Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

On March 23, 2020, the Landlords 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 June 12, 2020, the Landlords amended their Application for Dispute Resolution seeking to increase the amount of monetary compensation pursuant to Section 67 of the *Act.*

The Landlords' Application was originally set down for a hearing on July 28, 2020 at 1:30 PM but was subsequently adjourned for reasons set forth in the Interim Decisions dated July 28, 2020 and September 29, 2020. This Application was then set down for a final, reconvened hearing on December 14, 2020 at 11:00 AM.

Landlord J.Y. attended the final, reconvened hearing with E.H. attending as his translator and D.Y. attending as his agent. Neither Tenant attended at any point during this 30-minute hearing. All in attendance provided a solemn affirmation.

During the original hearing, D.Y. advised that a Notice of Hearing package with some evidence was served to each Tenant by registered mail on March 28, 2020, and the Tenants confirmed receipt of these packages. In addition, D.Y. advised that the Landlords' Amendment and further evidence was served to the Tenants by registered mail on June 12, 2020, and the Tenants confirmed receipt of this package as well. As per this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants have been served the Notice of Hearing and evidence

packages, and the Amendment. As well, I have accepted all of the Landlords' evidence and will consider it when rendering this Decision.

The Tenants advised that they served their evidence to the Landlords by registered mail on July 9, 2020, but they did not check to see if the Landlords could view their digital evidence in accordance with Rule 3.10.5 of the Rules of Procedure. D.Y. confirmed that they received the Tenants' evidence; however, they did not receive any digital evidence or a link to any digital evidence. As the Tenants did not comply with Rule 3.10.5, their digital evidence has been excluded and will not be considered when rendering this Decision. However, the rest of their evidence will be accepted and considered.

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

- Are the Landlords entitled to monetary compensation?
- Are the Landlords entitled to apply the security deposit towards this debt?
- Are the Landlords 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 most current tenancy started on November 1, 2018 and ended when the Tenants gave up vacant possession of the rental unit on February 29, 2020. Rent was established at $3,700 per month and was due on the first day of each month. A security deposit of $1,750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties also agreed that a move-in inspection report was conducted on August 23, 2016. Regarding a move-out inspection report, during the July 28, 2020 hearing,

D.Y. advised that the Tenants texted on February 28, 2020 that they could meet for an inspection on February 29, 2020. He stated that they arrived at the rental unit on February 29, 2020 but the Tenants were still cleaning. The Tenants told them to come back at 6:30 PM, and when the Landlords returned, the Tenants were still not done cleaning, so the Tenants told the Landlords to return at 8:00 PM. The Landlords returned at 8:00 PM, but the Tenants were not there. They then received a text from the Tenants advising them to go ahead with the inspection and that the Tenants would return soon; however, when the Tenants did arrive, they simply returned the keys and departed. The Landlords spent one hour completing the report, in the absence of the Tenants. As it was dark, it was difficult to see as clearly as if the inspection was conducted in the daytime. D.Y. referenced an audio recording of the interaction between the Landlords and the Tenants to support their position.

Tenant S.M. advised that they agreed that February 29, 2020 would be the date of the inspection. According to his “recollection”, when they returned to participate in the move-out inspection, they were not provided with a “safe space” to attend the inspection as they were insulted by the Landlords. However, when he was asked to elaborate on this, he stated that he was not present at the time of the inspection. He stated that as the rental unit was new, there was ample ceiling light to be able to view the unit at that time of the night.

With respect to a forwarding address in writing, D.Y. advised that the Landlords received this from the Tenants via a text from Tenant M.M. on March 11, 2020. S.M. agreed with this but then he claimed to have provided the Landlords with their address on a piece of paper when they returned to collect their mail on March 3, 2020. However, he did not submit any proof to support that they provided this then.

D.Y. advised that the Landlords are seeking compensation in the amount of **$700.00** for the balance of February 2020 rent. D.Y. advised that the Tenants were served a Two Month Notice to End Tenancy for Landlord’s Use of Property on September 30, 2019, effective for January 31, 2020. However, the Tenants did not leave the rental unit until February 29, 2020. He stated that the Tenants paid three installments of $1,000.00 for February 2020 rent by electronic transfer. When the Tenants were asked for the remaining balance of rent, they told the Landlords to deduct the amount from the security deposit. The Tenants were never given authority to have any amount deducted from the deposit.

S.M. referenced text messages submitted as documentary evidence advising the Landlords that they could use a portion of the security deposit towards this outstanding rent.

D.Y. advised that the Landlords are seeking compensation in the amount of **$637.04** and **$166.73** for the cost of outstanding utilities that the Tenants owe. These costs are from October 2, 2019 to February 29, 2020. He referenced bills submitted as documentary evidence and a calculation of these utilities to support these costs.

