



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on February 11, 2019 (the “Application”). The Landlords sought the following:

- Compensation for damage caused to the unit;
- Compensation for monetary loss or other money owed;
- To recover unpaid rent;
- To keep the security deposit; and
- For reimbursement for the filing fee.

The Landlords appeared at the hearing. The Tenants appeared at the hearing. J.C. appeared at the hearing as support for Tenant D.B. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Tenant C.L. confirmed his full legal name and this is reflected in the style of cause.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

Tenant C.L. confirmed he received the hearing package and Landlords’ evidence. He said he received this a month prior to the hearing. He submitted that he did not have enough time to review the package because he was dealing with other things and it was with Tenant D.B. He confirmed the package was served on him in person.

Tenant D.B. confirmed she received the hearing package and Landlords' evidence.

Landlord N.C. confirmed receipt of the Tenants' evidence and Landlord E.C. confirmed she was fine with proceeding.

I was satisfied Tenant C.L. had sufficient time to review the materials and prepare for the hearing given he received the hearing package and Landlords' evidence a month prior to the hearing. Having other things to deal with is not a valid reason to be unprepared for the hearing when materials have been received a month prior to the hearing date. Nor is it a valid reason to say the materials were with Tenant D.B. when they were provided personally to Tenant C.L.

As I was satisfied of service, I proceeded with the hearing. The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all documentary evidence pointed to during the hearing. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for damage caused to the unit?
2. Are the Landlords entitled to compensation for monetary loss or other money owed?
3. Are the Landlords entitled to recover unpaid rent?
4. Are the Landlords entitled to keep the security deposit?
5. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought compensation as follows:

Item	Description	Amount
1	Door and door frame	\$2,467.50
2	Drywall repair	\$150.00
3	Emergency door repair	\$696.18
4	Garbage and drywall painting	\$100.00
5	Door and trim painting	\$441.00
6	Carpet cleaning	\$199.50
7	House cleaning	\$175.00

8	Process server	\$105.00
9	Unpaid rent for February 2019	\$2,300.00
10	Filing fee	\$100.00
	TOTAL	\$6,734.18

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between Landlord E.C. and a co-landlord, other than Landlord N.C., and the Tenants. The Landlords advised that Landlord N.C. is a co-owner of the rental unit. The tenancy started October 01, 2018 and was for a fixed term ending March 31, 2019. Rent was \$2,300.00 due on the first day of each month. The Tenants paid a \$1,150.00 security deposit.

The parties agreed on the following. The Tenants never provided the Landlords with a forwarding address in writing. The Tenants never agreed in writing that the Landlords could keep some or all of the security deposit.

The parties further agreed on the following. A move-in inspection was done September 29, 2018. The Condition Inspection Report (CIR) submitted was completed and signed for both parties.

The Landlords testified as follows. A move-out inspection was done February 02, 2019. The Tenants did not participate. A CIR was completed and signed by the Landlords.

The Tenants agreed they were not present for the move-out inspection.

Landlord E.C. advised that the security deposit has been reduced to \$1,050.00 because she was awarded the filing fee on a previous file. I have reviewed the prior decision and confirmed this.

Item #1 Door and door frame

Item #3 Emergency door repair

Item #5 Door and trim painting

Landlord E.C. testified as follows. Police attended the rental unit for Tenant C.L. Tenant C.L. locked himself in the rental unit. Police surrounded the rental unit for hours. Police asked Tenant C.L. to come out but he did not. Police “blew in” the door and smashed the window. The door was locked at the time. The lock pulled the door trim

and damaged it. The door and lock were also damaged. There was a window in the door and on either side of the door.

Landlord E.C. further testified as follows. The incident occurred at 3:00 a.m. on a Sunday. The Landlords had to secure the door for the safety of Tenant D.B. and security of the rental unit. A company attended the rental unit around 4:00 a.m. or 5:00 a.m. on Sunday. The company secured the door with plywood and changed the lock.

In relation to item #1, Landlord E.C. testified that she obtained three quotes for the door and door frame replacement and went with the cheapest quote. The Landlords submitted the quotes and invoice. The Landlords submitted photos of the door. In the Landlords' written materials, it states that the door had to be custom made to match the rest of the strata properties.

In relation to item #5, Landlord E.D. pointed to an invoice submitted.

