



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was scheduled for 1:30 p.m. on May 14, 2021, via teleconference call, to deal with a landlord's application for a Monetary Order for unpaid and/or loss of rent and utilities, compensation for damage and cleaning; and, authorization to retain the tenant's security deposit.

Only one of the landlords appeared for the hearing. There was no appearance on part of the tenant despite leaving the teleconference call open for at least 10 minutes to give the tenant sufficient opportunity to appear. The landlord was affirmed and ordered to not make a recording of the proceeding.

Since the tenant did not appear, I explored service of hearing materials upon the tenant.

The landlord testified that the tenant provided his forwarding address on the move-out inspection report and the proceeding package and the evidence was sent to the tenant at his forwarding address, via registered mail, on January 12, 2021. The landlord provided the move-out inspection report and the registered mail receipt as proof of service. A search of the tracking number showed that the registered mail was successfully delivered on January 15, 2021. I was satisfied the tenant was duly served with the landlord's proceeding package and evidence on January 15, 2021 and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation from the tenant in the amounts claimed?
2. Are the landlords authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

The tenancy started on October 1, 2019 and the tenant paid a security deposit of \$625.00. The tenant was required to pay rent of \$1250.00 on the first day of every month. The tenant was also responsible to pay 2/3 of the hydro and gas bills. The tenancy agreement reflects that the tenancy was for a fixed term set to expire "May 31, 2019". The landlord stated this was a typographical error and should have read May 31, 2020.

On December 8, 2020 the tenant emailed the landlord notification that he would be moving out at the end of December 2020. The tenant vacated the rental unit on December 30, 2020.

The landlord and the tenant participated in a move-in and move-out inspection together. A move-in and move-out inspection report was prepared. The tenant authorized the landlord to deduct \$100.00 for cleaning and \$150.00 for a broken door from the security deposit and provided his forwarding address on the move-out inspection report.

Below, I have summarized the landlords' claims against the tenant.

Unpaid and/or loss of rent -- \$1250.00

The landlord testified that upon receiving the tenant's notice to end tenancy he had lined up replacement tenants for January 1, 2021; however, the landlord found the tenant left the rental unit in a condition that was unsuitable to be re-rented and the incoming tenants went elsewhere. After the tenant vacated the rental unit the landlord proceeded to clean the rental unit and make repairs. The landlord advertised the rental unit starting on January 10, 2021 and secured new tenants for February 1, 2021.

The landlord is seeking to recover unpaid and/or loss of rent for January 2021 due to the insufficient notice to end tenancy given by the tenant and the condition in which he left the unit at the end of December 2020.

Damage and cleaning -- \$420.00

The landlord seeks compensation of \$150.00 for the damaged door and \$100.00 for cleaning, as authorized by the tenant on the move-out inspection report.

In addition, the landlords seek a further \$150.00 for repairs to the wall in the entry way. The landlord explained that at the time of the move-out inspection there were several stick-on hooks on the wall that were supposed to come off without damaging the wall surface; however, when the hooks were removed the paint and drywall paper came off as well. This required filing, sanding, and painting the area. The landlord stated the rental unit had been painted approximately 1.5 years prior to the start of the tenancy.

The landlord stated he performed the work himself but his corporation invoiced the other co-landlord to include GST on the above amounts.

Vinyl floor replacement -- \$453.18

The landlord submitted that during the move-out inspection there were spots of pink or red stains observed on the bathroom floor that the tenant thought was nail polish spilled by his daughter. The landlord anticipated the stains could be removed; however, the landlord was unable to remove the stains despite trying all different kinds of stain remover. The landlord suspects the stains may have been from hair dye.

The landlord submitted an estimate from a flooring contractor in support of the cost claimed to replace the bathroom floor. The landlord submitted that the floor was actually replaced for the same cost as the estimate.

The landlord submitted that the vinyl floor tiles were approximately 1.5 years old at the start of the tenancy.

Utilities for January 2021 - \$125.00

The landlord submitted that the tenant had been paying a portion of the equal payment plan during the tenancy but he did not make the payment for January 2021.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of all of the unopposed evidence before me, I provide the following findings and reasons.

Unpaid and/or loss of rent

Upon review of the tenancy agreement, I accept the landlord's submission that the tenant was to pay rent of \$1250.00 every month and the tenancy was in a month to month status after May 31, 2020.

A tenant in a month to month tenancy is required to give the landlord at least one full month of written notice to end tenancy. The tenant sent an email to the landlord on December 8, 2020 to notify the landlord he was giving "short notice" and moving out at the end of the month. The landlord's response to the tenant was that he would do his best to get it re-rented.

