



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. A Monetary Order for damages to the unit - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement started on October 1, 2020 although the Tenant was allowed to move into the unit on September 9, 2020 with no rent payable until October 1, 2020. Rent of \$2,600.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,300.00 as a security deposit. The Tenant moved out of the unit on November 26, 2020. The Landlord received the Tenant’s forwarding address on November 26, 2020 as set out on the move-out report. The tenancy agreement

provides for a daily late rent fee of \$25.00. No rent was paid for November 2020. The Parties mutually conducted a move-out inspection with a copy of the report provided to the Tenant. The Tenant's Agent who attended the move-out inspection did not agree with the details provided by the Landlord on the move-out report.

The Landlord submits that there was an agreement to reduce November 2020 rent to \$2,600.00 and claims this amount. The Landlord claims late rent fees of \$750.00 for unpaid November 2020 rent.

The Landlord states that the Parties mutually conducted a move-in inspection with a completed move-in report copied to the Tenants. The Tenant states that the move-in inspection of the upper part of the unit occurred September 8, 2020 and the inspection for the lower part of the unit occurred on October 14, 2020. The Tenant states that the inspection report does not set out any details on anything other than damages noted and that the report is not legible. The Tenant states that the Landlord had left items in the lower part and yard of the unit that were supposed to be removed by the Landlord but were not.

The Landlord states that the Tenant left the carpet unclean and claims \$300.00 as the cost of cleaning the carpet. The Landlord states that the various parts of the carpets were between 15 and 30 years old. The Tenant states that the carpet was not clean at move-in and that the Tenant cleaned the carpet on September 9, 2020. The Tenant provides a receipt for the cleaning.

The Landlord states that the Tenant left the garbage and recycling bins overflowing. The Landlord claims its labour costs of \$200.00 and the dump fees of \$56.80. The Landlord states that this dump also included items that the Tenant had agreed to remove. The Landlord states that the Landlord had left these items behind at the unit and that there was also an understanding with the Tenant that if the Tenant did not want

any of them the Landlord would remove them himself. The Tenant states that whatever was left in the basement and yard belonged to the Landlord.

The Landlord states that the Tenant left the unit unclean, specifically the laundry/utility room, the washing machine, the family room, the oven, the stairwell, and the yard. The Landlord states that the Tenant left dog feces and two holes in the yard. The Landlord claims \$600.00 as its labour costs to clean the unit at an hourly rate of \$50.00. The Landlord claims \$8.94 for cleaning supplies. The Witness who attended the move-out inspection states that the unit was left clean and that they did not agree with the Landlord's inspection report. The Tenant states that the oven was dirty at move-in, so the Tenant cleaned the oven then. The Tenant states that the oven was not used after that. The Tenant states that the unit was dirty at move-in with spiders and mice infesting the lower part. The Tenant states that at move-in it had the upper part of the unit professionally cleaned to remove mold that was present. The Tenant states that nothing was included in the move-in report about cleanliness of the unit. The Tenant states that there was pre-existing dog feces and holes at the outset of the tenancy. The Tenant states that it did foster a dog for about two weeks during the tenancy but that they cleaned up the feces before they left. The Landlord states that the unit was entirely clean at move-in although not noted in the report. The Landlord states that photos of the unit taken an hour before the move-in inspection were provided for this dispute. The Landlord states that it had not done an inspection before and did not know to note the cleanliness of the unit on the move-in report.

The Landlord states that the Tenant left blinds damaged and claims \$85.36 for the cost of new blinds and \$100.00 as the Landlord's labour to install the blinds. The Landlord states that some blinds had pre-existing damages and that the blinds that were damaged by the Tenant were between 5 and 10 years old at the onset of the tenancy. The Landlord provides photos. The Tenant states that it did not damage any blinds.

The Landlord states that the Tenant left a curtain bracket damaged leaving holes where the screws had come out. The Landlord states that the drywall was about 15 years old and the brackets were about 7 years old. The Landlord claims \$75.00 for the Landlord's labour to repair the bracket. The Tenant states that it did not damage the bracket and does not know how the bracket came loose.

The Landlord states that the Tenant left the shower head damaged and claims \$25.74 as the costs for a new shower head and \$50.00 for the Landlord's labour for its replacement. The Landlord states that the plastic and vinyl shower head was split on the back and sprayed water all over. The Landlord states that the shower head was 7 years old at the outset of the tenancy. The Tenant states that the shower head was split and had rust on it. The Tenant states that the shower head was like something you would find in a camper shower. The Tenant states that the shower sprayed water from the outset of the tenancy.

The Landlord states that the Tenant left the front gate damaged and claims \$50.00 as the estimate for supplies and \$200.00 for the Landlord's labour. The Landlord states that this was not repaired due to contractors not being available and that it plans to still make these repairs when the contractors are available. The Landlord states that the unit was rented after this tenancy ended for a monthly rent of \$2,800.00 and that the new tenants were not given any discount for the damage.