Tenant D.B. testified that she was not present when the door was kicked in by police. She said the door damage is not her fault because she was in the hospital.

Tenant C.L. agreed the police kicked in the door. He said he was sleeping at the time. Tenant C.L. said the issue with the items sought is the amounts claimed. He testified that he asked the Landlord to get another quote in relation to item #1, but the Landlord never responded. He testified that he only ever saw one quote. He said he told the Landlord there would be cheaper quotes.

Tenant C.L. testified that he only received one quote in the Landlords' evidence package.

In relation to item #3, Tenant C.L. submitted that the amount is ridiculous given the company only put plywood on the door and swept the glass aside.

In relation to item #5, Tenant C.L. raised an issue in relation to the amount sought.

In reply, Landlord E.C. testified that all quotes were in the evidence package. She denied that the Tenants asked for other quotes and said she told the Tenants this was the cheapest quote. The Landlords also testified that the whole door, frame and side windows had to be replaced because it was all once piece.

Item #2 Drywall repair

Landlord E.C. testified that the Tenants ripped the stair railing from the wall in the rental unit. She said this left a hole in the drywall. Landlord E.C. testified that the railing could not be put back on and they had to repair the drywall. Landlord E.C. said she discovered the damage during a walk through on January 07 or 08, 2019. She pointed to the move-in CIR which shows the basement stair and stairwell were fine on move-in and had a hole on move-out. Landlord E.C. pointed to photos submitted of the damage. She also pointed to an invoice submitted.

Tenant D.B. testified that the railing just fell off by itself one day. She said Tenant C.L. was going to repair it but never did.

Tenant C.L. agreed with Tenant D.B. He also said the railing was not secured properly.

Item #4 Garbage and drywall painting

Landlord E.C. testified that the rental unit had the Tenants' personal belongings and garbage in it at move-out. She referred to photos submitted. Landlord E.C. testified that the personal belongings and garbage had to be removed. Landlord E.C. testified that her father and brother removed the garbage.

Landlord E.C. testified that she had to repaint the drywall in relation to item #2. She said she did this herself and the amount claimed is the cost of materials.

Landlord E.C. said the amount claimed also includes the time spent on these issues and gas for the truck used to remove the garbage. Landlord E.C. pointed to page three of the CIR in relation to these issues.

Tenant C.L. testified that the Landlord had 18 cans of paint under the stairs.

Tenant D.B. testified that she felt rushed moving out. She said she would have gone back and cleaned the rental unit, but the Landlord said she was sending her father with police. Tenant D.B. testified that she would have cleaned but did not feel safe being at the rental unit.

Tenant D.B. testified that the tenancy ended by Landlord E.C. telling her by text on January 04, 2019 that she was evicted. She said she agreed to vacate and started

looking for a place January 05, 2019. Tenant D.B. acknowledged she left the rental unit messy.

In reply, Landlord E.C. testified that she never indicated the tenancy was ending and that she told the Tenant she would go the legal route and that a dispute hearing was set February 07, 2019.

Item #6 Carpet cleaning

Landlord E.C. testified that the carpets in the rental unit were dirty upon move-out. She said this is not reflected in the CIR because it was wear and tear and she thought of the CIR as relating to damage. Landlord E.C. did not point to any other evidence that the carpet was dirty. Landlord E.C. testified that the addendum to the tenancy agreement required the Tenants to professionally clean the carpets on move-out. She said she had to hire a company to attend the rental unit and clean the carpet.

Tenant C.L. testified that the carpets were clean.

Tenant D.B. testified that she vacuumed the carpets daily. She said she felt pressured to leave and did not get the cleaning done.

Item #7 House cleaning

Landlord E.C. testified that nothing in the rental unit had been cleaned on move-out. She said she hired a cleaner to clean the rental unit. She relied on photos and an invoice submitted in relation to this issue. Landlord E.C. said the CIR does not reflect that the rental unit was dirty on move-out because the CIR relates to damage.

Tenant C.L. said he was not there at move-out. I understood all of the parties to agree Tenant C.L. vacated earlier than Tenant D.B.

Tenant D.B. testified that there was no time to clean because the Landlord was saying her father was coming. Tenant D.B. said she is fine with \$175.00 being deducted from the security deposit for this issue.

