Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL, MNSD, FFT

Introduction

This hearing dealt with cross-applications filed by the parties. On March 19, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On April 5, 2020, the Tenants made an Application for Dispute Resolution seeking a return of the security deposit pursuant to Section 38 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

These Applications were originally set down for a hearing on July 24, 2020 at 1:30 PM but were subsequently adjourned for reasons set forth in the Interim Decision dated July 24, 2020. These Applications were then set down for a reconvened hearing on August 31, 2020 at 11:00 AM but were subsequently adjourned again for reasons set forth in the Interim Decision dated September 1, 2020. These Application were set down for a final, reconvened hearing on October 13, 2020.

The Landlord attended the final, reconvened hearing with A.S. attending as counsel for the Landlord. Tenant R.R. attended the final, reconvened hearing as well, with R.N. attending as her advocate and K.R. attending as her witness. All in attendance, except A.S., provided a solemn affirmation.

During the original hearing, I was satisfied that the Tenant had been served the Notice of Hearing and evidence package, and the Landlord's evidence was accepted and considered when rendering this Decision.

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During the original hearing, it was determined that the Landlord's amended claims would not be addressed, and that the Landlord's Application would only address claims for the amount noted on the Landlord's Application of $21,882.97.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?
- Are the Tenants entitled to a return of double the security deposit?
- Are the Tenants entitled to monetary compensation?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2017 and ended when the Tenants gave up vacant possession of the rental unit on February 28, 2020. Rent was established at $1,714 per month, including utilities, and was due on the first day of each month. A security deposit of $750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The parties also agreed that a move-in inspection report was conducted on June 1, 2017, and that a move out inspection report was conducted on February 28, 2020.

However, the Tenant did not sign this report because she did not agree with it. A copy of these reports was submitted as documentary evidence.

The Tenant advised that she mailed her forwarding address in writing to the Landlord; however, she was not sure when she did this. The Landlord confirmed that this forwarding address in writing was received, and that the letter was dated March 3, 2020.

A.S. advised that the Landlord is seeking compensation in the amount of **$15,852.53** because the Tenants caused three separate floods in the rental unit. On July 19, 2018, the property manager was informed of a water leak by the tenant that lived below the rental unit. A plumber investigated the issue but could not determine the source of the leak. The property manager inspected the rental unit in September 2018 to determine if there was a waterbed or aquarium in the rental unit.

On October 12, 2018, another water leak was reported, and plumbers were dispatched to investigate again. It was determined that the leak was caused by an improperly installed bidet hose in the rental unit, and that this was likely the cause of the first flood. This bidet hose was installed without the Landlord's authorization. The plumber put in a stopgap measure and informed the Tenants that there was no guarantee that this would fix the problem. The cost of the repairs of the first and second flood totalled $1,086.93 and invoices for these repairs were submitted as documentary evidence.

On January 7, 2019, the tenant below the rental unit reported a significant flood, and it was determined that this was caused by the bidet again. The Tenants had used an incorrect supply line and had cross-threaded this onto the toilet. The Tenants acknowledged to being responsible for this third flood. A restoration company reported extensive damage and the downstairs tenants were required to vacate until the remediation was completed, which resulted in rental loss to the Landlord. Pictures and invoices were submitted as documentary evidence to support the Landlord's claims of $14,765.60 due to this third flood. As part of this amount claimed, the Landlord was seeking compensation for $260.00 as he was required to file an insurance claim and his premium went up by this amount. This insurance claim was rejected as it was determined that the Tenants were at fault for the leak. In addition, he was seeking compensation in the amount of $4,507.50 for the cost of his time to manage the remediation and repair of all the damage. Pictures were also submitted as documentary evidence to demonstrate the extent of the damage caused by the flood.

A.S. advised that the property manager dealt with the Tenants during the October 2018 flood, but never advised the Landlord of the bidet installation. The Landlord only knew of this after the third flood occurred. Permission from the Landlord was never given to the Tenants to install this bidet or to keep it. She referenced an email from the property manager, dated April 17, 2019, where she indicated that the Tenants confirmed they did not have insurance and agreed to pay for the associated repair costs.

