



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding J. D. NELSON & ASSOC. LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, MNDCL-S, FF

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for a monetary order for damages or compensation under the Act, for permission to retain the security deposit, and for the return of their filing fee. The matter was set for a conference call.

The Landlord and one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damages or losses due to the tenancy?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties testified that this tenancy began on July 1, 2018, as a one-year fixed term tenancy that rolled into a month to month tenancy at the end of the initial fixed term. The parties agreed that rent in the amount of \$1,750.00 was to be paid by the first day of each month, and the Landlord had been given a \$900.00 security deposit at the outset of this tenancy. A copy of the tenancy agreement, the move-in inspection and five photographs of the rental unit, taken at the beginning of this tenancy, were submitted to documentary evidence by the Landlord.

The parties also agreed that one of the Tenants M.A., to the original tenancy agreement, gave notice to the Landlord to end their tenancy early, as of December 31, 2018, and that a new Tenant A.F. had moved into the rental unit. The Landlord testified that they had approved the change in Tenant, but that they did not have the new Tenant sign this tenancy agreement. When asked, the Landlord testified that they did not have the Tenant A.F. sign a tenancy agreement at all for their tenancy.

The Landlord testified that the August 2019 rent was not paid for this tenancy. The Landlord is requesting the recovery of the unpaid rent for August 2019, in the amount of \$1,750.00.

The Tenant initially testified that they had moved out in July 2019 and that they could not confirm if the rent for August 2019 had been paid. The Tenant then testified that they did not pay the rent in August as they had paid the rent twice in April 2019. The Tenant testified that they had sent the Landlord the April 2019 rent payment by e-transfer and that there had been a problem with the transfer, which resulted in that payment not being credited to the Landlord's account. The Tenant testified that when they found out that the rent payment for April 2019 had not been received by the Landlord, they sent the payment a second time. The Tenant argued that the rent was paid twice in April 2019, so the Tenants did not pay rent in August 2019, as that rent had already been paid. The Tenant testified that their bank is investigating what happened with the missing e-transfer.

The Landlord testified that they did not receive two rent payments in April 2019.

The Landlord testified that this tenancy ended on August 20, 2019, when the Tenants move-out of the rental unit, in accordance with a 10-Day Notice for Unpaid Rent that the Landlord had issued the Tenants.

The Landlord testified that the move-out inspection was completed with the Tenants on August 20, 2019, and that the Tenants had returned the rental unit in a dirty and damaged state. The Landlord submitted a copy of the move-in/move-out inspection report (the "inspection report") into documentary evidence.

The Landlord testified that the bathroom countertop was severely water damaged at the end of this tenancy and that it had to be replaced as a cost of \$729.40. The Landlord testified that the bathroom countertop was ten years only and that they are only seeking to recover half the replacement costs in the amount of \$364.70. The Landlord submitted a picture of the bathroom countertop taken at the end of tenancy and a copy of the invoice for the purchase of the new bathroom countertop into documentary evidence.

The Tenant testified that the bathroom countertop was old and had some water damage at the beginning of the tenancy.

The Landlord testified that the kitchen countertop was severely damaged with knife cuts at the end of this tenancy and that it had to be replaced as a cost of \$453.54. The Landlord testified that the kitchen countertop was also ten years old and that they are only seeking to recover half the replacement costs in the amount of \$226.77. The Landlord submitted a picture of the damaged countertop taken at the end of tenancy and a copy of the invoice for the purchase of the new kitchen countertop into documentary evidence.

The Tenant testified that the kitchen countertop was old and had some knife cuts in it at the beginning of the tenancy.

The Landlord testified that it had cost them \$221.47 to have the bathroom and kitchen sinks reinstalled after the new countertops were installed. The Landlord is asking for the recovery of their costs to have the plumbing associated with the bathroom and kitchen counters replaced. The Landlord submitted a copy of the invoice for the plumbing into documentary evidence.

The Tenant testified that they had no comment regarding this portion of the Landlord's claim.

The Landlord testified the window blinds in the living room and master bedroom were damaged at the end of this tenancy and that they had to be replaced at the cost of \$101.82. The Landlord submitted a picture of the damaged window blinds taken at the end of tenancy and a copy of the invoice for the purchase of the new window blinds into documentary evidence.

When asked, the Landlord testified that the window blinds were two years only at the end of this tenancy.

The Tenant testified that the window blinds were old and that they broke due to their age and normal wear and tear.

The Landlord testified the walls of the rental unit had several holes in them that required repair at the end of tenancy. The Landlord testified that there were nail and screw holes in the walls that needed to be patched and repainted at the end of this tenant at the cost of \$309.76. The Landlord submitted the invoice for the labour to complete these repairs into documentary evidence.

