



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S MNRL-S

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$34,938.69 pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:14 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. Both landlords attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

Landlord MB testified that she personally served the tenant with the notice of dispute resolution form and evidence in late 2019 (shortly after receiving the notice of dispute resolution proceeding package from the Residential Tenancy Branch). I find that the tenant was served with these documents in accordance with the Act.

Preliminary Issue – Uploading of Document

At the hearing, it quickly became apparent that the landlords neglected to provide a copy of the Move-In/Move-Out Condition Inspection Report (the "**Inspection Report**") to

the RTB. The landlords testified that this document was included in their evidence they served on the tenant in late 2019. Accordingly, I permitted the landlords to upload a copy of the Inspection Report to the RTB's online evidence system during the hearing.

Issues to be Decided

Are the landlords entitled to:

- 1) a monetary order of 34,938.69; and
- 2) retain the deposits in partial satisfaction of any monetary order made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlords, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting February 1, 2018. Monthly rent was \$3,350 and was payable on the first of each month. The tenant paid the landlords a security deposit of \$1,675 and a pet damage deposit of \$1,675. The landlords still retain these deposits.

The rental unit is a 3,100 square foot single-detached house, with high, vaulted ceilings.

The tenancy agreement included a "No Smoking Addendum", signed by the tenant and landlord RB on January 10, 2018, which stated:

Tenant is to maintain a smoke-free environment in the property at all times.

Tenant is responsible for all residents, guests, invitees, and all other parties adhering to the smoke-free policy.

Tenant understands and agrees to be responsible for any damage caused by smoking any substance in the property. Damage includes, but is not limited to, deodorizing carpets and drapes, necessary painting, replacement of drapes and/or carpets, repairing burn marks, and any other costs incurred by smoke damage.

Any violation of this addendum is a material violation of the rental agreement.

The landlords conducted a condition inspection at the start of the tenancy. The tenant attended and signed the Inspection Report provided to him at that time.

The landlords testified that the vacated the rental unit at some point in early March 2019, one month prior to the end of the term of the tenancy. He did not pay any rent for March 2019.

The landlords were out of the country when the tenant left the rental unit. Landlord RB testified that when they returned to the country, they attended the rental unit and discovered it smelled of tobacco smoke throughout the house. The rental unit was also not adequately cleaned. There was water damage to the ceiling and glass panes were missing from the dining room chandelier.

On March 26, 2019, Landlord RB emailed the tenant, with a list of alleged damage to the rental unit, as follows:

- 1) A strong smoke odor (cigarette or cigar) is apparent immediately upon entering, throughout the main floor and to a lesser extent on the upper floor- it is apparent that you did not abide by the Non-Smoking Addendum to your lease - remediation requirements detailed on the signed copy attached. We acknowledge that we had planned some repainting on your departure to address minor mismatch issues.
- 2) We appreciate that your recent injury makes it difficult for you to get around and that you have not been able to inspect the house yourself after your movers completed - the house has been left tidy but it has not been cleaned - the entire house needs cleaning (particularly the guest bathroom) and the carpets need to be shampooed (hopefully this will address some of the smoke odor issues).
- 3) Extensive water damage to the ceiling in the main floor office and additional damage to the carpet in the guest bedroom at the base of the wall adjacent to the master bathroom - this originated with the plugged toilet that overflowed while you were out of town and your mother was staying at the house. My son attended (as I was also out of town), found the toilet overflowing, plunged the toilet to clear the drain and checked to make sure everything was working properly. We suggested at the time that you claim this on your renter's insurance. Please advise if this claim has proceeded and provide contact information for your renter's insurance.
- 4) Damage to 4 panes of glass in the dining room light fixture - 3 missing and one cracked. Two of the smallest panes, in addition to the 3 mentioned, are our responsibility.

- 5) The dishwasher will not complete a cycle - the plugged drain light comes on after only a few minutes.
- 6) The handle on the freezer compartment of the fridge is broken (now held together with electrician's tape).
- 7) Pet damage to garden planting - since there is also winter kill and the pet damage is not too significant we will attend to this at our cost.
- 8) Light bulbs in the living room and 5 in the entry chandelier are burnt out.
- 9) 2 bedside table lamps are missing from the spare bedroom and replaced with only one lamp with a small black shade.
- 10) Draperies in the kitchen and some hanging in the upstairs closet are not ours.
- 11) Carpet stains in the family room, master bedroom, upstairs spare bedroom and outside the laundry room. The carpets will need to be cleaned as noted above and we unsure whether these stains will come out. We acknowledge there was minor discoloration in the family room carpet when you moved in.
- 12) The master bedroom deck drain was plugged with debris, it appears rain water backed up resulting in leakage into the ceiling and wall in the kitchen that now exhibit significant water damage.
- 13) The alarm system that was installed and operable at the commencement of your lease has been replaced with another system (but currently not communicating with the Radius Alarm Company) - this may be acceptable but we will require the system information, account number and access codes.
- 14) There are carpets and sundries in the garage and a few items in the garden shed that are not ours.

