



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation, 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.

The Landlord and both Tenants were present for the teleconference hearing. The Landlord also had a witness join during the hearing. The Tenants confirmed that they received the Notice of Dispute Resolution Proceeding package. However, they stated that one of them was served with the notice of hearing documents and the other was served with a copy of the Application for Dispute Resolution.

The Tenants confirmed that they had both reviewed the information and were ready to proceed with the scheduled hearing, despite both receiving different documents. The Tenants confirmed receipt of a copy of the Landlord’s evidence as well. Although the Tenants noted that this was received late, again they indicated that they had reviewed the documents and were ready to proceed with the hearing. As such, I find that the Tenants were sufficiently served for the purposes of the *Act* in accordance with Section 71.

The Landlord stated that he did not receive a copy of the Tenant’s evidence. However, the Tenants provided a tracking number which is included on the front page of this decision. The Tenants stated that they served the Landlord with their evidence on July 5, 2019 following receipt of the Landlord’s evidence. The address the package was sent to was confirmed with the Landlord as accurate. Entering the tracking number on the Canada Post website confirms that the package was sent on July 5, 2019 and a delivery notice left on July 8, 2019. As the Landlord served his evidence late, I find it reasonable that the Tenants would wait for his evidence before responding, despite the Landlord not yet claiming the package. As such, I find that both parties were sufficiently served

for the purposes of the *Act* pursuant to Section 71. Therefore, the evidence of both parties is accepted and will be considered as part of this decision.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Is the Landlord entitled to monetary compensation?

Is the Landlord entitled to compensation for damages?

Should the Landlord be authorized to retain the security deposit towards compensation found to be owing?

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

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began in March 2015 and ended on March 31, 2019. Monthly rent at the end of the tenancy was \$1,400.00 and a security deposit of \$650.00 was paid at the start of the tenancy and of which the Landlord is still holding.

On the Application for Dispute Resolution the Landlord claimed compensation in the amount of \$8,620.00. However, he submitted a break down of his monetary claims into evidence which states that the amount claimed as \$7,908.75.

The witness for the Landlord provided testimony that she conducted move-in and move-out inspections for the Landlord as an agent. She stated that she completed an inspection prior to the tenancy and one after the Tenants had moved out. A copy of the Condition Inspection Report was submitted into evidence and indicates that an inspection was conducted on January 15, 2015 and on March 31, 2019. The witness confirmed that the Tenants were not present for either inspection. The Condition Inspection Report is signed by the witness only. The witness stated that she was hired as an agent by the Landlord in December 2014.

The witness stated that the condition of the rental unit on March 31, 2019 was poor due to dirt and damages that were beyond normal wear and tear. She stated that the electrical outlets had all been painted over and that the rooms had been painted a different colour. She also noted scratched floors, broken tiles and missing light fixtures. The witness also stated that there was broken vinyl siding on the house, that there were rips in the vinyl decking, and that garbage was left behind.

The Tenant stated that they were not asked to participate in a move-in inspection. They stated that they had an appointment to meet the Landlord for a move-out inspection on March 31, 2019 at 1:00 pm but the Landlord did not attend. The Tenants also stated that they had called the police to be present at the inspection due to threats from the Landlord. They noted that they were there from 12:30 pm and the Landlord did not show up, instead telling them to leave the keys. The Tenants submitted into evidence an audio recording of a phone call with the Landlord inquiring as to where he was. In the recording the Landlord says to leave the keys in the mailbox and in response to whether they will be conducting a move-out inspection states that they can take photos.

The Tenants also submitted a copy of a police report which notes that the police were called at around 12:10 to attend the residence and that they remained at the property until 1:00 pm. The report notes that the Tenant received a text to leave the keys in the mailbox.

The Landlord was in agreement that he decided not to attend the rental unit with the Tenants on March 31, 2019. He stated that he had been threatened too many times. However, he stated that he took photos of the unit on April 1, 2019.

