



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, utilities, damage to the rental unit, and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The landlord, the landlord's agent, and the two tenants, female tenant ("tenant") and "male tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his daughter, who is his agent, had permission to speak on his behalf at this hearing. This hearing lasted approximately 82 minutes.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord's agent confirmed receipt of the tenants' evidence package, except for eight videos. In accordance with sections 88, 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's application and the landlord was duly served with the tenants' evidence package.

I notified both parties that I could not consider the tenants' eight videos because it was not served to the landlord, as required.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, utilities, damage to the rental unit, and for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee for his application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on October 13, 2018 and was for a fixed term ending on October 31, 2019. The tenancy ended on April 19, 2019. Monthly rent in the amount of \$1,900.00 was payable on the first day of each month. A security deposit of \$950.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address to the landlord on April 4, 2019, by way of a letter and again on April 23, 2019 by way of the move-out condition inspection report. The landlord had written permission to keep \$126.00 for the blinds from the tenants' security deposit. The landlord's application to retain the tenants' deposit was filed on May 3, 2019. The rental unit is the upper floor of a house with a separate basement.

The landlord seeks a monetary order of \$11,682.93 plus the \$100.00 application filing fee. The landlord seeks \$126.00 for the blinds, which the tenants agreed to pay during the hearing.

The landlord seeks \$525.00 for the flooring installation and repair in the bedroom because the landlord's agent said the tenants caused grooves in the flooring. She stated that the tenants had a water birth of their child in the bedroom and the amount of activity from everyone in that room could have caused the damage to the flooring. The landlord provided photographs and a copy of the receipt, which the landlord's agent said was paid by cheque on May 17, 2019.

The landlord seeks \$201.86 for the flooring (\$185.06) and the trim (\$16.80) in the patio and around the bedroom. The landlord's agent stated that this had to be replaced and painted. The landlord provided photographs and a receipt, claiming it was paid on May 7, 2019. The landlord seeks \$47.03 for the underlay foam for the flooring. The landlord provided a receipt for same.

The tenants disputed the above flooring costs, stating that they would only agree to pay \$100.00 total for the damages. The tenant maintained that the damage to the flooring was small, like the size of a quarter, providing photographs of same. She explained that the landlord repaired the flooring before for other larger damages, so a replacement in this situation with less damage, was not required.

The landlord seeks \$3,194.10 for painting, labour and materials. The landlord's agent claimed this was paid on June 6, 2019 by cheque and a receipt and photographs were provided for same. She explained that the upstairs and entrance to the doorway of the bedroom had to be painted because there were scrapes and scratches to the drywall and the trim was "roughly used." She maintained that the two bedrooms had to be painted, along with the kitchen and living room. She testified that although there were other tenants in the unit before, there were no marks like this, which included deep gouges and cuts, despite the short duration of these tenants' tenancy.

The tenants dispute the above painting costs, claiming that they cleaned the unit when they moved out, the walls were not perfect but there was damage when they moved in, and this was reasonable wear and tear. The tenant stated that the tenants traveled a lot, so they were not always home during this tenancy. The tenants dispute the landlord's receipt for the painting, claiming that there was no breakdown of costs between the paint and the labour.

The landlord seeks \$44.89 for the trim and moulding in the bedroom and entrance doorway to the bedroom. The tenants agreed to pay the \$35.48 for the trim, claiming that they dented the trim with their queen-sized bed, but not the \$9.41 for the moulding. The landlord provided receipts for same from May 8, 2019.

The landlord seeks \$29.05 for hydro electricity costs after April 19, 2019, claiming that it was paid by the landlord. The landlord provided a copy of the bill but not the receipt or proof of payment or the June 2019 bill which showed that the payment was made from

April 2019. The tenants disputed this cost, claiming that they paid the hydro electricity costs until April 19, 2019, but not after because they had already vacated the rental unit.

The landlord seeks \$690.00 in liquidated damages, as per clause 5 of the parties' written tenancy agreement, since the tenants moved out earlier than the fixed term end date of October 31, 2019. The landlord's agent stated that she tried to sign a mutual agreement to end tenancy with the tenants but they refused. She confirmed that this amount was a genuine pre-estimate of the loss by using the number of days to rent multiplied by 25 or 30. She said that she made efforts to re-rent but did not provide the appointment dates of showings or her notes for same.

