



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, MNDCL, CNC, MNDCT, MNR, AAT, RP, PSF,
LRE, LA, AS, OLC, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On December 21, 2020, the Landlords applied seeking an order of possession for the rental unit; a monetary order for unpaid rent; a monetary order for damage to the rental unit; and for money owed or compensation for damage or loss. On February 6, 2021 the Landlords amended their application to remove the claim for unpaid rent and to change the amount of the other monetary claims listed in the initial application. The Landlords amended application included a check box indicating a request to claim against the security deposit.

On December 14, 2020, the Tenants applied for dispute resolution seeking the following relief:

- To cancel a notice to end tenancy for cause.
- For a monetary order for money owed or compensation for damage or loss.
- For a monetary order for the cost of emergency repairs.
- For an order for the Landlord to make repairs to the rental unit.
- For the Landlord to provide services or facilities required by law.
- To allow the Tenant to assign or sublet the tenancy.
- For an order for the Landlord to allow the Tenant access to the unit.
- For an order to suspend or set conditions on the Landlords right to enter the rental unit.
- For authorization to change the locks to the rental unit.
- For an order that the Landlord comply with the Act, Regulation, or tenancy agreement.

The matter was set for a conference call hearing. The Landlord and Tenants attended the hearing. I introduced myself and the participants. The parties were provided with

an opportunity to ask questions about the hearing process. They were provided with the opportunity to present oral testimony and to make submissions during the hearing.

The parties confirmed that they had exchanged the documentary evidence that I have before me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlords and Tenants participated in previous dispute resolution hearing on January 19, 2021 where an Arbitrator ended the tenancy and granted the Landlord an order of possession for the rental unit.

Since the tenancy has already ended there is no need to consider the Landlords' request for an order of possession and the Tenants' request to cancel a notice to end tenancy. In addition, since the tenancy has ended, the Tenants' claims for the following relief are dismissed.

- an order for the Landlord to make repairs to the rental unit.
- for the Landlord to provide services or facilities required by law.
- to allow the Tenant to assign or sublet the tenancy.
- an order for the Landlord to allow the Tenant access to the unit.
- an order to suspend or set conditions on the Landlords right to enter the rental unit.
- authorization to change the locks to the rental unit.
- an order that the Landlord comply with the Act, Regulation, or tenancy agreement.

The hearing proceeded on the parties claims for monetary compensation.

The Tenants confirmed they have received a copy of the Landlords' documentary evidence.

The Tenants sent their evidence to the Landlord in digital format provided on a data stick. The Tenants testified that they contacted the Landlord and confirmed that he could open the files; however, he chose not to. The Landlord confirmed that he received a usb data stick containing digital evidence from the Tenants. The Landlord stated that some of the files were from 2018 so he was not willing to open them. The Tenants testified that they asked the Landlord what an acceptable format would be and got no response from the Landlord.

The Residential Tenancy Branch Rules of Procedure is to ensure a fair, efficient, and consistent process for resolving disputes for landlords and tenants. Rule 3.10.5

Confirmation of access to digital evidence includes the following:

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence. If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered. If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service.

Based on the evidence before me, I find that the Landlord was properly served with the Tenants' digital evidence. The Landlord's justification for declining to open the files appears to be a personal choice, rather than an inability to access the files.

Nevertheless, the Landlord had an obligation to reply to the Tenants if an alternate format was needed and it appears a response was not provided.

The evidence that is before me from the Tenants is accepted and was considered in making this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order due to damage to the rental unit?
- Is the Landlord entitled to a monetary order due to money owed or compensation for damage or loss?
- Are the Tenants entitled to compensation for the cost of emergency repairs?
- Are the Tenants entitled to a monetary order due to money owed or compensation for damage or loss?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on September 1, 2020, as a one-year fixed term tenancy. Rent in the amount of \$2,250.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,125.00. As mentioned previously, the tenancy ended by order of an Arbitrator on January 20, 2021.

Landlord's Application

Filing Fee for file # 210026161

The Landlord is seeking to recover \$100.00 from a previous hearing.

The Landlord was informed that I do not have the authority to change a Decision from an earlier hearing. I note that the previous hearing authorized the Landlord to keep \$100.00 from the Tenants security deposit for the cost of the filing fee.

The Landlords claim to recover \$100.00 is dismissed.