R.N. confirmed that there was a leak on July 19, 2018 but the plumber could not locate the source of the leak. She also acknowledged that there was a second leak where a plumber fixed the bidet on October 19, 2018. This repair person tested the bidet and there were no issues with it. She was not sure why there would have been a leak and she submitted that if there was a leak, the floor should have been wet, which it was not. She confirmed that the Tenants did not have authorization from the Landlord to install the bidet. She stated that the Tenants are aware that the bidet caused the third flood.

A.S. advised that the Landlord is also seeking compensation in the amount of **$5,060.44** because the Tenants did not leave the rental unit in a re-rentable state at the end of the tenancy. She submitted that the move-in and move-out inspection reports were conducted with the Tenant; however, the Tenant elected not to sign the move-out report as she did not agree to the contents. A.S. advised that the Landlord's claim for this amount was broken down into four separate claims. Firstly, the Landlord is seeking compensation in the amount of $109.69 for the cost of re-keying the rental unit as the Tenants changed the locks without the Landlord's consent and did not give a copy of these keys to the Landlord at the end of the tenancy. A copy of the lock re-keying was submitted as documentary evidence.

Secondly, the Landlord is seeking $1,136.25 for the cost to clean the rental unit after the Tenants gave up vacant possession of the rental unit. She submitted that there was a mouse infestation that the Tenants did not advise the Landlord of. Pictures of the rental unit were submitted to support the noted deficiencies on the move-out inspection report. In addition, invoices were submitted to corroborate the cost of cleaning, as well as a breakdown of the Landlord's claim for his time to oversee the cleaning process.

Thirdly, the Landlord is seeking $2,823.00 for the cost to repair damage to the walls and to repaint the rental unit. A.S. submitted that paint was peeling off the walls, that there were many, tiny holes in the walls, that there were large pinholes and nail holes in the walls, that there were smudges, scuffs, and marks on the walls, and that clear tape was left on them. She referenced pictures submitted to demonstrate the damage to the walls, she cited the invoice of the repair, and the breakdown of the Landlord's time

spent addressing this issue. The Landlord advised that the walls were last painted prior to the Tenant moving in.

Finally, the Landlord is seeking $991.50 for the cost to repair damage to the rear bedroom wall and to repaint the rental unit. The damage to this wall was due to the water ingress that occurred, causing the paint to peel. Due to the age of the rental unit, an asbestos and lead test needed to be conducted first before any tradespeople would conduct any necessary repairs. She cited a picture of the damage, the invoices for the asbestos and lead test, the invoice for the repair, and the breakdown of the Landlord's time to support the cost of this claim.

In response to these claims, R.N. advised that the Tenant's daughter lost the key to the rental unit and that they changed the locks without the consent of the Landlord. She stated that a copy of the key was provided to the Landlord; however, she is not sure when this was done. K.R. advised that the key to the rental unit was stolen from her, that she was not sure when the locks were changed, and that she was not sure if a replacement key was provided to the Landlord.

Regarding the cleaning, R.N. submitted that the Tenant did "as much as she could" over six days, with a friend helping her. The carpet was shampooed, and the Tenant was not aware of any mouse infestation. She stated that the move-out inspection report does not indicate that there is damage to the rental unit, and if there was damage, the pictures are not consistent with the report.

With respect to the condition of the walls at the end of the tenancy, R.N. submitted that the Tenant claimed that the paint was not fresh at the start of the tenancy and that the appearance of the walls at the end of the tenancy was due to "maybe wear and tear." The Tenant submitted that there were no big holes in the walls, only tiny holes that were "maybe" created by pins or nails.

Finally, R.N. stated that the Tenant advised the Landlord of the paint peeling right away, "maybe in 2018", and that the Landlord looked at it then. The Tenant denied being responsible for this as the paint was peeling due to moisture from the ceiling.

In response, the Landlord advised that he had a repair person attend the rental unit in March 2020 to fix this problem that was due to a nail in the roof that had popped out. This resulted in a moisture leak from the ceiling.

A.S. clarified that the Tenant did not advise the Landlord of this leak during the tenancy, which caused additional damage to the rental unit because it began two years prior.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 21 of the *Regulations* outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet damage deposit for damage is extinguished if the Landlord does not complete the condition inspection reports.

