



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlords under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Landlords were present for the teleconference hearing while no one called in for the Tenants during the approximately 50-minute hearing. The Landlords were affirmed to be truthful in their testimony and testified that the Tenants were served with the Notice of Dispute Resolution Proceeding package and a copy of their evidence by mail. The Landlords stated that the packages were sent to an address provided by the Tenants through text message on October 29, 2018.

The Landlords stated that the packages were returned to the office of their legal counsel as unclaimed. The Landlords submitted into evidence photos of the envelope sent by xpresspost that show that the packages were unclaimed. The tracking numbers for both packages are included on the front page of this decision. The Landlords also submitted a letter from their legal counsel stating that the packages were too large to send by registered mail so were sent by xpresspost instead.

Despite not claiming the mail, I find that both Tenants were served in accordance with Sections 88 and 89 of the *Act*. I also note that failure to claim mail is not a ground for review under the *Act*.

The Landlords were provided full opportunity to present their testimony and evidence.

Issues to be Decided

Are the Landlords entitled to monetary compensation for damages?

Should the Landlords be authorized to retain the security deposit towards compensation owed?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony, not all details of the submissions are reproduced here.

The Landlords provided undisputed testimony on the tenancy which was confirmed by the tenancy agreement and a notice of rent increase that were included as evidence. The tenancy began in February 2013 and the Tenants moved out on or around October 12, 2018. Monthly rent began at \$750.00 and was raised to \$777.75 during the tenancy. The Tenants paid a security deposit of \$375.00 at the start of the tenancy. The Landlords confirmed that they are still in possession of the full security deposit amount.

The Landlords testified that they served the Tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") which had an effective end of tenancy date of October 31, 2018. However, they stated that the Tenants moved out prior to this which they discovered on October 12, 2018.

The Landlords stated that at the start of the tenancy they conducted a walk through of the rental unit and instructed the Tenants to fill out the Condition Inspection Report with any concerns. They testified that the Tenants were happy with the condition of the unit and therefore signed the report without filling out any of the detailed information.

The Condition Inspection Report was submitted into evidence and was signed by one of the Tenants on February 16, 2013. The Landlords stated that they were unable to do a move-out inspection with the Tenants due to them moving out early without notification to the Landlords. They stated that they tried to reach the Tenants, but it was difficult to connect with them. The Landlords did not fill out the Condition Inspection Report at move-out but submitted photos and videos into evidence of the rental unit which they stated were taken at the time the Tenants moved out.

The Landlords submitted copies of text message communication with the Tenants. From a text message dated December 7, 2018, the Landlord informs the Tenant of the cost of repairs to the rental unit and the Tenant notes that he can make payments towards the amount owing.

The Landlords have applied for compensation for damages in the amount of \$13,133.80. They submitted a Monetary Order Worksheet that outlines their claims which will be explained below.

Backsplash tiles: The Landlord has claimed \$86.31, \$59.67 and \$86.31 for the cost of purchasing new backsplash tiles for the kitchen in the rental unit for a total of \$232.29. They provided testimony that the whole rental unit was covered in a thick yellow/brown residue that was unable to be removed. They noted that the home was new in 2007 or 2008 including the kitchen backsplash. As they were unable to remove the thick residue, the Landlords stated that they needed to replace the entire kitchen backsplash. They submitted a receipt dated December 5, 2018 in the amount of \$59.67, another receipt dated December 23, 2018 in the amount of \$86.31, and what appears to be the same receipt dated December 23, 2018 in the amount of \$86.31.

Mirror: The Landlords testified that they are seeking \$54.87 for the cost of replacing the mirror in the bathroom of the rental unit. They submitted a receipt in this amount dated October 29, 2018. They testified that the bathroom fan had broken during the tenancy but that the Tenants did not notify them. As such, the bathroom became filled with moisture and humidity which caused the back of the mirror to peel off. As this was not fixable, the Landlords purchased a new mirror.

