



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for monetary loss or money owed 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

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants confirmed receipt of the landlords' application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the tenants were duly served with the landlords' application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed

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

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began January 1, 2019, and ended on May 30, 2020. Monthly rent was set at \$2,700.00, payable on the first of every month. The landlords collected a security deposit in the amount of \$1,350.00, which the landlords still hold.

The landlords are seeking a monetary order equivalent to the security deposit for the tenants' failure to leave the home in reasonably clean and undamaged condition. The landlords submitted documents in support of their claim including a copy of the move-in and move-out inspection reports, photos, and a repair and painting invoice in the amount of \$2,380.00. The landlords, in their claim, also stated that the tenants had failed to maintain the yard and brought chickens onto the property without their permission. The landlords confirmed in the hearing that they are only seeking a portion of the invoice of \$1,350.00 for the damage left by the tenants. The landlords testified that the home was last repainted in March or April of 2018.

The tenants testified that they accept responsibility of some damage, but are disputing the landlords' monetary claim exceeding the quotations that the tenants obtained. The tenants obtained 2 quotations in the amount of \$595.00, which they submitted into evidence. The tenants testified that the landlords had failed to mitigate their losses by not obtaining multiple quotations. The tenants testified that they had accepted the damage as indicted in the inspection report, and attempted to resolve the matter in good faith with the landlords before the landlords had filed for dispute resolution, but the landlords declined their offers. The tenants also submitted receipts for cleaning and lawn care that they had paid for.

The landlords responded that they had new tenants moving in, and given the timeline of the repairs and painting, they had to act in a timely manner. The landlords testified that they were unable to accept the tenants' offer of repairs and further cleaning as the tenants had waited until the end of the tenancy to attempt to complete the repairs and cleaning. The landlords testified that as the move-out took place on a weekend, it would be difficult to contact contractors on such a last-minute basis. The landlords feel that that the quotation provided by their contractor was reasonable, and did not obtain additional quotes as they were bound by a timeline. The tenants questioned the landlords' explanation as they feel that their proposed resolution would not have impacted or inconvenienced the new tenants or the landlords more than the work undertaken by the landlords.

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. I find that the landlords had provided sufficient evidence to show that the tenants did not take reasonable care and attention when vacating the suite. I find that the landlords had complied with sections 23 and 35 of the *Act* by performing condition inspection reports for both the move-in and move-out. I also find that the landlords had supported the value of their loss with an invoice for the work completed. Accordingly, I find the landlords are entitled to compensation for these losses. I must now assess the amount of compensation the landlords are entitled to.

I note that although the landlords had made submissions about the tenants' failure to properly clean the home or maintain the yard, I am not satisfied that the landlords had provided sufficient evidence to support the monetary losses associated with this portion of their claim. As stated above, the burden of proof is on the applicant to support the losses associated with the breach. I also find that the tenants did not provide receipts for cleaning and yard work. I find that the monetary losses claimed by the landlord are mainly related to the condition of the walls and paint. For these reasons, I will consider the landlords' monetary claim in relation to the monetary loss associated with repairing and repainting the walls.

The tenants dispute the landlords' monetary claim of \$1,350.00 as they feel that the landlords had failed to mitigate their losses by not obtaining further quotations and by refusing their offers to perform repairs. Under section 37(2)(a) of the *Act*, the tenants are obligated to return the rental unit in reasonably clean and undamaged condition. The expectation is that all repairs and cleaning should have been completed before the inspection was done, and before the tenancy had ended at the latest, unless prior arrangements were made with the landlords and with the consent of both parties. I accept the landlords' testimony as well as the evidence submitted, which supports that at the end of the tenancy, and at the time of the move-out inspection the home was not

in reasonably clean and undamaged condition. I find that the tenants had ample time, and an obligation, to ensure that the cleaning and repairs were completed prior to the end of the tenancy, and I find that the tenants failed to fulfill this obligation. I find the tenants' failure to comply with the *Act* resulted in the monetary loss incurred by the landlords, and despite this loss, the landlords are only claiming for a portion of the cost of painting and repairing the walls. Furthermore, I find the landlords' explanation to be reasonable. I find that the landlords had already arranged for new tenants to occupy the home, and any further delays could possibly result in further and greater losses such as loss of rental income or a request for a rent reduction by the new tenants.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of interior paint is four years. The rental unit was repainted before the tenants had moved in and therefore at the end of the tenancy had approximately 2 years of useful life left. The approximate prorated value of the remainder of the useful life of the interior painting is \$1,190.00. ($\$2,380.00/48 \times 24$). Although the tenants provided two quotations in the amount of \$595.00, I accept that the final losses incurred by the landlords amounted to \$2,380.00. I also accept the landlords' explanation for why they had decided to not pursue additional quotes. I am satisfied that the landlords had made an effort to mitigate the tenants' exposure to the landlords' monetary losses as is required by section 7(2) of the *Act*. I find that the landlords had only filed a partial claim for losses despite the other issues raised in their application and in the hearing, and the tenants' exposure to the actual monetary loss could have possibly been greater if the landlords were not able to re-rent the home in reasonably clean and undamaged condition.

Accordingly, I find that the landlords are entitled to a monetary order in the amount of \$1,190.00 as calculated above, in satisfaction of the monetary loss suffered by the landlords due to the tenants' failure to comply with section 37(2)(a) of the *Act*

The landlords also requested the recovery of the filing fee. The tenants disputed this claim stating that they had attempted to resolve this matter before the landlords had filed an application. I find that both parties were unable to come to a mutual resolution, and that the landlords had to fulfill their obligation under section 38 of the *Act* to file an application within 15 days of the end of the tenancy. I find that the landlords suffered this loss in order to fulfill their obligation. As the recovery of the filing fee is normally rewarded to a successful party after a hearing, I allow the landlords to recover the filing fee in the amount of \$100.00.

The landlords continue to hold the tenants' security deposit in the amounts of \$1,350.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order

the landlords to retain a portion of the deposit in partial satisfaction of the monetary claim. The rest shall be returned to the tenants.

Conclusion

I allow the landlords to retain \$1,290.00 of the security deposit in satisfaction of this monetary awards granted in this decision as set out below. The remaining portion of the tenants' deposit shall be returned to the tenants. I issue a Monetary Order in the tenants' favour for the return of the remainder of their security deposit.

Item	
Deposit Held by Landlord	\$1,350.00
Monetary Award for Damaged Walls	-1,190.00
Recovery of Filing Fee	-100.00
Total Monetary Order to Tenants	\$60.00

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.

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: July 10, 2020

Residential Tenancy Branch