Pest Control

The Landlord is seeking compensation of \$103.95 for the cost of having a pest control company attend the rental unit. The Landlord testified that he ordered pest control at his own cost. The Landlord stated that the Tenant refused access to the rental unit and the Landlord was charged \$103.95 which he paid on January 28, 2021.

The Landlord testified that he posted a written notice of entry on the tenants' door three days in advance. He testified that he did not attend the rental unit with the pest control person. He testified that the pest control person knocked on the Tenants' door and the tenant did not answer.

In reply, the Tenant testified that when pest control arrived, he was on the phone and did not answer the door.

Inspection # 1

The Landlord is seeking compensation in the amount of \$1,548.75 for the cost of having the rental unit inspected for humidity and mold due to the presence of the Tenants plants in the unit. The Landlord testified that he ordered an inspection around December 26, 2020 and received the report on January 2, 2021. The Landlord testified that he wants the Tenant to pay the cost of the inspection because the inspection report indicated there was an issue with humidity and mold.

In reply, the Tenant testified that they asked the Landlord to perform a mold inspection and the inspection was conducted without written notice to them. The Tenants testified that they never agreed to pay for the cost of an inspection and the cost is not attributed to damage caused by them. The Tenant testified that there was no damage to the property.

Inspection #2

The Landlord is seeking compensation in the amount of \$1,233.75 for the cost of having the rental unit reinspected for moisture and damage. The Landlord testified that the rental unit was inspected at the end of January 2021. The Landlord testified that the moisture and humidity levels were down and there was no damage behind the walls. The Landlord stated that he did not have the tenants agreement to pay the cost of the inspection.

In reply, the Tenant testified that they never agreed to pay the cost of the inspection.

Locks

The Landlord is seeking compensation in the amount of \$122.33 for the cost of purchasing and installing new door locks. The Landlord testified that the tenants moved locks around without authorization. The Landlord testified that the Tenants changed a door lock and left the original lock and the new lock in the rental unit when they moved out. The Landlord testified that he purchased two new locks and installed them. The Landlord confirmed that he had a key for the original locks. The Landlord testified that he did not have replacement locks. The Landlord is seeking the purchase cost of the locks and two hours of his labor to install them.

In reply, the Tenant testified that they notified the Landlord that the door locks were not functional. The Tenant testified that the Landlord refused to address the issue, so the Tenants called a locksmith. The Tenants testified that they informed the Landlord that the locksmith was called and provided him information on when the locksmith would be arriving.

The Landlord testified that there was no reason to attend the unit and that he informed the Tenant that he was not allowed to change the locks. He testified that the lock was working properly and only stopped working properly after the Tenant moved it.

The Tenant refuted the Landlords claim that the Tenant moved locks prior to having an issue with the lock.

Evidence and Service Costs

The Landlord is seeking compensation in the amount of \$63.92 for the cost of serving his application and evidence to the Tenants.

The Act permits compensation to be awarded due to a breach of the Act, Regulation or tenancy agreement but does not specifically include recovery of costs for service of an application and evidence. I find that these costs for service are the costs of doing business as a landlord and are not recoverable from the Tenants.

The Landlords claim for \$63.92 is dismissed.

Unpaid Hydro Charges

The Landlord is seeking compensation in the amount of \$475.94 for the 22 days the Tenants were in the rental unit for January 2021. The Landlord testified that the tenancy agreement requires the Tenants to pay 50% of the hydro costs. The Landlord did not provide a copy of January 2021 hydro bill.

In reply, the Tenants testified that they are not aware of a hydro bill for January 2021 and that the Landlord did not provide a bill for the month of January 2021. The Tenants testified that they paid the Landlord \$863.80 for the hydro costs from October to December 2020. The Tenants testified that they will pay their portion of the hydro costs once they receive a copy of the bill.

Security Deposit

The Landlord is seeking to keep the security deposit in the amount of \$1,025.00 in partial satisfaction of the Landlords claims.

The Landlord applied for dispute resolution on December 21, 2020 which was prior when the tenancy ended. The Landlords' initial application did not include a claim to keep a security deposit. The Landlords' amendment to the application dated January 6, 2021 and February 6, 2021 included a check box indicating a request to claim against the deposit.

The Landlord testified that they received the Tenants' forwarding address in writing on January 24, 2021. The Landlord stated that there was no written agreement entered into at the end of the tenancy that authorized the Landlord to keep any amount of the security deposit.