The landlord testified that he made efforts to secure replacement tenants for January 1, 2021 but that he was unsuccessful and it remained unrented until February 1, 2021.

In these circumstances, I find I am satisfied the tenant violated the Act with respect to giving sufficient notice to end tenancy, causing the landlord to suffer a loss of rent for January 2021 despite the landlord's efforts to re-rent the unit. Therefore, I find the landlord entitled to recover unpaid rent of \$1250.00 from the tenant for the month of January 2021.

Cleaning and damage

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Section 37 of the Act also requires that a tenant leave a rental unit “reasonably clean” at the end of the tenancy.

The landlord seeks compensation of \$100.00 for cleaning and \$150.00 for damage to the door, plus GST. The move-out inspection report indicates the rental unit needed cleaning and a door was broken. The tenant had authorized the landlord recover these amounts, without GST, from the security deposit on the move-out inspection report. It is uncertain why the landlord performed the work himself and then used his own corporation to invoice the co-landlord and charge GST. Nor, was I provided proof the individual landlords paid the corporation the amount invoiced, including GST. Therefore, I limit the landlords award to \$100.00 for cleaning and \$150.00 for door damage as agreed upon by the tenant.

The landlords also seek compensation of \$150.00 plus GST for additional damage to the entry wall discovered after the move-out inspection was performed and the stick on hooks removed. I accept the landlord’s explanation that the damage was not noted on the move-out inspection report because the hooks were still on the wall when the inspection was performed and it was expected that removal of the stick-on hooks would not cause damage. Upon review of the photographs, I see six significant spots where the textured drywall finish was removed and I am satisfied the amount claimed is not unreasonable; however, for the reasons provided above, I do not add GST on to the amount and I award the landlords \$150.00 for wall damage.

Vinyl floor damage

The move-out inspection report indicates the bathroom flooring was in need of cleaning and it was stained at the end of the tenancy, as denoted by “CS” on the move-out inspection report; and, the landlord’s photographs show two spots of pink or red stain. In contrast, the move-in inspection report indicates the floor was showing signs of normal wear and tear at the start of the tenancy, as denoted by the “W” on the move-in inspection report. As such, I accept that the tenant is responsible for the staining on the bathroom floor.

The landlords submitted unopposed evidence that the stains could not be removed and the landlord proceeded to replace the floor. I find the tenant is liable to compensate the landlord a portion of the replacement cost; however, I do not award the landlord the full replacement cost. Monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged that it requires replacement, an award will generally take into

account depreciation of the original item. To award the landlord full replacement value of certain building elements that were already worn and aging would result in a betterment for the landlord. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation.

Policy guideline 40 provides that the average useful life of flooring, except hardwood, is 10 years. In this case, I heard the flooring was 1.5 years old at the start of the tenancy, meaning it would be nearly four years old in January 2021, the last month for which the tenant is liable to pay rent. Accordingly, I find the existing vinyl flooring was approximately 4/10 depreciated and I find it appropriate to limit the landlord's award to 6/10 of the replacement cost, or \$271.91.

Utilities for January 2021

The tenancy agreement addendum provides the following term with respect to utilities:

45. OTHER.

2/3s of Hydro & Natural Gas are due for the past month on the 1st of the following month. (ie, October utilities paid Nov 1)
Utilities are calculated based on EQUAL PAYMENT PLANS, and will be adjusted annually where any deficit in payment 2/3s of outstanding will be bore by the tenant. Likewise, 2/3s of any surplus will be reimbursed to the tenant.

I am satisfied the tenant was required to pay for 2/3 of the hydro and gas bills and the accounts were on an equal payment plan; however, the landlords did not provide me with a copy of the hydro and gas bills to verify the amount claimed. Nor, did the landlords provide a printout of the tenant's ledger to demonstrate the amount the tenant had been regularly paying for his share of the utilities. As such, I find the landlords did not provide sufficient evidence to verify the amount claimed and I dismiss this component of the landlords' claim, without leave to reapply.

Filing fee, security deposit and Monetary Order

The landlords' application had merit and I award the landlords recovery of the \$100.00 filing fee.

The landlords are authorized to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlords with this decision.

In keeping with all of my awards and findings above, the landlords are provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid and/or loss of rent – January 2021	\$1250.00
Cleaning	100.00
Door damage	150.00
Wall damage	150.00
Vinyl floor damage	271.91
Filing fee	100.00
Less: security deposit	<u>(625.00)</u>
Monetary Order	\$1396.91

Conclusion

The landlords are authorized to retain the tenant's security deposit and are provided a Monetary Order for the balance owing of \$1396.91 to serve and enforce upon the tenant.

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 19, 2021

Residential Tenancy Branch