Item #8 Process server

Landlord E.C. testified that this issue relates to serving the hearing packages on the Tenants.

Item #9 Unpaid rent for February 2019

Landlord E.C. testified as follows in relation to this issue. She found out January 31, 2019 that Tenant D.B. was vacating the rental unit. She did not receive notice from Tenant D.B. that she was ending the tenancy. She gave Tenant D.B. until February 01, 2019 at midnight to vacate. The dispute hearing in relation to ending the tenancy was not until February 07, 2019. Tenant D.B. did vacate February 01, 2019.

Landlord E.C. testified that she re-listed the rental unit a week or two after Tenant D.B. vacated once it was cleaned. She testified that it was listed as available for February 15, 2019 or March 01, 2019. She testified that it was listed for \$2,300.00. Landlord E.C. testified that she re-rented the unit for March 01, 2019.

Tenant D.B. testified that the Landlord texted her January 04, 2019 with an eviction notice. Tenant D.B. pointed to the text in evidence. I pointed out that the text does not say she is evicted. Tenant D.B. said she got the impression she was evicted. She said she had a bad concussion at the time.

Tenant D.B. testified that she called Landlord E.C. about vacating. She said she only had a phone number for Landlord E.C. I pointed out that Landlord E.C.'s address is on the tenancy agreement. Tenant D.B. said Tenant C.L. had taken the tenancy agreement. Tenant D.B. said she could not give written notice without the Landlords' address. Tenant D.B. testified that Landlord E.C. told her she would be evicted and she would get the necessary papers but they never came.

Tenant C.L. testified that he was not there at the time and Landlord E.C. knew he had vacated. He said Landlord E.C. knew Tenant D.B. was leaving.

In reply, Landlord E.C. testified that Tenant D.B. asked for her address once and she told her it was on the tenancy agreement.

Analysis

Section 7(1) of the *Residential Tenancy Act* (the “*Act*”) states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Section 37(2) of the *Act* states:

(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...

The Tenants were co-tenants under the same tenancy agreement. As stated in Policy Guideline 13:

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.

There is no evidence before me showing Tenant C.L. ended the tenancy in accordance with the *Act* when he vacated. It is not sufficient that the Landlords knew Tenant C.L. had vacated. I find Tenant C.L. and Tenant D.B. both liable for all debts and damages arising in relation to this tenancy.

The parties agreed the Tenants never provided the Landlords with their forwarding address in writing. Therefore, section 38(1) of the *Act* has not been triggered. The Landlords have complied with the *Act* and are entitled to claim against the security deposit.

Item #1 Door and door frame

Item #3 Emergency door repair

Item #5 Door and trim painting

Section 32(3) of the *Act* states:

(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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

There is no issue that police kicked in the door to the rental unit. I did not understand either of the Tenants to dispute that this was because Tenant C.L. was in the rental unit and did not come out when called by police. Therefore, I accept that the damage to the door, door frame and trim resulted from Tenant C.L.'s actions or inaction. I accept the damage was beyond reasonable wear and tear given the cause and extent of it.

Pursuant to section 32(3) of the *Act*, the Tenants were responsible for repairing the damage.

There is no issue that the Landlords repaired the damage. This is supported by the texts between Landlord E.C. and Tenant D.B., photos and invoices submitted.

In relation to item #1, I accept that the Landlords paid \$2,467.50 to replace the door and door frame based on the invoice submitted. I accept that this amount is reasonable given the testimony of Landlord E.C. that the door and side windows were all one piece that had to be replaced. I did not understand the Tenants to dispute this. I also accept that the cost is reasonable given that the door had to be custom ordered to match the remainder of the strata properties. Again, I did not understand the Tenants to dispute this. In these particular circumstances, I am satisfied the cost claimed is reasonable. The Landlords have met their onus in this regard. The cost is not clearly unjustified. The Tenants did not submit any evidence showing that the door and frame could have been replaced for less.

In relation to item #3, I accept based on the invoice submitted that the Landlords paid \$696.18 to have a company attend the rental unit on an emergency basis and secure the door. Based on the invoice, I accept that the company attended on the Sunday and outside of normal business hours. I also accept that the company secured the door, cleaned up broken glass and supplied and installed new dead bolts to the front and garage doors.

