



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-S, MND-S, FF, MNSD

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord serve the tenants with the notice of hearing package via Canada Post Registered Mail on May 2, 2019; the submitted documentary evidence via Canada Post Registered Mail on July 5, 2019 and again July 12, 2019 with the filed amendment to the application for dispute. Both parties also confirmed the tenants served their notice to end tenancy and the submitted documentary evidence via Canada Post Registered Mail on June 23, 2019. Neither party raised any service issues. As both parties have attended and confirmed receipt of the submitted documents, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation, damage and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Are the tenants entitled to a monetary order for return of double the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on November 1, 2015 on a fixed term tenancy ending on November 1, 2016 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated September 10, 2015. The monthly rent was \$1,700.00 payable on the 1st day of each month. A security deposit of \$800.00 was paid.

Both parties confirmed the tenancy ended on April 15, 2019 and the tenants provided their forwarding address for return of the security deposit via email on April 16, 2019 to the landlord..

During the hearing the landlord clarified that she now only seeks at this time items listed in bold from the submitted updated monetary worksheet submitted online on July 11, 2019 which are items 2, 3, 4, 5, 10, 13, 23/24, 25, 26, 27, 28, 29 which have been noted and described below. Both parties confirmed their understanding of the item numbers and the landlord's clarified monetary total of \$9,321.67.

The landlord seeks an amended monetary claim of \$9,321.67 which consists of:

\$25.04	lightbulb replacements, 1 kitchen and 1 bathroom
\$51.40	track light replacement
\$47.61	hood vent, missing part, visor
\$340.65	Labour Service and parts, re:dryer, install new hood vent, repair of soap dispenser and gasket
\$52.50	Service, repair of washer control panel
\$200.00	Damaged FOB Replacement, X2
\$6.13	Cleaning Materials, Dirty Stove top
\$44.73	Difference in Insurance Premiums paid for empty rental during repairs
\$11.08	Weather Stripping Replacement, front door
\$205.23	Cleaning/Repair, Venetian Blinds
\$610.00	Painting, Deposit Paid
\$3,065.00	Painting, Invoice Paid
\$262.50	Replace, Damaged Cabinet Side Splash

\$5,100.00 Loss of Rent, 3 months X \$1,700.00 (June, July and August)

The landlord claims that the tenant vacated the rental unit leaving it dirty and damaged which required her to have repairs and replacement of items that took 3 months. The landlord stated that as such a loss of rental income for 3 months was incurred from June to August. The landlord has submitted a completed condition inspection report for the move-in by both parties, approximately 70 photo files and 15 video files, a condition inspection report completed by the landlord only, invoices, receipts and estimates. The landlord has listed items of burnt out lightbulbs, damaged blinds, missing part from track lighting, dirty stove top, dirty dishwasher, dirty oven, dirty bathtub, damaged dryer and washer casing(s), damaged hood visor, damaged fob remote(s), damaged cabinet side splash and wall and ceiling blotches. The landlords claim that the above listed items required repair/replacement, cleaning and the painting of the affected areas of the rental unit. The landlord stated that the rental unit was last painted in 2012/2013 approximately 3 years before the tenants moved in. The landlord further stated that she suffered a loss of rental income for 3 months due to dealing with the cleaning and repair/replacement of the above noted items. The landlord stated that she has a full time job and dealt with the rental issues in her spare time. During the hearing, the landlord confirmed in her testimony that she “never attempted to re-rent” the unit until July 31, 2019.

The tenants dispute the landlord’s claims stating that a condition inspection report for the move-out was never completed with both parties. The tenants agreed to the landlord’s claim that there were 2 burnt out bulbs that required replacement. The tenants argued that the missing piece from the track lighting was already missing at the start of the tenancy. The tenants argued that the washer and dryer damage was present at the start of the tenancy and was not caused by the tenants. The tenant stated that 2 fobs remotes were returned to the landlord and noted that 1 fob was damaged during the tenancy and that the landlord had been notified. The tenants argued that the rental unit had been cleaned on April 14, 2019 leaving the unit with no issues. The tenants have provided 5 photographs of the rental unit showing the clean condition of the unit at the end of tenancy. The tenants argued that all of the pictures holes are in 1 wall which were filled and re-finished. The tenants reiterated that the unit was left in a “liveable” condition and argues that the landlord could have re-rented the unit right away. The tenants argued that the landlord did not attempt to re-rent the unit.

