



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The landlords apply for a monetary award for:

1. Unpaid rent,
2. Damages for loss of use of the property,
3. Interest on money borrowed to replace unpaid rent,
4. Damages for cleaning and repairs, and
5. Recovery of the \$100.00 filing fee.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The tenant admitted that he owed rent for the months of May, June, July and August 2020; a total of \$6800.00.

Issue(s) to be Decided

Did the tenant breach his obligation under s. 37(2) of the *Residential Tenancy Act* (the “RTA”) to leave the premises reasonably clean and free from damage but for reasonable wear and tear? If not, what is a reasonable measure of damages?

Have the landlords suffered a loss of use of the property due to the tenant’s actions? If so, what is a reasonable measure of damages for that loss?

Background and Evidence

The rental unit is a portion of a duplex house. The tenancy started August 1, 2017. At that time the home was owned by someone else. The landlords purchased the property August 4, 2017. There is a dispute about whether a written tenancy agreement from August 2017 was signed by the tenant. Subsequent tenancy agreements were entered into by the parties, the last showing a one-year term ending July 31, 2020 and requiring that the tenant move out at that time. By further agreement, the tenancy ended September 30, 2020.

The rent was \$1700.00 per month. The landlord holds an \$825.00 security deposit and an \$825.00 pet damage deposit.

The landlord SA testified that as a result of the tenant's failure to pay rent since April, she has incurred interest charges on her line of credit, used to pay the mortgage held on the home. She calculates interest for October, November and December 2020 and for January 2021 but not for prior months.

SA submitted photos taken after the tenant vacated showing:

- 32 or more holes in the walls, caused by hammer blows. The tenant had filled the holes with plaster but the patches do not look sanded. They were not painted over. The landlord admits that she or her workmen punched through the repairs to expose the holes,
- Some bubbling on the laminate flooring indicative of water damage,
- A broken laundry room door,
- Refuse in the nature of garbage and outdoor furniture in the yard,
- A window blind showing damage.
- A shower stall with a shower curtain.
- Flattened cardboard boxing in a closet.

SA testified there was damage to the venting system above the kitchen range and that the toilet leaked. She says that there was a solid shower door where the curtain now is, that a light cover in the fridge is broken, a sink faucet is loose and the tenant left mouldy cardboard in a closet.

SA reviewed the estimates she had obtained for repairs, including a report that indicates asbestos removal protocols would have to be followed, at additional cost.

SA has not conducted any of the repairs as of this hearing date, saying she cannot afford it. It had been SA's intention to move into the home. However, she considers the home to be uninhabitable because of the damage, a strong smell and because she felt the tenant could be dangerous.

The home has remained empty and she says not being able to live in this home is costing her \$1850.00 per month, being the \$950.00 value for her one bedroom portion and the \$900.00 she thinks she could charge by renting out a second bedroom.

The landlord MR declined to testify.

The tenant DF admits that in April 2020, after a tiff with the landlord about paying rent, he caused the drywall damage with a hammer. He says he intended to repair and paint the holes.

He says he did not know about the new owners until May 2018 when he contacted his original landlord about a hot water issue and she informed him. He submits an email appearing to corroborate that statement. He denies signing the move-in condition report and tenancy agreement in the applicant landlords' names and dated August 2017.

He says that after September 30, 2020 he intended to return to collect the various items left behind. He called a witness BJ, who helped him move but the landlord said she'd call the police if he did. BJ confirmed their intention to return for more items. BJ also stated there had never been a solid shower door in the bathroom while DF lived there.

DF states that he returned the keys by leaving them on the kitchen counter.

Analysis

The tenant's suffering business through the Covid pandemic may offer a reasonable explanation for his failure to pay any rent since April 2020. However, the tenant's action of hammering over 30 holes in the walls of this rental unit is, in my view, a revelation of character. It shows an utter disregard for the property of others and a willingness to cause others financial harm. Further, the tenant had five months to make amends by repairing and repainting the damage but he did not. The landlord photos show that the jars of repair plaster were still on the table when he left, indicative of a last minute effort.

Damage and Cleaning

Drywall Repair – I accept the landlords' claim that the holes are too big and, in places, too close, to allow an effective repair with filler. Some drywall will have to be replaced. I have reviewed and compared the estimates submitted by the landlords and consider \$1850.00 to be a reasonable cost for doing so.

