



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S
 FFT MNDCT MNSD

Introduction

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

- a monetary order for double the value of the security deposit per Section 38;
- a monetary order for money owed or compensation for damage or loss per Section 67; and
- authorization to recover the filing fee for this application from the landlord per Section 72.

This hearing also dealt with the landlord's application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*; authorization to retain the tenants' security deposit per Section 67, and
- authorization to recover the filing fee for this application from the tenant per Section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions and to question one another. I find both parties met the service requirements of Sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to double the value of their security deposit?

Are the tenants entitled to compensation for increased use of electricity?

Are the tenants entitled to recover the filing fee?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to a compensation for cleaning, repairs, etc.?

Preliminary Matter

There was an error in the landlord's monetary worksheet where he listed \$136.66 for water damage repair instead of the actual value of his invoices, \$1360.06. I confirmed with the tenants they had reviewed all of the landlord's evidence and understood the claim for water damage repair is \$1360.06 and not \$136.66. I use my authority under Rules of Procedure 4.2 to amend the landlord's monetary claim to a total value of \$2,810.06. The breakdown of which is:

\$450.00 for October 11, 2018 Invoice #101

\$300.00 for use of utility trailer

\$500.00 rent rebate to future tenant

\$1360.06 for water damage repair

\$100.00 for postage

\$100.00 for filing fee

\$2810.06 total claim

Background and Evidence

The tenancy agreement was entered into evidence by both parties. The tenants pointed out the landlord altered his copy—their copy does not include the marginalia “Tenant is allowed to extend the term of this tenancy. Tenant is allowed to enter into to month to month tenancy.” The landlord agreed and testified that these were notes for him and have no other purpose.

The parties testified this tenancy began sometime in 2016 and ended on September 1, 2018. The tenancy agreement entered in to evidence by both parties is for a fixed-term tenancy starting August 1, 2017 and ending January 31, 2018. The agreement states the tenants must vacate on January 31, 2018. The monthly rent is \$1,500.00. On the agreement it is noted a \$700.00 security deposit is “transfer from previous contract.” The parties testified that the time of move-out, the rent was \$1,600.00 per month.

The landlord stated he was very flexible with the tenants about their move out date and allowed the tenants to remain after August 31, 2018 to accommodate their travel outside the country. The landlord testified he arranged for a new tenant to move in on September 3, 2018.

Both the tenants and landlord agree there was no move-out condition report completed. The tenants provided evidence of text messages between them and the landlord dated September 6. In these messages the tenants provide their forwarding address, which the landlord acknowledges. The landlord states “we are in the process of cleaning the place. I will contact you when all is done...”

The tenants recounted the actions they took to clean the unit and assert they left the unit in a clean, undamaged condition with the exception of:

- leaving behind one box containing packing supplies;
- leaving full garbage and recycling bins; and
- leaving perishables in the fridge, which they offered to a neighbouring tenant.

They noted all rooms had been cleaned and swept, the oven was cleaned and the fridge wiped out, cabinets in the kitchen wiped out, all nail holes filled and the windowsills were sanded and repainted to remove the residue from plastic sheeting used for insulation.

The tenants testified they were rushed on their last day and anticipated the landlord may have been required to spend one hour cleaning the unit, nonetheless they testified they did not agree to any portion of their security deposit being retained and expected the landlord to mail them a cheque for the return of their security deposit. The landlord provided in evidence a copy of an October 3 text message to “TENANT/1” stating the tenants had left “garbage everywhere, fridge full of stuff, greasy stove...” and an October 26 – 28 exchange with the tenants about the cost of cleaning up the unit.

The tenants questioned the credibility of the \$450.00 cleaning invoice, noting it was from another tenant and included \$30.00 to install shelving units. The landlord acknowledged the \$450.00 invoice was from another tenant who the landlord says is his handyman. The landlord explained there were five shelves in an upstairs closet and after the tenants moved out, there were no shelves. The tenants testified there were no shelves in the closet when they moved in and they did not remove any shelves.

The landlord referred to his documentary evidence—letters from his caretaker--to substantiate his claim the tenants did not leave the rental unit in a clean condition and a lot of work was required to get the unit ready for the next tenant. He claimed there were many boxes full of “stuff” and the unit was not clean. When I asked what the “stuff” was, the landlord did not elaborate or explain what was in the boxes or what the stuff was comprised of.

The tenants questioned the value of the letters from the caretaker because they were written not by the signatory but by the landlord. Also, during their entire tenancy they had no dealings whatsoever with the caretaker, who they thought was simply another tenant. They testified they did not interact with this tenant/caretaker regarding appointments for prospective tenants to view the rental unit and as far as they know, he was not ever inside their unit. The landlord disputes this and believes that all the tenants know who the caretaker is.