The tenants seek a clarified monetary claim of \$1,700.00 which consists of:

\$800.00	Return of Original Security Deposit
\$800.00	Compensation, Fail to Comply Sec. 38(6)
\$100.00	Filing Fee

Both parties confirmed that the tenancy ended on April 15, 2019 and that the tenants provided their forwarding address via email which the landlord accepted on April 16, 2019. A review of the landlord’s application for dispute shows that the landlord applied to retain the security deposit on April 27, 2019.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the evidence of both parties and find on a balance of probabilities that the landlord has established a claim for cleaning and damage to the rental unit. Although the tenants disputed the landlord's claims and provided 5 photographs of the rental unit at the end of tenancy, the landlord has provided evidence of the rental unit condition at the start of the tenancy in the form of a completed condition inspection report completed by both parties. The tenants confirmed the contents of the completed inspection. The landlord provided approximately 70 photo files, 15 video files in support of her claim showing the condition of the rental unit at the end of tenancy for comparison. On this basis, in reviewing this evidence, I find that the rental unit was vacated by the tenants leaving it dirty and damaged.

I find that the landlord has established a claim for cleaning and damages as listed below for a total of \$546.67. The tenants agreed to the landlord's monetary claim of \$25.04 for the replacement of two lightbulbs during the hearing.

\$25.04	lightbulb replacements, 1 kitchen and 1 bathroom
\$51.40	track light replacement
\$47.61	hood vent, missing part, visor
\$340.65	Labour Service and parts, re:dryer, install new hood vent, repair of soap dispenser and gasket
\$52.50	Service, repair of washer control panel
\$200.00	Damaged FOB Replacement, X2
\$6.13	Cleaning Materials, Dirty Stove top
\$44.73	Difference in Insurance Premiums paid for empty rental during repairs
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Residential Tenancy Policy Guideline "40. Useful Life of Building Elements" provides me with guidance in determining damage to capital property. The useful life of paint for an interior wall is

four years. The landlord testified that the rental unit was last painted in 2012\2013 making 2 years of useful life used prior to the tenants taking possession of the rental unit. This left 2 years of useful life left (50%). The purpose of damage is to return the claimant to his or her original position. As the value of the painting on the interior walls had depreciated by 50%, the tenant is responsible for 50% of the total cost of repair (\$3,675.00), that is, \$1,837.50.

On the landlord's request for the loss of rental income of \$5,100.00 for a 3 month period (June to August), I find that the landlord has failed to establish a claim.

Residential Tenancy Branch Policy Guideline #5, Duty to Minimize Loss states in part,

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation². Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved. The landlord or tenant entitled to contract for repairs as a result of a breach by the other party, may choose to pay a service charge that exceeds what one would reasonably be required to pay for the service in the circumstances. In that case, the arbitrator may award a reduced claim based on the reasonable cost of the service. If partial mitigation occurs, the arbitrator may apportion the claim to cover the period during which mitigation occurred. The landlord who does not advertise for a new tenant within a reasonable time after the tenant vacates a rental unit or site

prior to the expiry of a fixed term lease may not be entitled to claim loss of rent for the first month of vacancy;...

In this case, the landlord stated that no efforts were made to re-rent the unit until July 31, 2019 as it took her approximately 3 ½ months to organize and schedule cleaning, repairs and replacement of broken/missing items. I find in the circumstances that this 3 ½ period to be excessive based upon the extent of the landlord's claim. The landlord provided no details of any factors that would require an extended period of time to resolve these issues. As such, I find that the landlord is not entitled to recovery of the claim for loss of rent as no rent can be expected if no attempt at renting it was made.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a 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 subsection 38(6) of the Act equivalent to the value of the security deposit.

In this case, both parties confirmed that the landlord withheld the tenants' \$800.00 security deposit upon being served with the tenants request for return of the security deposit via email on April 16, 2019. The landlord applied on April 27, 2019 making it 11 days after receiving the tenant's request which is within the allowed 15 day time frame. On this basis, the tenants' request for compensation under section 38 (6) is dismissed.

However, the tenants are still entitled to recovery of the \$800.00 security deposit which shall be offset against the landlord's monetary claim. The landlord has established justification in withholding the security deposit. The tenants' request for recovery of the \$100.00 filing fee is dismissed.

In offsetting these claims, I authorize the landlord to withhold the \$800.00 security deposit in partial satisfaction of the claim. The landlord is also entitled to recovery of their filing fee of \$100.00.

Conclusion

The landlord is granted a monetary order for \$1,684.17. This consists of:

\$546.67	Damage(s)/Cleaning/Repairs
\$1,837.50	Painting
\$100.00	Filing Fee
\$2,484.17	Sub-Total
\$800.00	Less Credit for Security Deposit
\$1,684.17	Total

This order must be served upon the tenants. Should the tenants fail to comply with this order, the 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: August 09, 2019

Residential Tenancy Branch