



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

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

Both parties agree that the landlords emailed the tenant with the landlords' application for dispute resolution in April of 2020 and that the tenant received it. Both parties agree that the landlords served the tenant with the amendment via registered mail and that the tenant received it. I find that the above packages were served in accordance with the March 30, 2020 Director's Order and section 89 of the *Act*, respectively.

Preliminary Issue- Tenant's Evidence

The tenant testified that she posted her evidence on the landlords' door on August 23, 2020. The landlords testified that they received it on August 25, 2020 and did not have time to review and respond to it.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

In determining whether the delay of a party serving her evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principals of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

In this case, the landlords testified that they did not have time to review and respond to the evidence contained in the tenant's evidence package. Based on the landlords' testimony, I find that the landlords were not properly informed of the case made against them and did not have time to reply to the claims made against them. I therefore find that the tenant's evidence is excluded from consideration.

Issues to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Are the landlords entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Are the landlords entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2019 and ended on April 12, 2020. Monthly rent in the amount of \$2,000.00 was payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant to the

landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlords applied for dispute resolution on April 21, 2020, nine days after the tenant moved out.

Both parties agree that a move in condition inspection report was completed and signed by both parties. Landlord E.C. testified that she provided the tenant with four opportunities to complete the move out condition inspection report via email, but the tenant did not attend so the landlords completed it without her.

The tenant testified that she remembered the landlord mentioning completing the move out condition inspection report but did not attend to complete it. The move in and move out condition inspection reports were entered into evidence. The landlords testified that the house and the items in it were approximately 10 years old.

The landlords testified that the following damages arose from this tenancy:

| Item | Amount |
|----------------------------|-------------------|
| Replace lights | \$103.63 |
| Replace toilet seat | \$13.43 |
| Replace trim | \$172.92 |
| Replace garage door opener | \$47.01 |
| Carpet cleaner | \$210.00 |
| Garbage removal | \$20.00 |
| Repair and paint walls | \$500.00 |
| Repair kitchen cabinets | \$420.00 |
| Cleaning | \$150.00 |
| April 2020's rent | \$2,000.00 |
| Total | \$3,636.99 |

Replace lights

Both parties agree that the tenant broke one of two matching lights in the downstairs hallway. The landlord testified that the tenant also broke one of two matching lights in the upstairs hallway. The tenant testified that she doesn't know if the upstairs hallway light was broken.

The move in condition inspection report states that the light fixtures in the hallways were in good condition. The move out condition inspection report states that one of the two light fixtures in the upstairs and downstairs hallways were broken.

The landlord testified that she could not find the matching light fixtures, so all four of the lights required replacement. The landlord entered into evidence receipts for four new light fixtures totalling \$103.63.

Replace toilet seat

Landlord E.C. testified that the toilet seat was in good condition when the tenant moved in and was broken when she moved out. A photograph of a broken toilet seat was entered into evidence. The move in condition inspection report states that the toilet is in good condition. The move out condition inspection report states that the toilet seat is broken and glue was found inside the toilet.

The tenant testified that the toilet seat broke while she resided at the subject rental property and that she purchased a new toilet seat and left it at the subject rental property for the landlords. The landlords testified that the tenant did not leave them a new toilet seat. The landlords entered into evidence a receipt for a new toilet seat in the amount of \$13.43.

Replace trim

Both parties agree that the tenant's dog scratched the trim and walls in the subject rental property. The landlords entered into evidence photographs of same. The landlord entered into evidence receipts for new trim, paint and supplies to install the new trim totalling \$97.92. The landlords testified that it took approximately three hours to replace the damaged trim and repair the walls. The landlords testified that they are seeking reimbursement for their labour in the amount of \$25.00 per hour for three hours for a total of \$75.00.

Replace garage door opener

Both parties agree that the tenant was provided with a garage door opener at the beginning of the tenancy and that she lost it. The landlords entered into evidence a

receipt for a new garage door opener in the amount of \$47.01. The tenant testified that she does not dispute this claim.

