



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Landlords applied for monetary compensation, for compensation for damages, for compensation for unpaid rent or utilities, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Tenants applied for monetary compensation and for the return of the security deposit.

Both Tenants and both Landlords were present for the teleconference hearing. The Tenants confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the Landlords’ application and a copy of the Landlord’s evidence. However, the Tenants stated that the notice of hearing documents were not sent until May 24, 2019, which was later than they should have been.

The Landlords provided a registered mail tracking number which confirmed that the package was mailed on May 24, 2019. As the Landlords were to send the notice of hearing documents by May 19, 2019, 3 days after receipt from the Residential Tenancy Branch and in accordance with the *Residential Tenancy Branch Rules of Procedure*, I do find that the documents were sent a few days late.

However, the Tenants confirmed receipt and I find that they had time to provide evidence in response, given that the hearing was scheduled for August 20, 2019, almost three months after receipt of the documents. As such, I accept that the documents were sent late and find that the hearing should continue as scheduled as I do not find that it would unfairly prejudice the Tenants to do so.

The Landlords confirmed receipt of the Notice of Dispute Resolution Proceeding package regarding the Tenants' application and a copy of the Tenants' evidence.

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.

Preliminary Matters

The Landlords applied for monetary compensation, however as stated on their application, this is a claim for the return of the filing fee which was also noted on the application. Therefore, I amend the application to remove the claim for monetary compensation pursuant so Section 64(3)(c) of the *Act*. This decision will address the claims of the Tenants as well as the claim for damages and unpaid rent/utilities from the Landlords, and the Landlords' request for the recovery of the filing fee.

Issues to be Decided

Are the Landlords entitled to compensation for damages?

Are the Landlords entitled to compensation for unpaid rent and/or utilities?

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?

Are the Tenants entitled to monetary compensation?

Are the Tenants entitled to the return of the security deposit?

Background and Evidence

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

The parties were in agreement as to the details of the tenancy which were also confirmed by the tenancy agreement submitted into evidence. The tenancy started on

October 1, 2018. Rent in the amount of \$2,650.00 was due on the first day of each month. A security deposit of \$1,325.00 was paid at the start of the tenancy and of which the Landlord still holds. The Tenants moved out on April 30, 2019.

The Landlords are seeking total compensation in the amount of \$1,659.34 for damages, unpaid utilities and the filing fee.

Firstly, the Landlords have claimed \$220.00 for replacement of broken banisters on the stairway in the rental unit. The Landlords stated that the amount claimed includes the cost of replacement as well as the time to stain, paint and install the new banisters. The Landlords noted that they purchased three new banisters, but confirmed that the Tenants broke two.

The Landlords submitted a receipt dated May 11, 2019 in the amount of \$94.15. However, the Landlords included a note on the receipt breaking down the costs which included glue, 3 banisters at \$10.64 each, and stain for a total of \$73.40. The Landlords testified that the remainder of the \$220.00 is for labour costs for the repair of the banisters. They noted that the work has not yet been completed as they need to arrange entry with the new tenants.

The Tenants testified that two bannisters on the stairs of the rental unit were broken when moving out. They stated that the stairs were unsafe which caused them to fall into the bannisters and that they were injured as a result. The Tenants submitted copies of doctor's prescriptions which they stated were a result of the injuries caused from the fall on the stairs.

The Landlords agreed that the design of the stairs caused some issues in the past but that they had installed non-slip tracking on the stairs and warned the Tenants regarding the issue.

The Landlords are also seeking compensation for repairing a hole in the wall and painting in the amount of \$180.00. The Landlords noted that the rental unit was furnished and that the Tenants requested that they install a television to the wall. As such, the Landlord stated that there was a 6-inch hole on the wall as well as a hole on the wall of another bedroom. They submitted a photo of the hole where the TV was installed.

The Landlords stated that they did not submit an invoice as painting throughout the whole unit cost \$1,200.00 while they are just claiming \$180.00 of that for repair and painting of the two holes. The Landlords testified that the rental unit was painted before the tenancy started.

The Tenants state that there was already a hole in one of the rooms where the TV was. They stated that they pointed out the hole at move-in, but the Landlord said he would remember this hole was there. As for the second hole in the other bedroom, the Tenants stated that there was no stopper behind the door which caused the hole, however they agreed that this hole was caused during the tenancy. They disagreed that they were responsible for the other hole but did not dispute responsibility for the hole on the second bedroom wall.

The Landlords are also claiming for carpet cleaning in the amount of \$200.00. They submitted two photos of the carpets that were taken at the end of the tenancy as well as a photo showing the dirty water in the carpet cleaner following use. The Landlords also submitted a receipt for the rental of the carpet cleaning machine dated May 1, 2019 which shows a charge of \$90.70 and then a deduction of \$28.00 for the deposit once the machine was returned.

Therefore, the Landlords noted that the total cost for the rental was \$62.70. They stated that the remainder of the \$200.00 claim is for the time spent cleaning the carpets. They noted that they had tried to find a professional carpet cleaning company but were unable to find one in time so rented the machine instead.