The Landlord states that the Tenant left a bathroom door and other doors damaged and claims \$55.00 for the paint costs and \$100.00 for the Landlord's labour. The Landlord states that the upper bathroom door had gouges from a cat that the Landlord filled, sanded and stained. The Landlord states that the Tenant left water stains on two bedroom doors. The Landlord states that these doors were painted by the Landlord. The Landlord states that the last time the unit was painted was 10 to 12 years before the tenancy. The Tenant states that it did not damage the bathroom door and that it had no cats. The Tenant states that the entire home was broken at move-in.

The Landlord states that the Tenant left a basement wall in the storage and laundry room damaged by water and claims an estimated material cost of \$100.00 and the Landlord's labour of \$200.00. The Landlord states that this repair has not been done.

The Landlord states that the Tenant left a stairwell support bracket damaged and claims \$25.00 as the Landlord's labour costs for the repair. The Landlord states that the support for the stairwell was original to the house that the Landlord thinks is about 40 years old. The Landlord states that it thinks the Tenant was careless as the support should have lasted forever. The Tenant states that this was pre-existing damage and that the Landlord had mentioned at move-in that the stairwell support was broken. The Tenant states that she recalls these details as at move-in she was pregnant and was concerned about the safety of the damaged stairwell. The Landlord states that the broken section at move-in was at the top of the stairwell. The Landlord states that this part of the stairwell has not been repaired or claimed as damaged by the Tenant.

The Tenant states that the house was originally built in 1910 with sporadic additions done after this. The Landlord states that the western half of the unit was built in 1910 and that the eastern side of the unit was completed in 2005. The Landlord states that most of the damages claimed were located in the eastern half of the unit.

Analysis

Section 7(1)(d) of the Regulations provides that a landlord may charge an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. As the daily late fee is inconsistent with the Regulation that limits the late fee to \$25.00, I find that this term of the tenancy agreement is not enforceable. I therefore dismiss the claim for \$750.00 in late fees.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence that the Tenant occupied the unit in November 2020 and did not pay any rent for this month I find that the Landlord has substantiated its claim to unpaid rent of **\$2,400.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Residential Tenancy Branch Policy Guideline #40 sets the useful life of carpets at 10 years, wooden balcony railings at 10 years, doors at 20 years, interior paint at 4 years, drapes or venetian blinds at 10 years, faucets at 15 years and drywall at 20 years. Given the Tenant's supported evidence of carpet cleaning about 2 months before move-out I find that the Landlord has not substantiated that the Tenant left the carpet uncleaned. Further, given the Landlord's evidence of the age of the carpets I find that they were well past their useful life and that any stains that may have remained are left to the Landlord to remedy. I dismiss the claim for carpet cleaning.

Given the Landlord's vague evidence of the age of the blinds being between 5 and 10 years and the Landlord's photos of the blinds showing their construction I find on a balance of probabilities that the age of the blinds were past their useful life. I also

consider the Tenant's evidence that they did not damage any blinds to find that the Landlord has not substantiated its material and labour costs and I dismiss these claims.

The Landlord's evidence of the age of the unit was vague and misleading until prompted by the Tenant's evidence that the building was original over 100 years ago. The Landlord's evidence of the drywall that the curtain bracket attached to was 15 years is inconsistent with its later evidence of the new additions to the unit being 20 years old at the outset of the tenancy. The Landlord provided no evidence as to when the bracket was placed. For these reasons I find on a balance of probabilities that the bracket and drywall were well past their useful life. Given the Tenant's evidence that it did not know how the bracket came loose I consider that it likely came loose due to wear and tear from being aged. I therefore dismiss the claim for the costs to repair the curtain bracket.

Given the photos of the shower head and the Landlord's evidence of its plastic construction and as I consider the policy guideline to be setting the life of metal faucets, I find on a balance of probabilities that the shower head was beyond its useful life. I also consider the Tenant's more reliable evidence that the shower head was broken at move-in. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused any damage to the shower head beyond wear and tear.

Given the Landlord's evidence that the doors were last painted 10 to 12 years ago I find that the paint on those doors was beyond its useful life and any repairs to the paint remain with the Landlord. Further, given the Landlord's evidence that the last time the unit was renovated was between 20 and 100 years old, I find on a balance of probabilities that the door that had gouges was also beyond its useful life and that any repairs to the door remain with the Landlord. For these reasons I find that the Landlord has not substantiated the costs claimed for the painting and filling of the doors and I dismiss these claims.

Given the Landlord's evidence that the repairs were not made to the gate and the basement wall and without evidence that the Landlord would make the repairs, such as evidence of an agreement with the new tenants that the repairs would be made by a certain time or of a rent reduction for the new tenants until the repairs would be done, I find that there is insufficient evidence to establish that the Landlord will incur the costs claimed for these repairs and I dismiss these claims.

As the Landlord's claims have met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,500.00**. Deducting the security deposit plus zero interest of **\$1,300.00** from this entitlement leaves **\$2,200.00** owed to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit of \$1,300.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$2,200.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: March 26, 2021

Residential Tenancy Branch