Carpet cleaner

Both parties agree that the tenant did not hire a professional carpet cleaner at the end of this tenancy as required by the tenancy agreement. The landlords entered into evidence a carpet cleaning receipt in the amount of \$210.00. The tenant testified that she does not dispute this claim.

Garbage removal

The landlords testified that the tenant left seven garbage bags of garbage at the subject rental property at the end of this tenancy. Landlord E.C. testified that it took her brother one hour to take the garbage to the dump plus the dump fee. Landlord E.C. testified that she is seeking reimbursement in the amount of \$20.00 from the tenant.

The tenant did not dispute that garbage was left at the subject rental property. The tenant testified that since it was not garbage day, she couldn't put it out for collection.

Repair and paint walls

The landlords testified that the tenant caused significant wall damage to the subject rental property. The landlords entered into evidence photographs of the subject rental property taken before the tenant moved out showing frames hung on various walls. One photograph shows over 20 frames hung on one wall. The landlords testified that all the frames were hung up with screws. The tenant did not dispute the above testimony. The landlords testified that the damage that resulted was beyond regular wear and tear.

The landlords testified that the paint at the subject rental property was touched up immediately before the tenant moved in but the landlords could not recall when the subject rental property was last painted in full.

The landlords testified that they paid a tradesperson \$1,350.00 in cash to repair the walls at the subject rental property and to paint it. The landlords testified that they are seeking the tenant to contribute \$500.00 towards that cost for the damage she caused.

The landlords testified that the entered into evidence the receipt in the amount of \$1,350.00; however, all that was entered was the landlord's word document setting out their claim. No actual receipt was entered into evidence.

The tenant testified that she offered to fill in the holes in the walls but the landlords told her not to worry about it. The tenant testified that the subject rental property was not recently painted when she moved in. The landlords testified that they did not want the tenant to personally fix the walls because she was not a professional but did permit her to hire her own professional.

Repair kitchen cabinets

Both parties agree that the tenant's dog scratched two kitchen cabinet doors and two drawers at the subject rental property. The landlords testified that they had the doors and drawers repaired by their manufacturer which cost \$420.00, a receipt for same was entered into evidence.

The tenant testified that she did not agree with the repair cost.

Cleaning and April 2020's rent

Both parties agree that the landlords served the tenant with a One Month Notice to End Tenancy for Cause in March of 2020 (the "Notice"). The Notice was entered into evidence and has an effective date of April 30, 2020. Both parties agree that the tenant did not dispute the notice and moved out on April 12, 2020. The tenant testified that she did not agree with the reasons for eviction stated on the Notice but decided not to fight the Notice.

The tenant testified that the landlord wanted her to move out of the subject rental property earlier than the effective date on the Notice and the tenant agreed on the condition that she would not clean the subject rental property. The tenant testified that despite that agreement, she did clean the subject rental property when she moved out. Both parties agreed that the tenant moved out on April 12, 2020. Both parties agree that the tenant did not pay rent for April 2020.

The landlords testified that they did not make an agreement with the tenant that she did not have to clean the property if she moved out before the April 30, 2020 effective date

on the Notice. The landlords testified that they expected the tenant to move out on April 30, 2020 and that the tenant owes \$2,000.00 in unpaid rent for April 2020.

The landlords entered the following text messages from the tenant dated April 11, 2020 into evidence:

- Tenant: I haven't paid yet because I haven't had a paycheque in 3 weeks, or received EI. Your eviction notice says I have until April 30. Since you plan on keeping my deposit anyways you are more than welcome to hire cleaners if you wish and I can be 100% out sooner. Or I'm gonna be a while. You let ne know what you prefer.
- Tenant: Ok, so if I get all my stuff out tomorrow you want it as is? It's not filthy [landlord E.C.], I'm not a pig. But if you'd rather just get in there you can have it for Monday if that's the case.

