



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL
 MNSD, FFT

Introduction

This hearing dealt with the cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlords’ Application for Dispute Resolution was made on December 18, 2018. The Landlords applied for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover their filing fee. The Tenants’ application for Dispute Resolution was made on January 30, 2019. The Tenants applied for the return of double their security deposit and the return of their filing fee.

Both the Landlords and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlords and the Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony 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

- Are the Landlords entitled to a monetary order for damages or losses due to the tenancy?
- Are the Landlords entitled to retain the security deposit?

- Are the Landlords entitled to the return for their filing fee for this application?
- Are the Tenants entitled to the return of his security deposit?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

Both parties agreed that the tenancy began on January 15, 2018, as a one-year fixed term tenancy that rolled into a month to month at the end of the initial fixed term. Rent in the amount of \$1,900.00 was payable on the first day of each month, and the Tenants paid a security deposit of \$950.00 at the outset of this tenancy.

Both the parties agreed that the parties to this dispute entered into a mutual agreement to end the tenancy early, as of December 1, 2018. The parties agreed that the Tenants had moved out of the rental unit, in accordance with that their agreement and that the move-out inspection had been conducted on December 3, 2018. The parties also agreed that the move-in and move-out inspections had been conducted in accordance with the *Act* and that the Tenants had provided their forwarding address, in writing, to the Landlord on December 3, 2018.

The Tenants testified that in September 2018, their son had accidentally broken a section of glass in an interior glass French door of the rental unit. The Tenants testified that in mid October 2018, the Property Manager and both the Landlords had attended the rental property, and the Tenants had shown them the damage to the glass door and had requested direction on how it should be repaired. The Tenant testified that the Landlords told them to get it fixed but offered no specific directions to them at that time. The Tenants submitted a picture of the broken glass in the door, into documentary evidence.

The Landlords agreed that they had attended the rental unit and had been advised of the damage to the glass door and that they had told the Tenants to repair the door before the end of the tenancy.

The Tenants testified that they went to several local businesses to inquire about purchasing a replacement section of glass for the one that had been broken; However, they were advised that the glass was too old and was no longer being manufactured. Additionally, the Tenants testified that they attempted to buy a similar glass door as a replacement but that they were advised that the door was an old style and would be difficult to find. The Tenants testified that they then attempted to locate a second-hand piece of glass for the repair but were unsuccessful.

The Tenant testified that in an attempt to give the Landlords, as close a possible to the same door, they purchased a replacement door on November 19, 2018, and sent a picture of the door to the Landlords for their approval. The Tenants submitted three pictures of the replacement door and a copy of the text message into documentary evidence.

The Tenants testified that as of November 23, 2018, they had not heard back from the Landlords regarding the replacement door, and they determined on their own that the replacement door was not a good option as the door was a double door and they would no longer match if they used the replacement door. The Tenants testified that they returned the replacement door and continued to look for options to repair the glass door.

The Landlords testified that they had not gotten back to the Tenants, regarding their specific requests and direction on the repair of the door, as they had been travelling but that when they returned they had advised them that the replacement door was not approved.

The Tenant testified that on November 27, 2018, they heard back from the Property Manager, stating that the Landlords did not "want to different doors" and that they did not approve of the replacement door the Tenants' had purchased; however, this was the only limited direction the Landlords provided.

The Tenants testified that as their tenancy was nearing its end date, and the needed to complete the repair of the door before they left, they decided to go ahead and repair the door with two panes of clear glass that they had located. The Tenants testified that they installed the clear glass in both doors as the Landlords had advised them they wanted the doors to match. The Tenants submitted a picture of the repaired door into documentary evidence.

The Tenant testified that they exchanged a series of emails with the Property Manager on November 28, 2018, sending her a picture of the repair work they had completed on the door. The Tenant testified that the Property Manager response was that the Landlords did "not want clear glass." The Tenants testified that this was the first specific information they had received, from the Landlords, regarding the repair, and that at this late date in their tenancy it was too late as the repair had already been completed.

The Property Manager testified that when the move-out inspection was conducted on December 3, 2018, the rental unit was returned to the Landlords in good condition, except that the owners did not accept the repairs that had been made to the glass doors.