The landlord acknowledged he wrote all the letters from the caretaker as well as the letter from the new tenant "A.L.". He testified the content of the letters are true and the individuals did sign the letters, which he wrote only because these individuals did not have a computer printer.

The landlord testified tenants are responsible for his \$500.00 loss in rental revenue in September 2018 due to their failure to leave the rental unit in a clean condition. The landlord testified he had to tell the tenant who was going to move in on September 3, 2018 the unit wasn't ready because of the mess left by the tenants. He had to find a new tenant. The landlord entered into evidence a tenancy agreement with A.L. effective September 1, 2018 and signed by A.L. on September 10, 2018. He submitted a letter he wrote, which was signed by A.L., in which she says she received a \$500.00 rent credit from the landlord (this is also noted on the tenancy agreement).

The landlord is seeking \$300.00 from the tenants for the use of his trailer. He testified he treated the tenants as he would his own children and twice offered them the use of his utility trailer free of charge. The tenants agreed the landlord helped them and both times the use of his trailer was presented to them as free of charge; if it had not been free, the tenants would have not used the trailer.

The landlord testified that due to the tenants' claim for double their security deposit, he is now seeking payment for the two times he let the tenants use his trailer, as well as for two trips he had to make to get rid of all the stuff. He has determined he should be compensated \$75.00 for each use for a total of \$300.00. The tenants dispute they left stuff behind and only took advantage of the trailer during the tenancy because it was free.

Both the landlord and tenants agree it was discovered in January 2017 that the water tank was leaking and as a result, there was water damage to the utility room. The utility

room is external to the living quarters and has its own key. The landlord claimed the tenants should have known the water tank was leaking and because it was their rental unit, they have the key to it, and therefore are responsible for the cost of repair. The tenants testified the utility room was used only for keeping their summer tires and they had no reason to go into the utility room in January 2017. They testified there was no term in the tenancy agreement which required them to regularly inspect the utility room. They testified that as soon as the water damage from the tank was discovered, the landlord took action to make repairs. The landlord testified it was due to the tenants' negligence that the water tank had leaked to such an extent that the drywall and insulation had to be replaced. I asked the landlord if he was claiming the tenants knew the water tank was leaking and failed to notify him. He said no, he was not saying the tenants knew there was a leak and didn't tell him. The landlord reiterated that because it's their rental unit, the tenants should pay for the repairs. The landlord testified he decided to claim payment of \$1,360.06 from the tenants after they filed a claim against him for double the value of their damage deposit.

The tenants submitted a screen shot of a list of monthly invoices which they claim are electricity invoices. The month of February 2017 is an anomaly. The tenants claim the water tank leak caused an increase in electricity consumption—as water was leaking, more energy was being used to heat the water and during the repairs an electric heater was left on. The landlord entered into evidence a photo of a man holding the heater. The tenants claim the heater ran for five days while the landlord claims it ran for one day and would not cause a drain of electricity. The tenants testified that during the tenancy they asked the landlord to pay for the increase in electricity and he refused saying that he wasn't charging them for the repair. The landlord doesn't remember having this exchange with the tenants. The tenants have calculated a value of \$118.79 for compensation owed to them, which is the difference between the February 2017 invoice and the February 2018 invoice (249.73 – 130.94). Both parties agreed the water tank problem would have likely had an impact on energy consumption.

Analysis

- Landlord's claim of \$450 for October 11, 2018 Invoice #101

The landlord's testimony that the tenants removed shelves from the closet was not compelling and I award him nothing for the labour to install shelves.

The landlord did not provide compelling evidence to substantiate the requirement of 12 hours of cleaning and two hours of painting. No photographs were submitted into evidence to substantiate how the unit looked after the tenants vacated. Without photographic evidence, I must rely on the testimony of the parties and the letters submitted by the landlord.

I do not give the third-party letters much weight because they were written five months after the tenants vacated and the landlord admits he wrote the content of the letters. Although I believe the caretaker signed the letters, he is an employee and a tenant of the landlord thus has a personal relationship with the landlord in which the landlord holds the balance of power.

In his September 6th text message exchange with the tenants, the landlord had the opportunity to tell the tenants about the problems he was experiencing due to their negligence, but says only that he is cleaning the unit. In this text exchange there is no sense of outrage as there is in the landlord's October 3, 26 – 28 messages.

The tenants admitted they were rushed and more cleaning did need to be done, thus I find they failed to comply with Section 37(1)(2)(a) and did not leave the unit reasonably clean.

I do not find the landlord's testimony or evidence about the severity of the uncleanliness to be compelling. The invoice is not from a professional cleaning company; the landlord agreed the cleaning was done by another tenant. I find the fee of \$30.00 per hour for 12 hours to be excessive: there are no photographs to document what needed to be cleaned and cleaning is unskilled labour. I award the landlord \$12.65 per hour (minimum wage) for five hours of cleaning (\$63.25).

