



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

Both landlords attended the hearing, one of whom gave affirmed testimony, and the landlords also called 1 witness who gave affirmed testimony. One of the tenants attended the hearing, gave affirmed testimony and represented the other tenant. The parties were given the opportunity to question each other and the witness, and to give submissions.

All evidence provided for this hearing has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for damage to the rental unit or property?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for unjust compensation given to the tenant, unpaid rent, the cost of legal advice and emotional stress?
- Should the landlords be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on November 1, 2019 and was to expire on October 31, 2020, thereafter reverting to a month-to-month tenancy, which ultimately ended on September 3, 2020. Rent in the amount of \$2,000.00 was payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,000.00 and collected a pet damage deposit totalling \$500.00 during the tenancy, both of which are still held in trust by the landlords. The rental unit is a single family house and a copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy with one of the tenants present. The parties went through each room while the report was being completed, and a copy has been provided for this hearing. It is dated October 31, 2019, but the landlord forgot to have the tenant sign it. The landlord sent a copy by email to the tenant, and the tenant responded that it reflected the condition of the rental unit. No move-out condition inspection report was completed.

The landlords had given the tenant notice to end the tenancy for the landlords' use of the property but didn't know they had to use a specific form. The tenants did not dispute it, but gave the landlords notice to end the tenancy on August 14, 2020 effective 10 days later.

The landlords have provided a Monetary Order Worksheet setting out the following claims, which totals \$32,153:

- \$806.00 for flooring supply;

The tenants spilled a gallon of paint on the carpet in the living room, and destroyed carpet. Before and after photographs have been provided for this hearing. The landlords replaced all flooring but only claim for the living room, dining room, kitchen and north bedroom. The floors were destroyed with spills. The kitchen had laminate, but a terrible smell remained and when the laminate was removed the subfloor was saturated with urine. The north bedroom floor was damaged with crayons, paint, wax and sticky stuff that the landlords were not able to remove.

- \$620.00 for flooring installation;

A local flooring professional charged \$1.00/sq ft which was paid in cash, so no receipt was given, but the landlords have provided a copy of a text message string showing a \$900.00 fee. The carpet was about 15 years old and laminate was about 10 years old.

- \$568.34 for paint and supplies;
2 receipts have been provided for this hearing. One is for \$204.12 for the purchase of paint and the other is \$364.22 but some of the items were not part of the landlords' claim, and the landlord reduces the claim by taking off the \$90.00 for "1-in-1" and \$4.56 for "wash." The landlord grew up in the house and the tenants knew there was some personal connection to the home, which was last painted in March 2017. The landlord reduces this portion of the claim to \$473.78.
- \$301.09 for a bin;
The bin is a primer to seal smells, get crayon marks, etc. off walls and floors. A receipt has been provided for this hearing.
- \$2,400.00 for labour for paint and drywall;
The claim is for both landlords for 8 hours per day for 3 days, at \$50.00 per hour. The amount was recommended by a painter who charges \$60.00 per hour.
- \$18.00 for a dump fee for garbage left behind;
The landlords have provided a receipt in that amount.
- \$150.00 for the landlords' time to remove the garbage left behind;
The landlord also testified that her husband is a landscaper and charges \$50.00 per hour. It took 3 hours to gather all the garbage and get it to dump and return. Photographs have also been provided.
- \$2,000.00 for a compensation payment;
On July 1, 2020 the landlords gave the tenants a letter to end the tenancy stating that the landlords' son would be occupying the rental unit, but not in the approved form, and the landlords did not know that when ending the tenancy for landlord's use of property, the landlords had to pay compensation. On August 16, 2020 the landlords received a notice to end the tenancy from the tenants. However, the tenants threatened to refuse to move out, so the landlords paid the compensation, and claim it back from the tenants.
- \$2,000.00 for September rent;
The tenants did not give a full months' notice of their intent to vacate, and paid no rent for September, 2020.

- \$27.99 for damaged drapes;

A receipt in the amount of \$27.96 has been provided for this hearing, and the landlord testified that the amount of \$27.99 was an error. Photographs of the drapes before the tenants moved in and the damaged drapes have also been provided. The landlord amends the claim to \$27.96, plus taxes, for a total of \$31.32.

- \$116.48 for replacement pavers;

The pavers are slabs of concrete making a sidewalk. One was broken at the end of the tenancy and the other 7 had paint spilled on them. The concrete slabs were 10 or 15 years old.

- \$93.80 for sod replacement;

The sod was green at the beginning of the tenancy but the tenants put in a pool which damaged the green grass. An invoice has been provided.

- \$50.00 for the landlord's time to pressure wash the deck;

The landlord testified that it was used to get rid of spilled paint on the deck.

- \$100.00 for the landlord's time for sod replacement;

The landlord is a landscaper and charges \$50.00 per hour, and claims that amount from the tenants.

- \$93.80 for a door and frame;

The tenants' dogs were often left in the porch or downstairs and scratched the porch door. Photographs and a receipt for \$92.79 have been provided.

- \$100.00 for the landlord's time to replace the door;

The landlord testified that it includes 2 hours to replace the door and repair the casing;

- \$196.00 for legal advice;

A receipt has been provided.

- \$2,452.00 for loss of work;

The landlord lost work because of the trauma caused by the tenants' damages. No paystub has been provided for this hearing.

