



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Belmont Properties
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; other damages or losses under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit and pet damage deposit. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

I confirmed the tenants received the landlord's hearing package and evidence. I confirmed the tenants had not submitted any evidence prior to the hearing and they intended to provide their responses orally during the hearing.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage and other damages or losses, as claimed against the tenants?
2. Is the landlord authorized to retain the tenant's security deposit and pet damage deposit?

Background and Evidence

The tenancy started on August 1, 2017 and the tenants paid a security deposit of \$525.00 and a pet damage deposit of \$525.00.

The landlord performed a move-in inspection report with the male tenant and a move-in inspection report signed by both the landlord and the tenant was produced as evidence.

The landlord served the tenants with a 1 Month Notice to End Tenancy for Cause in January 2020 with a stated effective date of February 29, 2020. The tenants vacated the rental unit on February 22, 2020. The tenants explained they moved out on February 22, 2020 because this was the date the tenant's sister was available to help them move out.

The landlord invited the tenants to participate in a move-out inspection but the tenants had already left town and did not have the funds to return to do the move-out inspection. The landlord performed the move-out inspection without the tenants and on February 24, 2020 the landlord's agent took photographs of the unit as the tenants left it.

The tenants acknowledged leaving abandoned possessions behind and testified that they had orally told the landlord's agent to keep their deposits.

The landlord did not obtain the tenant's written authorization to retain the deposits and the landlord is of the position the damages and losses exceed the deposits.

Below, I have summarized the landlord's claims against the tenants and the tenant's responses. Both parties provided oral testimony in support of their respective positions. The landlord also provided copies of the tenancy agreement; communications to the tenants regarding preparing for pest control; the 1 Month Notice to End Tenancy for Cause; condition inspection reports; invoices and receipts; and, several photographs.

1. Cockroach treatments in the rental unit and adjacent units -- \$2850.67

The landlord seeks recovery of the cost to treat the rental unit and surrounding units for a cockroach infestation. The landlord is of the position the residential property did not have a history of cockroaches and there were thousands of cockroaches found in the rental unit, which then migrated to other rental units in the building.

The landlord attributed the cockroach infestation and expense to treat the infestation to the tenants because they did not report the problem to the landlord and the tenants did not take sufficient action to accommodate treatment once the problem was discovered.

The landlord submitted that in September 2019 the landlord received a complaint of "bugs" from a tenant in the rental unit below the rental unit. The landlord had the complainant's unit and the surrounding units inspected by a pest control technician on September 27, 2019. The rental unit was found to have numerous cockroaches, especially around the sectional couch in the rental unit.

Cockroach treatments commenced on October 4, 2020. Cans of insecticide were found in the rental unit and the pest control technician was of the opinion this likely caused the cockroaches to spread. The technician also noted the rental unit was very cluttered and cockroaches came out of the tenant's bulky furniture but he treated the exposed areas with need to return in a week's time to permit de-cluttering of the rental unit.

On October 11, 2019 the pest control technician returned to the rental unit and noted some de-cluttering had occurred but instructed the tenants to de-clutter more. On October 18, 2019 the pest control technician returned to the rental unit and noted it was still very cluttered. Traps were placed in the unit. On October 24, 2019 another visit resulted in finding cockroaches and refreshing bait in the traps. On October 31, 2019 another visit to the rental unit resulted in the technician finding the rental unit very cluttered and difficult to manoeuvre. On November 7, 2019 the technician returned and found the unit cluttered. The technician returned regularly and found evidence of cockroaches. On December 19, 2019 the tenant informed the technician further treatments could wait until January 2020. The technician returned on January 14, 2020 and found cockroach activity in the rental unit and the unit was not prepared according to the preparation sheet. On January 27, 2020 the technician returned and rebaited the traps. On February 25, 2020 the vacant rental unit was treated.

The landlord submitted that effective treatment of the cockroaches was difficult because the rental unit was very cluttered and dirty. The tenants were given multiple notices to declutter and clean the unit so that it could be effectively treated for cockroaches but the tenants did not undertake sufficient action. Rather, the tenants indicated sickness and the preparation as being too much work as being the reason they were not sufficiently preparing the unit for treatment. The landlord continued to treat the rental unit and surrounding units which would reduce the number of cockroaches for a time but then the numbers would increase again, resulting in the need for repeated treatments. The landlord finally gave the tenants the 1 Month Notice to End Tenancy for Cause and after the tenants vacated the rental unit it was effectively treated for cockroaches and there have been no further issues with the cockroaches.

In support of its position, the landlord pointed to images of cockroaches trapped in the rental unit and the pest control technician's findings noted on the pest control invoices.

