Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT, MNDL, MNDCL, FFL

Introduction

This hearing involved cross applications made by the parties. On September 10, 2019, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Sections 51 and 67 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 28, 2019, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was set down for a hearing on January 13, 2020 and was subsequently adjourned to be heard on March 17, 2020 as there was not enough time to complete the hearing initially.

Both the Tenants and both the Landlords attended the adjourned hearing. All parties provided a solemn affirmation.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation based on the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?

- Are the Tenants entitled to recover the filing fee?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 15, 2013 and ended when the Tenants gave up vacant possession of the rental unit on June 4, 2019 based on being served the Notice. Rent was established at $1,100.00 per month, due on the first day of each month. A security deposit of $500.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

All parties agreed that the Landlords served the Notice on April 28, 2019 by hand. The reason the Landlords checked off on the Notice was because “The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).” The Landlords indicated on the Notice that the effective end date of the tenancy was July 1, 2019. A copy of this Notice was submitted as documentary evidence, for consideration.

Tenant J.S. advised that they did not care about the compensation. Their issue is that the Landlords claimed that the purpose for the Notice was for their sister to move in, and despite this not even being in compliance with the *Act*; the sister did not move in. Rather, the rental unit was renovated and sold.

Tenant G.F. advised that as per the evidence that the Landlords submitted, their sister did not even move into the rental unit and the sister’s letter indicated that she would only need additional care for six to eight weeks. He questioned how it made sense that the Landlords would need to renovate the rental unit for the sister’s use if she only required it for this short period of time. He stated that the Landlords told them not to worry about the damage left behind as they wold be renovating the rental unit anyways. He also submitted that the Landlords clearly made no efforts to use the rental unit for the stated purpose on the Notice. As such, the Tenants are seeking compensation in the amount equivalent to 12 months’ rent (**$13,200.00**) pursuant to Section 51(2) of the

Act as the Landlords did not use the rental unit for the stated purpose for at least six months after the effective date of the Notice.

The Tenants were seeking compensation in the amount of **$60.00** for cleaning of the rental unit and **$119.00** for the cost of moving expenses; however, the Tenants were advised that there are no provisions in the *Act* for these expenses. As such, these claims were dismissed in their entirety.

Landlord V.C. served the Notice and told the Tenants that her sister might move into the rental unit, but she did not say that her sister would only occupy the rental unit for only six to eight weeks. After the Tenants vacated the rental unit, the Landlords left it empty and did not occupy it, they fixed it and renovated it, and then they sold it in September 2019. She stated that there were no extenuating circumstances that prevented the from using the rental unit for the stated purpose on the Notice, for at least six months after the effective date of the Notice.

All parties agreed that a move-in inspection report was not conducted. V.C. added that they could “not remember” if they conducted a move-in inspection report; however, the rental unit was “brand new” at the start of the tenancy. V.C. advised that the Tenants refused to sign the move-out inspection report at the end of the tenancy; however, the Tenants advised that they did sign the move-out inspection report while they stood in the kitchen and discussed the damage that the Landlord pointed out. A copy of the move-in and move-out condition inspection report was submitted as documentary evidence by the Landlords and neither the Landlords’ nor the Tenants’ signatures appear anywhere on this document.

V.C. advised that they are seeking compensation in the amount of **$3,675.00** for the cost of painting and sanding 50 – 100 holes in the walls left by the Tenants, that the Tenants had mudded excessively. She stated that baseboards were cracked, that there was ceiling damage, and that there was damage from nails in the walls. She submitted that the painter had to remove baseboards, fill in nail holes sand off the excess mud left by the Tenants, and then re-paint entirely. She stated that the painter spent a full day painting the ceiling and spent about three or four full days completing the work, but she was not sure of the exact number of hours spent or how much the painter charged per hour. She stated that the rental unit was last painted in 2013. She also referenced the pictures and the invoice of the painter, submitted as documentary evidence, to support her claim.

The Tenants stated that the Landlords told them not to worry about the damage when they met on the last day of the tenancy. V.C. denied this and stated that they did not tell the Tenants that they would re-paint anyways. The Tenants advised that the rental unit was not brand new at the start of the tenancy as the building was built in 2010 and there were previous tenants in the rental unit before them. V.C. reconsidered her earlier claim that the rental unit was brand new in 2013 and then acknowledged that it was a "couple of years old" and that there were previous tenants living in the rental unit prior to 2013. The Tenants referenced V.C.'s sister's letter which confirmed that the rental unit had not been painted within the last 10 years. They stated that they mudded the holes at the end of tenancy and those holes were simply wear and tear. They then stated that they "thought" they signed the move-out inspection report, that they did not agree with the damage listed, and that they did not receive a copy of that report.

V.C. stated that they had to paint the rental unit as they had no choice given the amount of mud the Tenants left on the walls. As well, she stated that the Tenants acknowledged that they were responsible for this mudding. She added that the rental unit was not rented to them with all the mud holes in the walls and then she acknowledged that the rental unit was not painted within the last 10 years.

