



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL (Landlord)
 MNDCT, MNSD, FFT (Tenants)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlord filed the application October 11, 2019 (the “Landlord’s Application”). The Landlord sought compensation for damage, to keep the security deposit and reimbursement for the filing fee.

The Landlord filed an amendment December 03, 2019 adding \$600.00 to the claim for compensation.

The Tenants filed their application November 20, 2019 (the “Tenants’ Application”). The Tenants sought compensation for monetary loss or other money owed, return of the security deposit and reimbursement for the filing fee.

The Tenants filed an amendment January 15, 2020 changing the amount of the monetary claim to \$3,543.00

At the hearing, the Tenant confirmed the Tenants are seeking double the security deposit back.

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions about the process when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages, amendments and evidence and no issues arose at the outset.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

Landlord's Application:

1. Is the Landlord entitled to compensation for damage?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Tenants' Application:

4. Are the Tenants entitled to compensation for monetary loss or other money owed?
5. Are the Tenants entitled to return of double the security deposit?
6. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Patching and painting	\$2,180.00
2	Changing the door locks	\$129.59
3	Change in rent amount	\$600.00
4	Filing fee	\$100.00
	TOTAL	\$3,009.59

The Tenants sought the following compensation:

Item	Description	Amount
1	Rent amount owing	\$693.00
2	Return of security deposit	\$950.00 (\$1,900.00 at hearing)
3	Landlord entering rental unit without permission	\$1,900.00
4	Filing fee	\$100.00
	TOTAL	\$4,593.00

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started October 15, 2018 and was for a fixed term ending October 15, 2019. Rent was \$1,900.00 per month due on the 15th day of each month. The Tenants paid a \$950.00 security deposit.

The parties agreed the tenancy ended September 05, 2019.

The Tenant testified that the Tenants provided their forwarding address in writing to the Landlord October 01, 2019. The Tenant testified that the numbers in the address were wrong and so the forwarding address was provided again October 24, 2019.

The Landlord agreed he received the Tenants' forwarding address in writing October 01, 2019 and the new address October 24, 2019.

The parties agreed on the following. The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Landlord testified as follows in relation to a move-in inspection. The parties did a move-in inspection on October 15, 2018. He left the Condition Inspection Report (CIR) with the Tenant to complete and give back to him. The Tenant completed the CIR. He did not sign the CIR. He had given the Tenant two copies of the CIR, she kept one and gave him one.

The Tenant agreed with the Landlord above the above. The Tenant testified that she did not sign the CIR.

The parties agreed on the following. They did a move-out inspection September 04, 2019. The Landlord completed the CIR. Neither party signed the CIR.

The Landlord testified that he did not give a copy of the move-out CIR to the Tenants at move-out because they just left. He could not recall if a copy of the move-out CIR was sent to the Tenants in the evidence package for this hearing.

The Tenant testified that the move-out CIR was not in the evidence package for this hearing.

Given the issue with service of the move-out CIR, I asked the parties for their position on whether the move-out CIR should be admitted as evidence or excluded. The Tenant took the position that the move-out CIR submitted should be excluded because she does not know if it the same as what she saw on move-out. The Landlord took the position that the move-out CIR should be admitted because the parties completed it together and the Tenants did not wait for a copy.

Landlord's Application:

Patching and painting \$2,180.00

The Landlord testified as follows. The Tenants left significant damage in the rental unit. He could not re-rent the unit without patching and painting. He tried to make it so the rental unit was in the same condition as when the Tenants moved in.

The Landlord relied on photos submitted and pointed to dents on the wall, damage to the doors and patches. The Landlord submitted a video of the rental unit.

The Landlord submitted an invoice for the patching and painting. In relation to the amount sought, the Landlord testified that patching and painting was done throughout the whole rental unit including the entrance door and hallway which was damaged due to the Tenants moving their furniture. The Landlord testified that the Tenants patched some of the damage and the painter patched some of the damage. The Landlord testified that it took the painter one-and-a-half days to patch and paint. The Landlord did not know how much the painter charged per hour.

The Landlord testified that he purchased the rental unit two years ago and everything was brand new.