The Tenant testified that there was may nail holes in the walls of the rental unit at the beginning of this tenancy and what they added was only normal wear and tear.

Both parties to this dispute agreed that the toilet tank top had been broken during this tenancy.

The Landlord testified that it cost them \$106.28 to purchase a replacement toilet tank top, stating that the toilet is old, and it had cost extra to purchase a specialty top for it. The Landlord testified that they had not submitted an invoice for the purchase of the toilet tank top into document evidence.

The Tenant testified that they believe that \$106.28 was too expensive for a new toilet tank top and that it should only cost \$50.00 at the most for a new top.

The Landlord testified that it cost \$846.76 to replace a window, remove junk left in the rental unit and have additional cleaning done at the end of this tenancy. The Landlord submitted seven invoices into documentary evidence and referenced the previously submitted inspection report and picture evidence to support this portion of their claim.

The Landlord testified that they minimized their costs to have the window repaired by having just the glass replaced. The Landlord also testified that they had paid a

handyperson to do the needed cleaning and junk removal. When asked, the Landlord testified that the broken window was 15 years old at the end of this tenancy.

The Tenant testified that the window was very old, and they did not damage it; it just broke due to age. The Tenant testified the cleaning costs the Landlord is claiming for are way too expensive, and that there was no way that much additional cleaning was required at the end of this tenancy.

The Landlord also testified the rental unit required additional cleaning after the repairs were completed. The Landlord testified that it cost them \$200.00 to clean the carpets, and \$75.00 for cleaning once the repairs were completed. The Landlord referenced the move-out inspection and the twelve photographs taken of the rental unit, already submitted into documentary evidence to support this portion of their claim.

The Tenant agreed that the carpets had not been cleaned at the end of this tenancy and that they felt that \$75.00 in cleaning after the repair work was completed was fair.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

First, I will address the tenancy agreement that I have before me; I accept the testimony of the Landlord that one of the signing Tenants to this agreement ended their tenancy as of December 31, 2018. I also accept the Landlord's testimony that they agreed to a new Tenant moving into the rental unit as of January 1, 2019, and that the Landlord did not have this new Tenant sign the tenancy agreement that I have before me, nor did they enter into a signed tenancy agreement with this new Tenant.

I find that the tenancy agreement that I have before me, signed on June 25, 2018, ended on December 31, 2018, when the Tenant M.A. ended their tenancy with the Landlord. Which legally ended the tenancy for all the Tenants included in that agreement.

Additionally, I find that the Landlord and the five Tenants, listed as respondents to this claim, entered into a verbal tenancy agreement, that started on January 1, 2019.

In this hearing, the Landlord has claimed that the final month's rent for August 2019, was not paid for this tenancy. Section 26(1) of the Act states that a tenant must pay the rent when it is due under the tenancy agreement.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the testimony of the Landlord that the rent had not been paid for August 2020 for this tenancy. I find that the Tenants breached section 26 of the Act when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$1,750.00 in full recovery of the unpaid rent for August 2020 for this tenancy. Additionally, I grant permission to the Landlord to retain the \$900.00 security deposit they are holding for this tenancy in partial satisfaction of this award.

The Landlord has also claimed for compensation in the amount of \$2,452.56 in the recovery of repair and cleaning costs they incurred due to this tenancy; consisting of \$364.70 for a bathroom countertop, \$226.77 for a kitchen countertop, \$101.82 to replace window blinds, \$221.47 to plumbing costs, \$309.76 to patch and repaint walls, \$200.00 to clean the carpets, and \$75.00 for cleaning.

First, I find that the Tenant agreed to the cost of cleaning the rental unit in the amount of \$200.00 for carpet cleaning and \$75.00 of cleaning after repairs had been completed during this hearing. Accordingly, I grant the Landlord the agreed to amount of \$275.00.

I find that the rest of the claimed items, remained in dispute during this hearing. Awards for compensation due to damage are provided for under sections 7 and 67 of the Act. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept the Landlords' testimony that they paid \$1,494.41 to have new countertops installed in the bathroom and kitchen of the rental unit. In this case, the Landlord had requested to recover half of the cost of the new countertops and all of the plumbing cost, in the amount of \$812.94, consisting of \$364.70 for a bathroom countertop, \$226.77 for a kitchen countertop, and \$221.47 in plumbing costs.

In determining the requested amount is a suitable award, I must refer to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements. The guideline sets the useful life countertops at 25 years.

