



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a monetary order for lost off rent, damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

JM testified on behalf of the landlords in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlords' dispute resolution application ('Application') and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the Application and evidence package. The landlord testified in the hearing that she had issues opening the tenants' evidence package, but that she was able to review the evidence before the hearing. After discussing the issues and options with the landlord, the landlord confirmed that she wished to proceed with the hearing as scheduled and had no issue with the admittance of the tenants' evidence package.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation for damage to the unit, site, or property, monetary loss, or money owed?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on November 1, 2018. Both parties entered into a new fixed-term tenancy for the period of May 1, 2019 to April 30, 2020. Monthly rent was set at \$2,000.00, payable on the first of every month. The landlords collected, and still hold, the tenants' security and pet damage deposit in the amounts of \$1,000.00 each deposit. Both parties confirmed that the tenants moved out on January 31, 2020, and that no formal move-in or move-out inspections were performed for this tenancy.

The landlords requested monetary compensation as follows:

Item	
Loss of Rental Income – February 2020	\$2,000.00
Repairs to melted siding (not disputed by tenants)	406.88
Tear down of shed	450.00
Vacuum replacement	1,200.00
Repairs to crack in sunroom	
Replacement of outside tap	100.00
Move Out cleaning	150.00
Recovery of Filing Fee	100.00
Total Monetary Award Requested	\$4,406.88

During the hearing the tenants consented to the landlords retaining \$406.88 of their security deposit to cover the cost of the damaged siding caused by the barbecue. Accordingly, I allow the landlords to retain \$406.88 of the security deposit in satisfaction of this monetary award.

During the hearing, the landlords withdrew the following portions of their claim, as indicated in bold above. The landlords withdrew their monetary claim for loss of rental income as the landlords were able to recover the lost income from their insurance. The landlords also withdrew their monetary claim for repairs to the sunroom and move out cleaning. Accordingly, these portions of the landlords' monetary claim were not considered as part of this application. I make no findings on the merits of these matters. Liberty to reapply is not an extension of any applicable limitation period.

The landlords are seeking a monetary claim of \$450.00 for the tear down of a shed used by the tenants to house their chickens. The landlord testified that the 25 year old shed cannot be re-used due to the smell, and must be torn down. The tenants are disputing this claim, and stated that the "chicken coop was old, falling apart, and filled

with pine cones when we moved into the house. We had her permission to clean out the pinecones and use it as a chicken coop”. The tenants provided a copy of the original email from the landlord agreeing to the use of the shed as a chicken coop, and testified that they had cleaned it upon move-out, and returned it to its move-in condition.

The landlords also filed a monetary claim for the replacement of their vacuums, which the landlords approximated to be 5 years old. The landlords submit that they were in working order at the beginning of the tenancy, but not at the end of the tenancy. The tenants dispute that they had damaged the vacuum cleaners. The tenants testified that one of the two Dyson vacuum cleaners were not in working condition at move-in ,and the other two vacuums were both working upon move out on January 31, 2020.

The landlords testified that they had discovered that the outside tap was not working. The landlords testified that they had called their contractor, and discovered that the taps were not shut off, which caused the damage. The tenants dispute this claim, stating that they had turned off the tap when they moved out. The landlords submitted a photo in support of their claim, but testified that they have yet to receive a detailed invoice for this specific repair.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

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

The landlords also submitted a monetary claim in the amount of \$450.00 to tear down a shed that was used to house chickens. Although I accept the landlords’ testimony that the shed may no longer be in useable condition, I find that the tenants had provided evidence to support that the landlords had given them permission to use the shed to house chickens. Furthermore, *Residential Tenancy Policy Guideline #40* speaks to the useful life of an item. Although sheds or chicken coops are not specifically included in the policy guideline, the guidelines set out that “If a building element does not appear in the table, the useful life will be determined with reference to items with similar

characteristics in the table or information published by the manufacturer.” As per the policy, the useful life of storage is 20 years. As the shed was approximately 25 years old, given the age and nature of use of this shed, I find that the shed has exceeded its useful life. On this basis, I dismiss this portion of the landlords’ monetary claim without leave to reapply.

The landlords are seeking a monetary claim for their damaged vacuums, which the tenants dispute having damaged. Sections 23 and 35 of the *Act* require the landlords to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. In the absence of move-in and move-out inspection reports, I have no way of ascertaining what damages occurred during this tenancy unless the item was brand new at the beginning of the tenancy, or unless agreed to by the tenants. The tenants disputes the landlords’ entire claim that they had damaged the vacuums during this tenancy. As stated above, the landlords bear the burden of establishing their claim. I find that the landlords failed to establish that the tenants had damaged the vacuums during this tenancy. On this basis, the landlord’s monetary claims for damage to the vacuums are dismissed without leave to reapply.

Similarly, the landlords are seeking a monetary claim for damage to the outside faucet. In light of the disputed testimony, I find that the landlords have failed to provide sufficient evidence that the damage was caused by the tenants. Furthermore, I find that the landlords failed to support the value of their loss in relation to this specific claim. For these reasons, I dismiss this portion of the landlords’ monetary claim without leave to reapply.

As the recovery of the filing fee is normally rewarded to a successful party after a hearing, I allow the landlords recovery of half of the filing fee in the amount of \$50.00.

The landlords continue to hold the tenants’ security deposit and pet damage deposits in the amounts of \$1,000.00 each deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain a portion of the deposits in partial satisfaction of the monetary claim. The rest shall be returned to the tenants.

Conclusion

The landlords withdrew their monetary claim for loss of rental income, as well as their monetary claim for repairs to the sunroom and move out cleaning. Accordingly, these portions of the landlords’ monetary claim were not considered as part of this application. I make no findings on the merits of these matters. Liberty to reapply is not an extension of any applicable limitation period.

I allow the landlords to retain \$406.88 of the security deposit in satisfaction of this monetary award for the damaged siding, as well as \$50.00 for recovery of half of the filing fee. The remaining portions of the tenants' deposits shall be returned to the tenants. I issue a Monetary Order in the tenants' favour for the return of the remainder of their deposits.

Item	
Deposits Held by Landlord	\$2,000.00
Repairs to melted siding (not disputed by tenants)	-406.88
Recovery of Filing Fee	-50.00
Total Monetary Order to Tenants	\$1,543.12

The tenants are provided with this Order in the above terms and the landlords must be served with a copy of 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.

The remainder of the landlords' monetary claims are dismissed without leave to reapply.

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 22, 2020

Residential Tenancy Branch