Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

This hearing also dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Tenant Su.A., the tenants' agent (the "agent") and landlord P.H. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The agent testified that the landlords were served with the tenants' application for dispute resolution on December 14, 2020 via registered mail. The agent testified that the landlords were served at the tenants' address because the landlords did not provide the tenants with their address for service. Landlord P.H. testified that the landlords were not served with the tenants' application for dispute resolution and that the landlords' address for service was provided in the landlords' application for dispute resolution which was served on the tenants on December 11, 2020 via registered mail. The agent

confirmed receipt of the landlord's application for dispute resolution around that time but did not know on what date.

I find that the landlords' application for dispute resolution was served on the tenants in accordance with section 89 of the *Act.* I find that the tenants' application was not served on the landlords in accordance with section 89 of the *Act*, as it was not served to the landlords' address and the landlords did not receive it. The tenant's application for dispute resolution is therefore dismissed with leave to reapply.

I note that while the tenants' application is dismissed, because the landlords' application seeks authorization to retain the tenants' security deposit, the right of the tenant to the return of the deposit will still be considered in this decision. If it is found that the landlord is not entitled to retain the deposit, the tenant will receive a monetary award for the return of the deposit.

Landlord P.H. testified that the tenants were served with the landlords' evidence on March 1, 2021. The agent testified that the tenants received the landlords' evidence on March 3, 2021. The agent submitted that this evidence was late and so should not be considered.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules"*) state that evidence should be served on the respondent at least 14 days before the hearing. I find that the tenants received the landlords' evidence more than 14 days before this hearing. The landlords' evidence is therefore accepted for consideration.

Issues to be Decided

1. Are the landlords entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
2. Are the landlords a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
3. Are the landlords retain the tenants' security deposit, pursuant to section 38 of the *Act*?
4. Are the landlords recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This month to month tenancy began on June 1, 2019 and ended on November 15, 2020. Monthly rent in the amount of $1,850.00 was payable on the first day of each month. A security deposit of $925.00 was paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application. Both parties agree that while the tenancy agreement is dated June 1, 2019, the agreement was signed sometime in 2020 and that their original agreement was verbal.

The landlords filed this application for dispute resolution on November 30, 2020. The agent testified that the tenants sent the landlords their forwarding address via regular mail on November 20, 2020. Landlord P.H. testified that the landlords received the tenants' forwarding address around that time but could not recall on what date.

Both parties agree that the landlords did not ask the tenants to complete a move in or out condition inspection report and that no such reports were created.

Both parties agree that the tenants verbally gave the landlords two months' notice to end tenancy effective October 31, 2020. Landlord P.H. testified that the landlords accepted the tenant's verbal notice to end tenancy.

Landlord P.H. testified that sometime in mid-October 2020, the tenants verbally asked to stay in the subject rental property for another month and that the landlords agreed, but the tenants only paid ½ of November's rent and moved out on November 15, 2020. Landlord P.H. is seeking the remainder of November's rent in the amount of $925.00.

The agent testified that on October 1, 2020 the tenants verbally asked the landlords to stay at the subject rental property until November 15, 2020. The agent testified that the landlords accepted, and the parties agreed that the tenants would only pay for the time they stayed at the subject rental property, and so the tenants only paid ½ of November 2020's rent.

Landlord P.H. testified that the following damages arose from this tenancy:

Item	**Amount**
Replace over the hood microwave	$372.41
Carpet cleaning	$350.00
Replace locks	$37.99
Repairs, garbage removal and yard cleaning	$350.00
Cleaning	$360.00
Total	$1,470.40

Replace over the hood microwave

Landlord P.H. testified that the tenants broke the over the hood microwave. Landlord P.H. testified that she does not know how old the microwave is as the landlords purchased the subject rental property in 2016 and it was part of the purchase. Landlord P.H. testified that the previous owner did recent renovations, so she did not believe it was very old when the property was purchased. The landlords entered into evidence a payment confirmation in the amount of $372.41 but the confirmation does not state what item was purchased. Landlord P.H. testified that the tenants unplugged the microwave and taped up the door.

