



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenants' security deposit towards any amount owing, and to recover the cost of the filing fee.

Landlord NE (landlord) attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated February 24, 2021 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenants each with their own package by registered mail on February 26, 2021. Two registered mail tracking numbers were provided during the hearing, which have been included on the style of cause for ease of reference and labelled as 1 and 2 with the initials of the respective tenant. According to the Canada Post registered mail website, both packages were mailed on February 26, 2021 and out for delivery as of March 4, 2021. The landlord stated that the address used for the tenants was their written forwarding address provided by the tenants on the outgoing Condition Inspection Report. Based on the evidence before and the undisputed testimony of the landlord, I find the tenants were served as of March 4, 2021, which is when the Canada Post records show that the documents were out for

delivery and is beyond the 5 days deemed service date indicated in section 90 of the Act.

Given the above, I consider this matter unopposed by the tenants as I have found them both to have been sufficiently served in accordance with the Act. Pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 7.1 and 7.3, which address the consequences for not attending a dispute resolution hearing, the hearing proceeded without the tenants present.

Preliminary and Procedural Matters

The landlord was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The landlord was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the landlord was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The landlord had no questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlord confirmed the respective email addresses at the outset of the hearing for both parties and stated that they understood that the decision and any applicable orders would be emailed to them. The tenants will be emailed the decision only.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on November 1, 2020 and was scheduled to revert to a month to month tenancy after October 31, 2021. Monthly rent was \$1,699.99 per month and was due on the first day of each month. The landlord continues to hold the tenants' security deposit of \$849.50, which has accrued no interest under the Act.

The landlords' monetary claim for \$1,689.50, contained an adding error and actually totals \$1,579.00 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Liquidated damages – breaking fixed-term tenancy	\$849.50
2. Damages (kitchen table scratches, bathroom ceiling paint/drywall, mattress cover, lost key)	\$630.00
3. Filing fee	\$100.00
TOTAL	\$1,579.50

Regarding item 1, the landlord presented a documented signed by the parties dated December 13, 2020, which is entitled "Early Lease Termination Agreement" (Agreement) and under 3, the Agreement reads:

Landlord agrees to terminate the attached lease on January 31st, 2021, releasing Tenants from further responsibility under the lease, including (but not limited to) their obligations to pay rent, in exchange for Tenants' payment of \$849.50 by December 15th, 2020. This payment is to cover costs for services and advertising related to finding a new tenant.

[Reproduced as written]

The parties initialled that clause and all parties also signed and dated the Agreement. As a result of the tenants breaking the fixed term lease and signing the Agreement, the landlord is seeking the \$849.50, which the landlord stated the tenants failed to pay after vacating the rental unit on January 31, 2021 and not paying the amount agreed upon for liquidated damages.

Regarding item 2, the landlord has claimed \$200.00 for a scratched kitchen table, \$200.00 for a damaged bathroom ceiling, \$50.00 for a new mattress cover due to staining, and \$180.00 to rekey the rental unit.

Regarding the kitchen table, the landlord presented a photo of a scratched kitchen table and stated that the rental unit was furnished and that the kitchen table was new at the start of the tenancy in November 2020 and was scratched when the tenants vacated the rental unit. The landlord admitted that they did not have the kitchen table repaired but the landlord stated that the kitchen table is now worth less than it was due to the cosmetic defects caused by the tenants.

Regarding the bathroom ceiling, the landlord is seeking \$200.00 due to what the landlord referred to as the tenants splashing water from the shower up to the ceiling causing the drywall and ceiling to become water damaged and showed as black marking on the colour photos submitted in evidence. The landlord admitted that the ceiling was not repaired prior to the current tenants moving in; however, the landlord stated that the rent was reduced for the new tenants due to this flaw in the bathroom, which the landlord stated would not have occurred if the tenants did not splash water from the shower up to the ceiling, which is not normal wear and tear. The rent for the new tenants was \$1,629.00 per month.

Regarding the mattress cover, the landlord has claimed \$50.00 for a mattress cover, which the landlord stated was stained by the tenants and not washed before the tenants vacated the rental unit. The landlord stated that they are claiming for the cost to replace the mattress cover.

Regarding the rekeying cost, the landlord stated that the tenants were missing one key at the end of the tenancy, and although the landlord is seeking \$180.00 to rekey the rental unit, the landlord also admitted that they have not rekeyed the rental unit and instead had a new key cut for the cost of \$3.00.

The landlord filed their claim on February 14, 2021.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenants were served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenants.

Item 1 – I find that the parties initialled the clause of the Agreement to end the fixed-term tenancy and all parties also signed and dated the Agreement. Therefore, section 44(1)(c) of the Act applies which states that parties can agree in writing to end the tenancy, which I find the parties did. I also find the tenants' breached that Agreement by failing to pay the required \$849.50 agreed upon in the Agreement. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$849.50** as claimed for this item.

Item 2 - Regarding the kitchen table, although the landlord is claiming \$200.00 for the scratched kitchen table, I am not satisfied that the landlord suffered a loss of \$200.00 and instead, while I do agree that the scratches exceed normal wear and tear permitted under section 37(2)(a) of the Act, I grant the landlord a nominal amount of **\$100.00** to reflect the breach of the Act by the tenants. I dismiss the higher amount due to insufficient evidence, without leave to reapply.

Regarding the bathroom ceiling, although the landlord is seeking \$200.00 due to the bathroom ceiling damage, again I am not satisfied that the tenancy was devalued by \$200.00, I do grant the landlord a nominal amount to reflect what I find was a breach of section 37(2)(a) of the Act by the tenants by splashing water onto the ceiling causing damage. I also acknowledge that the monthly rent for the new tenants was \$70.00 less per month and as result, I grant a nominal amount of **\$100.00** to reflect the breach of the Act. I dismiss the higher amount due to insufficient evidence, without leave to reapply.

Regarding the mattress cover, the landlord has claimed \$50.00 for a mattress cover, which I accept the tenants stained and did not reasonably clean based on the photo evidence. Therefore, I find the tenants are liable for the cost to replace the mattress cover and I award the landlord **\$50.00** as claimed.

Regarding the rekeying cost, as rekeying did not take place, I grant the landlord the **\$3.00** amount paid to have a new key cut for the rental unit as I accept the tenants breached section 37(2)(b) of the Act, which requires that the tenants return all the keys to the rental unit. I dismiss the higher amount due to insufficient evidence, without leave to reapply.

In summary, I find the landlord's application is mostly successful as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Liquidated damages – breaking fixed-term tenancy	\$849.50
2. Damages (kitchen table scratches, bathroom ceiling paint/drywall, mattress cover, lost key)	\$253.00
3. Filing fee	\$100.00
TOTAL	\$1,202.50

As the landlords continue to hold the tenants' security deposit of \$849.50, and I find that they filed their claim on February 14, 2021, which is within 15 days of the written

forwarding address provided on January 31, 2021, I authorize the landlords to retain the tenants' full security deposit of \$849.50 in partial satisfaction of the landlord's monetary claim. I grant the landlords a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlords in the amount of **\$353.00**.

Conclusion

The landlords' application is mostly successful.

The landlords have been authorized to retain the tenants' security deposit of \$849.50 and have been granted a monetary order pursuant to section 67 of the Act, in the amount owing of \$353.00 owing by the tenants to the landlords. The landlords must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division). The tenants are cautioned that they could be liable for all costs associated with enforcing the monetary order.

This decision will be emailed to both parties. The monetary order will be emailed to the landlords only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 30, 2021

Residential Tenancy Branch