The Landlords testified that they were unhappy with the repair completed on the broken glass French doors in the rental unit as the doors lead to a room that is meant to be a bedroom, and for privacy, the glass in the doors needed to be opaque.

The Landlords testified that they were able to locate a company that was able to order in a replacement door for them, so the Tenants should have been able to do the same. The Landlords testified that due to the Tenants repair work they now need to replace both glass panes in the French doors in the rental unit. The Landlords submitted a copy of an estimate of the replacement cost of the two French door panels into documentary evidence.

When asked the Landlords testified that the property was built in 1995 and that the French doors had been original to the property.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlords are claiming for \$1,297.37 to recover their cost to replace the glass in the interior door damaged by the Tenants during the tenancy. I accept the agreed upon testimony during the hearing that the glass in an interior door had been damaged during the tenancy and required repair. I also accept the agreed upon testimony that the Tenants' had replaced the damaged glass in the door, before the tenancy ended but that the Landlords were unhappy with the chosen glass as the new glass was clear and not opaque, as in the previous door.

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.

I find that the parties to this dispute are in agreement that an interior glass door had been damaged by the Tenants during the tenancy and that the Tenants had taken steps to repair the damage before the tenancy had ended, as required pursuant to section 37 (2) of the *Act*.

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 have reviewed the Landlords' application and testimony during the hearing, and as the Tenants had repaired the damaged glass before the tenancy ended, I must find that there is no evidence before me to show that the Tenants had breached the *Act* during their tenancy.

However, I understand that the nature of the dispute before me is whether or not the repairs completed by the Tenants were sufficient to meet their obligation under the *Act*. As stated above, section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean and undamaged at the end of the tenancy.

I accept the Landlords' testimony that they are unsatisfied with the replacement glass chosen by the Tenants as the replacement glass chosen had been clear glass, and the Landlords had wanted opaque glass installed.

I have reviewed both the Landlords' and the Tenants' applications, and I find that there is no evidence before me to show that the Landlords had provided any direction to the Tenants regarding their preferences for the type of glass to be used to replace the damage. I also accept the evidence and the testimony of the Tenants that they had made several attempts to contact the Landlords for guidance on the repair and that the Landlords did not reply to them. I find it unreasonable of the Landlords, to after the fact, hold the Tenants to a specific level of repair when they did not or were unwilling to communicate their expiations to the Tenants during the repair period.

Additionally, pursuant to section 7 of the *Act*, a party claiming for compensation due to damage or loss must take steps to mitigate their losses, stating the following;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As the primary complaint regarding the repair to the door, completed by the Tenants, was that they had used a clear glass instead of opaque glass; I find it unreasonable of the Landlords to seek compensation for their cost for the purchase of a custom manufactured piece of glass. When there are several inexpensive methods of turning clear glass opaque, that would have minimized the Landlords' losses in this case.

Furthermore, I must also refer to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements. The guideline sets the useful life of glass at 15 years. I accept the testimony of the Landlords that the glass door had been original to the house, and that the house had been built in 1995, making the glass in the door at least 22 years old at the beginning of this tenancy. I find that the damaged glass door had been passed its useful life expectancy. Accordingly, as this door was passed its useful life expectancy, and the Landlords are not entitled to the full replacement costs of the glass.

For these reasons, I dismiss the Landlords claim for the replacement cost of the glass, and I find that they are not entitled to retain the security deposit for this tenancy.

During the hearing, the Tenant tenants withdrew their requested for the return of double their security deposit, pursuant to section 38(6) of the *Act*, and amended their request to the return of the \$950.00 security deposit that the Landlords are currently holding pending the outcome of this hearing.

As the Landlords' have failed in their claim, I order the Landlords to return the security deposit, they are holding for this tenancy to the Tenants.

Additionally, 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 were not successful in their application, I find that the Landlords are not entitled to recover the \$100.00 filing fee paid for their application.

As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for their application.

I grant the Tenants a Monetary Order in the amount of \$1,050.000; consisting of \$950.00 for the return of the security deposit, and \$100.00 for the recovery of the Tenants' filing fee for their application.

Conclusion

I grant the Tenants a **Monetary Order** in the amount of **\$1,050.00**. The Tenants are provided with this Order in the above terms, and 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: April 15, 2019

Residential Tenancy Branch