In this email, landlord RB asked the tenant to attend the rental unit with him and go over the damage together. The tenant refused. In an email dated March 28, 2019, the tenant wrote: "I'm not coming to the house to go over anything. It looks as though you've gone over everything and there is no need for argument or debate as well based on my leg injury".

In this email, the tenant also denied that:

- 1) he breached the Non-Smoking Addendum;
- 2) water damage on the main floor offices were caused by him;
- 3) he damaged the dishwasher;
- 4) two bedside table lamps were ever in the spare bedroom;
- 5) there were carpet stains;
- 6) water pooled on the master bedroom deck drain; and
- 7) the ceiling or wall of the kitchen has water damage.

In this email the tenant admitted that:

- 1) further cleaning was required;
- 2) his movers damaged the panes of glass in the chandelier;
- 3) he damaged that freezer handle;
- 4) he did not change the light bulbs;
- 5) he took down some of the draperies of the landlord and moved them to the garage;
- 6) he replaced the landlord's alarm system with his own; and
- 7) he may have left a few items in the garage and shed.

The landlords submitted a letter from two cleaners dated April 22, 2019, which states:

This statement is written in regards of a smell problem that occurred at [rental unit] while the property was rented by [the tenant].

We were hired by [landlord MB] for house cleaning when her and her husband were still living at that house. At that time, there was no particular smells like smoke smell or any other kind of smells present.

In March of 2018, after [the landlords] moved out, we were hired by [the tenant]. We continued our work there every second week until March of 2019. After our first couple cleanings with [the tenant], we noticed the presence of a smell that resembled very much the one after the smoking of a cigarette. Also, with time the smell became much stronger.

Thus, we confirm that the smoke smell occurred only after [the tenant] moved into the house and not before that.

The landlord submitted photographs of the rental unit showing that cleaning is needed throughout.

The landlords updated the Inspection Report on March 29, 2019 to reflect the damage listed in its March 26, 2019 email.

The landlords testified that, in an effort to remove the smoke smell from the rental unit they had the entire house cleaned and cleaned and disinfected the carpets and drapes. They testified that this did not eliminate the smell of smoke. They testified the walls still smelled of tobacco. They testified that they had to have the walls and ceilings

throughout the rental unit sealed (to contain the smell) and then painted. They testified that they last painted the rental unit roughly two years prior to the end of the tenancy.

The landlords submitted a monetary order worksheet setting out the costs they incurred remediating the damage to the rental unit. They provided receipts to support each amount claimed.

Drapery cleaning	\$543.07
Carpet cleaning and disinfectant	\$447.30
House cleaning (pre-drywall and paint)	\$250.00
House cleaning (post-painting)	\$175.00
Painting (labour and materials) Receipt 1	\$11,051.25
Painting (labour and materials) Receipt 2	\$7,339.50
Replacement of damaged dining room light fixture panels	\$782.50
Replacement and reconfigure after removal of security system	\$529.07
Clean all windows for smoke residue	\$420.00
Total	\$21,537.69

I note that the landlords have not claimed compensation for many of the items they referenced in their March 26, 2019 email.

The landlords testified that the multiple cleaning attempts and repainting of the rental unit took three months. They testified that even after the work was done, the rental unit smelled slightly of smoke, and that they had to rent it out at a lower rate (they have not made a claim for this difference in rent).

The landlords claim for the unpaid rent of March 2019 (\$3,350), and for the loss of rent for the months of April, May, and July 2019 (\$10,050), as they were unable to rent the rental unit during this time due to extensive cleaning and smoke remediation being made. They testified the rental unit was re-rented for July 1, 2019.

Analysis

1. March Rent

I find that the tenancy agreement is for a fixed term ending April 1, 2019

Section 45 of the Act states:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As such, the tenant is not entitled to end the tenancy prior to April 1, 2019. Accordingly, he must pay rent for March 2019, even if he vacated part-way through that month.

I order that the tenant pay the landlord \$3,350 representing payment of March 2019 rent.

2. Damage to rental unit and loss of ability to re-rent

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

Section 37 of the Act states:

Leaving the rental unit at the end of a tenancy

37(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

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim.

So, the landlords must prove, on a balance of probabilities, that:

- 1) the tenant failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy;
- 2) they suffered a specific monetary loss as the result of this damage; and
- 3) they acted reasonable to minimize their loss.

a. Security System

Based on the landlords' testimony and the tenant's March 28, 2019 email, I find that the tenant removed the security system installed in the rental unit at the start of the tenancy and installed his own.

Policy Guideline 1 states:

The tenant who has installed an alarm system, and then moves out, must either:

- leave the system in the unit; or
- remove the system and repair any damage caused to the unit during installation or removal.