The Landlord is claiming compensation to repair the vinyl siding on the rental unit due to damage which he believes may have been caused from the Tenants' child skateboarding. He stated that he has not yet completed the repair work but estimates the cost of repairs at \$800.00 to \$1,000.00.

The Tenants stated that this was an older home with lots of damage present at the start of the tenancy. They stated their position that the Landlord is trying to sell the home so is completing repairs for that purpose only. The Tenants also noted that there was lots of weather damage to the home which had not been repaired.

The Landlord is also claiming \$3,200.00 for painting. He stated that this includes the cost of fixing the drywall and painting due to the Tenants painting the home various colours without permission. The Landlord submitted the receipt for painting dated April

25, 2019 in the amount of \$3,200.00. The Landlord also submitted into evidence photos of various areas of the rental unit.

The Tenants stated that they had permission from the Landlord to paint and that they were provided with no restrictions on colours other than to not use a neon coloured paint. They stated that the Landlord even gave them his discount code at a paint store. They also stated that they did not paint any rooms orange.

The Landlord stated that the Tenants had permission to paint the steps only and did not have permission to paint the rooms as they did.

The Landlord is also claiming \$2,100.00 for the cost of re-tiling as well as the cost of purchasing new tiles in the amount of \$400.00. He stated that they were unable to re-grout the tile in the bathroom on the floor and tub as it was too filthy, as well as the tiles in the kitchen. He also noted that the tiles were new at the start of the tenancy and that a few were broken at the end. The Landlord submitted an invoice dated June 8, 2019 in the amount of \$2,100.00.

The Tenants questioned why there were no photos of the tiles and noted that they left the rental unit clean at the end of the tenancy. They also stated that they did not break any tiles, instead that there was one in the kitchen and one in the bathroom that were already cracked.

The Landlord is also seeking compensation for repairing the deck in the amount of \$300.00. He stated his position that the Tenants' dog damaged the deck and pulled back the vinyl decking. The Landlord submitted an invoice dated May 14, 2019 for repair of the deck in the amount of \$300.00.

The Tenants stated that there was damage on the deck caused by the wind and that their dog did not cause any damage. They stated that at the start of the tenancy there was a tear in the decking which kept ripping up further. They also noted that the previous tenants had a dog as well.

The Landlord has claimed \$708.75 for replacing the electrical sockets and light switches throughout the home as they were painted over when the Tenants painted. The Landlord submitted photos into evidence. The Landlord also submitted an invoice dated May 15, 2019 in the amount of \$708.75 which notes that electrical receptacles, switches and plates were replaced.

The Tenants were in agreement that they painted the home and stated that they may not have done a perfect job. However, they stated that there was no need to replace all of the electrical receptacles and switches. They testified that they had taken the covers off while painting.

Lastly, the Landlord has claimed \$400.00 for replacing three blinds in the living room. The Landlord submitted photos of the blinds as well as a receipt dated June 15, 2019 in the amount of \$400.00. The Landlord stated that the blinds had been purchased right before the start of the tenancy as there had been curtains in the rental unit prior. He stated that the Tenants' dog may have damaged the blinds.

The Tenants stated that their dog did not chew the blinds and that the blinds were not new at the start of the tenancy. They stated that although the blinds were in decent condition at the start of the tenancy they already had chew marks on them.

The Landlord mentioned additional claims that have come up since he filed the application and submitted evidence such as cleaning, the Tenants not cutting the grass and a new dishwasher. However, I decline to address these claims as they were not on the application and no amendment was filed. Both parties are at liberty to file a new Application for Dispute Resolution should there be any outstanding claims regarding this tenancy.

The Tenants stated that they were not comfortable providing a forwarding address so instead notified the Landlord that they had mail forwarding and he could mail documents to the address of the rental unit. They stated that they sent this information to the Landlord with a request for their security deposit back around April 1 or April 2, 2019. The Landlord confirmed receipt of this information in the first week of April 2019.

Analysis

As the Landlord is seeking compensation from the Tenants, I refer to Section 7 of the *Act* which 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.

Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss outlines a four-part test for determining if compensation is owed 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.