The tenants dispute the liquidated damages, claiming that the landlord's agent forced the tenants to leave the rental unit so the fixed term was breached by the landlord. The tenants provided copies of emails between the parties, which the landlord's agent confirmed were accurate. The tenant stated that she was told by the landlord's agent that unless she took responsibility for the damages in the rental unit, which the landlord's agent inspected during the tenancy, the landlord would pursue the "immediate eviction" of the tenants. The tenants provided copies of two caution notices, which the landlord's agent agreed she gave to the tenants, warning of their behaviour or eviction could be pursued. The tenant maintained that the landlord caused the tenants stress, they had two children, and felt compelled to vacate, given the landlord's agent's threats. The landlord's agent denied making any threats of eviction, stated that she was scared and fearful of the tenants causing further damages so she wrote emails to them, and provided caution notices, but not intending to threaten or cause their eviction.

The landlord seeks \$6,650.00 for 3.5 months of rental loss for half of May, and all of June, July and August 2019. The landlord's agent agreed that the tenants paid rent until May 15, 2019, but claimed that they breached the fixed term tenancy agreement, so they owed more rent. She claimed that the unit was still not re-rented, as many people had come to see it but found that it was too small or they were too tall for it.

The tenants dispute the landlord's loss of rent claim, confirming that they paid rent until May 15, 2019, almost one month beyond their move-out date of April 19, 2019, because they wanted to give proper notice to the landlord to leave. The tenant maintained that the tenants intended to stay until the end of the fixed term but after the landlord's agent's threats of eviction, the tenants were forced to leave. The tenant stated that the landlord posted the unit for re-rental online for a \$300.00 higher rent than what the tenants were paying. She stated that the unit was posted for \$2,200.00 as of April 16, 2019 and now it was listed for \$2,058.00, which is still higher than the \$1,900.00 that

the tenants were paying of \$1,900.00. The landlord's agent agreed with this information, claiming that the market for rent was higher for units in this area and she was still getting calls from interested tenants so she did not need to lower the rent price. The tenant claimed that the landlord should have rented by now, as the rental market is good for landlords, there are many tenants looking for places, and the unit is located in a busy and popular main city. She said that the landlord's agent does unreasonably complicated references checks and the basement of the rental property was empty for six months while the tenants were living in rental unit, so the landlord had a habit of leaving his places empty without tenants.

The landlord seeks \$175.00 for 5 hours of cleaning at \$35.00 per hour. She said that she submitted her own invoice with her own name on it because she and the landlord did the cleaning at 2.5 hours each. She said that the above rate was given even though they are not professional cleaners because a landlord agency and the RTB told her it was reasonable and that she could create her own invoice and include her own amount. She said that the landlord did not pay her the above amount for the cleaning that was already done and that if she received this money from this application, it would go to the landlord and she might share in it. She said that the landlord vacuumed, washed and scraped the floors, while she cleaned the bathroom, wiped the windows and blinds, and did other work. The landlord provided photographs of the unit.

The tenants dispute the landlord's claim for cleaning, but agreed to pay \$50.00 because the tenant said that she forgot to clean under the refrigerator, the stove, and the bathroom drawer upstairs. She maintained that the tenants cleaned the rest of the unit before vacating and provided photographs of same.

Analysis

Overall, I found the tenant to be a more credible party than the landlord's agent. The tenant was candid in answering questions, forthright in her testimony, consistent with her version of events, and admitted when she caused damages, agreeing to pay for same. On the other hand, the landlord's agent was inconsistent in her version of her events, changed her testimony and version of events depending on the questions, and did not adequately explain information that was clearly supported by documentary evidence.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of

probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlords \$126.00 for the blinds, since the tenants agreed to pay this amount during the hearing.

I award the landlord \$35.48 for the trim in the bedroom, as the tenants agreed to pay this amount during the hearing.

I award the landlord \$50.00 of the \$175.00 for cleaning. The tenants agreed to pay this amount during the hearing. I find that the tenants adequately cleaned the rental unit when they vacated, as per their photographs, with the exception of a few areas which they admitted during the hearing, so the above accounts for the lack of cleaning in those areas.

