



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, FFL, MNDL-S**

Introduction

This hearing was convened in response to applications by the landlords pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a Monetary Order pursuant to section 67 of the *Act*;
- to retain the security deposit for damage or loss under the *Act*; and
- a return of the Filing Fee pursuant section 72 of the *Act*.

Both landlords and the tenants appeared at the hearing. The tenants confirmed receipt of the landlords’ application for dispute resolution and evidentiary package by way of Canada Post Registered Mail, while the landlords confirmed receipt of the tenants’ evidentiary package after it was delivered in person. I find all parties were served with all applicable documentation in accordance with sections 88 & 89 of the *Act*.

All parties present were afforded an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order for damage or loss suffered as a result of the tenancy?

Can the landlords retain the tenants’ security deposit?

Are the landlords entitled to a return of the filing fee?

Background and Evidence

Both parties provided testimony that this tenancy began on March 1, 2019 and ended on December 31, 2019. Rent was \$2,200.00 per month and a security deposit of \$1,100.00 paid at the outset of the tenancy, continues to be held by the landlords.

The landlords explained they were seeking a monetary award of \$4,297.11 representing the costs required to bring the unit to an acceptable state of repair following the tenancy. In addition, they were seeking unpaid rent for the month of January 2020.

Specifically, the landlords sought the following amounts:

Items	Amount
D.K. – cleaning of entire rental unit	\$445.00
Rona – supplies for repairs	115.26
Colour Pro – paint	840.00
J.R. – further cleaning of rental unit	100.00
Rona – new locks and replacement of door stops	112.94
J.R. – Repair closet	50.00
Unpaid Utilities (September/October/November/December 2019)	333.91
Unpaid Rent for January 2020	2,200.00
Return of Filing Fee	100.00
Total =	\$4,297.11

Both parties acknowledge the rental unit was “new” when the tenancy began in March 2019, with the landlords explaining it was fully renovated and painted prior to the tenants’ occupation.

As noted previously, the landlords argued the unit was left in a state of disrepair following the conclusion of the tenancy. They described efforts they took to clean the unit, along with repairs that were required following the conclusion of the tenancy. Amongst the items cited specifically by the landlords for repair or additional cleaning were; new locks due to keys not being returned, broken doorstops, weather stripping and the cleaning of cigarette butts (outdoors). The landlords are also seeking unpaid rent for the month of January 2020. The landlords explained the tenants provided them with insufficient notice of their intention to vacate the property for January 1, 2020, informing the landlords around December 5th or 6th, 2019 that they were moving out.

During the hearing, the tenants acknowledged that some damage had occurred to the rental unit while they were in possession of it. Specifically, the tenants cited the scruffs to the wall, however, they argued the unit was subject only to ‘normal wear and tear’. Further, the tenants described extensive efforts they took to ensure the unit was properly cleaned following their move out. The landlords acknowledged some efforts

were undertaken by the tenants to clean the walls but argued these fell short of acceptable. The tenants did not dispute the landlords' testimony that they vacated the suite in early December 2019.

A large portion of the landlords' testimony concerned the portion of their monetary application reflecting unpaid utilities. Both parties acknowledged a breakdown in their relationship concerning the utilities. The landlords explained this disintegration occurred as a result of increased utility costs, above the agreed upon amount. The tenants placed a significant of blame on the occupants of the suite below theirs, saying those occupants had "mislead" the landlords as it related to utility expenses and consumption. A copy of the tenancy agreement submitted in evidence by the tenants notes as follows:

Utilities are included with your rent within reason. We have implemented a generous cap on our utility's coverage of \$200 per month. This is to ensure our tenants are not abusing the included utilities. If we have a problem with usage, we will keep open lines of communication with you and come up with a suitable solution together. From past experience things like plug in space heaters and air conditioner units use far more power than built in heat and AC through the built in HVAC system so please use the furnace from your heating and cooling needs, unless you're ok with a monthly surcharge.