G.F. stated that they believed they were doing the Landlords a favour by mudding all the holes in the walls and if he thought the Landlords would seek compensation for this, he would have left it entirely without mudding. He stated that he also offered to sand the mud and re-paint; however, the Landlords declined this offer. He stated that the Landlords advised them that they would not pursue them for the re-painting, and this is echoed in their own evidence indicating that they would not charge the Tenants for the damage noted.

V.C. stated that they were at the rental unit fixing many issues. She stated that the Tenants never offered to paint and sand and that she wrote the letter stating that they would not pursue damages as they were being nice and were fed up with being harassed.

V.C. advised that they are seeking compensation in the amount of **$134.36** for the cost of replacing blinds in the bedroom that were chewed and bent by the Tenants' cat. The blinds were brand new at the start of the tenancy and she referenced the pictures and invoice, submitted as documentary evidence to support this claim.

G.F. advised that they replaced these blinds at the end of the tenancy, and he referenced a picture with the tags still on them. He also stated that there was a set of

blinds that were “maybe” damaged, but this was a result of the previous tenants’ cats. He stated that the hardware on this set still worked and that the Landlords should not be seeking compensation for them.

V.C. reiterated that the pictures they submitted reflect this damage and stated that the Tenants did not replace the blinds. The Landlords replaced all the blinds in the rental unit as they were all chewed and bent.

G.F. reiterated that they replaced the blinds in the master bedroom only but did not replace the ones in the secondary bedroom as the hardware was still functioning.

V.C. advised that they are seeking compensation in the amount of **$80.25** and **$235.65** for the cost of replacing the living room and patio blinds as the tracks were broken and they could not be moved. She stated that the living room blinds were four years old and the patio blinds were 10 years old. She referenced the picture and invoice, submitted as documentary evidence; however, she did not submit a picture of the patio blinds.

J.S. advised that the living room blinds were actually six years old and the patio blinds were there when they moved in. G.F. acknowledged that the twist arm of the living room blinds was broken but he is not sure when this happened. The hardware on the patio blinds still worked but there was cosmetic damage from to them. He could not recall the state of the blinds at the start of the tenancy, but they were in “fairly good shape” at the start.

V.C. stated that there were no frayed strings on the blinds, but the tracks of the blinds were damaged and not working.

L.S. advised that the Landlords may be confused as the blinds were vertical up and down blinds and there were not tracks. G.F. advised that if there were damaged blinds that were not working, he would have replaced them.

V.C. stated that the picture of the bedroom blinds show that the Tenants did not replace them; therefore, it is not likely that the Tenants replaced the other blinds either.

V.C. advised that they are seeking compensation in the amount of **$150.00** for the cost of the strata move out fee. She stated that they paid this fee to the strata as the Tenants did not, but she has no evidence of this payment. She submitted that the Tenants signed the Form K upon move in, that they were provided a copy of the strata bylaws at

the start of the tenancy, and that they would have been updated via email by the strata of any changes.

The Tenants advised that there was a miscommunication about this move out fee and they were shocked to find out they had to pay it as they were not made aware of this. G.F. asked the Landlords if this was in the bylaws and if they could get a copy of them as they were never provided at the start of the tenancy, but they were never made aware of this requirement.

V.C. stated that she sent the Tenants an email and that the Tenants were provided with a copy of the bylaws. As well, they would have received emails from the strata throughout the tenancy.

Finally, V.C. advised that they are seeking compensation in the amount of **$135.00** for the cost of fixing a light that the Tenants broke and left the wires hanging dangerously. She referenced pictures of this light and an invoice, submitted as documentary evidence, to support this claim.

The Tenants acknowledged that the cover of the light fell and broke and they then cinched up the wire to the light so it would not hang so low.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 49 of the *Act* defines a close family member as the “individual's parent, spouse or child, or the parent or child of that individual's spouse.”

With respect to the Tenants’ claim for twelve-months’ compensation owed to them as the Landlords did not use the property for the stated purpose on the Notice, I find it important to note that the Notice was dated April 28, 2019 and Section 51 of the *Act* changed on May 17, 2018, which incorporated the following changes to subsections (2) and (3) as follows:

> ***51*** *(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the*

amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or
(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

With respect to this situation, I also find it important to note that Policy Guideline # 50 states that:

Section 51(2) of the RTA requires a landlord to compensate a tenant an amount equal to 12 months' rent payable under the tenancy agreement if the landlord (or purchaser, if applicable) has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the Notice to End Tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (RTA only).

Compensation must be paid unless an arbitrator of the Residential Tenancy Branch finds that the landlord's failure was due to extenuating circumstances.

Finally, the Policy Guideline outlines the following about extenuating circumstances: “An arbitrator may excuse a landlord from paying compensation if there were extenuating circumstances that stopped the landlord from accomplishing the purpose or using the rental unit. These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation. Some examples are:

- A landlord ends a tenancy so their parent can occupy the rental unit and the parent dies before moving in.
- A landlord ends a tenancy to renovate the rental unit and the rental unit is destroyed in a wildfire.
- A tenant exercised their right of first refusal but didn’t notify the landlord of any further change of address or contact information after they moved out.

