and signed at the beginning and the end of the tenancy. The report shows the rental unit was in good condition at the beginning of the tenancy. Upon move-out, the report indicates that the rental unit was dirty throughout, had multiple areas of damage to the walls, windowsill, missing rack in fridge, ice tray missing and damage in bathroom. Tenant L.P. signed the report at move out on October 1, 2018, and confirmed that they agreed with the contents of the report;
- A copy of a receipt for the purchase of paint on October 19, 2018, in the amount of \$51.49;
- A copy of an invoice in the amount of \$1,260.00 for the touch up of the rental unit dated October 21, 2018;
- A copy of an invoice in the amount of \$189.00 for the cleaning of the rental unit dated October 23, 2018;
- A copy of a water bill from the municipality in the amount of \$532.09 for water use from June 01, 2018, to September 30, 2018;

- A copy of an invoice in the amount of \$189.00 for the cleaning of the dryer vent dated January 07, 2019;
- A copy of an invoice in the amount of \$551.25 for the repair of the dryer dated January 29, 2019;
- Copies of pictures of the dryer and vent assembly;
- A copy of an e-mail in which the landlord offers for the tenants to do the repairs themselves before the landlord completed the work; and
- A copy of a Monetary Order Worksheet detailing the landlord's monetary claim;

Item	Amount
Cleaning of the Rental Unit	\$189.00
Water Bill - June 2018 to September 2018 – 532/4 =	133.00
Water Bill Estimate – Estimated October 01 to October 15, 2018	16.36
Paint	51.49
Repairs to Rental Unit	1,260.00
Rental Loss	206.00
Dryer Vent Cleaning	93.00
Dryer Repair	551.25
Application Fee	100.00
Requested monetary award for damages =	\$2,600.10

The landlord submitted that this tenancy ended based on the tenants giving late notice to end the tenancy for which they have incurred a loss. The landlord stated that they are seeking to be compensated for costs associated to the cleaning of the rental unit, an unpaid water bill, damage to the walls of the rental unit beyond reasonable wear and tear as well as repairs in the bathroom which were included in the total cost of re-painting the rental unit. The landlord stated that the tenants stored their bicycles in the rental unit which damaged the walls and windowsill.

The landlord submitted that the rental unit was last painted immediately prior to the tenancy beginning. The landlord stated that they tried to allow the tenants to perform the repairs themselves but that the tenants refused. The landlord further submitted that the tenants failed to clean the lint filters which resulted in excessive lint accumulation and resulted in the dryer needing to be repaired and the vents requiring cleaning.

The tenants did not dispute the cleaning bill. The tenant stated that they agreed to pay the \$90.00 for the water bill that was noted on the condition inspection report but that the amount requested from the landlord continues to increase with each

correspondence from them. The tenant submitted that they tried to negotiate with the landlord in good faith and had offered to surrender the security deposit to cover all expenses incurred by the landlord for the water bill and damages.

The tenant confirmed that they stored their bicycles in the rental unit which may have resulted in some wear and tear to the windowsills and walls. The tenant stated that the landlords provided no alternative storage of the bicycles and that it was not wise to leave the bicycles outside in consideration of the neighbourhood the rental unit is located.

The tenant referred to the caulking in the bathroom, which represents the damage the landlord is seeking to be compensated for, stating that the landlord's son had done the work which was of poor quality and was the reason that it fell apart. The tenant stated that the landlord is just seeking to have the rental unit renovated again at the tenants' expense.

Analysis

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.

In this case, the onus is on the landlord to prove entitlement to their claim for the monetary award.

Residential Tenancy Policy Guideline #1 establishes that the landlord is responsible to clean out the dryer exhaust pipe and outside vent at reasonable intervals. Having

reviewed the evidence and testimony, I find that the landlord has not established that they incurred a loss for the dryer vent cleaning due to the actions of the tenants in violation of the Act. I find that the landlord is responsible to clean the vents at reasonable intervals and for this reason I dismiss this portion of the landlord's claim, without leave to reapply.

