



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation, compensation for damages, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The hearing was initially scheduled for November 14, 2019 and was adjourned through an interim decision dated November 15, 2019. This decision should be read in conjunction with the interim decision.

The hearing was reconvened on December 6, 2019. The Landlord and Tenants were present for both hearing dates. They were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Is the Landlord entitled to monetary compensation and/or compensation for damages?

Should the Landlord be authorized to retain the security deposit towards compensation found to be owing?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

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 some of the details of the tenancy. The tenancy started in approximately 2016. A new tenancy agreement was entered into for the period of January 1, 2019 to June 30, 2019. Rent in the amount of \$2,800.00 was due on the first day of each month and a security deposit of \$1,400.00 was paid at the start of the tenancy. A copy of the last tenancy agreement was submitted into evidence and confirms the details as stated by the parties. The Landlord confirmed that he is still holding the full security deposit amount.

The tenancy agreement beginning January 1, 2019 listed 3 tenants and the Landlord stated that the third tenant moved out earlier. He stated that the tenancy ended on July 2, 2019 when the two Tenants named in this dispute moved out.

The Tenants stated that there were five people in total named on different tenancy agreements and stated that the tenancy ended when they moved out on July 1, 2019.

The Landlord has claimed a total of \$2,163.06 which includes repair costs, junk removal, carpet cleaning and lock rekeying. The Landlord has also applied to retain the \$1,400.00 security deposit towards compensation owed.

The Landlord's first claim is for \$729.75 for the cost of repairing drywall and doors in the rental unit following the end of the tenancy. The Landlord stated that there was damage caused to the front door of the rental unit including a crack in the panel of the door which went right through to the other side and a hinge at the bottom of the door which was separating away from the door. The Landlord submitted photos of the door into evidence and stated that the door was repaired and repainted, although he is not claiming for the cost of paint.

The Landlord stated that the repair costs also include repairing the holes in the drywall, repairing the faceplate pulled off of the stove drawer, as well as the metal rollers that had broken off the dishwasher. The Landlord submitted multiple photos of the areas needing repair into evidence and stated that the photos were taken on July 1, 2019. The Landlord also referenced further repairs that were conducted but for which he is not seeking compensation.

The Landlord also submitted an invoice for the repair work dated July 13, 2019 in the amount of \$729.75.

The Landlord also submitted a copy of the Condition Inspection Report. The report was signed by the parties at move-in with the inspection conducted on June 28, 2016 and by both parties at move-out with the inspection conducted on July 1, 2019. At move-out, the Tenants did not agree that the report represents the condition of the rental unit and wrote the following:

House was clean. There was no mattresses, garbage or furniture left behind and Landlord ignored calls and texts to schedule move-out inspection. Move out date was June 30th.

The Landlord stated that the move-out inspection was scheduled for July 1, 2019 at 5:00 pm. He referenced audio files submitted into evidence; one dated June 28, 2019 in which the Landlord calls one of the Tenants and confirms the date and time for the move-out inspection, and a second audio file dated July 1, 2019. In the second recorded phone call the Tenant advises the Landlord that they are delayed with moving out and suggests that the Landlord complete the inspection without the Tenants and then they go through the document together at a later time.

The Landlord also submitted a Notice of Final Opportunity to complete the move-out inspection on July 17, 2019. He also submitted copies of text message communication with the Tenants including a text message from the Tenant on July 3, 2019 in which the Tenant writes that they are unable to travel back to the rental unit for the inspection and suggests meeting at their workplace to sign the inspection report. In a text message dated July 1, 2019, the Landlord asks if the Tenants will still be able to meet at 5:00 pm to which the Tenant responds that they are not able to.

The Landlord stated that the move-out inspection was emailed to the Tenants for them to review and sign on July 15, 2019, as per their request and was returned to him on July 21, 2019.