The agent testified that the door was loose when the tenants moved in and that the microwave stopped working approximately two months after the tenants moved in. The agent testified that the landlords were notified, and they said they would replace it but never did. The agent testified that the tenants did not cause the microwave to stop working and that the landlords were responsible for replacing it.

Carpet cleaning

Both parties agree that the tenants did not have the carpets shampooed at the end of this tenancy. Landlord P.H. testified that the landlords had the carpets shampooed at the end of this tenancy at a cost of $350.00. A receipt for same was entered into evidence. The agent testified that the requirement to have the carpets cleaned was not in the tenancy agreement and so the tenants are not responsible for this charge.

Replace locks

Both parties agree that the tenants returned the keys to the subject rental property at the end of this tenancy. Landlord P.H. testified that the keys in the locks were difficult to use and so had to be replaced. The agent testified that the keys worked fine for the tenants.

Repairs, garbage removal and yard cleaning

Landlord P.H. testified that the tenants left many items outside including a drying rack, hose and boxes. Photographs of same were entered into evidence. Landlord P.H. testified that the tenants did not clean up the leaves in the yard. Landlord P.H. testified that there weren't many leaves. Photographs of same were entered into evidence. Landlord P.H. testified that the tenants broke a towel holder and a toilet paper holder which required repair. No photographs of the towel holder and toilet paper holder were entered into evidence. The landlords entered into evidence a signed letter from P.S. which states:

> This letter is to confirm that I [P.S.] received a cash payment of $350.00 from [landlord P.H.] for repairs, outdoor garbage removal and yard cleaning of [the subject rental property].

The agent testified that the items left in the yard do not belong to the tenants and were there when they moved in. The agent testified that the landlords are responsible for cleaning up the leaves, not the tenants. The agent testified that the tenants did not break the towel and toilet paper holder.

Cleaning

Landlord P.H. testified that the tenants did not clean the subject rental property and that the walls, doors, floors, counters, cabinets, bathrooms and kitchen all required cleaning. Landlord P.H. testified that the kitchen was super greasy. Photographs confirming the above testimony were entered into evidence. The landlords entered into evidence a signed letter from the landlords' cleaner which states that the subject rental property was very dirty and that the cleaner was paid $360.00 in cash to clean the subject rental property.

The agent testified that the dirt left at the subject rental property is consistent with regular wear and tear. The agent testified that the tenants cleaned the subject rental property but are not professional cleaners and that the tenants could not be expected to clean the property to the standard of a professional cleaner. The agent testified that the build up of grease is not beyond reasonable wear and tear.

Analysis

Section 67 of the *Act* states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Replace over the hood microwave

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that the landlords have not proved, on a balance of probabilities, that the damage to the microwave was caused by an intentional or negligent act of the tenants, rather than regular wear and tear. Residential Tenancy Policy Guideline #40 states that the average useful life of a microwave is 10 years. Given that the microwave was not brand new when the landlords purchased the property five years ago, the microwave may well have already passed it useful life.

The landlords' claim for the cost of a new microwave is dismissed because the landlords have failed to prove that the tenants breached the *Act.*

Carpet cleaning

Residential Tenancy Policy Guideline #1 states that at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

I find that this tenancy was over one year long and the tenants are therefore responsible for the cleaning of the carpets in the amount of $350.00.

Replace locks

I find that the landlords have not proved, on a balance of probabilities, that the keys and locks were difficult to use due to the actions of tenants rather than regular wear and tear. I therefore dismiss the landlords' claims for the cost of new locks.

Repairs, garbage removal and yard cleaning

I find that the landlords have not proved the move in condition of the yard of the subject rental property. The landlords did not complete move in and out condition inspection reports, contrary to sections 23 and 35 of the *Act.* The responsibility for completing the

report rests with the landlords.

Landlord P.H. testified that the items left in the yard were the tenants, the tenants' agent testified that they were the landlords. Landlord P.H. testified that the tenant broke a toilet and toilet paper holder, the tenants' agent testified that the tenants did not. The above testimony is divergent. As stated above, when one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I therefore dismiss the landlords' claim for repairs, garbage removal and yard cleaning.