Section 32 of the *Act* requires that the Tenants repair any damage to the rental unit that is caused by their negligence.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receive the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Regarding the provision of the forwarding address in writing, while the Tenant could not remember when she mailed this, the consistent evidence is that it was dated March 3, 2020. Section 90 of the *Act* states that a document is deemed to be received five days after it was mailed. As such, this was deemed to have been received on March 8, 2020. As the Landlord made an Application to keep the deposit within 15 days of March 8, 2020, I find that the Landlord complied with the requirements of Section 38. Thus, I do not find that the doubling provisions of this Section of the *Act* apply in this instance.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

In addition, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The first issue I will address is the Landlord's claim for compensation in the amount of $15,852.53 due to the three floods that the Tenants caused. The consistent and undisputed evidence before me is that the Tenants installed an after-market bidet system without the Landlord's authorization and the improper installation of this system caused three, separate floods to the property. Given that the property manager was aware after this second flood that the Tenants had installed this system without the

Landlord's consent and that this was responsible for the first two floods, it is not clear to me why this person did not either inform the Landlord of this, or order the Tenants to remove this system after the second flood. In my view, this would have mitigated any chance of the third flood happening. However, given that the Tenants were already aware that the installation of this system caused the first two floods, and as she acknowledged responsibility for the installation of this system, I am satisfied that the Tenants are culpable for this damage as well.

Thus, when reviewing the breakdown of the Landlord's claims for the floods, as the Tenants were wholly responsible for the first two floods, I grant the Landlord a monetary award in the amounts of **$1,002.93** and **$84.00**.

With respect to the third flood, I will address the Landlord's claim of $4,507.50 for his time separately. I note that the Landlord's costs for repair and remediation of the third flood, and the increased insurance premium, as per Exhibit D2 totalled $10,258.10. Given that the property manager could have mitigated this third flood from happening by informing the Landlord of the cause of the previous two floods, or by ordering the Tenants to remove this unauthorized bidet system, neither of the scenarios happened. As such, I find that the Landlord, by way of the property manager's negligence, is partially responsible for bearing the costs involved with rectifying this situation. However, given that the Tenants continued to use this unauthorized bidet system after already causing two previous floods, I am satisfied that the Tenants should be accountable for 75% of the cost of this repair, remediation, and increased insurance. As such, I grant the Landlord a monetary award in the amount of **$7,693.58** to satisfy this claim.

In regard to the Landlord's claim of $4,507.50 for the costs of the time that he spent overseeing this remediation project, I acknowledge that the Tenants caused a serious flood that resulted in considerable damage to the rental unit. While it is the Landlord's role and part of the Landlord's responsibility to manage issues that occur in a tenancy, I find that the nature of this particular incident warranted a significant amount of time and the assistance of a qualified professional to ensure that this flood was correctly repaired. While I accept that the Landlord can do this work himself and charge a wage that is commensurate with this position, I note that the Landlord charged an hourly amount that was equivalent to his time. However, I do not find that this is acceptable as he could have hired a tradesperson to do the same job at an appropriate, equivalent wage for that job. As such, I am satisfied that the Landlord should be compensated in the amount $85.00 per hour for the 30.05 hours that he spent coordinating this

remediation. Furthermore, as I have found that the Tenants should be responsible for 75% of this cost, I grant the Landlord a monetary award in the amount of **$1,915.69** to satisfy this claim.

With respect to the Landlord's claims for compensation in the amount of $5,060.44, I will first address the lock re-keying fee. The consistent and undisputed evidence is that the Tenants changed the keys without the Landlord's consent. While the Tenant claimed that the new keys were provided to the Landlord, I find it important to note that she was vague in when this was returned. Furthermore, her witness could not corroborate that a key was, in fact, provided to the Landlord. Moreover, had the Landlord been provided with a key, it would not make sense to me that the Landlord would then go to the expense to re-key the rental unit again. Based on a balance of probabilities, I am satisfied that the Tenants, more likely than not, did not provide the Landlord with a copy of the new keys. As such, I grant the Landlord a monetary award in the amount of **$109.69** to satisfy this claim.