Painting: The Landlords applied for compensation for painting the interior of the rental unit in the amount of \$1,050.00 and painting the ceiling and trim in the amount of \$2,415.00. They submitted an invoice for the interior paint dated October 30, 2019 in the amount of \$1,050.00 and an invoice dated October 27, 2018 for the ceiling and trim paint in the amount of \$2,415.00. On this invoice, it is noted that 3 coats of paint were needed to cover the stain on the trim and 5 coats to cover the stain on the ceiling.

The Landlords testified that they tried to paint the rental unit themselves first but were unable to cover the yellow residue. They noted that they painted 2 coats on the ceiling prior to having the professional come in who added an additional 5 coats. They stated

that the professionals had to prime the walls and ceiling with a stain blocker prior to painting.

Tile trims/transition boards/tiles: The Landlords have claimed \$291.11 for the cost of replacing the transition floor pieces for the new flooring as well as purchasing additional tiles and tile trim for the kitchen and a small backsplash in the bathroom. They submitted the receipt (date illegible) which notes that they also purchased tiling supplies such as glue and a tiling trowel in the amount of \$291.11.

Fan/light/vanity replacement: The Landlords are seeking compensation in the amount of \$518.93 for the cost of purchasing a new bathroom fan, a new vanity for the bathroom and new bathroom lights. They testified that due to the broken fan in the bathroom the moisture had caused significant damage to the vanity and the lights. They noted that the light fixtures had rusted, and the vanity had become swollen from moisture with the doors falling off. A receipt dated October 27, 2018 in the amount of \$518.93 was submitted into evidence.

Fan/lightbulbs/paint: The Landlords have applied for \$368.99 for the cost of purchasing a new hood fan over the stove, new lightbulbs and paint/painting supplies. They submitted a receipt dated October 13, 2018 in the amount of \$368.99. The Landlords stated that the light fixtures throughout the rental unit needed to be replaced due to the sticky, thick, yellow residue on them that was unable to be cleaned off.

They also noted that new lightbulbs needed to be purchased as the majority of the bulbs in the light fixtures had burnt out. They stated that the paint was purchased as they attempted to paint the walls in the rental unit themselves. As they were not able to cover the residue on the walls with their own attempts to paint, they hired professional painters after this. They stated that they had tried to do the painting themselves in an effort to keep the costs down.

Flooring/carpet replacement: The Landlord are seeking compensation in the amount of \$2,136.92 for the cost of replacing the floor in the living area of the rental unit and carpet in the two bedrooms. They submitted a receipt in this amount dated October 27, 2018 and noted that this was the cost of vinyl flooring and two tools for completing the replacement.

The Landlords stated that the Tenants advised them that they had tried to clean the carpets but were unable to. The Landlord noted that they also tried to steam clean the

carpets, but the black stains present did not come out. Photos of the carpets were submitted into evidence. They stated that the carpets were new when the rental unit was new in 2007 or 2008 and were in good condition at the start of the tenancy.

Regarding the vinyl flooring, the Landlord stated that this was new in 2011 or 2012. The Landlords stated that the flooring was significantly scratched and submitted photos of the floor. They stated that the Tenant had advised them that they had a futon with a steel frame that had scratched the floors. The Landlords submitted that they had considered fixing the floors instead of a full replacement but due to the amount of damage were unable to complete a repair.

Closet doors: The Landlords stated that the closet doors in both bedrooms had broken off of the tracking and as such, they needed to purchase new hardware to repair the doors. The cost of this was \$24.62 as stated on a receipt dated November 19, 2018. Photos of the doors were submitted into evidence which shows them detached from the closet.

Kitchen counter: The Landlords have claimed \$1,866.00 for replacement of the kitchen countertop. They submitted two e-transfer receipts each showing a half payment of \$933.00 each made on November 27, 2018 and December 5, 2018. They testified that the finish on the countertop was ruined due to the Tenants cutting on the countertop instead of using cutting boards. They stated that since the countertop was one piece they were unable to do repairs with replacement of smaller pieces and needed to replace the entire countertop.

Cabinets: The Landlords have claimed \$4,147.50 for the cost of replacing the kitchen cabinets. They provided testimony that due to the thick residue on the cabinets they were unable to be cleaned and instead required a full replacement. They submitted photos of the cabinets into evidence as well as an undated invoice from a cabinet company in the amount claimed.