The tenants testified that they never had cockroaches before moving into the rental unit and the sectional couch was purchased when they moved into the rental unit. The

tenant testified that she had orally told the former manager that they had “bugs” in the rental unit but the landlord did not take any action.

The landlord’s agent stated that she had asked the tenants whether they had seen bugs in their unit but the tenants indicated they had not. The tenant acknowledged that the current landlord’s agent had enquired about bugs in their unit and the tenants had indicated they did not have any but the tenant explained that at that time they had not seen any.

The tenants acknowledged that their rental unit was cluttered but attributed this to the landlord not providing them with a larger two bedroom unit that they desired.

2. Labour for cleaning, hauling, repairs and installing new blinds -- \$360.00

The landlord seeks recovery of an invoice paid for the labour to clean the rental unit of debris and garbage and dump the garbage before the carpets were removed, painting could ensue, and other repairs facilitated. The invoice indicates the landlord was charged \$360.00 for all these tasks although the repairs were not specified and there was not a breakdown of the cost for specific tasks. The tenants pointed out that the entire invoice is not readable and they do not what repairs are included on the invoice. The landlord conceded the repairs were not specified and was agreeable to a reasonable award for the cleaning, hauling and installing blinds.

As for installing new blinds, the landlord submitted the curtains were so filthy they could not be cleaned and they were disposed of and replaced with new blinds.

The tenants recognized that they abandoned possessions in the rental unit and they are responsible for the removal and dumping of their abandoned possessions. Based on the tenant’s prior work experience, the tenants were of the position that \$120.00 is a reasonable award for labour costs to remove the abandoned possessions.

The tenants objected to paying for the installation of new blinds. The tenants acknowledged there was a stain on one curtain but that it could have been rectified by applying stain remover and washing the other two curtains.

3. Dump fee -- \$47.25

The landlord seeks recovery of the fee paid to dump the tenant’s abandoned possessions. The tenants were agreeable to compensating the landlord for this fee.

4. Purchase of new blinds -- \$160.00

As stated earlier, the landlord was of the position the curtains were filthy and could not be cleaned so they were replaced with new blinds. The landlord stated the curtains were new at the start of the tenancy. The landlord decided to install new blinds as they are less expensive than curtains.

The tenants acknowledged one curtain was stained but that it could have been cleaned with stain remover and the other two curtains just needed a washing. As such the tenants objected to compensating the landlord for new blinds.

5. Professional cleaning -- \$288.75

The landlord's staff did a cursory cleaning to facilitate repairs and carpet replacement and painting that was previously claimed. This claim is for the more detailed cleaning paid to a professional cleaner for the appliances, windows, kitchen and bathroom.

The tenants were agreeable to compensating the landlord the amount requested under this claim.

6. Fridge repairs – \$323.61

The landlord submitted that the shelving and holders in the fridge were broken during the tenancy and had to be replaced. The landlord estimated the fridge was approximately 5 years old and pointed out it was in satisfactory condition when the tenancy started.

The tenants were of the position the fridge shelving and holders were broken and/or missing when the tenancy started and they taped the shelves and told the previous manager of the repairs needed to the fridge.

7. Carpet replacement – \$2132.12

The landlord submitted that the carpeting was so filthy and stained that it had to be removed before anybody would work in the unit. The landlord described the carpeting as new when the tenancy started and pointed to the move-in inspection report.

The tenants testified the carpet was not new at the start of the tenancy and claimed it was very dirty when they moved in and the carpeting should have been replaced before their tenancy started but it was not.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

- That the other party violated the Act, regulations, or tenancy agreement;
- That the violation caused the party making the application to incur damages or loss as a result of the violation;
- The value of the loss; and,
- That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon everything before me, I provide the following findings and reasons.

Pest control

It is undisputed that cockroaches were found in the rental unit and surrounding unit during the subject tenancy and several treatments were undertaken in an effort to eliminate the cockroaches. This issue to determine is whether the tenants are responsible to compensate the landlord for the cost of pest control actions performed in the rental unit and surrounding units and common areas.

A landlord is required to repair and maintain the rental unit and residential property so that it complies with health, safety and building laws and is suitable for occupation by a tenant under section 32 of the Act. Tenants also have obligations under section 32 of the Act, which is to repair damage they cause by way of their actions or neglect but to also maintain reasonable health, cleanliness and sanitary standards throughout the rental unit.

Pests are generally opportunistic and are often introduced into a rental unit or residential property without any negligence, knowledge or intention of the landlord, tenant or other occupant. In keeping with section 32 of the Act, I find that pest control is generally a landlord responsibility; however, there may be exceptions where the tenant

intentionally or negligently causes the infestation or permits the infestation to continue or worsen due to their actions or neglect.