When considering an award of this nature it is incumbent that the award not put the recipient in a better position than had the damage not occurred at all; by making the respondent pay for new when it is to replace something that is old. According to Residential Tenancy Policy Guideline 40, "Useful Life of Building Elements," drywall has a useful life of 20 years. The age of this drywall was not indicated during the hearing. The home itself appears well over 40 years, though interior flooring does not look original. In all the circumstances I reduce the award by 50% of the drywall repair costs: \$925.00.

Painting – The repairs are extensive enough that entire walls will require painting, not just touch up areas. The landlords' estimates appear to contemplate the painting of the entire interior, including ceilings. That is beyond the tenant's responsibility. In all the circumstances, I consider the amount of \$1750.00 for painting to be a reasonable assessment. However, the useful life of interior paint is four years. It is unknown when this rental unit was last painted and I suspect that because the landlords did not have the home inspected before purchase, they don't know either. I reduce the award by 75% to \$437.50.

Floor Damage – There appear to be bubbles in the laminate flooring; two bubbles in a closet and a seam in what is said to be the living room showing some very minor bubbling. Laminate flooring bubbles in this fashion either from moisture or from high humidity. Moisture can be present either from spills on the flooring or from moisture from below. In this case the age of the floor is unknown, though the house appears older than the existence of laminate flooring itself and so I conclude it was a renovation conducted at some time.

There is a move-in condition report purporting to have been signed by these parties after an inspection conducted on August 1, 2017. That is four days before these landlords acquired possession of the property. The tenant's April 5, 2018 text to his original landlord about a failed hot water supply is, at first blush, persuasive that he was unaware of the change in ownership until then, however, in the text his former landlord tells him to contact SA, using only her first name, as though the tenant knew who she

was at that time. As well, I consider it unlikely that this tenant had not changed over rent payments to his new landlords after eight months into their ownership.

In all the circumstances I consider it likely that the floor damage occurred during this tenancy. I consider it most likely that the kitchen area damage was caused by water spilling onto the floor soaking into the seams of the flooring. I find that the closet floor damage has not been proved to have been caused by the tenant during this tenancy.

The living room floor damage is very minor and within the category of reasonable wear and tear, for which a tenant is not responsible.

I therefore dismiss the landlords' claim for floor repair.

Pocket Door Repair - Though the tenant indicates the door was always missing a handle and simply needed to be lifted back onto its rails (a simple thing for him to have accomplished prior to September 30, 2020), the landlord's estimators consider that the door needs to be replaced. I agree with the estimators and I award the landlords \$800.00 as a reasonable cost.

Kitchen Vent – This vent has failed, causing exhaust from above the range to leak into the cabinet housing the vent and thus into the kitchen. The landlords have not proved on a balance of probabilities that this odd damage in a relative remote cabinet in the kitchen was actual damage caused by anyone as opposed to failure over time. I therefore dismiss this item of the claim.

Leaking Toilet – The toilet is not leaking onto the floor. The water tank flushing apparatus is not sealing, causing water to seep from the tank into the toilet bowl. This is a common breakdown in a toilet, often caused by mere aging and use. It has not been shown the tenant was the cause and I therefore dismiss this item of the claim.

Blind Damage – The landlords' photos satisfy me that the blinds have been damaged and I find the damage likely occurred during this tenancy. I assess the cost of repair/replacement to be \$250.00. Blinds have a useful life of ten years according to the Guideline. I award the landlords 50% of the cost: \$125.00.

Garbage/Items Left by Tenant – The landlords have not shown they had reasonable cause to refuse the tenant the opportunity to return and collect items around the outside of the house. They should have allowed it, even if they felt police attendance was required. I dismiss this item of the claim.

Basin/Drain Plugs – Two sinks had no functioning plugs when the landlords retook possession. It was not made apparent during this hearing whether the plugs were simple rubber ones or those designed to rise and lower from a system incorporated into the tap and faucets. I allow for the lesser and award the landlords \$15.00 for replacement plugs.

Kitchen Faucet – The faucet was loose. It appears to be of the style having a knurled nut holding the tap to the faucet assembly. The landlords were unable to explain why a simple tightening would not be the solution. I dismiss this item of the claim.

Wet Gray Floor – The landlords provide a photo claimed to be a wet area of the gray laminate flooring. It is not evident that the floor is damaged. I dismiss this item of the claim.

