Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT / MNDL-S, MNDCL-S, MNRL-S, FFL

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to section 38;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for damage or compensation under the Act, pursuant to section 67;
- a Monetary Order for unpaid rent, 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 from the tenants, pursuant to section 72.

The female landlord D.M. (the "landlord") and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed receipt of the other's application for dispute resolution via registered mail. I find that the applications were served on each party in accordance with section 89 of the *Act.*

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*?
4. Are the landlords entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
5. Are the landlords entitled to a Monetary Order for damage or compensation under the Act, pursuant to section 67 of the *Act*?
6. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
7. Are the landlords entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
8. Are the landlords entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on April 1, 2018 and ended on January 1, 2019. This was originally a fixed term tenancy set to end on March 31, 2019. The subject rental building is a house with separate upper and lower suites. The subject rental property is the lower suite. Monthly rent in the amount of $949.00 was payable on the first day of each month. A security deposit of $475.00 was paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Tenants' Claim

The tenants are seeking the following damages arising out of this tenancy:

Item	Amount
Doubled security deposit	$950.00
December 2018's rent	$949.00
Filing fee	$100.00
Total	**$1,999.00**

Both parties agree that the tenants sent the landlord a letter dated November 27, 2018 via e-mail on December 1, 2018. The landlord confirmed receipt of the letter dated November 27, 2018 on December 1, 2018. The letter dated November 27, 2018 was entered into evidence, it states that the tenants will vacate the subject rental property on January 1, 2019 due to the following issues:

- A pipe burst causing damage to the subject rental property which took time to repair and which damaged some personal belongings for which the tenants have not been compensated;
- The tenant in the upper unit had a key to the tenants' suite without the knowledge of the tenants and the locks have not been changed since this revelation; and
- Mold growing in the subject rental property.

The letter dated November 27, 2018 also provided the landlords with the tenants' forwarding address. Both parties agree that the landlords have not returned the tenants' security deposit.

Both parties agree to the following facts. The tenants notified the landlord about mold growing in the bedroom on November 1, 2018. The landlords sought permission from the tenants to attend at the subject rental property the following weekend from November 3-4, 2018 to repair the affected area. The tenants refused entry as they were not available for repair that weekend and did not want the landlords in the subject rental property without them being present.

Both parties agree that the landlords sought permission to attend at the subject rental property the following weekend, November 10-11, 2018 and the tenants again refused on the same grounds as the previous weekend. The tenants granted the landlords

access to the subject rental property on the following Saturday, November 17, 2019 and the landlords cleaned the affected areas and applied a mold treatment.

Both parties agree that the tenants in the upper unit, unbeknown to the tenants, had a key to the subject rental property. The landlord testified that the previous tenants in the lower suite were often out of town and the tenants in the upper suite had a key in case they needed access to the furnace or hot water tank on an emergency basis while the lower tenants were out of town. The landlord testified that she forgot about this when the tenants moved in but when they asked her about it in November of 2018 she contacted the upper tenant and retrieved the key from her.

The tenants testified that they asked the landlords to change the locks at the subject rental property but that the landlord refused. The landlord testified that she was willing to change the locks but every time she spoke to the tenants to arrange a time to have the locks changed, tenant J.O. yelled at her telling her that they were leaving the subject rental property, therefore negating the necessity to change the locks.

The landlord entered into evidence a text message dated December 2, 2018 which states that she has arranged a locksmith to attend late the following week. The text message goes on to ask the tenants if there is a date that works best. The landlord testified that the tenants did not return her text messages regarding the lock smith and that texting was their usual means of communication. The landlord entered into evidence other text message exchanges between the parties.

Both parties agreed to the following facts. In May of 2018 a pipe burst causing some damage to the subject rental property. The landlord testified that the damage was minimal and that the tenants never informed her of any damage to their personal property prior to the letter dated November 27, 2018. The tenants did not dispute this testimony. The tenants did not enter into evidence any photographs of the alleged damage or receipts for personal items that required replacement.

The tenants testified that they are seeking December 2018’s rent from the landlord because of the three issues identified in the letter dated November 27, 2018.

Both parties agreed that prior to the letter dated November 27, 2018 the tenants had not provided the landlords with written notice that if the issues stated in the November 27, 2018 letter were not addressed within a reasonable time, the tenants would move out.

Landlords' Claim

The landlords filed their claim with the Residential Tenancy Branch on April 29, 2019. The landlords are seeking the following damages arising out of this tenancy:

Item	**Amount**
January 2019's rent: breach of fixed term tenancy agreement	$949.00
Unpaid utilities	$517.27
Repair damage to exterior wall	$68.25
Repair damage to concrete walkway	$68.25
Carpet cleaning	$84.00
Repair washing machine	$99.23
Repair lawn	$204.75
Filing fee	$100.00
Total	**$1,999.00**

The landlord testified that the tenants moved out of the subject rental property prior to the end of the fixed term and the subject rental property was left in a state of disrepair which made it impossible to rent out for the month of January 2019. The landlord testified that it took approximately one week to clean and repair the subject rental property before it could be shown to prospective tenants. The landlord testified that the first showing of the subject rental property was January 8, 2019 and that she was able to rent the subject rental property for February 1, 2019. The landlord is seeking January 2019's rent in the amount of $949.00 for breach of the fixed term tenancy agreement.