S.M. advised that the utility bills were in the Landlords' name and that the Tenants did not have their own bill. He stated that the Landlords have multiple properties and their calculations are not accurate. He submitted that to his "knowledge", the Tenants paid their own hydro bills.

D.Y. stated that since the tenancy started, the utility account was in the Landlords' name, that the bills would be mailed to the dispute address, and that the Tenants would then pay the bills.

S.M. questioned whether there was any proof that the Tenants paid the cost of utilities to the Landlords in the past. He stated that the hydro bills were in his name and that he paid the hydro when the bills arrived. He questioned how he could pay a hydro bill in another person's name.

D.Y. submitted that the Landlords have never paid for the utility bills for this rental unit at any time during the tenancy.

During the reconvened hearing of September 29, 2020, D.Y. advised that the Landlords are seeking compensation in the amount of **$105.00** and **$336.00** for the cost of repairs to the building because the Tenants caused damage when they moved out. He stated that the Tenants were required to schedule a move-out date with the strata at least seven days in advance to book the elevator and that the Landlords offered to help the Tenants coordinate this. However, the Tenants failed to do so, and documentation was submitted to support this position. He stated that the Tenants were aggressive towards strata staff.

M.M. advised that the Landlords did not offer any help. M.M. confirmed that coordination of the use of the elevator needed to be coordinated with the property manager and this was done over email. Despite the information in the emails submitted as documentary evidence, the date for booking the elevator was changed verbally a week before the

move-out date. M.M. stated that the property management company was not competent enough to book this properly. M.M. advised that they paid $200.00 to book this elevator and they have not received it yet.

D.Y. stated that he was not aware that the Tenants paid $200.00 to the property manager to book the elevator. As the strata has not fixed the damage that cost $336.00, he believes that the $200.00 that the Tenants paid could be used by the strata towards the $336.00 owing.

D.Y. advised that the Landlords are seeking compensation in the amount of **$200.00** because the Tenants left eight pieces of unwanted and broken furniture in the rental unit, so the Landlords had to pay to dispose of these items. He referenced pictures submitted to support their position that these items were left behind. He stated that they paid a person this amount to take apart the furniture and dispose of it, that it took this person one and a half days to complete this, and that junk removal companies would charge $300.00 to $400.00 to do this work.

M.M. advised that they had coordinated someone to pick up these items, but this person cancelled on them. M.M. confirmed that they left these items behind, that they received a quote from a junk removal company for $140.00, and that they did not submit this quote as documentary evidence.

D.Y. advised that the Landlords are seeking compensation in the amount of **$1,370.00** because the Tenants left damage, scratches, nail holes, and heavy marks on the walls at the end of the tenancy. He stated that the walls were last painted in 2014 and he referenced pictures submitted as documentary evidence to illustrate the damage to the walls. He advised that it took 42 hours to fix all the damage and a receipt was submitted to substantiate the cost of repairing this damage.

M.M. advised that the tenancy agreement did not prohibit them from creating nail holes in the walls and that much of the damage alleged by the Landlords is reasonable wear and tear. M.M. claimed that the damage depicted in the bedroom closet was actually caused by the strata when a repair was completed and that the damage near the windows of the rental unit were caused by window washers.

During the final, reconvened hearing, D.Y. advised that the Landlords are seeking compensation in the amount of **$746.90** because the Tenants damaged drawers in the fridge and there were missing parts. He stated that Landlord J.Y. noticed these issues and asked the Tenants about them. The Tenants advised that they lost the parts and

that the amount could be deducted from the security deposit. He advised that the damage to the drawers do not affect their functionality. He submitted an invoice to support the cost of this claim.

D.Y. advised that the Landlords are seeking compensation in the amount of **$385.00** because the Tenants left the rental unit in an unreasonably dirty state at the end of the tenancy. When the Landlords went to the rental unit at the original time of inspection, the Tenants advised them to come back later as the unit was a complete mess. They phoned the Tenants later for an update, and they were advised that the Tenants needed even more time. When the Landlords went to the rental around 8:30 PM, they discovered that the walls were dirty, the oven, microwave, and range hood were not cleaned, there were stains on drawers, garbage was left behind, cupboards were not wiped, there were food scraps in the fridge, and the bathroom was not cleaned well. He referenced pictures and an invoice to support the condition of the rental unit at the end of the tenancy.