Smoke detector: Lastly, the Landlords have claimed \$27.57 for the cost of a new smoke detector. They submitted a receipt dated December 23, 2018. The Landlords provided testimony that at the end of the tenancy the smoke detector was disconnected, as well as covered in the yellow residue. As the Landlords had concerns that the residue on the detector might mean it would not work as it should, they opted to replace it.

The Landlords noted that they completed most of the labour themselves so are only seeking compensation for the materials, other than the professional painters and the cabinet installation. They also stated that they had spoken with one of the Tenants who had agreed to sign an agreement with a lawyer for a payment plan, but then changed his mind and did not follow through.

Analysis

Regarding compensation, Section 7 of the Act states the following:

- 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.

In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- 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.

As stated in Section 37 of the *Act*, at the end of a tenancy a tenant must leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear. I accept the undisputed testimony and evidence of the Landlords which establishes that there was significant damage to the rental unit that I find to be well beyond what would be considered reasonable wear and tear. Therefore, I find that the Tenants breached the *Act* by not leaving the rental unit reasonably clean and undamaged.

Although the Condition Inspection Report at move-in was not filled out completely, I accept the testimony of the Landlords that the Tenants signed the report as is due to not having any concerns with the rental unit. I also accept the testimony of the Landlords

that the rental unit was new in 2007 or 2008, other than the vinyl flooring which was installed in approximately 2011 or 2012 and was in good condition.

I find that the text messages submitted into evidence establish that the Tenants were aware that damage was caused in the rental unit as in the messages the Tenant discusses ways to pay the Landlords.

Based on the receipts and invoices submitted, I find that the Landlords have established the value of their losses and I accept the photos and video evidence that demonstrates that these losses occurred due to the damage caused by the Tenants.

I also accept the testimony of the Landlords that they were unable to conduct repairs in most situations and instead had to complete a full replacement, such as with the flooring and kitchen cabinets. The photos establish the level of damage to the areas of the rental unit that the Landlords replaced.

By mostly completing the work themselves, I do find that reasonable steps were taken by the Landlords to mitigate any potential losses. Accordingly, I find that the Landlords have met the four-part test regarding their claims. The exception to this is with the receipts for the purchase of tiles for the kitchen as it seems that one receipt in the amount of \$86.31 may have inadvertently been submitted twice. As such, as I do not have further evidence before me that this was a separate amount paid for tiles, I decline to award the full amount of \$232.29 as claimed and instead award \$145.98.

I also note that flooring has a useful life expectancy as outlined in *Residential Tenancy Policy Guideline 40*. As the carpet has a useful life of 10 years and other flooring between 10 and 20 years, I find that the Landlords are not entitled to full replacement costs. However, as I find that the damage to the flooring was significant, including black stains throughout the carpets and scratches and other marks on the vinyl flooring, I still find that the Landlords are entitled to come compensation for the replacement of the floors. In consideration of the amount of damage, as well as the age of both the carpet and vinyl flooring, I find it reasonable to award half the amount claimed for floor replacement in the amount of \$1,068.46.

I award the remainder of the compensation as claimed to the Landlords as I am satisfied that they have met the burden of proof in this matter and that the Tenants caused significant damage to the rental unit. Pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00. The Landlords may retain the

security deposit of \$375.00 towards the total amount owed. Therefore, I award the Landlords a Monetary Order in the amount outlined below:

Tiles	\$145.98
Mirror	\$54.87
Interior painting	\$1,050.00
Tile trim/transition boards/additional tiles	\$291.11
Fan/light/vanity replacement	\$518.93
Ceiling/trim painting	\$2,415.00
Hood fan/lightbulbs/paint	\$368.99
Flooring	\$1,068.46
Repair of closet doors	\$24.62
Countertop replacement	\$1,866.00
Cabinets	\$4,147.50
Smoke detector	\$27.57
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$375.00)</i>
Total owing to Landlords	\$11,704.03

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a **Monetary Order** in the amount of **\$11,704.03** as outlined above. 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: June 07, 2019

Residential Tenancy Branch