Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $4,475 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord attended the hearing. Tenant JA appeared on behalf of the tenants. Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified, and the JA confirmed, that the landlord served the tenants with the notice of dispute resolution form and supporting evidence package. JA testified, and the landlord confirmed, that the tenants served the landlord with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the landlord entitled to:

1) a monetary order for $4,475;
2) recover the filing fee; and
3) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

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

The parties entered into a written tenancy agreement starting December 1, 2017. Monthly rent was $2,000 and is payable on the first of each month. The tenants paid the

landlord a security deposit of $1,000 and a pet damage deposit of $1,000. The landlord still retains theses deposits.

The rental unit is the upper unit of a single-detached house. The landlord occupies the lower unit.

The parties did not conduct a move-in condition inspection report at the start of the tenancy. At first, the landlord testified that the rental unit was “brand new” at the start of the tenancy. However, he later admitted that he and his family occupied the rental unit for three months prior to the start of the tenancy. In any event, he testified that the rental unit was undamaged at the start of the tenancy, which is why he did not believe that a move-in inspection was necessary.

On November 2, 2020, the tenants gave the landlord written notice that they would be vacating the rental unit at the end of November. The tenants moved out on November 28, 2021. The landlord re-rented the rental unit on December 1, 2020 for $2,000 per month.

The landlord’s monetary claim against the tenants in comprised of three parts:

1) $2,000 as compensation for the tenant’s failing to give him one month’s notice of their intention to end the tenancy (classified as “loss of rent” on the application)’
2) $475 as compensation for the tenant’s failure to pay their share of a yard cleaning service for 12 months; and
3) $2,000 as compensation for damage caused by the tenants to the rental unit.

I will address each of these in turn

1. Compensation for Failure to Give One Month’s Notice

As stated above, on November 2, 2020 the tenants gave notice that they would be vacating the rental unit at the end of November. The landlord argues that this amounts to a breach of the Act and the tenancy agreement, both of which requires that he be given one month’s notice of the tenants’ intention to end the tenancy. He stated that the soonest the tenants could have ended the tenancy on November 2nd, 2020 was December 31, 2020.

As such the landlord seeks compensation equal to one months’ rent as compensation for the tenant's “breach of the tenancy agreement”.

JA argued that the landlord did not suffer any financial loss as a result of the tenants giving the notice to tenancy on November 2, 2020. As such, she argued the tenants should not have to pay landlord any amount in connection with this portion of the landlords claim.

2. Yard Cleaning

The landlord testified that in 2018, the tenants agreed to split the cost of a yard cleaning service with the landlord. This service was required because both the landlord and the tenants have dogs which used the backyard, in which the dogs periodically defecated. The tenants' monthly share of this service was $25. The landlord testified that the tenants stopping paying this amount in April 2019. He seeks compensation from April 2019 to November 2020 (19 months x $25 = $475).

The landlord testified that he did not make any demand for payment of the tenants' share of this expense since they stopped paying it.

JA agreed that such an agreement existed. However, she argued that it ended in April 2019, as the landlord preventing the tenants from using the backyard. She testified that the landlord built a fence in the backyard, partitioning the backyard in two (one part of which was supposed to be for the tenants' use) and then planted trees on the residential property which impeded the tenants' ability to easily access the part of the yard which was designated for their use. As such, she testified, the tenants stopped using any part of the backyard.

JA testified that the landlord never made any demand for payment of the yard cleaner's fees after the backyard was modified. She testified that the tenant's portion of the yard would not have needed cleaning, because the tenants never used it. She understood that as the tenants stopped using the backyard and as the landlord never asked her for payment, that the arrangement to split the cost of the yard cleaner was terminated.

The landlord did not deny that he made alterations to the backyard as alleged. However, he testified that the tenants continued to use their portion backyard after the changes were made.

3. Damage to Rental Unit

The landlord testified that the tenants damaged the rental unit during the tenancy and that they did not properly clean it when they left. He did not submit a move-out condition inspection report into evidence, but he did submit several photographs of the rental unit which he testified documented the damage caused by the tenants.