Toilet Paper Holder – The toilet paper holder is claimed to be missing. The landlords' photos show what appears to be a small drywall patch at the normal location for the holder on the wall beside the toilet. I consider it most likely that the holder was broken off during this tenancy. I consider the amount of \$45.00 to be a reasonable cost to acquire and screw on a new one and I award that amount to the landlords.

Fridge Light Cover – The landlords produce a photo of the interior of the fridge showing the opaque plastic light cover to be off and lying on the rack below. They claim it is broken. The tenant claims it simply needs to be snapped back in. Having regard to the wilful damage caused by this tenant and his lack of explanation why he didn't simply snap it back in, I prefer the landlords' evidence regarding this item. I consider \$35.00 to be a reasonable cost for the purchase and installation of this item and I award that amount to the landlords.

General Cleaning – There are two aspects to this item; the cleaning the tenant was required to do in order to leave the rental unit "reasonably clean" as required by the *RTA*, and the cleaning that will have to be done following repairs. The issue of the outside debris has been dealt with above. The state of the interior premises shown in the photos closely approaches "reasonably clean" however, after the drywall work is done there will be some general cleaning necessary. I award the landlords \$100.00 for general interior cleaning, including the flattened cardboard in the closet.

Mould – The landlords have claimed the flattened cardboard in the closet was wet and has caused mould. I am satisfied that the cardboard was intended as part of the

tenant's move out plans and had not been there very long. There is no objective evidence that the material was mouldy or would cause a mould problem in the home. I dismiss this item of the claim.

Home Inspection – In the circumstances of this case, where a tenant has caused significant willful damage, the landlords were entitled to call upon a professional home inspector. The tenant should pay that cost and I award the landlords \$525.00.

Asbestos Testing – As the result of the home inspection report it was prudent and necessary to determine whether the repairs necessitated by the tenant's actions would involve asbestos and asbestos procedures. The tenant is responsible for this cost and I award the landlords \$588.00 accordingly.

Asbestos Removal – I am satisfied from the asbestos report filed by the landlords that some materials in the home are of an age that they contain asbestos, particularly, the drywall joint compound and some of the subfloor materials. As per the lower estimate submitted, I award the landlords \$1890.00 (inclusive of GST) for this work without any deduction for depreciation.

Asbestos Removal – This special cost contemplates removal of both drywall in certain areas as well as flooring and subflooring, where asbestos is also located. The tenant is not responsible for paying for a new floor and subfloor. I consider a third of the averaged \$2782.50 asbestos removal cost to be attributable to drywall removal and thus the tenant's responsibility, a sum of \$927.50. I consider this work to be subject to the same depreciation adjustment as any drywall repair/replacement and reduce the award by 50% to \$463.75.

Loss of Use

The rental unit was not reasonably habitable during the time necessary for the repairs the tenant was responsible for; principally, the drywall work. I consider the landlords would have lost the use of premises for the month of October had the repairs been conducted in a timely fashion. The value of that use I assess as the value of the tenancy: \$1700.00 and not what the landlords opine to be their value of a portion of it and their personal assessment of the value of a bedroom in a shared accommodation.

The landlords have been without the use of the home after October because, they say, they cannot afford the repairs. After consideration, I conclude I cannot consider that to be a factor in extending the tenant's responsibility for the uninhabitable state of the

home. It is too remote. A party to a contract would not reasonably consider it to be factor in determining the other's loss due to a breach of this nature. In result, I award the landlords \$1700.00 for loss of use of this home following the end of this tenancy.

Interest

I find that it would be reasonably foreseeable that a landlord who is not receiving rent would have to borrow to maintain a mortgage on the rental unit. The landlords testify they are paying 9.15% on a line of credit used to replace the tenant's \$1700 per month unpaid rent. They have not performed the exact calculation in their documents for the relevant period but after consideration I assess the interest accrued to the time this application was made to be \$207.40 and I award them that amount.

Conclusion

The landlords are entitled to an award totalling \$12,766.65 plus recovery of the \$100.00 filing fee.

I authorize the landlords to retain the \$1650.00 of deposit money they hold, in reduction of the amount awarded. They will have a monetary order against the tenant for the remainder of \$11,216.65

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 17, 2021

Residential Tenancy Branch