I am satisfied the cost claimed is reasonable given the following. The company attended the rental unit on a Sunday, outside of normal business hours. The company attended the rental unit on an urgent basis. The scope of the work done as noted on the invoice. The fact that the cost includes supplies.

I am satisfied based on the Landlords' evidence that the cost claimed for item #3 is reasonable. The Landlords have met their onus in this regard. The cost is not clearly unjustified. The Tenants did not submit any evidence showing that the emergency repair could have been completed for less.

In relation to item #5, I accept that it will cost the Landlords \$441.00 to have the door and trim painted based on the quote submitted. I find this amount reasonable considering it includes both the time and materials required to do the repairs. The Landlords have met their onus in this regard. The cost is not clearly unjustified. The Tenants did not submit any evidence showing that the door and trim could have been painted for less.

Item #2 Drywall repair

Based on the move-in CIR, which both parties were present for, I accept that the railing was in good condition on move-in. Further, the move-in CIR shows that no repairs were required on move-in. Tenant C.L. indicated on the move-in CIR that he agreed with it and signed it.

There is no issue that the railing fell off during the tenancy. There is no issue that the Tenants did not fix the railing.

I find the damage to the railing and wall was caused by the Tenants given the move-in CIR shows there was no issue with the railing at move-in. I accept that a railing falling off the wall is beyond reasonable wear and tear when the railing was in good condition at the start of the tenancy. I accept that the Tenants breached section 37 of the *Act* by failing to fix the railing and wall.

I accept that the Landlords had to fix the railing and wall given the purpose of a railing and given the damage as shown in the photo submitted.

I accept based on the invoice submitted that the Landlords paid \$150.00 to have the drywall repaired. I find this amount reasonable given the damage as shown in the photo. I also find it reasonable given the cost claimed includes both supplies and time involved in the person attending the rental unit. The Landlords have met their onus in this regard. The cost is not clearly unjustified. The Tenants did not submit any evidence showing the drywall could have been repaired for less.

Item #4 Garbage and drywall painting

I accept that Tenant D.B. left garbage in the rental unit at move-out given the photos submitted. I did not understand Tenant D.B. to dispute this and she acknowledged she did not clean the rental unit at move-out.

I do not accept that Tenant D.B. had a valid reason to not clean the rental unit upon move-out. She said she started looking for another place January 05, 2019. This was almost a month prior to move-out. Tenant D.B. had more than enough time to prepare for the tenancy ending which should have included cleaning the rental unit and removing the garbage.

Nor do I accept that Tenant D.B. had a reasonable basis to feel unsafe at the rental unit because of the Landlords as she has submitted no evidence showing this was a reasonable belief.

I find Tenant D.B. breached section 37 of the *Act* by leaving garbage in the rental unit.

I accept that the Landlords had to remove the garbage. I accept that this took time and cost money in relation to gas for the truck used to remove the garbage as this is common sense. From the written materials, I understand the Landlords to be claiming \$50.00 for the two hours it took to remove the garbage. I find this amount reasonable given what was left in the rental unit as shown in the photos.

In relation to the painting, I understand from the written materials that the Landlords are seeking \$50.00 for this. I have accepted that the damage to the drywall was caused by the Tenants. I have accepted that the Landlords needed to repair this. I accept that Landlord E.C. did this herself. I find the amount claimed reasonable and find the Landlords mitigated their loss by painting themselves rather than having someone attend to paint. I find the amount reasonable whether it is for time and paint or just time and therefore do not find it relevant that Landlord E.C. may have had paint available.

Item #6 Carpet cleaning

Based on the photos submitted, I accept that the carpet was not clean on move-out as there were bits of garbage left on it. Further, I understood Tenant D.B. to acknowledge that she did not have the carpets cleaned upon move-out.

I acknowledge that the addendum to the tenancy agreement states that the carpets are to be professionally cleaned on move-out. Section 5 of the *Act* states that parties cannot contract out of the *Act*. The *Act* requires tenants to leave the rental unit reasonably clean. It does not require more than this. I find the term in the addendum unenforceable pursuant to section 5(2) of the *Act*.

Policy Guideline 1 addresses carpet cleaning and states:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly

stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

This tenancy was not one year long. The Landlords have not pointed to evidence showing the Tenants deliberately or carelessly stained the carpet. The photos show the carpet was dirty with bits of garbage but do not show stains.