The Tenant testified as follows. There were picture holes and holes from the television in the walls at the end of the tenancy. She patched all the holes. The Landlord told her not to worry about painting, otherwise she would have done the painting. The Landlord is charging for patching and painting a common area which is shown on the invoice.

The Tenant questioned how the Landlord knows it was the Tenants who caused the damage in the common area.

In reply, the Landlord denied telling the Tenant not to worry about painting.

Changing the door locks \$129.59

The Landlord testified that the Tenants did not return the keys to him at move-out and therefore he had to change the locks to the rental unit.

The Landlord relied on a receipt submitted showing the cost of a deadbolt and keys.

The Tenant testified that the Tenants returned the keys to the Landlord at the end of the tenancy.

Change in rent amount \$600.00

The Landlord sought \$600.00 for loss of rent. He relied on Policy Guideline 3.

The Landlord testified as follows. The Tenants broke the fixed-term tenancy. The Tenants paid \$1,900.00 in rent. He had to re-rent the unit for \$1,850.00.

The Landlord acknowledged that he understood as of August 05, 2019 that the Tenants were vacating the rental unit early.

The Landlord submitted the tenancy agreement with the new tenants showing rent is \$1,850.00.

The Tenant testified as follows. The Tenants gave notice ending the tenancy. They paid rent up until September 15, 2019. They moved September 05, 2019 because the new tenants wanted to move in September 06, 2019.

The Tenant acknowledged the Tenants broke the fixed-term tenancy early.

Tenants' Application:

Rent amount owing \$693.00

The Tenant testified as follows. The Tenants paid rent on the 15th of each month. They paid rent up until September 15, 2019. The Landlord re-rented the unit for September 06, 2019. The Tenants want the Landlord to return the rent they paid for September 06, 2019 to September 15, 2019 when they were not living in the rental unit and the new tenants were living in the rental unit.

The Tenant agreed rent for September 06, 2019 to September 15, 2019 was \$633.33 not \$693.00.

The Landlord acknowledged he collected rent from the new tenants starting September 06, 2019. The Landlord said he previously misunderstood the law and is now agreeing to refund the \$633.33.

Landlord entering rental unit without permission \$1,900.00

The Tenant testified that the Landlord entered the rental unit and took a photo without the Tenants' permission to enter the rental unit. The Tenant relied on a photo taken by the Landlord. The Tenant pointed out that the photo shows it was taken when the Tenants were still living in the rental unit.

I asked the Tenant why the Tenants would be entitled to \$1,900.00 for this issue. The Tenant stated as follows. She is not sure. It was "unmoral" and dishonest of the Landlord to enter the rental unit. She does not know how many times the Landlord has done this so thought \$1,900.00 was appropriate.

The Landlord testified as follows. He had a short time to show the rental unit to the painter once the Tenants moved their belongings out September 04, 2019. There were "no items" from the Tenants left other than pieces of paper. He took the photo in issue and sent it to the Tenants. He was in the rental unit a short period of time.

The Landlord maintained the photo was taken September 04, 2019. The Landlord acknowledged the Tenants were not home at the time he entered and took the photo. The Landlord testified that the parties had a mutual discussion "so many times" about him being permitted to go into the rental unit without the Tenants being present in

relation to the painting. The Landlord acknowledged he did not give the Tenants notice that he was going to enter the rental unit.

In reply, the Tenant denied that the Tenants gave the Landlord permission to enter the rental unit without them present in relation to the painting.

Analysis

Security deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act*. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

The parties agreed the Tenant participated in the move-in and move-out inspections and therefore I find the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

I do not find it necessary to determine whether the Landlord extinguished his rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlord has claimed for loss of rent.

The parties agreed the tenancy ended September 05, 2019.

The parties agreed the Landlord received the Tenants' forwarding address in writing October 01, 2019 and October 24, 2019. I find October 01, 2019 to be the relevant date for the purposes of section 38(1) of the *Act*.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from October 01, 2019 to repay the security deposit or file a claim against it. The Landlord's Application was filed October 11, 2019, within the 15-day time limit. I find the Landlord complied with section 38(1) of the *Act*. The Tenants are not entitled to double the security deposit back.

Compensation

Section 7 of the *Residential Tenancy Act* (the “*Act*”) states:

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.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- 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.