Finally, D.Y. advised that the Landlords are seeking compensation in the amount of **$400.00** because the Tenants put a nail into the back of a kitchen cabinet door, and this caused the door to crack. He stated that the door still functions, and that Tenants put a piece of tape over this crack to cover it. He submitted that the single door cannot be replaced as it will not match the rest of the cabinetry, so the entire set has to be replaced. He received a verbal quote for the cost if only the one cabinet were to be replaced.

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 Landlords 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 Landlords 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 Landlords 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 Landlords or the Tenants have a preponderance of evidence to the contrary.

Section 32 of the *Act* requires that the Landlords provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

The undisputed evidence before me is that the parties agreed to a move-out inspection on February 29, 2020 and they eventually met late that evening. While the Tenants claim that there was a hostile atmosphere created by the Landlords, S.M. admitted that he was not present so he could not speak to how they were allegedly insulted. Given this lack of any persuasive evidence from the Tenants, I am satisfied that the parties met to conduct a move-out inspection report. Furthermore, I find it more likely than not that the Tenants elected not to participate in the entirety of the inspection. As such, I do not find that the Landlords extinguished their right to claim against the security deposit.

Section 38 of the *Act* outlines how the Landlords must deal with the security deposit at the end of the tenancy. With respect to the Landlords' claim against the Tenants' security deposit, Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords 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 Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

While S.M. claimed to have provided the Landlords with their forwarding address in writing on March 3, 2020, he had no proof of having done this. As well, as this was contrary to his earlier acknowledgement that the Tenants provided their forwarding address via text message on March 11, 2020, I find it more likely than not that this was the date that the Landlords received the Tenants forwarding address. As the Landlords made an Application, using this same address, to attempt to claim against the deposit on March 23, 2020, I am satisfied that they made this Application within 15 days of receiving the Tenants' forwarding address pursuant to the *Act*. As such, I am satisfied that the doubling provisions do not apply to the security deposit 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 Landlords prove the amount of or value of the damage or loss?
- Did the Landlords 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.

Regarding the Landlords' request for compensation in the amount of $700.00 for the balance of February 2020 rent, given the undisputed evidence that only $3,000.00 was paid for rent and that the Tenants advised the Landlords to deduct the remaining balance of $700.00 from the security deposit, I am satisfied that the Tenants did not pay the full amount of rent. As such, I grant the Landlords a monetary award in the amount of **$700.00** to rectify this debt.

With respect to the Landlords' claims for compensation in the amount of $637.04 and $166.73 for the cost of outstanding utilities, I find it important to note that the Landlords' utilities bills were for the dispute address. While S.M. claimed that the utility bill was in his name, I find it important to note that he has provided insufficient evidence to support this. Furthermore, I find it unlikely that the hydro company would issue two, separate bills for utilities on the same rental address. Moreover, I do not find S.M.'s submission

that to his “knowledge” the Tenants paid the utilities to be very persuasive. When reviewing the totality of the evidence before me, I am doubtful of the legitimacy of the Tenants’ submission. As a result, I prefer the Landlords’ evidence on this point. Consequently, I grant the Landlords a monetary award for the utilities in the total amount of **$803.77** to satisfy these arrears.

Regarding the Landlords’ request for compensation in the amount of $105.00 and $336.00 for the cost of strata fines and repairs to the building because the Tenants caused damage when they moved out, I find it important to note that the Tenants were aware that they were required to schedule a move-out date with the strata at least seven days in advance to book the elevator. Despite the Tenants giving short notice on February 14, 2020, the strata booked the elevator in accordance with the Tenants’ request for February 20, 2020 from 12:00 - 2:00 PM. The strata then accommodated an adjustment of this time to 10:00 AM – 12:00 PM based on one of the Tenant’s requests on February 18, 2020. On February 20, 2020, the Tenants emailed the strata requesting to reschedule the move-out , and then they emailed the strata on February 25, 2020 requesting to book the elevator for February 27, 2020. The strata explained that it was not possible on such short notice and then later confirmed that one of the Tenants re-booked this move-out for March 2, 2020. It was later determined that despite all of this coordination, the Tenants moved out on February 28, 2020, contrary to the strata rules and set date. In addition, it was documented that during this unsanctioned move, the Tenants “spoke with an aggressive attitude to the staff on site and this type of behaviour is unacceptable.”

I find it especially important to note this because during the original hearing, S.M. was cautioned twice about his behaviour and continued interruptions, which is consistent with notes in the strata warning letter dated March 2, 2020. While the Tenants attempt to portray a scenario where they claim to have followed strata rules and that it was the strata’s inability to facilitate a move-out, from the totality of the evidence, it is clear to me that the Tenants’ attitude and behaviours are contrary to their submissions during the hearing. In my view, I am satisfied that the Tenants did not schedule the move-out properly with the strata and then decided to move anyways on a date that was convenient for them. I find that this causes me to doubt the reliability and credibility of the Tenants, and as a result, I prefer the Landlords’ evidence. I also find from the inconsistencies in the Tenants’ submissions, and their pattern of combative behaviour, that it was their belief that they could act in any manner they saw fit. Based on a review of the evidence before me, I am satisfied that the Tenants caused damage upon move-out and I grant the Landlords a monetary award in the total amount of **$441.00** to satisfy this claim.