In this case, there is no evidence before me to suggest the tenants negligently, knowingly or intentionally brought cockroaches into the rental unit and I find there is insufficient evidence to hold them liable for bringing in the cockroaches to the building.

Once pests are discovered in a rental unit by a tenant it is expected that the tenant will inform the landlord so that the landlord may take action to deal with the pests before they spread and/or proliferate and/or cause damage. I was provided opposing evidence that the tenants notified the landlord that they found “bugs” in their unit prior to the landlord receiving a complaint from another tenant in another unit. If the tenants became aware of “bugs” in their unit and notified the former manager as they claim, they did not provide specific testimony as to when they made the discovery or when and how they notified the former manager. I further find the tenants lacked credibility (for reasons described in the section dealing with carpet replacement) and in the absence of corroborating evidence I find their vague verbal testimony that they notified the former manager of “bugs” to be unconvincing.

In light of the above, I find there to be insufficient evidence the tenants were negligent and responsible for introducing cockroaches to the property and I do not hold them liable to compensate the landlord for the initial treatments for cockroaches; however, I find there is considerable evidence that after the infestation was found in the rental unit by the pest control technician, the tenants were notified a number of times to declutter and prepare the unit for pest control treatment by cleaning the rental unit. Since it was the tenant's possessions that needed to be moved or removed to facilitate treatment, I find that to be the tenant's obligation to manage their possessions accordingly and failure to do so is an act of negligence on part of the tenants. Having too many possessions while waiting for a two bedroom unit to become available is not the landlord's burden. Rather, I find it upon the tenants to dispose of or store their excess furniture in an appropriate storage facility. In failing to take sufficient action to declutter and clean, resulting in multiple pest treatments to reduce the numbers of cockroaches, but not entirely eliminate the cockroaches until after the tenants moved out, I find the tenants were negligent in fulfilling their obligation to maintain reasonable sanitary and cleanliness standards. As such, I find the tenants responsible for compensating the landlord for the latter pest control treatments.

I note that the landlord initiated pest control treatment upon complaint of cockroach sightings by the tenant in unit 108. Unit 108 and the rental unit were inspected and

treated at the same time starting September 27, 2019. During the inspection of October 24, 2019 and November 7, 2019 no evidence of cockroaches were found in unit 108; yet, multiple cockroaches were still found in the rental unit and the pest control technician noted that the rental unit remained very cluttered. However, a subsequent inspection in mid-November 2019 resulted in finding evidence of cockroaches in 108 and other units were inspected. Upon consideration of this evidence, I find it likely that compliance with the preparation instructions and effectively treating the cockroach infestation before it became out of control resulted in relatively quick success in treating unit 108 for cockroaches. As such, I find the tenant's lack of effort to declutter and clean resulted in the need for further treatment and likely resulted in cockroaches returning to unit 108. Therefore, I hold the tenants responsible for pest control actions from November 7, 2019 onwards.

The sum of the invoices for cockroach inspections and treatment made on November 7, 2019 through February 2020 amount to \$1701.00 [\$393.75 + \$304.50 + \$194.25 + \$126.00 + \$577.50 + \$105.00] and I award this amount to the landlord.

Cleaning, hauling, repairs, installing blinds

The landlord's documentation for this claim demonstrates the landlord may have been charged \$360.00 for several activities performed but there is missing information and/or a breakdown of activities on the documentation provided by the landlord and the landlord was unable to describe the repairs made and the cost associated to each activity.

The tenants acknowledged responsibility for removal of their abandoned possessions and estimated \$120.00 as being a fair cost for labour to do so based on the tenant's past experience.

In light of the above, I find I am satisfied the landlord is entitled to recover \$120.00, as acknowledged by the tenants, for this claim and I award that amount to the landlord.

Dump fee

The tenants took responsibility to pay for the dump fee of \$47.25 and I award the landlord this amount, as claimed.

New blinds

The landlord's agent testified the curtains were new at the start of the tenancy; however, I note that the move-in inspection report denotes the curtains as being in "satisfactory" condition. I am of the view that if the curtains were new, the move-in inspection report would have described them as such since the landlord's agent had described the carpeting as "new" on the move-in inspection report. Therefore, I find the curtains were likely not new but were in satisfactory condition at the start of the tenancy.

At the end of the tenancy, the landlord denoted the curtains as being damaged and stained on the move-out inspection report. When I look at the landlord's photographs, I do not see any stains or damage on the curtains but I do see the rental unit, in general, was left in a very dirty condition and the unit required a significant amount of cleaning. The tenants also acknowledged the curtains required cleaning at the end of the tenancy. I note that in completing the security deposit statement on the move-out inspection, the landlord indicated the curtains required cleaning at an estimated cost of \$100.00.

