



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Four Green Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:57 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent 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 landlord's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that tenant M.R. was personally served by a process server on November 29, 2019 and tenant C.V. was personally served by a process server on December 15, 2019. Affidavits of service for the above were entered into evidence. I find that the tenants were served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?

2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord's agent, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent provided the following undisputed testimony. This tenancy began on July 1, 2018 and ended on February 5, 2019. Monthly rent in the amount of \$1,150.00 was payable on the first day of each month. A security deposit of \$575.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord's agent testified that the tenants texted him on February 5, 2019 to let him know that they had already moved out, no notice was provided. A text message evidencing same was entered into evidence. The landlord's agent testified that the tenants did not pay any rent for February 2019 and the landlord is seeking February's rent in the amount of \$1,150.00. A rent ledger confirming the above was entered into evidence.

The landlord's agent testified that a move in condition inspection report was completed with the tenants at the beginning of the tenancy, a copy of same was entered into evidence. The landlord testified that the tenants were not provided with two opportunities, the last in writing to complete the move out condition inspection report because the tenants did not provide them with a forwarding address and stopped responding to all other methods of communication. The landlord's agent testified that a move out condition inspection report was completed without the tenants. The move out condition inspection reports was entered into evidence.

The landlord's agent testified that the following damages arose out of this tenancy:

Item	Amount
Cleaning	\$140.00
Painting	\$290.00
Painting supplies	\$46.42
Plumbing repair- February 26, 2019	\$315.00
Plumbing repair- February 27, 2019	\$120.00
Wax toilet gasket	\$13.43
Re-clean after plumbing repair	\$40.00
Plumbing repair- March 3, 2019	\$63.00
Replace locks	\$133.37
Replace window pane	\$80.10
Furnace filter	\$5.59
Total	\$1,246.91

The landlord is also claiming a 20% markup on the above claims in the amount \$249.38 pursuant to section G-3 of the second addendum to the tenancy agreement which states:

Upon leaving the Park, tenants must leave the Lot clean and in good condition. If the Landlord is obliged to clean or repair any part of the Lot, the tenant shall be required to pay for such work at the actual cost to the Landlord plus 20%.

Cleaning

The landlord's agent testified that the tenants did not clean the subject rental property when they moved out and that the subject rental property was dirty. The move in and move out condition inspection reports were entered into evidence confirm the above testimony. The landlord entered into evidence photographs showing that the subject rental property was dirty when the tenants moved out. The landlord entered into evidence a cleaning invoice in the amount of \$140.00.

Paint/Painting supplies

The landlord's agent testified that the walls were so dirty and stained that they required re-painting after the tenants moved out. Photographs showing same were entered into evidence. The landlord's agent testified that the subject rental property was last painted just before the tenants moved in. The landlord entered into evidence a painting invoice in the amount of \$290.00, a receipt for paint in the amount of \$43.67 and a receipt for drywall compound in the amount of \$2.46 plus tax (\$2.75).

Plumbing Repairs/ Re-cleaning

The landlord's agent testified that the tenants' actions/inaction caused the pipes at the subject rental property to freeze, causing damage. The landlord's agent testified that the damage was discovered after the tenants moved out. The landlord entered into evidence an invoice dated February 26, 2019 in the amount of \$315.00 from a plumber which states in part:

“Water leaking from under trailer, bathtub will not drain, toilets not flushing....all sewer lines frozen solid.....Tenant possibly running water due to outside cold weather. Too slow of flow, caused ice dam.”

The landlord's agent testified that the subject rental property has never before had a problem with frozen pipes and the tenants are responsible for the frozen pipes. The landlord's agent testified that the tenants did not advise the landlord of issues with the plumbing at the subject rental property, and had the landlord been advised of the problem earlier, the freezing damage would not have been as severe.

The landlord testified that a handyperson attended at the subject rental property to complete further plumbing repairs for the toilet relating to the damage caused by the frozen pipes. A receipt in the amount of \$120.00 was entered into evidence. After the plumbing repairs were completed, the bathroom required further cleaning. An invoice for cleaning in the amount of \$40.00 was entered into evidence. A receipt for a toilet bowl wax seal in the amount of \$11.99 plus tax (\$13.43) was entered into evidence. The landlord's agent testified that the wax seal needed to be replaced due to the freezing caused by the tenants.

The landlord's agent testified that new tenants moved into the subject rental property on March 1, 2019 and that on March 3, 2019 the new tenants reported that the water in the kitchen was not working and the toilets would not flush. The landlord sent a plumber to

investigate. An invoice from the plumber in the amount of \$63.00 was entered into evidence. The invoice states that the water was working in the kitchen and the toilets flushed. No issues were found.

Replace locks

The landlord's agent testified that the tenants did not return the keys to the subject rental property so all the locks at the subject rental property required replacement. The landlord entered into evidence a receipt for the cost of replacing the locks in the amount of \$133.37.

Replace window pane

The landlord's agent testified that the tenants broke a window pane at the subject rental property. A photograph of same was entered into evidence. A receipt in the amount of \$80.10 for a replacement window pane was entered into evidence.