Following discussions between the parties, the landlords explained they agreed to an 80/20 split, with the figure of \$333.91 representing their best assessment of the outstanding costs. In support of this agreement, the landlords submitted a series of text messages and emails that were exchanged between the parties.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove their entitlement to a claim for a monetary award.

The landlords are seeking a Monetary Order of \$4,297.11 in reflection of the costs associated with repairing damage purported to have resulted from the tenants'

occupation of the rental unit. The landlords are also seeking to retain the security deposit.

The tenants explained that some of the damage to the unit should be attributed to regular wear and tear. *Residential Tenancy Policy Guideline #1* expands on this issue of “normal wear and tear” and notes, “The tenant must maintain ‘reasonable health, cleanliness and sanitary standards’ throughout the rental unit or site. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that started. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or [their] guests.”

Guideline #1 continues by stating that, “A tenant is not required to make repairs for reasonable wear and tear” which is defined as being the “natural deterioration that occurs due to ageing and other natural forces, where the tenant has used the premises in a reasonable fashion.”

Paint -

When questions of normal wear and tear are raised by a party, *Residential Tenancy Policy Guideline #40* provides direction for determining the useful life of building elements. As per *Guideline #40*, the useful life of interior paint is 4 years. If the unit was painted in February/March 2019 when the landlord took possession of the rental unit, the useful life of that initial paint job had 75% of its useful life remaining. Therefore, I find the landlord is entitled to a return of 75% of the \$840.00 sought in relation to the painting that was required. I award the landlord \$630.00 in satisfaction for the amount sought for paint.

Cleaning/Keys –

Section 37(2)(a) & (b) note, “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, and (b) give the landlord all the keys.” As noted above this is expanded upon by *Policy Guideline #1* which states, “the tenant is responsible for washing scuff marks, finger print, etc. off the walls...the tenant must return all keys at the end of the tenancy...unless there is an agreement to the contrary, the tenant is responsible for removal of garbage at the end of the tenancy...at the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.”

After reviewing all photos submitted in evidence, I find some indication that the tenants made efforts to leave the unit reasonably clean. However, I do note the presence of some items which would have benefited from additional cleaning that was within the tenants' abilities. I therefore award the landlords one-third of their request for D.K. and J.R. cleaning, totalling \$198.33. The landlords are granted the entirety of their amount sought for supplies for repairs and to replace the locks due to the tenants' failure to return all keys, totalling \$228.20.

Utilities –

The parties presented somewhat conflicting testimony regarding the costs associated with utilities. The tenants placed a significant amount of blame on the other rental unit contained in the home, while the landlords sought to recover an amount they said was agreed upon by the parties, an 80/20 split. I find this agreement is supported by text messages and emails supplied in the landlords' evidence package. I find the amount of \$333.91 submitted by the landlords to be an accurate estimation of the utility costs incurred, above the \$200.00/month agreed upon in their tenancy agreement and therefore award the landlords the entire amount sought in their application for utilities.

January 2020 Rent –

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord 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."

In this case, the tenants did not comply with section 45 of the *Act*, requiring them to provide the landlords with 1 full month's notice of their intention to vacate the rental unit.

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains 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. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect." In this case, notice was provided to the landlord on, or around December 5, 2019 and the unit was re-rented for February 2020. I find that the landlord has made *reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect*. I therefore award the landlord the entire amount sought for January 2020 rent.

As the landlords were successful in their application, they may recover the \$100.00 filing fee. Pursuant to section 72 of the *Act*, I allow the landlords to retain the tenants' security deposit in partial satisfaction for the monetary award granted.

Conclusion

I issue a Monetary Order of \$2,590.44 in favour of the landlords as follows:

Item	Amount
Unpaid Rent for January 2020	\$2,200.00
Paint	630.00
Cleaning	198.33
Supplies/keys	228.20
Unpaid utilities	333.91
Recovery of Filing Fee	100.00
Less Security Deposit	(-1,100.00)
Total =	\$2,590.44

The landlords are provided with a Monetary 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: June 12, 2020

Residential Tenancy Branch