These photos show:

1) a paddle-style bathroom light switch where the switch appears to have been pushed in so that a gap appears between it and the frame;
2) small burn marks on the laminate floor;
3) screw holes in the ceiling of an unidentified room;
4) screw hole in the doorframe;
5) dirty or stained baseboard behind a toilet;
6) living room wall with four large patched over screw holes (not repainted);
7) walls beneath and beside a window with circular dents or hole; and

8) various walls with small dents and scuff mark.

The landlord also testified that the rental unit required extensive cleaning after the tenancy ended. No documentary evidence was submitted to support this claim.

JA admitted that the tenants caused some small amount of damage to the rental unit during the tenancy (described below). However, JA denied that the rental unit was dirty or (aside from the damage acknowledged) damaged beyond the level of reasonable wear and tear. She submitted numerous photos of the rental unit taken on November 28, 2020. The rental unit appears clean in all of these photos. Several of these photos show the walls to have been patched and sanded, including six large patches in the bathroom where shelves appear to have been removed and at least 15 patches on in the children's bedroom. JA testified that the tenants patched and sanded all holes created by them during the tenancy.

JA testified that the landlord never provided her with instructions as to how to hang items on the walls of the rental unit, or what could be hung in the rental unit.

JA denied that there were any holes in the ceiling of the rental unit.

JA also testified that the holes or dents shown in the landlord's photographs around the windows which were not patched were not caused by the tenants. Rather, she characterized these as "screw pops", where the screws used to attach the drywall to the framing had popped up or sunk into the frame causing indentations in the wall. She argued that the tenants should not be responsible for fixing these.

The landlord testified that the tenants broke the door and door frame of the water heater closet. No photos of this damage were submitted. JA denied that this was damaged.

The landlord testified that the tenants' dog damaged the weatherstripping around the front door. JA agreed this was the case and agreed to pay the cost for replacing and installing the weatherstripping. The landlord testified that the tenants did not return the front door keys. JA agreed this was the case and agreed to pay the replacement cost for replacing and installing the deadbolt. The landlord testified that the tenants damaged a of blinds in the rental unit. JA agreed this was the case and agreed to pay the cost for replacing and installing the blinds.

The landlord submitted an invoice he prepared which set out all the work done to the rental unit following the tenants leaving it, in order to get it ready for the new rents on December 1, 2021.

Description	Quantity	Unit Price	Amount
Labour	(hours)		
Painting*	23	$35.00	$805.00

Cleaning*	9	$35.00	$315.00
Filling holes, sanding, and painting	12	$35.00	$420.00
Repair broken closet door	1.5	$35.00	$52.50
Repair light switch	0.5	$35.00	$17.50
Repair weatherstripping	1	$35.00	$35.00
Install new blinds	1	$35.00	$35.00
Install deadbolt	1	$35.00	$35.00
Repairing landscape wiring	2	$35.00	$70.00
Materials	(# of units purchased)		
Light switch	1	$2.48	$2.48
Weatherstripping	3	$15.87	$47.61
Painting	7	$39.97	$279.79
Blinds	1	$88.42	$88.42
Deadbolt kit	1	$47.92	$47.92
Total		**Subtotal**	**$2,251.22**
		Tax	**12%**
		Total	**$2,521.37**

*one charge was recorded as 10 hours for painting and cleaning (for the purposes of this table I have apportioned it 5 hours to each task, as the landlord was unable to tell me how much of each type of work was performed in that 10 hour time.

The landlord testified that he had to repaint the entirety of the rental unit due to the number of holes and patches in the walls.

The landlord testified that he and some of his employees made the repairs to the rental unit, and that $35 per hour is the going rate for such work.

I note that, despite the fact the landlord sets out more than $2,000 in expenses incurred on his invoice, he is only claim compensation for $2,000 in connection with cleaning and damages to the rental unit.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

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

Section 37(2)(a) of the Act states:

> **Leaving the rental unit at the end of a tenancy**
> 37(2) When a tenant vacates a rental unit, the tenant must
> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

Section 32(4) states "A tenant is not required to make repairs for reasonable wear and tear."

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> 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. In most circumstances this is the person making the application.

So, the landlord must prove it is more likely than not that the tenant breached the Act or tenancy agreement, that the landlord suffered a quantifiable loss as a result of the breach, and that he acted reasonably to minimize the loss.