The following are probably not extenuating circumstances:

- A landlord ends a tenancy to occupy a rental unit and they change their mind.
- A landlord ends a tenancy to renovate the rental unit but did not adequately budget for renovations

When reviewing the Tenants’ Application, what I have to consider is whether the Landlords followed through and complied with the *Act* by using the rental unit for the stated purpose for at least six months after the effective date of the Notice. Firstly, even if Landlord V.C’s sister moved into the rental unit, this would not have complied with the *Act* as she would not meet the definition of close family member as contemplated by the *Act*. Regardless, based on the totality of the solemnly affirmed testimony and undisputed evidence before me, I am satisfied that the Landlords failed to use the rental unit for the stated purpose as the Landlords or a close family member, as defined by the *Act*, did not occupy the rental unit for at least six months after the effective date of the Notice. Furthermore, the undisputed evidence is that they could not have even complied with the reason on the Notice as they sold the rental unit within six months after the effective date of the Notice. In addition, there is no evidence before me that there were any extenuating circumstances that prevented the Landlords from using the rental unit for the stated purpose. Consequently, as I am satisfied that the Landlords did not use the rental unit for the stated purpose for at least six months after the effective date of the Notice, and as there were not any unforeseen or extenuating circumstances that prevented them from doing so, I am satisfied that the Tenants have substantiated their claim that they are entitled to a monetary award of 12 months’ rent pursuant to Section 51 of the *Act*, in the amount of **$13,200.00**.

In turning my mind to the Landlords' claims, I find it important to note that Sections 23 and 35 of the *Act* outline the Landlords' requirements to conduct a move-in and move-out inspection report. Clearly the importance of having completed these reports would be paramount to a claim for damages at the end of the tenancy.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlords' claim of $3,675.00 for the cost of re-painting the rental unit, I find that V.C.'s initial claim that the rental unit was brand new to have been misleading, and this causes me to question the reliability and truthfulness of the Landlords' submissions on the whole. Furthermore, as they did not complete a move-in inspection report, it becomes difficult for them to prove the actual condition of the rental unit at the start of this tenancy. Furthermore, Policy Guideline # 40 outlines that the average useful life for interior paint is four years and the consistent evidence is that the rental unit has not been painted in ten years. As such, I find that these factors all detract from the legitimacy of the Landlords' claims. However, when reviewing the pictures of the rental unit, I find that the amount of holes left were beyond a level of ordinary wear and tear, and consequently, I find that the Tenants should bear the cost of some of this repair. Based on my doubt of the Landlords' truthfulness and the fact that the useful life of the paint has more likely than not been exceeded, I am satisfied that the Landlords have established that they should be granted a monetary award in the amount of **$200.00** to satisfy this claim to repair the damage that the Tenants left.

With respect to the Landlords' claims of $134.36, $80.25, and $235.65 for the cost of replacing the broken blinds, I find it important to note that the Landlords only provided pictures of the bedroom blinds for consideration. While there was much contradictory testimony between the parties over the condition of the blinds, the burden of proof is on the Landlords to provide evidence to support their claims. While the Landlords' evidence is lacking, I do not find it likely that the cat damage to the blinds was as a result of the previous tenants. Regardless, as the Landlords' scant evidence does not fully support their claims, I find that the Landlords have only established that they should be granted a monetary award in the amount of **$100.00** to satisfy these claims.

Regarding the Landlords' claim of $150.00 for the cost of the move-out fee, I find it important to note that Section 7 of the *Residential Tenancy Regulations* states that a move-in or move out fee may only be charged by the strata to the Landlords if this is included in the tenancy agreement. While all parties agreed that the Form K was signed, there was a dispute over whether the Landlords provided a copy of the strata bylaws to the Tenants. Furthermore, the Landlords did not submit a copy of the bylaws as documentary evidence for my consideration. Moreover, the Landlords did submit a "Reminder Notice" from the strata about the requirement of a move-out fee; however, they indicated that this Notice was dated November 1, 2019 and the Tenants gave up vacant possession of the rental unit on June 4, 2019. As a result, I find that the Landlords have submitted insufficient evidence to corroborate that the Tenants were responsible for this fee. Consequently, I am not satisfied that the Landlords have substantiated this claim, and I dismiss it in its entirety.

Finally, with respect to the Landlords' claim of $135.00 for the cost of replacement of the broken light, the consistent and undisputed evidence is that the Tenants broke the light during the tenancy. As such, I am satisfied that the Landlords should be granted a monetary award in the amount of **$135.00** to fix this issue.

As the Tenants were successful in their Application, I find that the Tenants are entitled to recover the $100.00 filing fee paid for this Application.

As the Landlords were partially successful in their Application, I find that they are entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

12 months' compensation	$13,200.00
Portion of repair costs	-$200.00
Portion of blinds costs	-$100.00
Replacement of broken light	-$135.00
Recovery of filing fee for Tenants	$100.00
Recovery of filing fee for Landlord	-$100.00
TOTAL MONETARY AWARD	**$12,765.00**

Conclusion

I provide the Tenants with a Monetary Order in the amount of **$12,765.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords 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: March 22, 2020

Residential Tenancy Branch