Based on the evidence before me, I am satisfied the curtains required cleaning at the end of the tenancy and the tenants are responsible for doing so. I find the landlord's estimate of \$100.00 to clean the curtains as being reasonable. However, in replacing curtains with blinds I suspect this may be part of updating the look of the rental unit and the landlord did not take into account the curtains were not new at the start of the tenancy. Therefore, I deny the landlord's request to hold the tenants responsible for the entire cost to purchase new blinds but I award the landlord \$100.00 for the tenants' contribution toward replacement with blinds instead of cleaning.

Cleaning

The tenants were agreeable to compensating the landlord for cleaning of the rental unit in the amount claimed and I grant the landlord's request for an award of \$288.75.

Fridge repairs

The move-in inspection report indicates the fridge was in satisfactory condition at the start of the tenancy and the move-out inspection report indicates the fridge it was damaged and dirty at the end of the tenancy. The tenants acknowledged that parts of the fridge were broken but allege it was already broken at the start of the tenancy.

Upon consideration of all of the evidence before me, I find the tenant's position unlikely. The tenant's position is not supported by any corroborating evidence and no damage is noted on the move-in inspection report. I also find the tenant's credibility to be lacking (for reasons described in the carpet replacement section). Further, I am of the view the tenants had a disregard for using the rental unit in a reasonable manner as demonstrated by cluttering the rental unit and extreme lack of cleanliness as seen in the landlord's photographs. Therefore, on the balance of probabilities, I am of the view that the tenant's use of the fridge without reasonable care is the reason the parts of the fridge were broken and I award the landlord the amount requested of \$323.61 to repair the fridge.

Carpet replacement

The move-in inspection report, which was signed by the tenant and acknowledged by the tenant as fairly representing the condition of the rental unit at the start of the tenancy, reflects new carpeting in the rental unit.

During the hearing, the landlord's agent testified the carpeting was new at the start of the tenancy; whereas, the tenants testified that the carpeting was dirty and in need of replacement at the start of the tenancy. The tenants offered no explanation to reconcile the "new carpeting" that was noted on the move-in inspection report and their testimony that it was in need of replacement at the start of the tenancy. Therefore, I find I accept the landlord's position, which is supported by the move-in inspection report, that the carpeting was new when the tenancy started.

At the end of the tenancy, the carpeting was described as being damaged and stained on the move-out inspection report. The landlord's photographs show a heavily soiled and filthy carpet. The landlord's photographs also include the possessions the tenants left behind including cat litter box overfull of feces which I am confident contributes to a strong odor in the rental unit. The landlord also provided an invoice for new carpeting installed after the tenancy ended. As such, I am satisfied the carpeting, which was relatively new, required replacement at the end of the tenancy due in large part to the tenant's actions or neglect in maintaining reasonable sanitary standards.

It is important to note that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged that it requires replacement, an award will generally take into account depreciation of the original item. To award the landlord full replacement value

of certain building elements that were already years old already would result in a betterment for the landlord. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation of the carpeting.

Policy guideline 40 provides that carpeting as an average useful life of 10 years, or 120 months. The tenancy was 19 months in duration, meaning the carpeting would have been depreciated by normal wear and tear in those 19 months in any event and I calculate the life of the carpeting was prematurely cut short by the tenant's actions or neglect by 101 months (120 – 19 months). Therefore, I find the landlord entitled to an award pro-rated as follows:

Cost of carpet replacement	\$2132.12
Tenant's responsibility for damage	<u>x 101/120 months</u>
Tenant's liability	\$1795.00 (rounded)

Filing fee, security deposit, pet damage deposit and Monetary Order

The landlord was largely successful in its claims against the tenants and I award the landlord recovery of the \$100.00 filing fee.

The landlord is authorized to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In keeping with all my findings and awards described above, I provide the landlord a Monetary Order to serve and enforce upon the tenants, calculated as follows:

Pest control	\$1701.00
Labour to haul away garbage	120.00
Dump fees	47.25
Curtain cleaning/replacement	100.00
Cleaning	288.75
Fridge repairs	323.61
Carpet replacement	1795.00
Filing fee	<u>100.00</u>
Sub-total	\$4475.61
Less: security and pet damage deposits	<u>- 1050.00</u>
Monetary Order	\$3425.61

Conclusion

The landlord is authorized to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the amounts awarded to the landlord with this decision. The landlord is provided a Monetary Order the balance that remains outstanding after off-setting, in the amount of \$3425.61, to serve and enforce upon the tenants.

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: August 12, 2020

Residential Tenancy Branch