The Tenants agreed that they participated in a move-in inspection but testified that they were not provided with the opportunity to attend a move-out inspection and that they disagree with the condition of the rental unit at the end of the tenancy. They also stated their position that it was not their signature on the move-out inspection and that they did not add the statement regarding their disagreement with the condition of the rental unit. They denied receiving and signing the move-out inspection by email. The Tenants also stated that they never received a final notice to conduct a move-out inspection and questioned why the Landlord completed the report on July 1, 2019 if a final opportunity was provided after this date. The Tenants stated that they did not receive a copy of the

move-out inspection until receipt of the evidence package from the Landlord for this hearing.

The Landlord noted that he conducted the move-out inspection on July 1, 2019 at the scheduled time but would have conducted another report with the Tenants had they responded about a new date and time that would work for them.

The Landlord referenced an email from the Tenants dated July 16, 2019 in which the Tenants write that they would like to sign the inspection report and to arrange payment for what they owe the Landlord. In this email the Tenants stated that they can pay \$150.00 every two weeks and stated that they agree that the amount claimed by the Landlord is fair. The email correspondence shows that the Landlord included copies of the Condition Inspection Report, invoices and some photos in the email.

In another email dated July 18, 2019 the Tenants write that they will sign the move-out inspection report as they see fair, but that they do not agree with the Landlord keeping the security deposit.

The Tenants stated that they never agreed to any deductions from their security deposit, either verbally or by email and stated their disagreement to the Landlord's claims that there was any damage in the rental unit. They testified that their forwarding address was left at the rental unit with the keys on July 1, 2019 and then emailed to the Landlord on July 13, 2019.

The Landlord denied receipt of the Tenants' forwarding address on July 1, 2019 and instead stated that it was received by email on July 13, 2019. He submitted a copy of an email dated July 13, 2019 in which the Tenants send their forwarding address in case the Landlord did not receive it when left on the fridge in the rental unit.

The Landlord has also claimed \$1,207.50 for the cost of junk removal at the end of the tenancy. He submitted an invoice for this amount dated July 6, 2019 which indicates the removal and disposal of 10 mattresses and removal and dumping fee for other items. The Landlord also submitted additional quotes received for junk removal which he stated show that he tried to minimize costs. The Landlord also referenced photos which show items left outside of the rental unit following the Tenants moving out, which he stated were sent to the Tenants.

The Landlord also referenced photos of a U-Haul truck parked outside the rental unit on the evening of July 1, 2019 which is why the Landlord stated that the tenancy ended on

July 2, 2019 when the truck left the premises. The Landlord also referenced an audio file of a phone call in which the Tenant agrees that garbage was left behind and that they were not able to attend that night to remove it. The Landlord also submitted statements from neighbours regarding the items left behind. He noted that the mattresses and other junk were removed from the property on July 6, 2019.

The Tenants testified that there was no furniture or other items left behind. They stated that there was garbage in the garbage cans which is what they thought the Landlord was referencing when they spoke to him on the phone. They denied that the text messages or emails were from them and stated that they did not park the U-Haul on the property, instead moving out on July 1, 2019.

The Landlord referenced an audio recording of a phone call in which the Tenants agree to the cost of the dump/garbage removal and that the Landlord can keep the security deposit towards the amount owed, along with a payment plan for the remainder of the costs.

The Tenants stated that they never had a phone conversation with the Landlord about the junk removal costs and never agreed that the Landlord could keep the security deposit.

The Landlord has also claimed \$58.23 for the cost of carpet cleaning and \$167.58 for the cost of lock rekeying. The Tenants agreed that they owed these amounts and that the Landlord may therefore deduct a total of \$225.81 from the security deposit.

Analysis

As the Landlord has claimed for monetary 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.

I also note that as stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, the Landlord has the burden of proof in this matter.

Regarding the claim for repairs in the rental unit, I find sufficient evidence to establish that there were areas of the rental unit that required repairs, including the door and repairs to the drywall.

I also find that the Condition Inspection Report establishes that this damage was not present at the start of the tenancy. As stated in Section 37 of the *Act*, a tenant must leave the rental unit reasonably clean and undamaged at the end of the tenancy. As I find the repairs needed to be beyond normal wear and tear, I find that the Tenants were in breach of the *Act* and should compensate the Landlord as a result.