If a security system is provided in the premises when the tenant moves in, the landlord is responsible for maintaining and repairing the security system unless the security system is damaged by the tenant or a person permitted in the premises by the tenant, in which case the tenant shall be responsible for the cost of repair

As such, I find that by installing his own security system and removing the landlords', the tenant damaged the rental unit unreasonably, and is liable for the cost of repairs.

Based on the receipt submitted into evidence, I find that the landlords paid \$529.07 to re-install their security system. I find that this is a reasonable amount. I order the tenant to repay the landlords this amount.

b. Dining Room Lighting Fixture

Based on the landlords' testimony and the tenant's March 28, 2019 email, I find that the tenant damaged the landlords' dining room light fixture. The tenants submitted a receipt in the amount of \$900.28, for the replacing of 6 glass panels in the light fixture. From this they deducted the cost of one of the glass panel to arrive at the total claimed of \$782.50. However, the Inspection Report indicates that two glass panels were damaged at the start of the tenancy, and that three *additional* glass panels were damaged or missing at the end of the tenancy.

Accordingly, I find that the tenant is responsible for damaging three of the glass panels, not five, as claimed by the landlord.

I order that the tenant pay the landlords \$450.14, representing half of the cost to replace six glass panels indicated on the receipt submitted by the landlords.

c. Cleaning and Painting

Based on the testimony of the landlords, the photographs of the rental unit submitted into evidence, and the tenant's March 28, 2019 email, I find that the rental unit required additional cleaning at the end of the tenancy. I find that the amounts claimed by the landlords are reasonable amounts to pay to have the rental unit cleaned. Accordingly, I order the tenant reimburse the landlords for these costs.

Based on the testimony of the landlords and the letter from the tenant's cleaners, I find that the rental unit smelled of tobacco smoke at the end of the tenancy, and that it did not smell of tobacco smoke at the start of the tenancy. I find it reasonable to conclude that the tenant caused the rental unit to smell this way by smoking tobacco inside the rental unit.

This is a breach of the No Smoking Addendum, as well as section 37 of the Act.

I accept the landlords' testimony that they first tried to eliminate the odor by conducting a deep clean of the carpets and curtains. I accept their evidence that this was not successful. I find that it was reasonable for them to then seal and re-paint all the walls and ceilings in the rental unit.

I accept the landlord's evidence, supported by the receipts submitted, that the cost to seal and repaint the interior of the rental unit was \$18,390.75. Given the size of the

rental unit (3,300 square feet), the necessity to seal all the walls, and the fact the rental unit has vaulted ceilings, I find this amount to be reasonable.

However, this does not mean that the tenants are entitled to recover the full amount of this expense.

Policy Guideline 40 states:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. [...]

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 lists interior paint's useful life as four years. In normal circumstances, as the interior paint was two years old at the time it was replaced, this would mean that the landlord would be entitled to recover 50% of the cost of repainting. However, in this case, the cost claimed includes the cost of sealing the interior walls. I have no evidence before me to show what portion of the cost claimed was for "sealing", and what portion was for "repainting". As I understand that all surfaces had to be sealed before they could be painted, I find it reasonable to assign half the cost to seal and repaint the interior of the rental unit to "sealing" (\$9,195.38), and half to "repainting" (\$9,195.38).

The cost of sealing the walls should not be reduced by any amount per Policy Guideline 40. The cost of repainting the rental unit should be reduced by 50% per Policy Guideline 40. Accordingly, I order the tenant to pay the landlord \$13,793.06 in compensation for the full cost of sealing and half the cost of repainting the rental unit walls and ceiling.

3. Lost Rent

I accept the landlords' uncontroverted testimony that it took three months to clean and repaint the rental unit to eliminate the smoke smell. This testimony is corroborated by the receipts from the painting company, dated June 11, 2019 and June 28, 2019. I find that it was reasonable to first attempt to eliminate the smell by cleaning the carpets and drapes before undertaking to paint the rental unit.

I find that, as a result of the smell and the working required to eliminate the smell, the landlords were unable to rent the rental unit for the months of May, June, and July 2019. Accordingly, I find that they lost three months of rental income as a result of the tenant's breach of the No Smoking Addendum. I order that the tenant pay the landlords \$10,050 representing the loss of income for these months.

4. Filing Fee and Security Deposit

As the landlords have been substantially successful in their application, they may recover their filing fee from the landlord.

Per section 72(2) of the Act, the landlords may retain the security deposit and the pet damage deposit in partial satisfaction of the monetary orders made.

Conclusion

Pursuant to sections 38, 67, and 72 of the Act, I order the tenant pay the landlord \$26,757.64, representing the following:

Cleaning	\$1,835.37
Sealing and Painting	\$13,793.06
Light Fixture	\$450.14
Alarm System	\$529.07
Unpaid March 2019 Rent	\$3,350.00
Loss of Rent (April to June)	\$10,050.00
Filing fee	\$100.00
Credit for Deposits	-\$3,350.00
Total	\$26,757.64

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: March 13, 2020

Residential Tenancy Branch