Pursuant to rule 6.6 of the Rules of Procedure (the “Rules”), it is the applicant who has the onus to prove their own claim.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Evidence

In relation to the move-out CIR, I am not satisfied it was ever provided to the Tenants given the testimony of the parties on this point. The Landlord was required to provide a copy to the Tenants pursuant to section 35 of the *Act* and 3.14 of the Rules. Given the

Landlord did not provide it to the Tenants as required, I exclude the move-out CIR and have not considered it. I find it would be prejudicial to admit the move-out CIR when the Tenants have not seen it and cannot confirm it is the same document they saw upon move-out.

Landlord's Application:

Patching and painting \$2,180.00

Section 37(2)(a) of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

The Tenant acknowledged there were picture holes and holes from the television in the walls of the rental unit at move-out. The Tenant testified that she patched all of the holes. Based on the photos submitted, I am satisfied there were numerous holes patched throughout the rental unit at move-out. Based on the move-in inspection, I am satisfied there were not numerous holes in the walls at move-in. Therefore, I am satisfied the Tenants caused the holes shown in the photos.

Policy Guideline 1 states:

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.

I am satisfied the Tenants are responsible for patching and painting the walls given the number of holes shown in the photos and given it would be unreasonable to expect the Landlord to leave the walls patched and not painted.

I am not satisfied the Tenants are responsible for patching and painting common areas as there is insufficient evidence that the Tenants are responsible for causing damage to the common areas.

I am not satisfied the Landlord told the Tenants not to worry about painting. The Landlord denied this. The Tenants did not submit documentary evidence to support this. I would expect such an agreement to be in writing given the importance of tenants leaving the rental unit undamaged expect for reasonable wear and tear.

Based on the invoice submitted, I accept that the Landlord paid \$2,180.00 for patching and painting the rental unit and common areas.

I am not satisfied the Landlord is entitled to compensation for the full amount of the invoice for the following reasons. Pursuant to Policy Guideline 40, the useful life of interior paint is four years. The Landlord testified that the rental unit was brand new two years ago. The Tenant did not dispute this. I accept this. I find the Landlord got at least one-and-a-half years use out of the brand new paint. The Landlord is not entitled to compensation for brand new paint. I reduce the amount of compensation awarded taking into account the useful life of paint and age of the paint.

I also reduce the amount of compensation awarded as I am satisfied the painter charged for common areas. The Tenant testified that this was the case. The Landlord did not dispute this. The invoice shows the suite, hallway and stairs were patched and painted. I am satisfied this includes common areas. The Landlord is not entitled to compensation for patching and painting common areas as I am not satisfied based on the evidence provided that the Tenants are responsible for damage to the common areas.

I also reduce the amount of compensation awarded given the lack of information on the invoice. The invoice is not detailed. I cannot tell from the invoice what was done in the rental unit and what was done in the common areas. I am satisfied based on the testimony of the Tenant and photos submitted that the Tenant patched the holes in the rental unit. I am not satisfied the Landlord is entitled to compensation for the painter doing further patching in the absence of further evidence justifying this. The invoice

does not state how long the patching and painting took. It does not state how much the painter charged per hour.

In the circumstances, I award the Landlord \$545.00 for the painting pursuant to section 67 of the *Act*. I find this amount reasonable taking into account the above noted reductions.

Changing the door locks \$129.59

Section 37(2)(b) of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must...

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The Landlord testified that the Tenants did not return their keys. The Tenant testified that the Tenants did return their keys. The Landlord did not point to further evidence to support his testimony on this point. This is an issue that both parties should have ensured was reflected on the move-out CIR. I have not considered the move-out CIR for the reasons stated above and therefore do not rely on it to support either position. In the circumstances, I am not satisfied the Landlord has met his onus to prove the Tenants failed to return their keys. I decline to award the Landlord the compensation sought.

Change in rent amount \$600.00

There is no issue that the Tenants ended the fixed term tenancy early. This was a breach of the tenancy agreement and section 45(2) of the *Act*.

Based on the written tenancy agreement with the new tenants submitted, I accept that the Landlord re-rented the unit for September 06, 2019 with a rent amount of \$1,850.00 per month.