I award the landlord \$100.00 of the \$773.89 claimed for the flooring foam, replacement and installation. The tenants agreed to pay this amount during the hearing. I find that the damage caused by the tenants was minor, was mainly reasonable wear and tear, and I accept their photographs of the small area of damage, which they admitted was caused by them. I find that the landlord's photographs confirm how small the damaged areas are, such that the landlord had to put bright yellow sticky notes next to the damaged areas in the photographs, to show where they were located. I find that a replacement of the flooring areas was not required.

On a balance probabilities and for the reasons stated below, I dismiss the remainder of the landlord's application, without leave to reapply.

I dismiss the landlord's claim for the moulding of \$9.41, as the tenants disputed this claim. I find that the landlord failed to provide sufficient evidence of this damage, as per their own photographs.

I dismiss the landlord's claim for painting of \$3,194.10. The tenants disputed this cost. I find that the landlord was unable to show that the tenants caused damages to the walls beyond reasonable wear and tear, as per Residential Tenancy Policy Guideline 1. I find that the landlord's photographs confirm how minor the wall marks are, such that the landlord had to put bright yellow sticky notes next to the damaged areas in the photographs, to show where they were located.

I dismiss the landlord's claim for hydro electricity costs of \$29.05. The tenants disputed this cost. I find that the tenants were not responsible to pay for these costs beyond April 19, 2019, when they vacated the rental unit, as they were no longer living there. Although the tenants paid for the rent until May 15, 2019, I find that this was only sufficient in order to provide the landlord with proper rent notice to vacate the rental unit, not for additional usage charges for electricity and hydro.

I dismiss the landlord's claim for liquidated damages of \$690.00. I find that the landlord failed to show how this amount was a genuine pre-estimate of the loss, rather than a penalty, determined at the beginning of the tenancy in the tenancy agreement. The landlord's agent did not know how it was calculated.

I dismiss the landlord's claim for 3.5 months of rental loss from mid-May to August 2019, of \$6,650.00. I find that the landlord's agent agreed that she advertised the rental unit at higher amounts of \$2,200.00 and \$2,058.00, despite not being able to rent the unit for months after April 19, 2019. This may have detracted potential tenants from renting the unit. I also find that the tenants paid for additional rent from April 20 to May 15, 2019, almost one month, after vacating the rental unit, in order to provide notice and mitigate rental losses.

I find that the landlord breached the parties' fixed term tenancy agreement, so the liquidated damages and rental losses are the landlord's responsibility. The landlord's agent threatened the tenants with "immediate eviction" if they did not agree to the damages that the landlord wanted them to pay. The tenants provided emails with these threats, which the landlord's agent was unable to adequately explain, aside from having "fear" of the damages caused. She maintained that she did not threaten eviction, despite what the emails stated. The tenants found a new place and gave notice to leave because of the threat of eviction, since they did not agree with the damages the landlord claimed.

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 tenants' 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 deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenancy ended on April 19, 2019. The tenants provided the landlord with a written forwarding address on April 4, 2019, by way of a letter. The landlord did not return the security deposit to the tenants. I find that the landlord filed an application for dispute resolution to claim against the security deposit on May 3, 2019, which is within 15 days of the later end of tenancy date of April 19, 2019. Therefore, I find that the tenants are not entitled to double the value of their security deposit of \$950.00.

Over the period of this tenancy, no interest is payable on the tenants' security deposit. I order the landlord to retain \$311.48 from the tenants' security deposit of \$950.00, in full satisfaction of his monetary award.

I order the landlord to return the remaining \$638.52 from the security deposit to the tenants within 15 days of receiving this decision. Although the tenants did not file an application for the return of their security deposit, I am required to deal with its return on the landlord's application to retain the deposit, as per Residential Tenancy Policy Guideline 17. The tenants are provided with a monetary order for \$638.52.

As the landlord was mainly unsuccessful in his application, and only successful based on what the tenants agreed to pay, I find that he is not entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

I order the landlord to retain \$311.48 from the tenants' security deposit of \$950.00 in full satisfaction of his monetary award.

The remainder of the landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$638.52 against the landlord. The landlord must be served with this Order as soon as possible. Should the

landlord 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: August 09, 2019

Residential Tenancy Branch