The landlord testified that the tenants left garbage in the back yard of the subject rental property which they had to clean up. This testimony was not disputed by the tenants.

The landlord testified that the tenants spray painted something outside of the house and got spray-paint on the siding and the cement walkway. The landlord entered into evidence photographs showing same. The landlord testified that her husband and co-landlord spent an hour cleaning the side of the house and an hour cleaning the cement walkway and is seeking reimbursement at a rate of $68.25 per hour as that is the rate of a handyman they contacted. Tenant R.C. testified that tenant J.O. did spray paint something outside and that he may have gotten some of the paint on the siding and the

cement walkway, but she was not sure. Tenant J.O. did not provide testimony on this point.

The landlord testified that the tenants used the bedroom as a shop and that it smelt like oil and tires were stored in it. The landlord testified that the carpets were not clean when the tenants moved out and so she paid to have them professionally cleaned. A receipt in the amount of $84.00 for carpet cleaning was entered into evidence. The tenants testified that they had the carpets professionally cleaned after they moved out. No receipts showing same were entered into evidence. The tenants testified that they did not use the bedroom as a shop.

The landlord testified that the tenancy agreement states that parking spaces are not included in the rent and that the tenants were required to park on the street. The landlord testified that the tenants chose to park on the lawn at the subject rental property and that this destroyed the lawn, creating deep tire troughs in the lawn. The landlord entered into evidence a photograph of a vehicle parked on the lawn.

The landlord testified that her husband spent 2.5 hours leveling out the ground and re-seeding the lawn. The landlord testified that she contacted a landscaping company and that they would have charged $204.75 to repair the lawn and so she is seeking that amount from the tenants. The tenants testified that they did park on the lawn and that they tried to smooth out the ruts when they left the subject rental property. The tenancy agreement states that no parking spots are included in the rent.

The landlord testified that in November 2018 the tenants informed her that the washing machine was not draining. The landlord called a repair person who found that a coin was stuck in the pump, causing the problem. A receipt in the amount of $94.50 was entered into evidence, it states that the issue was a coin stuck in the pump. The landlord testified that the tenants caused the issue by allowing a coin to enter the washing machine and so should have to pay for the service call. The tenant testified that she allowed the washing machine repair person access to the subject rental property for the service call.

Both parties agreed that the tenants were responsible for paying 1/3 of the gas and hydro bills. Both parties agreed that the tenants did not pay their portion of the gas bill from July to December 2018 or their portion of the hydro bills from September to December 2018 because the landlord did not provide them with copies of these bills.

The landlord entered into evidence the following hyrdo bills:

- July 6, 2018 to September 5, 2018: $441.71;
- September 6, 2018 to November 5, 2018: $325.21; and
- November 6, 2018 to January 4, 2019: $358.82.

The landlord entered into evidence the following gas bill:

- July 4, 2018 to August 2, 2018: $39.45 – this bill is on an equal payment plan of $75.00 per month.

The landlord is seeking 1/3 of each hydro and gas bill to be paid by the tenants with the final bill pro-rated for days the tenants resided at the subject rental property. The total sum claimed by the landlord is $517.27 for unpaid utilities. A full break down of how this sum was calculated was not provided by the landlord.

Analysis

Tenants' Claim

December 2018's Rent

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order 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 tenants have not identified any grounds for their claim for the return of December 2018's rent. I find that the tenants failed to prove, on a balance of probabilities, that the burst pipe caused damage requiring repair or affected the value of the tenancy such that remuneration is required.

I find that the landlords responded quickly to the mold issue in November of 2018 and the only delay in treating the problem resulted from the tenants refusing access to the landlords to complete the necessary repairs.

I find that, based on the text messages, the landlords were willing to change the locks at the subject rental property. I accept that text messaging was a normal means of communication between the parties. I accept the landlord's testimony that tenant J.O. was uncooperative in setting up a time for the lock replacement to occur. I find that the landlords acted reasonably when informed that the upper tenant had a key to the subject rental property. I find that while the upper tenant should not have had a key to the subject rental property, the tenants have not proved, on a balance of probabilities, that any loss or damage resulted from the upper tenant having a key. I therefore dismiss the tenant's claim for December 2018's rent.

Security Deposit

Section 38 of the Act requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

Based on the evidence of both parties, I find that service of the tenants' forwarding address in writing was effected on the landlords on December 1, 2018. While e-mail is not an authorized method of service under the *Act*, I find that, pursuant to section 71 of the *Act,* the landlords were sufficiently served for the purposes of this *Act* with the tenants' forwarding address in writing as the landlord acknowledged receipt on December 1, 2018.

In this case, while the landlords made an application to retain the tenants' security deposit, the application was made more than 15 days after the tenancy ended, therefore the tenants are entitled to the return of double their security deposit in the amount of $950.00.