In reply, the Tenant provided testimony confirming that there was no written agreement authorizing the Landlord to keep any amount of the deposit and that they have not received any amount of the security deposit from the Landlords.

Tenants' Application

Inspection Cost

The Tenants are seeking compensation in the amount of \$3,570.00 for the cost of having a company perform an inspection of the rental unit.

The Tenants testified that they noticed mold growing in the bedroom, so they asked the Landlord to arrange for an inspection. The Tenants stated that the Landlord refused so they contacted a company to attend the unit to inspect and provided the quote to the Landlord. The Tenants stated that the Landlord refused to pay for the inspection, so the Tenants went forward with having the inspection done on December 7, 2020. The Tenants testified that inspection report indicated some building elements were beyond their useful life and the mold discovered was fairly harmless. The Tenants testified that they paid cost of the inspection. The Tenants testified that they chose to proceed with the inspection rather than file for dispute resolution on the matter because hearings and decisions can take weeks and they were worried about their health.

In reply, the Landlord testified that there was no reason to get an inspection and that he responded to the Tenants request on December 6, 2020. The Landlord testified that the Tenants had an excessive amount of plants in the unit and everything in the unit was fine.

Locksmith

The Tenants are seeking compensation in the amount of \$244.66 for the cost of a locksmith to attend the unit to fix the doors. The Tenant gave permission for an appraiser to enter the unit; however, the Tenant observed an electrician and other worker in his unit that were not with the appraiser. The Tenant testified that the unapproved persons gained entry through a non-securable sliding glass door.

The Tenant testified that the key for the door lock would not turn properly and graphite was used to lubricate the lock. The Tenant testified that the cost for the locksmith service includes repairing the main lock of the entrance door.

The Tenants called the locksmith and is seeking to recover the \$244.66 for the service call.

In reply, the Landlord testified that he exchanged text messages with the Tenants about the electrician entering the unit that day, and furthermore, it was the Tenants mother who let the workers into the rental unit. The Landlord testified that the sliding glass door lock button is located on the inside of the door and was functional. He testified that there is no keyhole / unlocking mechanism on the exterior of the door.

Moving Costs

The Tenants are seeking compensation in the amount of \$1,069.95 for their moving costs. The Tenants stated that they felt there were deficiencies in the tenancy, and they entered into a one-year fixed term tenancy without ant intention to move out early.

In reply the Landlord stated that the tenancy ended, and they were granted an order of possession for the rental unit due to issues caused by the Tenants. The Landlord stated that the previous Arbitrator found the Tenants to be at fault.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and,
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 7 of the Act provides,

if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline # 16 provides the following with respect to types of damages that may be awarded to parties:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Section 33 of the Act provides the following:

A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;*
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;*
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.*

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and*
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.*

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;*
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);*
- (c) the amounts represent more than a reasonable cost for the repairs;*
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

Residential Tenancy Policy Guideline #7 Locks and Access provides the following information:

The Act allows the tenant to request that the locks be changed at the beginning of a new tenancy. The landlord is responsible for re-keying or otherwise changing the locks so that the keys issued to previous tenants do not give access to the rental unit. The landlord is required to pay for any costs associated with changing the locks

in this circumstance. The landlord may refuse to change the locks if the landlord had already done so after the previous tenant vacated the rental unit.

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

The tenant may not prevent a landlord from entering to carry out repairs, where a valid notice of entry has been given, even if the tenant is capable, and willing to carry out the repairs.

Based on all of the above, the evidence and testimony of the parties, and on a balance of probabilities, I find as follows:

Landlords Claims

Pest Control

I find that the Landlord gave the Tenant written notice to enter the unit for the purpose of pest control. I find that it is not required that the Tenant be present at the time of this entry and the Landlord was at liberty to use his key to enter the unit. I find that the Landlord did not attend the unit with the pest control person.

I find that the Tenants did not prevent the Landlord from accessing the rental unit and therefore the Tenants is not responsible to pay for the service charge from the pest control company.

The Landlords claim for \$103.95 is dismissed.

Inspection #1

I find that the Landlord had concern about humidity in the rental home and made a decision to have an inspection conducted. I find that there was no agreement from the Tenant to pay for the cost of the inspection. Had the inspection identified damage to the rental unit related to high humidity caused by the Tenants' plants, the Landlord could have proceeded with a claim for damage; however, the cost of having the home inspected is the responsibility of the Landlord.