I also note that although there were additional tenants through various tenancy agreements, that co-tenants are jointly and severally liable for damage caused during the tenancy. As the two Tenants named on this dispute were co-tenants on each of the tenancy agreements, I find that they are responsible for damage, regardless of whether it was directly caused by them or by another co-tenant.

Although the Tenants argued that they were not provided opportunity to inspect the rental unit at the end of the tenancy, I accept the evidence before me that demonstrates that the Tenants were aware of the time and date of the scheduled inspection but did not attend and instead asked the Landlord to complete the inspection without them. I also find evidence that the Tenants were provided with additional opportunities to attend a move-out inspection but did not do so.

I also accept that the Tenants received a copy of the inspection report and signed and returned it to the Landlord. Although the Tenants disputed this, the Landlord submitted significant amounts of evidence to support his testimony. While the Tenants denied that the text messages, emails and phone calls submitted into evidence were valid, I found the Landlord's evidence to be credible due to the multiple sources of evidence submitted in support of his claims and due to insufficient evidence before me to establish that the evidence was not valid.

As the Landlord has the burden of proof, I find that he submitted sufficient evidence to support his testimony and also do not find any reason to not find the Landlord's evidence credible and reliable. As such, I find that I rely more on the Landlord's

testimony, particularly given that the multiple forms of evidence submitted by the Landlord in support of his testimony.

Therefore, I am satisfied that the Landlord has met the burden of proof to establish that the Tenants caused damage to the rental unit during the tenancy. I am also satisfied as to the amount claimed as indicated on the invoice and therefore award the Landlord an amount of \$729.75 as claimed.

Regarding the Landlord's claim for junk removal in the amount of \$1,207.50, I again find that the Tenants were in breach of the *Act* by leaving garbage and junk behind and thus not leaving the rental unit reasonably clean at the end of the tenancy. I accept the Landlord's evidence which shows the number of items left behind which is also supported by the invoice for junk removal which outlines the items that were removed.

I also find that audio recording of a phone call with the Tenants to be evidence in support of the Landlord's testimony that items were left behind at the rental unit to be disposed of. In the audio recording, the Tenants agree as to items left behind and agree as to the cost as claimed by the Landlord.

Although a verbal agreement regarding a deduction from the security deposit is not binding in the same way that a written agreement is, I do find that the phone conversation establishes that the Tenants were initially in agreement as to items left behind. I also accept that this recording is of the Tenants, despite their claim that it was not them.

As I am satisfied as to the amount claimed by the Landlord and find that he was diligent in obtaining other quotes to get the best price, I award the Landlord an amount of \$1,207.50 as claimed.

As the Tenants agreed during the hearing to pay for carpet cleaning and lock rekeying, I award the amounts as claimed by the Landlord; \$58.23 for carpet cleaning and \$167.58 for lock rekeying.

Regarding the security deposit, Section 38(1) of the *Act* states that a landlord has 15 days from the later date of when the tenancy ends or when the forwarding address is provided in writing to return the deposit or file a claim against it.

The parties were not in agreement as to when the Tenants' forwarding address was provided. However, in the absence of evidence to show that it was provided on July 1,

2019, I accept the evidence before me that the Landlord received and accepted the forwarding address by email on July 13, 2019.

Although the parties were also not in agreement as to the date the tenancy ended, as this date is prior to the date the forwarding address was received, I do not find it necessary to determine. Instead, I find that the Landlord had 15 days from July 13, 2019 to return the security deposit or file the claim.

As the Landlord filed the Application for Dispute Resolution on July 26, 2019, I find that he applied within the time allowable under the *Act*, and therefore does not owe the Tenants double the deposit. The Landlord may retain the security deposit towards the compensation found to be owing.

As the Landlord was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee paid for the application in the amount of \$100.00.

The Landlord is granted a Monetary Order in the amount outlined below:

Repairs	\$729.75
Junk removal	\$1,207.50
Carpet cleaning	\$58.23
Lock rekeying	\$167.58
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$1,400.00)</i>
Total owing to Landlord	\$863.06

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$863.06** as outlined above. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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: December 12, 2019

Residential Tenancy Branch