The landlords testified that they hired a private cleaner to clean the house for six hours at a rate of \$25.00 per hour for a total of \$150.00. The landlord wrote out the above claim in a word document, but no receipt was entered into evidence. The landlords testified that it was a cash transaction. The landlords testified that a cleaner was hired because all of the appliances needed to be pulled out and cleaned behind, there was gum in the carpet, all of the cabinets needed to be wiped down and the tenant over sprayed spray paint at the subject rental property.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;

3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Residential Tenancy Guide #40 states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Section 21 of the Residential Tenancy Act Regulation states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the

rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The move in condition inspection report was signed by both parties, I accept the move in condition inspection report as proof of the condition of the subject rental property at the beginning of the tenancy.

The move out condition inspection report was not completed by both parties and the landlords did not provide the tenant with a final opportunity for inspection in the approved form as required by the Residential Tenancy Act Regulation. I therefore give the move out condition inspection report little weight. I will base my findings on the move out condition of the subject rental property based on the testimony of the parties and evidence provided by the landlord.

Replace lights

Both parties agree that the tenant damaged a light in the downstairs hallway. The tenant testified that she did not know about the light in the upstairs hallway. The move in condition inspection report states that the lights in the upstairs hallway were in good condition at the beginning of the tenancy. The landlords entered into evidence photographs of the damaged upstairs hallway light. I find that the landlords have proved, on a balance of probabilities that the tenant damaged both lights. I accept landlord E.C.'s submissions that she could not find the matching light fixtures, so all four of the lights required replacement.

Policy Guideline #40 states that the useful life for light fixtures is 15 years (180 months). Therefore, at the time the tenant moved out, there was approximately 60 months of useful life that should have been left for the light fixtures. I find that since the light fixtures required replacement after only 120 months, the tenant is required to pay according to the following calculations:

$\$103.63 \text{ (cost of new lights)} / 180 \text{ months (useful life of lights)} = \$0.58 \text{ (monthly cost)}$

$\$0.58 \text{ (monthly cost)} * 60 \text{ months (expected useful life of lights after tenant moved out)} = \mathbf{\$34.80.}$

Replace toilet seat

Based on the move in condition inspection report, I find that the toilet and toilet seat were in good condition when the tenant moved in. Based on the landlords' testimony and the photograph of the broken toilet seat, I find that the toilet seat was broken at the end of this tenancy. I find that the tenant has not proved, on a balance of probabilities, that she purchased a new toilet seat and left it at the subject rental property at the end of this tenancy.

Policy Guideline #40 states that the useful life for toilets is 20 years (240 months). Therefore, at the time the tenant moved out, there was approximately 120 months of useful life that should have been left for the toilet. I find that since the toilet seat required replacement after only 120 months, the tenant is required to pay according to the following calculations:

$\$13.43 \text{ (cost of new toilet seat)} / 240 \text{ months (useful life of toilet seat)} = \0.056
(monthly cost)

$\$0.056 \text{ (monthly cost)} * 120 \text{ months (expected useful life of toilet seat after tenant moved out)} = \mathbf{\$6.72}.$

Replace trim

Based on the testimony of both parties, I find that the tenant's dog damaged the trim and walls of the subject rental property.

Policy Guideline #40 states that the useful life for drywall and panelling is 20 years (240 months). I find that trim is similar to panelling and I will use the life expectancy of panelling as the life expectancy for trim. Therefore, at the time the tenant moved out, there was approximately 120 months of useful life that should have been left for the trim and walls. I find that since the trim and walls required replacement/repair after only 120 months, the tenant is required to pay according to the following calculations:

$\$172.92 \text{ (cost of repair/replacement)} / 240 \text{ months (useful life of drywall and trim)} = \$0.72 \text{ (monthly cost)}$

$\$0.72 \text{ (monthly cost)} * 120 \text{ months (expected useful life of drywall and trim after tenant moved out)} = \mathbf{\$86.40}.$

Replace garage door opener

The tenant testified that she does not dispute the landlord's claim for \$47.01, the cost of a new garage door opener. I therefore award the landlord \$47.01.