Replace Furnace Filter

The landlord's agent testified that the furnace filter was dirty when the tenants moved out and required replacement. A receipt for a new furnace filter in the amount of \$4.99 plus tax (\$5.59) was entered into evidence.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Rent

Section 45(1) of the *Act* states that a tenant may end a periodic 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, and
- (b) 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.

I accept the landlord's agent's testimony that the tenants notified him via text on February 5, 2019, that they moved out of the subject rental property. I find the tenants did not provide one month's notice to end tenancy as required by section 45(1) of the *Act*. Residential Tenancy Policy Guideline #5 states that where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. I therefore find that the tenants owe the landlord for February 2019's rent in the amount of \$1,150.00.

Cleaning

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord, the move in and out condition inspection reports and the landlord's agent's undisputed testimony, I find that the rental unit required significant cleaning after the tenants moved out. I find that the landlord is entitled to recover the cost of cleaning in the amount of \$140.00.

Paint/Painting supplies

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord, the move in and out condition inspection reports and the landlord's agent's undisputed testimony, I find that the walls

required repair and repainting after the tenants moved out. I accept the landlord's agent's undisputed testimony that the subject rental property was painted just before the tenants moved in.

Policy Guideline #40 states that the useful life for interior painting is four years (48 months). Therefore, at the time the tenants moved out, there was approximately 41 months of useful life that should have been left for the interior paint of this unit. I find that since the unit required repainting after only approximately 7 months, the tenants are required to pay according to the following calculations:

$\$336.42$ (cost of painting and supplies) / 48 months (useful life of paint) = $\$7.01$ (monthly cost)

$\$7.01$ (monthly cost) * 41 months (expected useful life of paint after tenants moved out) = **$\$287.41$**

Plumbing Repairs/ Re-cleaning

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord's agent's undisputed testimony and the plumbing invoices entered into evidence, I find that the tenants caused the damage to the plumbing at the subject rental property either through action or negligent inaction. I therefore find that the tenants are responsible for all plumbing associated costs, including re-cleaning the bathroom, with the exception of the March 3, 2019 invoice.

I find that the landlord is not entitled to recover the March 3, 2019 invoice as the landlord already repaired the subject rental property and no subsequent issues were found when the plumber attended at the request of the new tenants. I find that the landlord has not established a causal connection between the tenants and the plumbing issues described in the March 3, 2019 invoice.

I find that the landlord is entitled to recover the following plumbing related expenses from the tenants:

Plumbing repair- February 26, 2019	\$315.00
Plumbing repair- February 27, 2019	\$120.00

Wax toilet gasket	\$13.43
Re-clean after plumbing repair	\$40.00
Total	\$488.43

Replace locks

Section 37(2)(b) of the *Act* states that when a tenant vacates a rental unit, the tenant must 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.

I accept the landlord's agent's undisputed testimony that the tenants did not return the keys to the subject rental property, contrary to section 37(2)(b) of the *Act*. I find that the landlord suffered a loss in the amount of \$133.37 because the subject rental property required new locks to ensure the safety and security of the new tenants. I find that the landlord is entitled to recover the cost of installing new locks from the tenants.

Replace window pane

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord's photographic evidence and the undisputed testimony of the landlord's agent, I find that the tenants broke a window pane at the subject rental property, contrary to section 37(2)(a) of the *Act*. The landlord's agent did not provide testimony as to the age of the window, so I am not able to complete a useful life calculation; the landlord has therefore not proved the value of the loss suffered. Nonetheless, I find that the landlord suffered a loss caused by the tenants' breach of the *Act*.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the landlord is entitled to nominal damages for the broken window in the amount of \$60.00.

Furnace Filter

Residential Tenancy Policy Guideline #1 states:

The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

As the landlord is responsible for changing the furnace filter, I dismiss the landlord's claim for the cost of a new furnace filter.

Mark-up

Residential Tenancy Policy Guideline #8 states that under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act, a term of a tenancy agreement is unconscionable if the term is oppressive or grossly unfair to one party. Terms that are unconscionable are not enforceable. Whether a term is unconscionable depends upon a variety of factors. A test for determining unconscionability is whether the term is so one-sided as to oppress or unfairly surprise the other party.

I find that term G-3 of the second addendum to the tenancy agreement is an unconscionable term that is grossly unfair to the tenant. Policy Guideline #16 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. The purpose of damages is not to be punitive, which is the effect of term G-3 of the second addendum to the tenancy agreement. I consequently find term G-3 is unenforceable. I therefore dismiss the landlord's claim for all "mark-ups".

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I accept the landlord's agent's undisputed testimony that the tenants have not provided the landlord with their forwarding address in writing. I therefore find that the landlord made an application for dispute resolution claiming against the security deposit in accordance with to section 38(a) and 38(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of \$575.00 in part satisfaction of the monetary claim against the tenants.

As the landlord was successful in its application for dispute resolution, I find that it is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
February 2019 rent	\$1,150.00
Cleaning	\$140.00
Painting/ painting supplies	\$287.41
Plumbing repairs, supplies and cleaning	\$488.43
Replace locks	\$133.37
Replace window pane	\$60.00
Filing fee	\$100.00
Less security deposit	-\$575.00
Total	\$1,784.21

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: April 25, 2020

Residential Tenancy Branch