I accept the Landlord's testimony supported by the documentary evidence that the bathroom and kitchen countertop had been damaged during this tenancy, and they had to be replaced due to this damage. I also accept the Landlord's testimony that the damaged countertops had been 10 years old at the end of this tenancy, putting them at approximately 40% of the life expectancy.

Based on the life expectancy of this item, I find that it was reasonable of this Landlord to only request half of the replacement value of the new countertops. Therefore, I find it

appropriate to award the Landlord their requested costs for kitchen and bathroom countertops in the amount of \$812.94.

I accept the Landlord's testimony supported by the documentary evidence that the window blinds in the living room and bedroom of the rental unit had been damaged during this tenancy. I also accept that the window blinds were two years only at the end of this tenancy and that it cost the Landlord \$101.82 to replace these window blinds.

Pursuant to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements, window blinds have a useful life expectancy of 10 years. As the window blinds in the rental unit were two years only, and at 20% of the life expectancy, I find it appropriate to grant the Landlord the recovery of 80% of the replacement value, in the amount of \$81.45.

As for the Landlord's claim for \$309.76 to repair and repaint the walls of the rental unit at the end of this tenancy. I have reviewed the Landlord's documentary evidence, and I noted that there no pictures of the condition of the walls in the rental unit at the end of tenancy submitted into documentary evidence. I also noted that there was some damage to the walls of this rental unit present at the beginning of this tenancy, as noted on the move-in inspection report. Overall, after reviewing the Landlord's supporting document, I find that there is insufficient evidence to prove that the Tenants had caused anything more than normal wear and tear to the walls of this rental unit during their tenancy. Accordingly, I dismiss this portion of the Landlord's claim.

The Landlord has claimed for \$106.28 to replace a toilet tank top, that both these parties agreed had been broken during this tenancy. However, the Landlord has failed to submit the invoice for the purchase of the new toilet tank top into documentary evidence. During these proceedings, the parties offered conflicting verbal testimony regarding how much it should cost to replace this broken item. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As this is the Landlord's claim, the Landlord holds the burden of proving the value of their loss beyond their verbal claim. After reviewing all of the Landlord's documentary evidence, if and that the Landlord has failed to prove the value of their claimed amount for this loss, and I must, therefore, dismiss this portion of the Landlord's claim.

However, an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not straightforward. In this case, both these parties

have agreed that the toilet tank top was broken during this tenancy. Therefore, I find it appropriate to award the Landlord the nominal amount of \$50.00 due to the agreed-upon damage case during this tenancy.

Finally, the Landlord has requested to recover their costs for parts and labour to clean, remove junk and replace a broken window at the end of this tenancy in the amount of \$846.76; the Landlord submitted seven invoices into documentary evidence and referenced their previously submitted inspection report and pictures to support this portion of their claim.

As for the cost associated with replacing the broken window, Pursuant to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements, window have a useful life expectancy of 15 years. I accept the testimony of the Landlord that the broken window was 15 years old at the end of this tenancy. Accordingly, I find that the window included in the Landlord's claim was at the end of its life expectancy, and therefore, I find it appropriate to dismiss the Landlord's claim for their costs to replace this broken window at the end of this tenancy.

Additionally, after reviewing the invoices submitted to support this portion of the Landlord's claim, I noted that these invoices include several items not included in the Landlord's original claim. Specifically, these invoices include costs to remove a tub, to install a tub, to paint a floor, running errands, travel time, and one item dated May 13, 2019, several months before this tenancy had ended.

I have reviewed the Landlord's claim and testimony offered during these proceedings, and I find that these additional items were not testified to by the Landlord during these proceedings, nor has any explanation been offered in the Landlord written application as to why these items were included on these invoices.

After reviewing these invoices, I find that the Landlord provided inconsistent testimony in relation to these invoices, which has caused me to question if the Landlord was attempting to include charges in this claim that had not been clearly disclosed in their application.

Overall, I find that the Landlord has not provided sufficient evidence, to satisfy me, of the value of this portion of their claim or of the cause to why some of these items were included in these invoices. Due to the inconsistency of these invoices, I find that I must dismiss this portion of the Landlord's claim in its entirety.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlords a monetary order of \$2,169.39, consisting of \$275.00 in cleaning costs, \$1,750.00 in rent for August 2019, \$812.94 to replace countertops in the bathroom and kitchen, \$81.45 to purchase in blinds, \$50.00 in a nominal award to replace a toilet tank top, and the recovery of the \$100.00 filing fee for this hearing, less the \$900.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I find for the Landlord under sections 26, 38, 65 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$2,169.39**. 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: September 9, 2020

Residential Tenancy Branch