



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FFL (Landlord)
 MNSD, MNDCT, FFT (Tenants)

Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Landlord filed the application January 12, 2021 (the “Landlord’s Application”). The Landlord applied as follows:

- For compensation for damage
- To recover unpaid rent
- For compensation for monetary loss or other money owed
- To keep the security deposit
- For reimbursement for the filing fee

The Tenants filed the application January 20, 2021 (the “Tenants’ Application”). The Tenants applied as follows:

- For compensation for monetary loss or other money owed
- For return of the security deposit
- For reimbursement for the filing fee

The Landlord appeared at the hearing. The Tenant appeared at the hearing with D.Z. to assist. The Tenant appeared for Tenant M.K. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

At the hearing, the Tenant advised that the Tenants are seeking double the security deposit back.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

D.Z. advised that the Tenants received the Notice of Dispute Resolution Proceeding from the Landlord on January 12, 2021. The Tenant testified that the Tenants did not receive any evidence from the Landlord. The Landlord testified that his evidence was sent to the Tenants by regular mail and email around January 15, 2021. The Tenant denied that the Landlord's evidence was sent to the Tenants by regular mail or email. The Landlord could not point to evidence to support his testimony about service.

The Landlord was required to serve his evidence on the Tenants pursuant to rules 3.1 and 3.14 of the Rules. The Landlord was required to prove service of his evidence pursuant to rule 3.5 of the Rules.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their onus of proof.

Here, the parties gave conflicting testimony about whether the Landlord's evidence was served on the Tenants. The Landlord could not point to evidence to support his testimony about service. Therefore, the Landlord failed to prove service as required.

I told the parties I was not satisfied of service of the Landlord's evidence. I told the parties I would hear them on whether the evidence should be admitted or excluded pursuant to rule 3.17 of the Rules. D.Z. submitted that the evidence should be excluded because the Tenants have not seen it. The Landlord submitted that the evidence should be admitted because it was emailed to the Tenants and they confirmed receipt of the email.

As stated, I was not satisfied of service because the Landlord did not point to documentary evidence to support his testimony about service during the hearing. Pursuant to rule 3.17 of the Rules, I excluded the Landlord's evidence as I found it would be unfair to consider it when I was not satisfied it was served on the Tenants.

The Landlord acknowledged receipt of the hearing package for the Tenants' Application as well as the Tenants' evidence.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to compensation for monetary loss or other money owed?
4. Is the Landlord entitled to keep the security deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?
6. Are the Tenants entitled to compensation for monetary loss or other money owed?
7. Are the Tenants entitled to return of double the security deposit?
8. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Carpet steam cleaning	\$120.00
2	Cleaning the unit	\$120.00
3	Painting walls and scratch on balcony door	\$100.00
4	Shelf damage	\$60.00
5	Cleaning stains on balcony	\$10.00
6	Unpaid rent	\$300.00
7	Loss of rent	\$2,400.00
8	Filing fee	\$100.00
	TOTAL	\$3,210.00

The Tenants sought \$1,050.00 for the cost of agent fees for filing the Tenants' Application and representing the Tenants at the hearing.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started December 01, 2019 and was for a fixed term ending November 30, 2020. Rent was \$2,400.00 per month due on the first day of each month. The Tenants paid a \$1,200.00 security deposit.

The parties agreed the tenancy was extended one further month. The parties agreed the tenancy ended December 29, 2020.

The parties agreed the Tenants provided the Landlord with their forwarding address December 29, 2020 by email.

The parties agreed the Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The Landlord testified that the parties did a move-in inspection but no Condition Inspection Report ("CIR") was done. The Landlord testified that the state of the rental unit was recorded through videos and photos and that the photos were emailed to the Tenants.

The Tenant testified that no proper move-in inspection was done, and no CIR was done. The Tenant acknowledged the Landlord took photos and sent these to the Tenants.