Carpet cleaner

The tenant testified that she does not dispute the landlord's claim for \$210.00, the cost of professional carpet cleaning. I therefore award the landlord \$210.00.

Garbage removal

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

Based on the testimony of both parties I find that the tenant left garbage at the subject rental property contrary to section 37(2)(a) of the *Act*. Landlord E.C. testified that it took her brother one hour to take the tenant's garbage to the dump plus the cost of the dump fee. I find the claim of \$20.00 for the above work to be reasonable and find that the tenant is responsible for this charge.

Repair and paint walls

Based on the testimony of both parties and the landlords' evidence, I find that the tenant damaged the walls at the subject rental property and that the damage was greater than that to be expected by reasonable wear and tear.

The landlords testified that it cost them \$1,350.00 to repair and re-paint the walls. I find that the landlords have not proved the value of this loss as no receipt was entered into evidence. I find that the word document the landlords drafted is not a receipt or proof of payment for the work allegedly done.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find that the landlords have proved that the tenant breached section 37(2)(a) of the *Act* by damaging the walls but have not proved their loss. I find that the landlords are entitled to nominal damages in the amount of \$350.00.

Repair kitchen cabinets

Based on the testimony of both parties, I find that the tenant's dog damaged two kitchen cabinets and two drawers. I find that the tenant is responsible for the entire cost of their repair in the amount of \$420.00. I note that I am not completing a useful life calculation because the doors/drawer were not replaced with new doors/drawers.

Cleaning and April 2020's rent

I find that the tenant has not proved, on a balance of probabilities, that the landlord agreed to accept less than the entire amount of April 2020's rent if the tenant moved out earlier than the effective date on the One Month Notice. The April 11, 2020 text message entered into evidence by the landlord shows that the tenant was aware that she did not have to vacate the subject rental property until April 30, 2020.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$2,000.00 on April 1, 2020. It is undisputed that the tenant did not pay rent on April 1, 2020. I find that the tenant owes the landlords \$2,000.00 in unpaid rent for April 2020.

The landlords testified that the subject rental property was not cleaned when the tenant moved out. The tenant testified that the subject rental property was cleaned when she moved out. The landlord did not enter into evidence photographs of the areas that required cleaning.

The landlords testified that it cost them \$150.00 to clean the subject rental property. I find that the landlords have not proved the value of this loss as no receipt was entered into evidence. I find that the word document the landlords drafted is not a receipt or proof of payment for the work allegedly done.

The text message entered into evidence by the landlord states that the tenant would move out April 12, 2020 if the landlord wants the subject rental property in "as is" condition.

Based on the totality of evidence, I find that the subject rental property required some cleaning, though the landlord has not proved, on a balance of probabilities how much cleaning was required, or the loss suffered. I also note that it is not the tenant's responsibility to clean under appliances that are not on wheels.

I find that the landlords are entitled to nominal damages in the amount of \$50.00.

Security Deposit and Filing Fee

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlords made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(a) and 38(b) of the *Act*.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$1,000.00.

Conclusion

I issue a Monetary Order to the landlords under the following terms:

| Item | Amount |
|----------------------------|-------------------|
| Replace lights | \$34.80 |
| Replace toilet seat | \$6.72 |
| Replace trim | \$86.40 |
| Replace garage door opener | \$47.01 |
| Carpet cleaner | \$210.00 |
| Garbage removal | \$20.00 |
| Repair and paint walls | \$350.00 |
| Repair kitchen cabinets | \$420.00 |
| Cleaning | \$50.00 |
| April 2020's rent | \$2,000.00 |
| Filing fee | \$100.00 |
| Less security deposit | -\$1,000.00 |
| Total | \$2,324.93 |

The landlords are provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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 2, 2020

Residential Tenancy Branch