I am satisfied the Tenants left the carpet dirty with bits of garbage and therefore breached section 37 of the *Act*. However, I am not satisfied based on the evidence submitted that the carpets needed to be professionally cleaned versus simply vacuumed. I am not satisfied the Landlords are entitled to compensation for this issue.

Item #7 House cleaning

Tenant D.B. agreed to \$175.00 being deducted from the security deposit for this issue and therefore the Landlords are entitled to this amount.

Item #8 Process server

Parties are not entitled to recover costs associated with preparing for hearings including the costs associated with service. The Landlords are not entitled to compensation for this issue.

Item #9 Unpaid rent for February 2019

There is no issue that this was a fixed term tenancy ending March 31, 2019. There is no issue that Tenant C.L. vacated the rental unit prior to Tenant D.B. Nor is there an issue that Tenant D.B. vacated the rental unit February 01, 2019.

I have reviewed the text messages between Landlord E.C. and Tenant D.B. I do not agree that Landlord E.C. told Tenant D.B. she was evicted in the January 04, 2019 text. Landlord E.C. told Tenant D.B. she would “have to do a formal eviction as I’ve been told to do”. Landlord E.C. told Tenant D.B. “According to residential tenancy, it will be a fast tracked eviction for special circumstances”. I do not find it reasonable that Tenant D.B. interpreted this as an eviction notice given the wording of the text and the requirements relating to an eviction notice under the *Act*.

Further, Tenant D.B. was not required to vacate the rental unit without proper notice from the Landlords or an Order of Possession issued by the RTB. Tenant D.B. is expected to know her rights and obligations in this regard.

I find that it was Tenant D.B. who ended the tenancy by choosing to vacate in the absence of a notice to end tenancy from the Landlords or an Order of Possession issued by the RTB.

Pursuant to section 45(2) of the *Act*, Tenant D.B. was not entitled to end the tenancy prior to the end of the fixed term. There is no evidence before me that the exception in section 45(3) of the *Act* applies here.

I also find that Tenant D.B. did not provide written notice ending the tenancy early. I do not accept that Tenant D.B. could not do so because she did not have contact information for the Landlords as this is written on the tenancy agreement. I do not accept that Tenant D.B. was excused from the written notice requirement because she did not retain a copy of the tenancy agreement as it was her responsibility to do this. Further, the texts submitted do not show that Tenant D.B. told Landlord E.C. that she did not have a copy of the tenancy agreement when Landlord E.C. told Tenant D.B. that is where her contact information was.

I find Tenant D.B. breached section 45 of the *Act* by ending the tenancy early and failing to provide written notice.

Landlord E.C. was entitled to wait for proper notice from the Tenants ending the tenancy before re-listing the rental unit whether she was otherwise aware the Tenants were vacating or not.

I accept that the Landlords lost rent for February as I did not understand the Tenants to dispute that the rental unit was empty during February. I accept that the Landlords mitigated their loss by listing the unit for rent within weeks of Tenant D.B. vacating without proper notice. I am satisfied the Landlords are entitled to compensation for February rent.

Given the Landlords were partially successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlords are entitled to the following:

Item	Description	Amount
1	Door and door frame	\$2,467.50
2	Drywall repair	\$150.00
3	Emergency door repair	\$696.18
4	Garbage and drywall painting	\$100.00
5	Door and trim painting	\$441.00
6	Carpet cleaning	-
7	House cleaning	\$175.00
8	Process server	-
9	Unpaid rent for February 2019	\$2,300.00
10	Filing fee	\$100.00
	TOTAL	\$6,429.68

The Landlords are permitted to keep the remainder of the security deposit pursuant to section 72(2)(b) of the Act. The Landlords are issued a further Monetary Order for \$5,379.68. The Monetary Order is recoverable against both or either of the Tenants as they were co-tenants and are liable for the debts and damages of each other in relation to this tenancy.

Conclusion

The Landlords are entitled to compensation in the amount of \$6,429.68. The Landlords are permitted to keep the security deposit. The Landlords are issued a further Monetary Order for \$5,379.68. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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 *Act*.

Dated: June 27, 2019

Residential Tenancy Branch