I further find that the landlord has not provided sufficient evidence that the repair to the dryer was due to the actions or neglect of the tenants. I find that the pictures of the lint screens do not conclusively establish that it was the tenants' neglect which caused the dryer to need repair. I find that there is no indication on the Condition Inspection Report that the dryer was not operational at the time the tenants moved out and that the date of the repair is over three months past the end of the tenancy. For the above reasons, the landlord's claim to recover costs associated to the repair of the dryer is dismissed, without leave to reapply.

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, is not earlier than the date specified in the tenancy agreement and is the day before the day in the month that rent is payable under the tenancy agreement

I find that the tenants' notice on September 19, 2018, with an effective date of October 15, 2018, is in violation of section 45 of the Act. I find that the earliest legal effective date that the tenants could have ended the tenancy on September 19, 2018, would have been on November 15, 2018, not earlier than one month after the date the landlord received the notice. For the above reason I find that the landlord is entitled to their claimed rental loss of \$206.00.

Having reviewed the evidence and testimony, I find that the landlord has established that the tenants are responsible for a quarter portion of the water bill charged quarterly. I find that the tenants acknowledged their responsibility for their portion of the water bill. For this reason I find that the landlord has established a claim in the amount of \$133.00 for water use from June 2018 to September 2018. I find that the tenants are also responsible for water use from October 01, 2018 to October 15, 2018. For this reason I find that the landlord is entitled to a monetary award in the amount of \$16.36, the amount claimed by the landlord for this period. $((\$133.00/4 = \$33.25)/2 = \$16.36)$.

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.

I find that the tenants have not disputed the amount owed for the cleaning of the rental unit. I find that the landlord has provided evidence of the actual amount required to be compensated for their cleaning expenses. For this reason I find that the landlord is entitled to a monetary award in the amount of \$189.00 for the cleaning of the rental unit.

Having reviewed the undisputed affirmed testimony and evidence, I find that the landlord has proven that they have incurred a loss for the painting of the rental unit. I find that the tenants confirmed that they had their bicycles in the rental unit on a regular basis and admitted to some possible wear and tear due to this fact. I find that the damage caused on the walls as well as the windowsill are beyond reasonable wear and tear due to the presence of the bicycles being stored in the rental unit.

I find that the tenants did not dispute the damage to the walls or the damage in the bathroom noted on the Condition Inspection Report. I find that the landlord attempted to mitigate their loss for the painting and the bathroom repair by allowing the tenants an opportunity to correct the damage themselves.

I find that the tenants confirmed the poor condition of the bathroom caulking at the move out in comparison to taking possession of the rental unit. I find that there was no indication at the time of the move in that the caulking was of poor quality. I find that this damage is beyond reasonable wear and tear. For the above reasons I find that the landlord is entitled to be compensated for their loss associated to the repair of the caulking and the touch up of the rental unit which was submitted on one invoice.

I will use *Residential Tenancy Policy Guideline #40*, to determine exactly how much money the landlord should be compensated for this loss. *Policy Guideline #40* provides general direction on determining the general useful life of building elements. This guideline notes that, "Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances."

As per *Residential Tenancy Policy Guideline #40*, the useful life of interior paint is 4 years (or 48 months). As caulking was a small part of this repair and has a useful life of 5 years (or 60 months), I find that it is reasonable to consider these costs together. Based on the residential tenancy guideline's expected life of 48 months for the painting of the rental unit, and considering that it was 12 months since the rental unit

was last painted, I find that the painting should have had an expected useful life of another 36 months.

Therefore, I allow the landlord to recover \$983.52 for the cost of the paint and for the labor associated to the touch up/repair of the rental unit. $((\$1,260.00 + \$51.49) / 48 \times 36 \text{ months})$

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.

Therefore, based on the above, I find that the landlord is entitled to a total monetary award in the amount of \$1,527.88 for unpaid rent, for damage to the rental unit and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. As the landlord was successful in their application, they may recover the filing fee related to this application.

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.

Conclusion

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

Item	Amount
Cleaning of the Rental Unit	\$189.00
Water Bill - June 2018 to September 2018 – $532/4 =$	133.00
Water Bill Estimate – Estimated October 01 to October 15, 2018	16.36
Repairs and touch up to Rental Unit	983.52
Rental Loss	206.00
Less Security Deposit	-800.00
Application Fee	100.00
Total Monetary Order =	\$827.88

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: March 19, 2019

Residential Tenancy Branch