



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both of those attending this teleconference confirmed that they also represented the other person identified as their co-landlord and co-tenant respectively.

As Tenant NA (the tenant) confirmed that they received a copy of the landlords' dispute resolution hearing package, and written and photographic evidence sent by the landlords by registered mail on July 27, 2019, I find that the tenants were duly served with this package in accordance with section 89 of the *Act*. The tenants did not enter any written or photographic evidence for this hearing.

Since the landlords have already returned the tenant's security deposit to the tenants in its entirety, Landlord AS (the landlord) withdrew their application to retain a portion of the tenants' security deposit. This portion of the landlords' application is hereby withdrawn.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for damage arising out of this tenancy? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began as a six-month fixed term tenancy on April 1, 2016. When two subsequent fixed tenancy agreements expired, the tenancy continued as a month-to-month tenancy. Monthly rent by the end of this tenancy was set at \$1,920.00, payable in advance on the first of each month. Although the tenants paid a security deposit of \$925.00, the parties agreed that the landlords have returned this security deposit in full to the tenants, after the tenants vacated the rental unit on June 30, 2019.

The landlords application for a monetary award of \$598.00, included a request for reimbursement of \$270.00 in the costs of repairing a bedroom wall and \$300.00 in repairing a closet door frame. The landlord testified that the actual costs totalled \$598.00.

The landlord provided a copy of the report of the joint move-in condition inspection of April 1, 2016, signed by the landlord and the tenant. The tenant testified that they participated in a joint move-out condition inspection with the landlord's daughter on June 30, 2019, when they handed the landlord's daughter the key to this rental unit. The landlord said that no such joint move-out condition inspection occurred. The landlord said that they had been waiting for the tenant to contact them to arrange for a joint move-out inspection, but that the tenants did not provide a time when that would happen. Both parties agreed that the landlords have not completed a report of any joint move-out condition inspection that did occur at the end of this tenancy. They also agreed that the landlords did not provide the tenants with written notice of a proposed final inspection of these premises.

Although the landlords did not complete a joint move-out condition inspection report, they did take photographs at the end of this tenancy. The tenant did not dispute the authenticity of these photographs, confirming that they were indeed photos of the rental unit at the end of this tenancy.

The landlord gave undisputed sworn testimony supported by written and photographic evidence that holes in walls occurred during this tenancy when the tenants removed shelving for a television in one of the rooms. The landlord also provided written and photographic evidence of damage to the frame of a closet door. The landlords also provided copies of estimates from the company that undertook these repairs. The landlord said that this work was completed in early July 2019.

The tenant asserted that the *Act* enabled the tenants to make themselves "at home" after renting the premises from the landlords. The tenant claimed that the wall damage caused by the tenants' removal of a shelf and television mount was not damage that the tenants were responsible for repairing. The tenant also maintained that any damage caused to the closet door and frame occurred over a long period of time, and represented reasonable wear and tear that could be expected of premises of this age.

The landlord said that this rental home was built in 2005. The landlord testified that the repair people the landlord retained had to return to the premises three or four times to complete this work, as the work had to be undertaken in various stages.

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.

I note that the joint move-in condition inspection report, signed by both the landlord and the tenant at the beginning of this tenancy, revealed no damage to the walls or the closet door frame. While the tenant maintained that the damage to the closet door frame likely happened over many years, there is no indication on the joint move-in condition inspection report that there was any noticeable damage to that door frame when this tenancy began.

In considering this matter, I advised the tenant at this hearing that they were in error in their interpretation of the *Act* in asserting that a landlord was responsible for repairing damage caused by a tenant in trying to make themselves "at home" after renting accommodation from the landlord. The damage that was caused to the bedroom wall(s) when the tenant(s) chose to remove a television and mounting shelves is not damage that would have occurred had the tenants not chosen to alter the premises rented to them. Under such circumstances, a tenant is required to restore premises to their previous condition before ending a tenancy. Since I accept that the bulk of the landlords' costs in repairing the bedroom wall arose solely as a result of the tenants' actions, I find that the landlords are entitled to the recovery of \$270.00 in costs they incurred in restoring this wall to its previous condition.

Although I have examined the Residential Tenancy Branch's Policy Guideline 40, which outlines the useful life of various building elements in a tenancy, there is no specific useful life identified for closet door frames. In the absence of any specific guidance on this item, I accept that there would have been some reasonable wear and tear that would have occurred over the course of the 14 years since this rental unit was constructed. However, I also note that there was no specific mention of damage to the door frame identified on the joint move-in condition inspection report that the tenant signed at the beginning of this tenancy. Under these circumstances and

based on a balance of probabilities, I find that the landlords are entitled to a monetary award equivalent to one-half of their requested claim of \$300.00 for the repair of this feature of the rental unit. This results in a monetary award of \$150.00 for the repair of the closet door frame.

Since the landlords have been successful in their application, I allow them to recover their \$100.00 filing fee from the tenants.

Conclusion

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords' claim for damage and to recover their filing fee:

Item	Amount
Wall Damage	\$270.00
Damage to Closet Door Frame	150.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$520.00

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlords' application to retain the security deposit for this tenancy is withdrawn.

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: November 14, 2019

Residential Tenancy Branch