1. Compensation for Failure to Give One Month's Notice

Section 45 of the Act requires that a tenant give at least one month's notice before ending a periodic tenancy. In this case, the tenants gave 28 days. This is less than one month and represents a breach of the Act. If the tenants wanted to end the tenancy as of November 30, 2020, the latest they could have given the landlord notice of this would have been October 31, 2020. As of November 2, 2020, the soonest the tenants could have ended the tenancy would have been December 31, 2020.

However, the landlord did not suffer any loss as a result of the tenants' breach. The landlord was able to re-rent the rental unit on December 1, 2020 for the same amount of rent as the tenants were paying. As such, the landlord earned the same amount of

income from the rental unit in December 2020 as he would have if the tenants remained in the rental for that month and paid rent.

There is no basis under the Act or in the tenancy agreement to levy a fine or penalty against the tenants for the sole reason that they breached the Act. Absent such a basis, I cannot award the landlord any compensation if he did not suffer any monetary loss.

I dismiss this portion of the landlord's application, without leave to reapply.

2. Yard Cleaning

In order to prove that the tenants breached the agreement to split the yard cleaning costs, he must first prove it us more likely than not that such an agreement existed at the time it was allegedly breached.

Based on the testimony of the parties, I find that the yard cleaning agreement ended in April 2019, and as such, the tenants are not obligated to pay the landlord any amount in relation to this portion of the landlord's claim. In making this finding, I rely on the testimony of JA which I found to be credible and in accordance with the preponderance of probabilities.

I accept that the tenants stopped using the backyard in March 2019, after the landlord made modifications to it. I accept that these modifications made it inconvenient for the tenants to access the part of the yard the landlord allocated for their use. I accept that, at no point since April 2019, did the landlord ask the tenants for any amount for yard cleaning. I do not think it reasonable to find that the landlord would cease making demands for payment of the cleaning fees if the landlord knew the tenants were still using the backyard after he made the modifications. The timing of the yard alterations is the same as the timing of the cessation of payments by tenants, as such, I find it is more likely than not that the tenants stopped using the backyard in April 2019.

It may be that neither party explicitly stated to the other that the yard cleaning agreement was terminated. However, I find a reasonable person, when considering the events described above, would conclude that neither party intended to be bound by the yard cleaning agreement following April 2019, given that the tenants no longer used the yard or could easily access the yard, and given that the landlord made no demands for payment for 19 months.

As such, I dismiss this portion of the landlord's application, without leave to reapply.

3. Damage to Rental Unit

As stated above, the landlord must prove that the tenant damaged or failed to clean the rental unit.

a. Cleaning

The landlord provided no documentary evidence to support his claim that the rental unit required cleaning at the end of the tenancy; he made only a bare assertion. This is not sufficient to displace his evidentiary burden. In the absence of any corroboration, and in light of the picture the tenants submitted into evidence showing a reasonably clean rental unit, I decline to find that the tenants breached the Act by failing to clean the rental unit prior to vacating it. As such, I decline to order the tenants pay the landlord any amount in connection with this portion of his claim.

b. Painting

Policy Guideline 1 states:

> **WALLS**
>
> Nail Holes:
>
> 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
> 2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
> 3. The tenant is responsible for all deliberate or negligent damage to the walls.
>
> **PAINTING**
>
> The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

The landlord did not provide any guidance to the tenants as to what could or could not be hung from the walls of the rental unit. As such, I do not find that the tenants are responsible for the damage caused to the walls by the sole virtue of using screws or nails to hang items from the walls.

However, some of the damage to the walls in the photographs provided by the parties shows damage to the walls that falls within the criteria set out at the second point in Policy Guideline 1 above:

1) I find that there are an *excessive* number of holes or dents (be they caused by nails, screws or otherwise) in the children’s room.

2) I find that the size of the damaged caused to the bathroom wall from hanging shelving is of a kind with that caused by “large nails”.
3) Similarly, I find that the damage to the living room wall with four large patches meets the level of damage caused by “large nails”.

As such, I find that the photographs show one room (the children’s bedroom) and two walls (one in the bathroom and the other in the living room) that require repainting due to damage for which the tenant is responsible. I note that the tenant has patched and sanded these holes, so the landlord is not entitled to compensation for doing this work. He is, however, entitled to compensation for the cost of repairing that room and those walls, as, were it not for the damage caused by the tenants to those walls, the painting would not have been necessary.