With respect to the Landlords' claims for compensation in the amount of $200.00 for the removal and disposal of eight pieces of unwanted and broken furniture that the Tenants left in the rental unit, as the Tenants confirmed that they left these items behind at the end of the tenancy, I grant the Landlords a monetary award in the total amount of **$200.00** for this claim.

Regarding the Landlords' request for compensation in the amount of $1,370.00 because of damage to the walls caused by the Tenants, when reviewing the pictures submitted of the walls, I do not consider this damage to be reasonable wear and tear. I find it important to consider that the Tenants caused damage upon move-out and that they left behind unwanted furniture. Given this pattern of behaviour, it is apparent that the Tenants gave little care for the manner with which they lived in the rental unit. Based on the above reservations I have regarding the reliability and credibility of their submissions, I am satisfied that they are responsible for the cost of restoring the rental unit to a re-rentable state.

Policy Guideline # 40 outlines that the average useful life of paint is approximately four years. Given that the rental unit was last painted in 2016 and may be due to have been re-painted anyways, I am not satisfied that the Tenants should be responsible for the entirety of this cost. Based on the condition that they left the rental unit, I find that the Tenants should bear the cost of a portion of this re-painting. As such, I grant the Landlords a monetary award in the amount of **$350.00**, which I find is commensurate with the Landlords' loss.

With respect to the Landlords' claims for compensation in the amount of $746.90 for damaged drawers and missing fridge parts, I am satisfied from the undisputed evidence that the Tenants are responsible for this. However, I find it important to note that D.Y. advised that the damage to the drawers minimally affects the functionality of these drawers and that the Landlords have not replaced them yet. While the Tenants appear to have damaged these drawers, I do not find that they still do not function as they are intended, and I do not find it likely that the Landlords will replace these drawers over what appears to be mostly aesthetic damage. As such, I dismiss this portion of the Landlords' claim.

The other portion of the Landlords' claim pertains to the missing parts. As the undisputed evidence is that the Tenants were responsible for these parts, and as the Landlords have replaced these parts already, I grant the Landlords a monetary award in the amount of **$373.05**, which includes shipping and tax.

Regarding the Landlords' request for compensation in the amount of $385.00 because of the condition the Tenants left the rental unit in, based on the undisputed evidence before me, given the hurried, disorganized nature that the Tenants left the rental unit, and based on the lack of credibility that the Tenants' submissions afford, I find it more likely than not that they did not clean the rental unit adequately upon move out. As such I grant the Landlords a monetary award in the amount of **$385.00** to satisfy this claim.

Finally, with respect to the Landlords' claims of compensation in the amount of $400.00 because a nail that the Tenants put into the back of a cabinet door damaged it, I accept the undisputed evidence that the Tenants did this. However, there is little evidence to demonstrate that the functionality of this door is compromised. Furthermore, the Landlords have provided insufficient evidence to support that to fix this one door, the entire set of cabinets needs to be replaced. Moreover, there is scant evidence to support that an estimate to fix this one door, if even possible, would total $400.00. While the Tenants caused this damage, given the lack of evidence provided by the Landlords to justify this repair cost, I grant the Landlords a monetary award in the amount of **$100.00** that I determine to be commensurate with this loss.

As the Landlords were partially successful in these claims, I find that the Landlords are 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 Landlords to retain the security deposit in partial satisfaction of these claims. It should be noted that the Landlords were already permitted to withhold $100.00 from the security deposit for a previous claim. As such, the remaining balance of the security deposit may be applied to the current debt (the relevant Decision is noted on the first page of this Decision).

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

Calculation of Monetary Award Payable by the Tenants to the Landlords

Item	Amount
Rental arrears	$700.00
Utility arrears	$803.77
Strata fines	$441.00
Furniture removal and disposal	$200.00
Cost to repaint the rental unit	$350.00
Cost of replacement fridge parts	$373.05
Cost of cleaning the rental unit	$385.00

Cost of cabinet damage	$100.00
Recovery of Filing Fee	$100.00
Security deposit	-$1,650.00
Total Monetary Award	**$1,802.82**

Conclusion

I provide the Landlords with a Monetary Order in the amount of **$1,802.82** 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: January 13, 2021

Residential Tenancy Branch