The Landlord testified that the parties did a move-out inspection, but no CIR was done. The Landlord testified that he emailed the Tenants about the deficiencies with the rental unit. The Landlord testified that the state of the rental unit was recorded through videos and photos.

The Tenant testified that a move-out inspection was done but the Landlord did not take photos or videos and no CIR was done. The Tenant testified that the Landlord did email the Tenants about deficiencies with the rental unit.

Landlord's Application

#1 Carpet steam cleaning

The Landlord withdrew this request at the hearing.

#2 Cleaning the unit

The Landlord testified that the rental unit was a mess at the end of the tenancy and the he had to hire a professional cleaner to clean it. The Landlord testified that he hired the least expensive cleaner.

D.Z. testified that the Tenants had cleaners booked and the Landlord sent an email telling them to cancel the cleaners and that the Landlord would take care of it. D.Z. testified that the Landlord told the Tenants they did not need to clean the rental unit.

The Tenant advised that the relevant email dated December 28, 2021 is in evidence and states that the Landlord will cover the cost of the Tenants moving out three days early.

#3 Painting walls and scratch on balcony door

The Landlord testified that the Tenants painted a door frame and walls in the living room and kitchen, but this was not done well so he had to buy paint and re-paint these areas himself.

The Tenant denied that the rental unit required painting and testified that the Landlord said he would cover painting in the email referred to.

#4 Shelf damage

The Landlord testified that he had to have a cabinet maker fix a shelf in the rental unit which cost \$60.00.

The Tenant testified that if the shelf was damaged, it was damaged, but the Tenants did not know this until the Landlord sent a picture and the Tenants do not know if they caused this.

D.Z. testified that the issues raised by the Landlord in relation to the rental unit were not documented during the move-out inspection and were not pointed out until after the tenancy was over.

#5 Cleaning stains on balcony

The Landlord testified that there were stains on the balcony due to a BBQ and cooking materials and he had to buy chemicals to clean the stains.

D.Z. referred to his previous point about shelf damage as set out above.

#6 Unpaid rent

The Landlord sought \$300.00 due to the Tenants paying \$300.00 less in rent during the tenancy. The Landlord acknowledged that he agreed to the Tenants withholding this \$300.00 during the tenancy. The Landlord testified that he allowed the rent reduction due to the pandemic and the Tenants having financial difficulty. The Landlord testified that he later found out the Tenants purchased a house for one million dollars and therefore wants the \$300.00 back.

The Tenant denied that the Tenants were having financial difficulty or told the Landlord they were having financial difficulty.

#7 Loss of rent

The Landlord sought loss of rent for two reasons. First, the Landlord lost a tenant willing to pay \$2,500.00 to rent the rental unit because the Tenants wanted to extend the tenancy. The Landlord acknowledged that he agreed to the Tenants extending the tenancy. Second, the Tenants did not let the Landlord show the rental unit to prospective tenants. The Landlord testified that notices of entry were sent to the Tenant by text and email. The Landlord testified that the rental unit was re-rented at the end of the Tenants' tenancy but that it was rented for less because the new tenants could not see the rental unit and rented it based on photos.

D.Z. testified that the Landlord did not serve proper written notice to enter on the Tenants in relation to showing the rental unit.

The Tenant testified that prospective tenants did view the rental unit on December 24, 2020 and December 26, 2020.

In reply, the Landlord acknowledged that the Tenant allowed one prospective tenant to view the rental unit.

Tenants' Application

I did not hear the parties on the Tenants' request for compensation for agent fees related to this proceeding as these types of costs are not recoverable.

The Tenants submitted the following relevant documentary evidence:

- Log of events
- Written response to Landlord's claims

Analysis

Pursuant to rule 6.6 of the Rules, it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

As stated, when one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Security deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of both parties, I find the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished his rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlord has claimed for cleaning, unpaid rent and loss of rent.

Based on the testimony of both parties, I accept that the tenancy ended December 29, 2020.

Based on the testimony of both parties, I accept that the Tenants provided the Landlord with their forwarding address December 29, 2020.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit or claim against it. The Landlord's Application was filed January 12, 2021, within time. I find the Landlord complied with section 38(1) of the *Act*.