On the evidence presented to me, I do not find that any of the other, unfilled, holes in the rental unit entitle the landlord to compensation, as I am cannot be certain that they were caused by the tenants. No inspection report was conducted at the start of the tenancy, so I cannot say whether this damage pre-dated the tenants (and was caused by the landlord in the short time he occupied it). Additionally, many of the other marks to the walls is ordinary wear and tear or are screw holes of such a size that does not give rise to an entitlement to compensation for the landlord.

Finally, I am not satisfied that the ceiling of the rental unit has any damage to it, as alleged by the landlord. I have found JA to be credible and the tenants have demonstrated that they patch and sand holes in the walls that they caused. The holes shown in the photograph of the ceiling have not been patched. In light of this, I am not satisfied that the tenants caused this damage, or that the damage exists as claimed by the landlord. Where the landlord’s and JA’s testimony differs on this point, I prefer JA’s.

The landlord did not provide a room by room breakdown of the time spent painting each room. In the circumstances, I find it appropriate to award the landlord 25% of the costs claimed for painting the rental (labour and supplies), representing compensation for the painting of the children’s bedroom, and the bathroom & living room walls. I do not include any portion of the work listed on the landlord’s invoice as “filing holes, sanding and painting” in the amount of which the tenants should pay 25% of, as I find it more likely than not that any painting done as part of that work would have been of walls on which the landlord filled holes. Such walls were not damaged by the tenants. I find $35 an hour to be a reasonable rate for painting. I calculate the amount the tenants must pay to the landlord to be $303.74 ($805.00 + $279.79 = $1,084.79; $1,084.79 x 12% = $1,214.96; $1,214.96 x 25% = $303.74)

Any other cost incurred by the landlord in repainting the rental unit is a cost that he must bear, as it was not necessitated by damage beyond ordinary wear and tear, and as the landlord is expected to repaint a rental unit at reasonable intervals (per Policy Guideline 1).

c. Light switch, closet door, and landscape wiring

Based on the evidence provided by the landlord, I do not find that the damage to the light switch amount to damage beyond ordinary wear and tear, As such, the tenants did not breach the Act and I decline to order that they pay any amount in connection with this expense.

The landlord has not provided any documentary evidence supporting his claim that the tenants broke the closet door or door frame. JA denied that the tenants caused such damage. As such, I find that the landlord has failed to discharge his evidentiary burden to prove that the closet door was damaged. As such, I decline to find that the tenants breached the Act or that they must pay the landlord any amount in connection with this portion of his claim.

At the hearing, the landlord made no mention of the damage to landscape wiring. The materials he submitted do not document the damage in any way. The only reference to such damage is on the invoice that the landlord repaired. I am uncertain as to what damage is being described. I find that the landlord has failed to establish the existence of this damage and I cannot therefore make any monetary order in relation to it.

d. Other damage

As stated above, the tenants have agreed to pay for the repair of the weatherstripping, blinds, and deadbolt. I accept the amounts listed on the landlord's invoice as accurate. I order the tenants to pay the landlord $323.62 in connection to these items, calculated as follows:

Description	Amount
Weatherstripping - Labour	$35.00
Weatherstripping - Supplies	$47.61
Blinds - Labour	$35.00
Blinds - Supplies	$88.42
Deadbolt - Labour	$35.00
Deadbolt - Supplies	$47.92
Subtotal	**$288.95**
Tax	**12%**
Total	**$323.62**

4. Deposit and filing fee

The tenant has been substantially successful in defending themselves against the landlord's application. As such, I decline to order that they reimburse the landlord his filing fee.

Pursuant to section 72(2) of the Act, the landlord may deduct the monetary orders made in this decision from the deposits he currently holds in trust for the tenants. He must return the balance of the deposits to the tenants.

Conclusion

Pursuant to sections 67 and 72 of the Act, the landlord may retain $592.69 of the security deposit, calculated as follows:

Description	Amount
Repainting	$303.74
Repairs (blinds, deadbolt, weatherstripping)	$323.62
Total	**$627.36**

I order the landlord to return the balance of the security deposit ($372.64) and all of the pet damage deposit ($1,000) to the tenants. I attach a monetary order to this effect.

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: May 26, 2021

Residential Tenancy Branch