The Landlords claim for \$1,548.75 is dismissed.

Inspection #2

I find that the Landlord was concerned about moisture and humidity in the rental home and wanted to have an inspection conducted to ensure there was no damage behind the walls. I find that there was no agreement from the Tenant to pay for the cost of this inspection. Again, had the inspection identified damage to the rental unit related to high humidity/ moisture caused by the Tenants, the Landlord could have proceeded with a claim for damage; however, the cost of having the home inspected is the responsibility of the Landlord.

The Landlords claim for \$1,233.75 is dismissed.

Locksmith

The policy guideline provides that a landlord is responsible for re-keying or otherwise changing the locks so that the keys issued to previous tenants do not give access to the rental unit. I find that the Tenant left the original lock and keys behind in the unit. I find that there is no justification for the Landlord to claim the cost to purchase replacement locks against the Tenant. The Landlord had the original locks and is also responsible to re-key or change locks between tenancies. I find that the two hours it took for the Landlord to change locks is also a cost of doing business as a Landlord.

The Landlords claim for \$122.33 is dismissed.

Hydro Charges

I find that the Tenants are responsible under the tenancy agreement to pay 50% of the hydro costs for the rental unit. I have reviewed the Landlords' documentary evidence and I find that the electricity bill provided by the Landlord is for a billing period from October 28 to December 29, 2020. The Landlords' evidence does not include an electricity bill for 22 days of January 2021.

The Landlord provided insufficient evidence of the amount of compensation the Tenants owe the Landlord for 22 days of hydro use at the rental unit.

The Landlords claim for \$475.94 is dismissed.

Security Deposit

I find that the Landlords are holding a security deposit of \$1,025.00. I find that the Landlords received the Tenants' forwarding address in writing on January 24, 2021. The Landlords applied for dispute resolution on December 21, 2020 and a careful

review of their amended application on February 6, 2021 included a claim against the security deposit.

I find that the Landlords claimed against the security deposit within 15 days of receiving the Tenants' forwarding address.

The security deposit of \$1,025.00 will apply towards any monetary awards granted to the Landlords.

Tenants' Application

Inspection Cost

I find that the Tenants had a concern about mold growing in the bedroom of the rental home and requested the Landlord to arrange for an inspection. The Landlord refused and the Tenants arranged for the inspection themselves. I find that there was no agreement from the Landlord to pay for the cost of the inspection. The Tenants had liberty to apply for dispute resolution to deal with the issue but chose to have the inspection completed immediately. I find that the responsibility to pay the cost of having the home inspected is the responsibility of the Tenant.

The Tenants claim for \$3,570.00 is dismissed.

Locksmith

Section 31(2) of the Act provides that a tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change. Section 33 of the Act provides that an emergency repair includes damaged or defective locks that give access to a rental unit.

I find that if the Landlord was refusing to repair a lock the Tenants had liberty to apply for dispute resolution to deal with the issue. There is insufficient evidence from the Tenants to satisfy me that the locks needed to be changed immediately due to unauthorized entry of persons through a non-securable door. The Landlord stated that the sliding glass door was functional, and it was the Tenants' mother who granted access to workers.

The Tenants' claim to recover \$244.66 from the Landlords is dismissed.

Moving Costs

I find that in an earlier Decision an Arbitrator ended the tenancy due to a finding that the Tenant unreasonably disturbed the Landlord. I find that the tenancy ended due to the actions/ behavior of the Tenants, rather than a breach of the Act by the Landlord.

The Tenants request to recover moving costs is dismissed.

Monetary Awards

The Landlords and Tenants were not successful with their monetary claims.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I decline an order for either party to repay the other for the \$100.00 fee that was paid to make application for dispute resolution.

Since the Landlord was not successful with their monetary claims against the security deposit of \$1,025.00, I order the Landlord to return the security deposit to the Tenants.

I grant the Tenants a monetary order in the amount of \$1,025.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Conclusion

Neither the Landlords nor Tenants were successful with their monetary claims.

Since the Landlord was not successful with their monetary claim against the security deposit of \$1,025.00, I order the Landlord to return the security deposit to the Tenants.

I grant the Tenants a monetary order in the amount of \$1,025.00.

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: March 25, 2021

Residential Tenancy Branch