Landlord's Application

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

#2 Cleaning the unit

Section 37 of the *Act* states:

(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...

In the Tenants' written response to the Landlord's claims there is an email dated December 28, 2020 from the Landlord to the Tenant stating:

Since you are evacuating the unit on mid day Tuesday, do you want to return the keys and end up your tenancy? We do not require you to bring your cleaner on Wednesday. We can take care of the cleaning.

The email states for a second time that the Tenant can cancel their cleaner as the Landlord will take care of it.

I am not satisfied the Landlord is entitled to compensation for cleaning costs given the Landlord told the Tenant the above. I dismiss this request without leave to re-apply.

#3 Painting walls and scratch on balcony door

Section 37 of the *Act* applies to this claim.

The parties disagreed about whether the rental unit required painting at the end of the tenancy. There is no admissible documentary evidence before me showing the state of the rental unit at the start or end of the tenancy. In the absence of further evidence, I am not satisfied the rental unit required painting and am not satisfied the Tenants breached section 37 of the *Act*. I dismiss this request without leave to re-apply.

#4 Shelf damage

Section 37 of the *Act* applies to this claim.

The Landlord takes the position that the Tenants damaged a shelf in the rental unit. The Tenant did not acknowledge damaging the shelf. There is no admissible documentary evidence before me showing the condition of the shelf at the start of the

tenancy and end of the tenancy. In the absence of further evidence, I am not satisfied the Tenants damaged the shelf or breached section 37 of the *Act* in this regard. I dismiss this request without leave to re-apply.

#5 Cleaning stains on balcony

Section 37 of the *Act* applies to this claim.

I dismiss this request without leave to re-apply for the same reasons outlined above in relation to *#2 Cleaning the unit*.

#6 Unpaid rent

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

One of the circumstances in which a tenant can withhold rent is when the landlord agrees to the tenant withholding rent. I find based on the Landlord's own testimony that he agreed to the Tenants withholding \$300.00 of rent during the tenancy. I do not accept that the Landlord can now change his mind and seek to recover the rent on the basis that he found out the Tenants purchased a home. The Landlord is not entitled to recover rent he agreed the Tenants did not have to pay. I dismiss this request without leave to re-apply.

#7 Loss of rent

The Landlord is only entitled to compensation for loss of rent if the Tenants breached the *Act*, *Regulations* or tenancy agreement.

The parties agreeing to extend the tenancy a further month is not a breach of the *Act*, *Regulations* or tenancy agreement by the Tenants.

In relation to the second basis for this claim, section 29 of the *Act* sets out when a landlord can enter a rental unit. The parties disagreed about whether the Landlord served proper notice of entry and whether the Tenants refused entry after proper notice

was served. There is no admissible documentary evidence before me to support the Landlord's position on these points. In the absence of further evidence, I am not satisfied the Tenants breached the *Act*, *Regulations* or tenancy agreement.

I dismiss this request without leave to re-apply.

#8 Filing fee

The Landlord is not entitled to reimbursement for the filing fee given the Landlord has not been successful on the Landlord's Application.

Tenants' Application

As stated, the Tenants are not entitled to the cost of agent fees associated with this proceeding as these types of costs are not recoverable.

The Tenants are entitled to return of the security deposit because the Landlord has not proven any basis to keep the security deposit. The Tenants are not entitled to return of double the security deposit because the Landlord complied with section 38(1) of the *Act* as explained above.

Given the Tenants were successful in their claim for return of the security deposit, the Tenants are awarded reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenants are issued a Monetary Order for \$1,300.00 as return of the security deposit and reimbursement for the filing fee.

Conclusion

The Landlord's Application is dismissed without leave to re-apply.

The Tenants are entitled to \$1,300.00 and are issued a Monetary Order for this amount. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it 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 *Act*.

Dated: June 02, 2021

Residential Tenancy Branch