Regarding the Landlord's claim for $1,136.25 because the Tenant did not clean the rental unit after giving up vacant possession, I have before me a move-out inspection report that noted deficiencies in the condition of the rental unit, and pictures from the Landlord that support a state of the unit that was not re-rentable. While the Tenant advised that she did not sign the move-out inspection report because she did not agree with the noted condition, I find that her statement that she cleaned "as much as she could" actually supports, in my view, the Landlord's claims that the rental unit was not adequately cleaned at the end of the tenancy. As such, I am satisfied that the Landlord has substantiated this claim.

However, the Landlord is also attempting to charge an hourly rate of $150 per hour of his time to coordinate the cleaning of the rental unit. Given that these are administrative tasks that I find would be associated with the Landlord's role and responsibility of being a Landlord, I dismiss his claims for compensation for his time. Consequently, for this group of claims, I grant the Landlord a monetary award in the amount of **$262.50** and **$236.25** to satisfy the costs of cleaning and restoration.

With respect to the Landlord's claim of $2,823.00 for the cost to repair damage to the walls and repaint the rental unit, I have before me a move-out inspection report that noted deficiencies in the condition of the rental unit and pictures from the Landlord that support the deficiencies in the walls. While the Tenant refuted the Landlord's suggested condition of the walls, I do not find her submissions of "maybe" not being responsible for this damage to be compelling. When reviewing the Landlord's pictures, I note that there

are some scuffs, some smudges, and some nail holes that I find are beyond reasonable wear and tear.

However, I do not find that the damage depicted in the pictures is consistent with the extent of the work completed on the invoice as it notes that doors, door frames, window frames, baseboards, a storage closet, and a mantel ledge were all re-painted, but submissions on these items were not made during the hearing. Furthermore, this invoice also included a charge of $220.00 plus GST for the cost to replace a front screen door, but again, no submissions were made with respect to this door. Given that it appears as if the Landlord is claiming for items on an invoice that were not addressed during the hearing, and as I am not satisfied that the damage depicted by the evidence warranted the entirety of the cost being sought, I find that the Landlord should only be awarded **$500.00** to address the repairing and re-painting of the damaged walls.

In regards to the Landlord's attempt to charge an hourly rate of $150 per hour of his time to coordinate the re-painting of the rental unit, again, given that these are administrative tasks that I find would be associated with the Landlord's role and responsibility of being a Landlord, I reject his claims for compensation for his time on this point.

Finally, with respect to the Landlord's claim for compensation of $991.50 for the cost to repair damage to the rear bedroom wall and to repaint the rental unit due to the water ingress from a deficiency in the ceiling, while the leak resulted from a defect in the roof, I do not find it reasonable that if the Tenants had advised the Landlord of the leak years ago, that the Landlord would have simply ignored this. I find it more likely than not that the Tenants did not notify the Landlord that there was a problem during the tenancy. However, with respect to the Landlord's attempt to charge an hourly rate of $150 per hour of his time to coordinate the repair and re-painting of the leak, similar to above, I reject his claims for compensation for his time on this claim. Consequently, I grant the Landlord a monetary award in the amount of **$514.50** and **$252.00** to rectify this claim.

As the Landlord was partially successful in his claims, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the debt outstanding.

As the Tenants were not successful in their claims, I find that the Tenants are not entitled to recover the $100.00 filing fee paid for this Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
Cost to remedy first flood	$1,002.93
Cost to remedy second flood	$84.00
Cost to remedy third flood	$7,693.58
Cost of Landlord's time to remedy third flood	$1,915.69
Re-keying fee	$109.69
Restoration of mouse infestation	$262.50
Cleaning	$236.25
Repair and repainting of walls	$500.00
Asbestos and lead testing	$514.50
Repair and repainting of walls	$252.00
Recovery of Filing Fee	$100.00
Security deposit	-$750.00
Total Monetary Award	**$11,921.14**

Conclusion

I provide the Landlord with a Monetary Order in the amount of **$11,921.14** 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: November 8, 2020

Residential Tenancy Branch