



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NORTH RIVER BLUFF HOLDINGS LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNDL-S MNRL-S**
 FFT MNDCT MNSD

Introduction

Further to my May 3, 2019 interim decision, this hearing dealt with applications from both the landlord and the tenant pursuant to the *Residential Tenancy Act* ("Act").

The landlord applied for:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- A monetary order for damage to the rental unit pursuant and authorization to retain a security deposit pursuant to sections 38 and 67; and
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67.

The tenants applied for:

- Authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67; and
- An order for the return of a security deposit or pet damage deposit pursuant to section 38.

Representative MH attended the hearing for the landlord. The tenants did not attend the hearing which lasted approximately 30 minutes.

Preliminary Issue – tenants' non-attendance at hearing

The landlord gave the following testimony. Following the adjournment of the initial hearing, a future hearing was set to reconvene on September 6, 2019 at 9:30. The landlord called into that hearing which did not proceed.

He was notified of a rescheduling of the hearing to today's date by an information officer of the Residential Tenancy Branch by email. On May 29, 2019, the landlord sent the tenants a copy of the Notice of Dispute Resolution Proceedings together with copies of evidence to the tenants by registered mail. He sent one package to the address provided to him in the tenants' written notice of forwarding address and sent another package to the address provided to him in the tenants' Application for Dispute Resolution. Canada Post tracking numbers were provided and are listed on the cover page of this decision. The landlord testified the package sent to the address provided on the tenants' Application for Dispute Resolution came back to him as unclaimed. A copy of the unclaimed envelope together with the tracking number were provided as evidence by the landlord.

Further, I confirmed with the information services of the Residential Tenancy Branch who confirmed they emailed the Notice of Dispute Resolution Proceedings to the tenants at j....e@hotmail.com on August 13, 2019 at 12:42 p.m.

I deem the tenants served with the landlord's evidence on June 3, 2019, five days after sending by registered mail in accordance with sections 88 and 90 of the *Act*.

I deem the Notice of Dispute Resolution Proceedings sufficiently served pursuant to section 71 of the *Act* and have authority proceed with hearing the landlord's claim.

Issue(s) to be Decided

Is the landlord entitled to:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- A monetary order for damage to the rental unit pursuant and authorization to retain a security deposit pursuant to sections 38 and 67; and
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67.

Background and Evidence

The landlord provided the following undisputed testimony. The rental unit is a brand new house, never before occupied. The tenants were the first to occupy the home and the parties did not do a condition inspection report at the commencement of the tenancy since everything was brand new.

A copy of the tenancy agreement was provided as evidence. The tenancy began on February 15, 2017 as a fixed one year term, becoming month to month at the end of the

first year. Rent was set at \$2,200.00 per month payable on the 15th day of the month. A security deposit of \$1,100.00 was collected as was a \$1,100.00 pet damage deposit, however the pet damage deposit is not mentioned in the tenancy agreement.

The tenants did not pay rent for September 2018 and on October 1st gave notice to the landlord that they would be out at the end of the month. The landlord provided a copy of a text message from the tenants whereby they acknowledged on October 1st that "We are absolutely going to pay for last month and this month as we have some money coming..." The tenancy ended on October 31st.

The landlord attempted to perform a move out inspection with the tenants and provided copies of text messages regarding his attempts to secure a date. The tenants responded with no confirmation of when they would be available and eventually notified the landlord that they were gone.

The landlord gave undisputed testimony that the home's walls were left dirty, with scuff marks, multiple holes where wall anchors were installed and several un-sanded areas where wall patch was applied and left unfinished. Photographs of the damaged walls was provided as evidence.

The landlord also provided photographic evidence of further damage to the unit including cracked hinge supports, extraordinary damage to the front entrance door and frame, scuffed and dented interior doors and chipped molding. The landlord testified that his company is in the home contracting business; his employees performed the labour; and the supplies for the repairs were either purchased exclusively for this rental unit or were part of existing inventory from being in the contracting business. No invoices were supplied for this claim.

Analysis

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply. Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend to present evidence, any written submissions supplied may or may not be considered.

The tenants did not attend the hearing which was scheduled by conference call at 9:30 a.m. As they did not attend, they did not present evidence regarding the merits of their claim for me to consider.

Consequently, I dismiss the tenants' application without leave to reapply.

As the tenants were not successful in their claim, they will not recover their filing fee.

Section 21 of the Residential Tenancy Regulations ("Regs") states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, the landlord gave undisputed evidence that this was a new home with the tenants being the first occupants. Given this, I find there is a preponderance of evidence that a condition inspection report would not provide any meaningful information regarding the rental unit's state of repair and condition.

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.

Residential Tenancy Policy Guideline 1 (PG-1) provides guidance for the landlord and tenants' responsibilities. The guidelines for nail holes and painting are reproduced below:

NAIL HOLES:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. **The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.**
3. **The tenant is responsible for all deliberate or negligent damage to the walls.**

PAINTING

1. The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. **The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.**

This was a tenancy that lasted approximately 20 months. The landlord has provided compelling evidence to show the holes left behind and the damaged fixtures and walls required painting much sooner than the suggested 4 year useful life of a paint job as expressed in Residential Tenancy Branch Policy Guideline PG-40 [Useful Life of Building Elements]. I am satisfied the landlord has suffered a loss due to the damage caused by the tenants beyond reasonable wear and tear.

The rental unit was a brand new home. To bring it back to the same condition, the landlord gave undisputed testimony that the approximate cost to perform the work of cleaning, repairing the walls, painting and purchasing supplies is \$2,600.00. I find this amount to be reasonable. Pursuant to section 67 of the *Act*, I award the landlord **\$2,600.00.**

The landlord provided undisputed testimony and evidence to satisfy me the tenants did not pay rent for the months of September and October 2019, contrary to section 26 of

the *Act*. In accordance with section 67 of the *Act*, award the landlord **\$4,400.00**.
(\$2200.00 x 2 = \$4,400.00)

As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit and pet damage deposit in sum of \$2,200.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Item	Amount
Wall repair, painting and cleaning	\$2,600.00
September and October 2018 rent	\$4,400.00
Filing fee	\$100.00
Less security deposit and pet deposit	(\$2,200.00)
Total:	\$4,900.00

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$4,900.00**.

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: September 25, 2019

Residential Tenancy Branch