Landlord's Claim

Spray Paint

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the testimony of tenant R.C. I find it more likely than not that tenant J.O. left spray paint on the side of the house and the cement walkway, breaching section 37 of the *Act*. I accept the landlord's testimony that her husband spent two hours cleaning the side of the house and the cement walkway. I find the hourly rate claimed by the landlord to be too high, as a professional handy person was not hired to complete the cleaning. I find that an acceptable hourly rate is $25.00 per hour. I find that the tenants are required to pay the landlords $50.00 labour in cleaning the above areas.

Carpet Cleaning

I find that, pursuant to section 37 of the *Act*, it is reasonable for the tenant to professionally clean the carpets. I accept the landlord's evidence that the carpets at the subject rental property required cleaning. I find that the tenants did not prove, on a balance of probabilities, that they cleaned the carpets after they vacated the subject rental property. I find that the landlord is entitled to recover the cost of the carpet cleaning in the amount of $84.00.

Lawn Repair

Upon review of the tenancy agreement, I find that parking was not included in the rent. Based on the testimony of both parties, I find that the tenants parked a vehicle on the lawn of the subject rental property. I find that the act of parking a vehicle on the lawn caused damage to the lawn. I accept the landlord's testimony that it took her husband 2.5 hours to repair the front lawn. I find that the landlords are entitled to recover $25.00 per hour for labour for the repair of the lawn for a total of $62.50.

Washing Machine Repair

Policy Guideline 1 states that the tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. I find that washing machine was damaged when the tenants allowed a coin to enter the washing machine. Based on the receipt from the washing machine repair person, I find that this act of neglect caused the damage to the washing machine and the tenants are therefore responsible for the repair bill in the amount of $99.23.

Breach of Fixed Term Tenancy

Section 45 of the *Act* sets out when and how a tenant may end a tenancy. Section 45(2) states that 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.

Pursuant to section 45(2), the earliest date the tenants could end their tenancy was March 31, 2019.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Residential Tenancy Policy Guideline 8 states that to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I find that prior to the letter dated November 27, 2018, the tenants did not put the landlord on written notice that they considered any of the issues occurring at the subject rental property a breach of a material term of the tenancy agreement and did not

provide the landlords with a reasonable period of time to correct the alleged deficiencies. I therefore find that the tenants were not entitled to end their tenancy prior to the end of the fixed term tenancy agreement, that being March 31, 2019. I find that in ending their tenancy early, the tenant's breached section 45 of the *Act.*

Under section 7 of the *Act* a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Policy Guideline 3 states that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

The landlord testified that the subject rental property was un-rentable for the first week of January 2019 due to damage caused by the tenant. Based on my above findings, I concur that the subject rental property was unrentable for the first week of January 2019. I find that the landlord mitigated her damages by quickly completing the necessary cleaning and showing the property as of January 8, 2019.

In this case, the tenants ended a one-year fixed term tenancy three months early; thereby decreasing the rental income that the landlord was to receive under the tenancy agreement for the months of January, February and March 2019. Pursuant to section 7, the tenants are required to compensate the landlords for that loss of rental income in the amount of $949.00.

Based on the testimony of both parties, I find that the tenants are obligated to pay 1/3 of the gas and hydro bills during their tenancy. I find that the tenants have not paid the gas

bills for the months of July to December 2018 and the hydro bill from September to December 2018. I find that the tenants' non-payment was due to the landlords' failure to provide the utility bills. I find that the landlords have now provided the tenants with three hydro bills and one fortis bill, and that the tenants are still obligated to pay their 1/3 share of the bills provided.

I note that only one gas bill was provided. I will not award the landlord a monetary order for bills not provided, not will I order a monetary order based on an equal payment plan. The landlords are required to prove the specific amount owed, I find that the landlords have not done so for the period of August 3, 2018 to December 31, 2018. I therefore dismiss the landlord claim for the gas bill from August 3, 2018 to December 31, 2018.

I find that the tenants are required to pay 1/3 of the gas bill provided as follows:

- July 4, 2018 to August 2, 2018: $39.45 / 3 = **$13.15**

I find that the tenants are required to pay 1/3 of their hydro bills as follows:

- $441.71 / 3 = $147.24;
- $325.21/ 3 = $108.40; and
- $358.82 / 60 (days in billing period) = $5.98 (daily amount) * 56 (days tenants resided at subject rental property in billing period) = $334.89 / 3 = $111.63
- **Total: $367.27**

As both parties were partially successful in their claims, I find that filing fees are to be offset against each other, resulting in neither party being awarded a monetary award for the filing fee.

Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	**Amount**
January 2019's rent: breach of fixed term tenancy agreement	$949.00
Unpaid utilities	$380.42
Repair damage to exterior wall	$25.00
Repair damage to concrete walkway	$25.00
Carpet cleaning	$84.00

Repair washing machine	$99.23
Repair lawn	$62.50
Less doubled deposit	-$950.00
Total	**$675.15**

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: May 23, 2019

Residential Tenancy Branch