Cleaning

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Resident6ial Tenancy Policy Guideline #1 states that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

I find that reasonable wear and tear applies to the deterioration of fixtures and chattels over time, it does not apply to cleaning. Based on landlord P.H.'s testimony and the photographs entered into evidence, I find that the subject rental property was not reasonably clean at the end of this tenancy. I find that the tenants breached section 37(2) of the *Act* and suffered a loss in the amount of $360.00 as set out in the letter from the landlords' cleaner. I find that hiring a cleaner to clean the property after the tenants failed to do so was reasonable. I award the landlords $360.00.

November 2020's rent

Section 45 of the *Act* states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the date before the day in the month that rent is payable under the tenancy agreement.

This issue is expanded upon in Policy Guideline #5 which explains that, where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

In this case, contrary to section 45 of the *Act,* less than one month's written notice was provided to the landlord to end the tenancy. I find that the tenants gave the landlords' verbal notice in October of 2020 that they wanted to end their tenancy effective either November 15, 2020 or November 30, 2020. While the end date is not clear what is clear is that since the notice to end the tenancy was provided in October of 2020, the earliest end date of the tenancy that conforms to the requirements of section 45 of the *Act,* is November 30, 2020.

Pursuant to Residential Tenancy Policy Guideline #5, where the tenants provide a time to end the time earlier that that permitted (less than one full months' notice), the landlord is not required to rent the rental unit or site for the earlier date. This means that even if the tenants gave notice to end the tenancy effective November 15, 2020, they remained responsible for pay the entirely of November's rent because they did not give one clear months' notice. Pursuant to my above findings, I award the landlords the remainder of November 2020's rent in the amount of $925.00.

Security Deposit

Section 24(2) of the *Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer the tenant two opportunities to complete the condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the "Regulations"), the second opportunity must be in writing.

Landlord P.H. admitted that no joint move-in condition inspection was conducted and that no move in condition inspection report was completed. Landlord P.H. also testified that the landlords did not ask the tenants to complete a move in condition inspection report. Responsibility for completing the move in inspection report rests with the landlords. I find that the landlords did not complete the condition inspection and inspection report in accordance with the Regulations, contrary to section 24 of the *Act.*

Since I find that the landlords did not follow the requirements of the *Act* regarding the joint move-in inspection and inspection report, I find that the landlords' eligibility to claim against the security deposit for **damage** arising out of the tenancy is extinguished.

As I have determined that the landlord is ineligible to claim against the security deposit for damage, pursuant to section 24 of the *Act,* I find that I do not need to consider the effect of the landlord failing to provide two opportunities, the last in writing, to complete the move out inspection and failing to complete the move out inspection report.

Section 38 of the Act requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit. I find that the landlords' filed this application within 15 days of receiving the tenants' forwarding address.

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for **damage** to the rental unit and the landlords' right to make such a claim has been extinguished under the Act.

In this case, while the landlords made an application to retain the tenants' security deposit within 15 days of receiving the tenants' forwarding address in writing, they are not entitled to claim against it for **damage** to the property due to the extinguishment provisions in section 24 of the *Act.* However, the extinguishment provisions only apply to claims for **damage**, not for unpaid rent. I find that the landlords were entitled to hold the tenants' security deposit until the outcome of this decision as part of the landlords' claim is for unpaid rent. The tenants are therefore not entitled receive double their security deposit.

Section 72(2) states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under sections 24 and 36 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlords are entitled to retain the tenants' security deposit.

The landlords applied to recover the $100.00 filing fee from the tenants; however, our records indicate that the landlords' filing fee was waived. As the landlords did not incur the cost of the filing fee, I find that they are not entitled to recover it from the tenants. The landlords' claim to recover the filing fee is therefore dismissed.

Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	**Amount**
Carpet cleaning	$350.00
Cleaning	$360.00
November 2020's rent	$925.00
Less security deposit	-$925.00
Total	$710.00

The landlords are provided with this Order 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: March 24, 2021

Residential Tenancy Branch