There is no issue that the Tenants paid \$1,900.00 in rent per month. I accept that the Landlord lost rent due to the Tenants' breach. I do note pursuant to Policy Guideline 3 that the Landlord would only be entitled to claim for loss for the balance of the

un-expired term of the tenancy. The un-expired term here is from September 06, 2019 to October 15, 2019, not for 12 months as claimed by the Landlord.

However, I am not satisfied the Landlord has proven he mitigated his loss in this regard. The Landlord testified that he had to re-rent the unit for \$1,850.00. However, the Landlord did not submit sufficient evidence to support his verbal testimony on this point. The Landlord did not submit sufficient evidence showing he attempted to rent the unit for \$1,900.00 but was unsuccessful. This is the type of evidence I would expect when a Landlord is claiming for loss of rent.

I decline to award the Landlord the compensation sought.

Filing fee \$100.00

Given the Landlord was partially successful, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Tenants' Application

Rent amount owing \$693.00

The Landlord agreed to return \$633.33 to the Tenants. The Tenants are awarded this amount.

Landlord entering rental unit without permission \$1,900.00

Section 29 of the *Act* states:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

There is no issue that the Landlord entered the rental unit without the Tenants present and took the photo submitted by the Tenant. The Landlord did not dispute this.

The Landlord took the position that he entered September 04, 2019 and that the Tenants had removed all of their belongings except some papers. I do not accept this. The photo shows numerous personal items on the counter.

In any event, the tenancy did not end until September 05, 2019. Therefore, the Landlord was not permitted to enter the rental unit, other than in accordance with section 29 of the *Act*, on September 04, 2019. It is irrelevant whether the Tenants had removed their belongings or not.

The Landlord took the position that the Tenants gave him permission to enter the rental unit in relation to the painting. The Tenant denied this. I do not accept that the Landlord had the Tenants' permission to enter the rental unit. I would expect such an agreement to be in writing given the importance of a landlord's rights and obligations in relation to entering a rental unit during a tenancy.

I am satisfied the Landlord breached section 29 of the *Act*.

The Landlord should have been aware of his obligations under section 29 of the *Act*. The rental unit was not the Tenants' own property, but it was their home on September 04, 2019. It had their personal belongings in it. The Landlord entered, in breach of the *Act*, and took a photo of the Tenants' personal belongings. I find the breach serious.

I am satisfied the Tenants are entitled to compensation for the Landlord's breach. I am not satisfied the Tenants are entitled to \$1,900.00. I find this amount excessive and unreasonable in comparison to the breach and any effect it could have had on the Tenants. Further, the Tenants are not entitled to compensation on the basis that they do not know how many times the Landlord entered the rental unit in breach of the *Act*. The Tenants are only entitled to compensation for the instances that they can prove the Landlord entered the rental unit in breach of the *Act*.

I award the Tenants \$127.00 for this issue pursuant to section 67 of the *Act*. I have calculated this amount based on the cost of rent for two days. I find this amount reasonable balancing the seriousness of the breach with the fact that the Tenants still had use of the rental unit despite the breach.

Filing fee \$100.00

Given the Tenants were partially successful, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the parties are entitled to the following:

Landlord:

Item	Description	Amount
1	Patching and painting	\$545.00
2	Changing the door locks	-
3	Change in rent amount	-
4	Filing fee	\$100.00
	TOTAL	\$645.00

Tenants:

Item	Description	Amount
1	Rent amount owing	\$633.33
2	Return of security deposit	\$305.00
3	Landlord entering rental unit without permission	\$127.00
4	Filing fee	\$100.00
	TOTAL	\$1,165.33

The Landlord can keep \$645.00 of the \$950.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord must return \$305.00 of the security deposit to the Tenants. The Landlord owes the Tenants an additional \$860.33. Therefore, the Landlord must pay the Tenants \$1,165.33 in total. The Tenants are issued a monetary order for this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlord can keep \$645.00 of the \$950.00 security deposit. The Landlord must return \$305.00 of the security deposit to the Tenants. The Landlord owes the Tenants an additional \$860.33. Therefore, the Landlord must pay the Tenants \$1,165.33 in total. The Tenants are issued a monetary order for this amount. This Order must be served on the Landlord as soon as possible. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: February 11, 2020

Residential Tenancy Branch