The Landlords referenced clause 10 of the tenancy agreement addendum which states that the Tenants will have the carpets professionally cleaned upon moving out and that they are also responsible for any cleaning costs. The addendum was signed by both parties on October 1, 2018.

The Tenants stated that they were not supposed to clean the carpets as they lived there less than one year. However, they noted that they had the carpets professionally cleaned on April 29, 2019 and referenced a receipt submitted into evidence. The receipt is undated and states that \$300.00 was paid although does not specify the service provided for this amount.

The Tenants also questioned why the Landlords are claiming \$200.00 for carpet cleaning when the rental unit only \$62.70.

The Landlords have also claimed \$200.00 for general cleaning of the rental unit. They stated that this includes the time involved with cleaning as well as the supplies they purchased to complete the cleaning. They stated that they spent the whole day cleaning the rental unit. The Landlords submitted photos of windows and blinds.

The Tenants stated that they cleaned for two days prior to moving and did their best to leave the rental unit reasonably clean.

The Landlords are seeking \$250.00 for the repair of the clothes dryer which they stated was broken during the tenancy. The Landlords confirmed that they did not submit any evidence of the broken dryer or the cost of repairs. The Landlords stated that they spent \$150.00 on having a repair person look at the dryer and then had to purchase a new dryer when it was unable to be fixed.

The Tenants disputed this claim and stated that there was nothing wrong with the dryer during the tenancy.

Lastly, the Landlords are seeking \$509.34 for unpaid utilities, which the Tenants stated their agreement to pay. The Tenants confirmed that they were willing to have the amount of \$509.34 deducted from the security deposit for payment of the utility bills.

As the Landlords were partially successful with their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00.

Regarding the Tenants' application, they have applied for compensation for carpet cleaning in the amount of \$300.00 as well as the return of double the security deposit. They stated that the amount they are claiming for the security deposit is \$1,631.32 which is double the deposit after the deductions for the utilities.

As for the move-in and move-out inspection, the Tenants stated that they participated in both inspections but never received a copy of the move-out report. They stated that they did not agree to any deductions from their security deposit. They also noted that they were unsure what happened with signing as they were never asked to sign the move-out report. A copy of the Condition Inspection Report was included in the Landlords' evidence and was signed by both parties on September 29, 2018. At move-out, the condition of the unit was filled out but was not signed or dated by either party.

The Landlords stated that the move-in and move-out inspections were conducted with the Tenants who were also provided a copy. They stated that the Tenants did not agree to any deductions except for a deduction for utilities which was agreed to through email. They stated that the Tenants did not agree with the damage noted on the move-out inspection and therefore chose not to sign the move-out inspection.

Both parties agreed that the Tenants' forwarding address was provided to the Landlords but were unsure of the date. A copy of the Tenants' letter was submitted into evidence but was undated. The Tenants stated that it was approximately May 10 or May 11, 2019 while the Landlord agreed it was in May 2019 and was received in time to send the notice of hearing documents to the Tenants' new address.

Analysis

Regarding the Landlords' application for compensation, 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 provides further clarification for determining if compensation is due through 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.

Regarding the Landlords' claim for the broken bannisters, while both parties agreed that two bannisters were broken, the parties were not in agreement as to who was responsible. However, I accept the testimony of the Landlords that they were aware of the design issue with the stairs and had installed non-slip tracking on the stairs to resolve the concerns.

As stated in Section 37 of the *Act*, a tenant must leave a rental unit reasonably clean and undamaged at the end of the tenancy. I find insufficient evidence before me to establish that there was a further issue with the stairs that caused the Tenants to fall, and instead I find that the Tenants are responsible for the cost of replacing the two bannisters that were broken.

However, as stated in the four-part test outlined above, a party claiming a loss must establish the value of that loss. While the Landlords claimed \$220.00, I find insufficient evidence regarding the additional costs above the cost of purchasing the materials, such as a break down of hours of labour.

I do find that the Landlords have established the cost of the material through the submission of the receipt. As the total for three bannisters and supplies such as stain and glue totalled \$73.40 and each bannister was \$10.64, I subtract \$10.64 from this total to charge the Tenants for two bannisters instead of three. Therefore, I find that the Landlords have established their claim for the cost of replacing the bannisters in the amount of \$62.76. As I am not satisfied as to the additional costs as claimed by the Landlords, I decline to award further compensation for this claim.

As for the Landlords' claim for repairing the hole in the wall and painting, the Tenants denied the hole caused by the TV, but accepted that the other hole was caused during the tenancy.

I note that I do not find the Condition Inspection Report to be reliable evidence regarding the condition of the rental unit at the end of the tenancy. Although the parties had conflicting testimony regarding why the report was not signed by the Tenants, as it was not signed by either party and without further information to establish whether it was conducted in accordance with the *Act*, I do not find that I can rely on this document as evidence.

Although the Landlords submitted photos of the hole caused by the TV installation, I do not find sufficient evidence before me to establish that this occurred during the tenancy

and was not already there as stated by the Tenants. However, I accept that the Tenants did not dispute the second hole and find that the amount claimed is reasonable. Therefore, I award half of the \$180.00 claimed in the amount of \$90.00 for the repair of one of the damaged walls.