While a tenant must leave a rental unit reasonably clean and undamaged at the end of the tenancy pursuant to Section 37 of the *Act*, I also note the requirements for inspecting the rental unit at the start and end of the tenancy as stated in Sections 23 and 35 of the *Act*. These sections outline the requirements for inspection which include that the unit is inspected together with landlord and tenant present and that the report must be signed by both parties.

I also note that as stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter I find that the Landlord has the burden of proof.

While the Landlord had an agent complete a Condition Inspection Report prior to the tenancy and after the Tenants moved out, I do not accept this as sufficient evidence as to the condition of the rental unit at the start and end of the tenancy. As the Tenants were not present for the completion of either report and did not have the opportunity to agree or disagree with the information in the report, I do not accept the report as valid evidence. Therefore, I look to the other evidence and the testimony of both parties to establish whether damage occurred and whether the Tenants should be responsible.

Due to the absence of sufficient evidence that would establish the condition of the rental unit at the start of the tenancy, I am not satisfied that damage to the vinyl siding on the

home, damage to the deck, damage to the tiles, or damage to the blinds occurred during the tenancy.

I do not find sufficient evidence before me to establish that the Tenants are responsible for this damage as I am not satisfied as to the condition of these items/areas of the rental unit at the start of the tenancy. Therefore, I find that the Landlord has not met the burden of proof to establish that the damage is the responsibility of the Tenants. I dismiss these claims of the Landlord, without leave to reapply.

Regarding the Landlord's claim for painting and the electrical costs, I accept the Tenants' testimony that they did paint the rental unit during the tenancy. Although the Tenants stated that they had permission to do so and no restrictions on colour choices, I do not find sufficient evidence before me to establish this. As such, I find that they should compensate the Landlord or the cost of returning the paint in the rental unit to the original condition.

However, I do not find sufficient evidence from the Landlord to establish that the unit required \$3,200.00 in painting, such as before and after photos, information on the age and condition of the paint at the start of the tenancy or other such evidence. I also do not find sufficient evidence regarding how many rooms the Tenants painted during the tenancy and whether the painting at the end of the tenancy involved just these rooms or a re-paint of the entire rental unit.

As such, I am not satisfied as to the value of the loss as claimed by the Landlord. However, as stated I accept that the Landlord would have incurred some cost due to the Tenants painting in the rental unit and therefore award the Landlord a nominal amount of \$500.00 for painting costs.

As for the Landlord's claim for electrical costs in the amount of \$708.75, I find that the photos submitted by the Landlord establish that there was paint on some of the electrical outlets which seems to be from when the Tenants painted. I also note that the Tenants agreed that they are not professionals and may have had some paint on the electrical outlets. As such, I find that the Landlord is entitled to some compensation for the cost of cleaning or replacing some of the outlets.

However, I am not satisfied that the Landlord has established the value of his loss as I am not satisfied that the electrical receptacles, sockets and light switches all needed to be replaced due to the actions of the Tenants at a cost of over \$700.00. Therefore, I award the Landlord a nominal amount of \$100.00 for the electrical claim.

Regarding the security deposit, I refer to Section 38(1) of the *Act* which states that within 15 days of the later date of when the tenancy ends, or the forwarding address is provided in writing the landlord must return the security deposit or file a claim against it.

As the tenancy ended on March 31, 2019, the Tenant provided notice of mail forwarding at the address of the rental unit in the first week of April 2019, and the Landlord filed the application on April 5, 2019, I find that the Landlord applied within the 15 days allowable. Therefore, I find that the Landlord does not owe the Tenants double the security deposit and may retain the deposit towards compensation owing.

As the Landlord was partially successful with the application, pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00. The Landlord is granted a Monetary Order in the amount outlined below:

Painting	\$500.00
Electrical	\$100.00
Recovery of filing fee	\$100.00
<i>Less Security deposit</i>	<i>(\$650.00)</i>
Total owing to Landlord	\$50.00

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$50.00** as outlined above. The Landlord is 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: July 29, 2019

Residential Tenancy Branch