- Landlord's claim of \$300 for use of utility trailer

I find the landlord's claim for \$150.00 for two uses of the utility trailer during the tenancy to be an abuse of the dispute resolution process per section 62(4)(c) of the *Act*. The landlord testified he is seeking payment because the tenants filed an application for dispute resolution. I dismiss this part of the landlord's claim without leave to reapply.

I dismiss the claim for \$150.00 for use of the trailer after the end of the tenancy because the landlord has not proven the tenants left behind two trailer-loads of stuff. This claim is dismissed without leave to reapply.

- Landlord's claim for a \$500 rent rebate to future tenant (loss of rental revenue)

As noted earlier, I find it significant the landlord did not reference the loss of a tenant in his September 6th text exchange with the tenants. He provided no documentary evidence of a tenancy to start on September 3. I also find it significant the landlord testified he was flexible about when the tenants vacated which means he could not expect to receive an entire month's rent for September. As the landlord did not substantiate the existence of a tenancy agreement that was thwarted by the tenants' negligence, I dismiss this part of the landlord's claim without leave to reapply.

- Landlord's claim for \$1360.06 for water damage repair

The landlord testified he does not think the tenants knew about the need to repair the leaking water tank and failed to notify him, yet he asserted the tenants should have known about the leak and are responsible for the cost of repair because it was their rental unit. The landlord also testified he is seeking payment from the tenants because they filed an application for dispute resolution to obtain double the value of their security deposit.

Referencing Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises, I note it says “the landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.” This same Guideline also notes the landlord is responsible for winterizing water tanks.

Per Section 7 of the *Act*, the landlord cannot be compensated without proving the tenants failed to comply with the *Act*, regulations or tenancy agreement. As the tenants noted, there was no requirement in the tenancy agreement for them to regularly inspect the water tank.

I find this part of the landlord's application to be an abuse of the dispute resolution process per section 62(4)(c). The landlord did not present any testimony or evidence that the tenants' deliberate or negligent actions were the cause of the water leak. The landlord testified he is seeking payment for this January 2017 repair because the tenants filed an application for dispute resolution. I dismiss this part of the landlord's claim without leave to reapply.

- Landlord's claim for \$100 for postage

There are no provisions in the *Act* or regulations allowing an applicant for dispute resolution to recover the cost of mailing application material. I dismiss this part of the landlord's claim without leave to reapply.

- Landlord's claim for \$100 for filing fee

As the landlord is largely unsuccessful with his claims, and I find he included claims in his application because the tenants applied for dispute resolution, I do not allow him to recover the filing fee from the tenants.

- Tenant's claim for \$118.79 for increased electricity consumption

Given the testimony from both the landlord and tenants, I find it probable that there was an increase in electricity consumption during the period the water tank was leaking. The parties did not agree on how many days the heater was on during the repair period. I accept the list of invoices submitted by the tenant are electricity invoices and that February 2017 is an anomaly in so far as it is substantially higher than the other months.

Per Section 7 of the *Act*, to award the tenants compensation, I must find the landlord failed to comply with the *Act*, regulations or the tenancy agreement. As the parties both testified the landlord acted immediately upon discovery of the leak, and the tenants provided no evidence the leak was caused by the landlord's failure to maintain the unit (ref: section 32 of the *Act*), I dismiss this part of the tenant's claim without leave to reapply.

- Tenants' claim for double the value of their security deposit

The landlord failed in to meet his obligation per section 35(2) of the *Act* to conduct a move-out condition inspection report. He had no legal authority to retain the tenants' security deposit per section 36(2) of the *Act*.

The documents submitted into evidence by both parties show text messaging was a usual means of communication between the landlord and the tenants. It is undisputed the landlord received the tenants' forwarding address on September 6. Section 38(1) of the *Act* requires the landlord to either return the security deposit, or apply for dispute

resolution, within 15 days of receiving the forwarding address. The landlord did neither thus he is subject to the statutory consequence set out in Section 38(6)(b), which is the requirement to return of double the value of the security deposit to the tenants.

I award the tenants \$1,400.00

- Tenants' claim for \$100 filing fee

As the tenants were largely successful with their application, I allow them to recover the filing fee from the landlord.

Conclusion

I have set-off the landlord's award of \$63.25 for cleaning against the tenants' award of \$1,500.00. I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,436.75**.

This order must be served by the tenants on the landlord as soon as possible. If the landlord fails to comply with this order, the tenants may file the order in the Provincial Court (Small Claims) and have it 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 15, 2019

Residential Tenancy Branch