Regarding the carpet cleaning and cleaning costs of \$200.00 each, I accept the photos that show that the carpets were not left clean. Despite the Tenants' testimony that they did not have to clean the carpet during a tenancy of less than one year, *Residential Tenancy Policy Guideline 1* notes that a tenant may be required to pay for cleaning if the carpet needs cleaning, regardless of the length of the tenancy. I accept the photos from the Landlord that show that the carpets were left dirty and therefore find it reasonable that the Landlords would steam clean the carpets at the end of the tenancy.

Although the Tenants stated that they had the carpets professionally cleaned, I find that the photos show this to not be the case. I also note that the receipt provided by the Tenants is not dated and does not indicate that the amount of \$300.00 was paid for carpet cleaning. As such, I do not find this to be reliable evidence.

However, I am not satisfied that the Landlords established the value of their loss regarding the carpet cleaning other than the cost spent on the machine as stated on the invoice. I do not find sufficient evidence before me regarding the time spent on the carpet cleaning or other charges that added to the claim amount of \$200.00. Therefore, I award the Landlords compensation for carpet cleaning in the amount of \$62.70.

Regarding cleaning costs, I do not find that I have sufficient evidence from the Landlords regarding cleaning such as a breakdown of time spent or receipts for the cleaning supplies that the Landlords testified they purchased. Although the Landlords submitted photos of windows and blinds that they stated were taken at the end of the tenancy, I also do not find sufficient evidence to establish the condition of the windows and blinds at the start of the tenancy, or that any other areas of the rental unit required cleaning. Therefore, I decline to award any compensation for cleaning as I am not satisfied that the Landlords have proven that the Tenants' breached the *Act* and the value of the loss that occurred as a result.

As for the repair of the dryer, I also do not find sufficient evidence before me to establish that the Tenants' were not in compliance with the *Act*, and that the Landlords suffered a loss as a result. The Landlords did not submit any evidence regarding the dryer such as information from the repair person, invoices or other documentation that would establish

that it was broken during the tenancy and that it was the responsibility of the Tenants instead of an issue with the dryer. As such, I am not satisfied that the Landlords have met the burden of proof regarding their claim for the dryer and decline to award any compensation.

Regarding the Landlords' claim for unpaid utilities in the amount of \$509.34, I accept that the Tenants confirmed their agreement during the hearing to pay the utilities and therefore award this amount to the Landlords.

As for the Tenants' application, as stated I do not find the receipt submitted for carpet cleaning to be reliable evidence given the lack of information on the receipt and the Landlords' photos that show that the carpet was not cleaned. Without further evidence to establish that the Tenants' are entitled to compensation for carpet cleaning, I decline to award this claim.

Regarding the security deposit, I accept the testimony of the parties that the tenancy ended on April 30, 2019 and that the Tenants' forwarding address was provided in May 2019. As stated in Section 38(1) of the *Act*, a landlord has 15 days from the later of the date the tenancy ends or the date the forwarding address is provided to return the deposit or file a claim against it.

As the Landlords filed their Application for Dispute Resolution on May 10, 2019, I find that they applied within 15 days and therefore were in compliance with Section 38(1) of the *Act* and do not owe the Tenants double the deposit pursuant to Section 38(6).

Although the Tenants claimed that they did not receive a copy of the move-out inspection report, the parties were not in agreement as to what occurred with the inspection. Without further evidence, I find it difficult to make a determination as to what happened and why the Tenants did not sign.

The Landlords stated that the Tenants chose not to sign while the Tenants stated that they were not asked to sign. As stated in Section 36(2) of the *Act*, a landlord's right to claim against the security deposit for damages is extinguished if they do not comply with Section 35 of the *Act* including the requirement to provide a copy of the report to the tenant.

However, as stated in Section 36(2), if a copy of the inspection report is not provided to the tenant, the landlord's right to claim for **damages** is extinguished. Regardless of what

exactly happened with the report and whether a copy was provided to the Tenants, I find that the Landlords were within their rights to retain the security deposit and apply within 15 days as they were also holding the deposit for unpaid utilities and not damages only. As such, I still find that the Tenants are not entitled to double the security deposit and therefore their application for double the deposit is dismissed, without leave to reapply.

As the amount awarded to the Landlords is less than the amount paid for the security deposit, the Tenants are awarded a Monetary Order for the return of the remainder of their deposit as outlined below:

Return of security deposit	\$1,325.00
<i>Less bannister replacement</i>	<i>(\$62.76)</i>
<i>Less wall repair/painting</i>	<i>(\$90.00)</i>
<i>Less carpet cleaning</i>	<i>(\$62.70)</i>
<i>Less utilities</i>	<i>(\$509.34)</i>
<i>Less filing fee</i>	<i>(\$100.00)</i>
Total owing to Tenants	\$500.20

Conclusion

Pursuant to Sections 38, 67 and 72 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$500.20** for the return of their security deposit after deductions as outlined above. The Tenants are provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords 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 29, 2019

Residential Tenancy Branch