- \$20,000.00 for emotional stress;

The landlord testified that she was throwing up and shaking every day for the way the home was left and being sued by the tenants for \$24,000.00. The landlords sought legal advice and was told it could go either way depending on the evidence. The landlords' son moved into the rental unit, and the tenants' application was dismissed at arbitration.

The landlord further testified that the tenants have not served the landlords with an Application for Dispute Resolution claiming the security deposit, and did not agree in writing that the landlords keep it. However, at move-out, the tenant said that he would not claim it "out of the goodness of his heart."

The landlords' witness testified that she is a development manager and building asset manager, with a background in architectural technology, which makes her an expert in the technology portions of her work, and has lots of experience.

The witness further testified that she worked with the landlord, and overheard her talking to her husband and contractors. The witness viewed the rental unit after the tenants had vacated and found the condition shocking, including a smell of urine in the kitchen. The witness recommended that the landlords use the bin to cover the smell and some damage to the floors and walls, specifically to cover crayons and such. The damage and smell cannot be painted over; it will come through.

The tenant testified that there was evidence from the landlord's Facebook about her drinking heavily, so perhaps she has a drinking problem and that was the cause of her shaking. The tenant's family was also stressed; leaving their support system, new schools for the kids within a month, and the stress worked both ways.

The landlord had told the tenants that the carpets were going to be replaced, but the tenant admits that paint was spilled. The tenant cut the carpet out and told the landlords that he would forfeit the pet damage deposit and security deposits for that.

The tenant agrees to the garbage pick-up costs and dump fees, and testified that he had issues with cleaners who didn't show up and a new cleaner only had a couple of hours.

The flooring didn't need to be replaced in the kitchen.

The tenants also had to get a de-humidifier due to a huge issue with moisture content causing mold in the windows.

A cat urine smell existed downstairs, which was never pursued by the landlords after the tenants moved in.

The tenant also agrees that the tenants' dogs wrecked the door frame.

Analysis

Firstly, the legal advice given to the landlord was not sound advice considering that the *Residential Tenancy Act* specifies that a notice to end a tenancy for landlord's use of property is not effective unless given in the approved form. It also states that a landlord who gives such a notice must provide compensation equivalent to one month's rent payable under the tenancy agreement, and if the landlord does not use the rental unit for the purpose contained in that notice, the landlord must compensate the tenant an additional 12 month's rent. In this case, the notice given was not in the approved form and therefore the landlords were not required to give any compensation to the tenants, and the tenants could not give 10 days notice to vacate or collect any compensation. Therefore, I find that the compensation of \$2,000.00 given to the tenants was not required and the landlords are entitled to recover that amount from the tenants. Further, given that the tenants were not permitted to give 10 days notice to vacate, and the landlords have established a monetary claim of \$2,000.00 for the last month's rent.

The landlords also claim damages, and the landlord referred to Residential Tenancy Policy Guideline #16 – Compensation for Damage or Loss, which states, in part:

“Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

In this case, the tenant sued the landlords for 12 times the monthly rent for failure to use the rental unit for the purpose contained in the notice to end the tenancy for landlord's use of property, and the application was dismissed. A tenant has every right to make such an application, however, since there was no Two Month Notice to End Tenancy for Landlord's Use of Property, the tenant could not have been successful, which should have been the legal advice that the landlord received. I am not satisfied that the landlord has established that the tenants caused the damage deliberately or through negligence, and I dismiss the landlords' \$20,000.00 claim.

Where a party claims damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The tenant did not dispute that his dogs damaged the door and frame and did not dispute the amounts, and therefore, I find that the landlords have established the claims of \$193.80, including the landlord's labor.

The *Act* provides for recovery of a filing fee, but not for legal fees, and I dismiss the landlords' claim for legal advice.

I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements, which puts the useful life of carpet at 10 years and specifies that hardwood is 20 years, and I am satisfied that laminate falls within the 10 year category. The landlord testified that the carpet was about 15 years old and laminate was about 10 years old. Any award for flooring would put the landlords in a better financial position than the landlords would be if the tenants hadn't damaged the flooring. Therefore, I dismiss the landlords' claims of \$806.00 for flooring supply and \$620.00 for installation.

The useful life of interior paint is 4 years and the landlord testified that the rental unit was last painted in March 2017. The tenancy ended on September 3, 2020, which is very near the 4 year mark. The claims of \$473.78 for paint and supplies, plus \$2,400.00 for labour and paint and drywall amount to \$2,873.78. There was about half a year left of the useful life, and I find that the landlords have established a claim of \$359.22 ($\$2,873.78 / 8 = \359.22).

The tenant testified that there was a smell at the beginning of the tenancy, however there is no evidence to substantiate that and nothing noted in the move-out condition inspection report. I accept the testimony of the landlord and the landlords' witness that the bin was required for removing marks and smells that paint would not cover, and I accept the landlords' claim of \$301.09 for the bin.

The tenant did not dispute the dump fee of \$18.00 or the clean-up claim of \$150.00, and I find that the landlords have established those amounts.

I have also reviewed the move-in condition inspection report, which was not disputed by the tenant. The report shows drapes in good condition at the beginning of the tenancy, and I find that the landlords have established the \$31.32 claim.

The report also shows that the grounds and walks were in fair condition at the beginning of the tenancy, and the Policy Guideline specifies that the useful life of concrete work is 10 years. The landlord testified that the concrete pavers were 10 or 15 years old and I dismiss the landlords' claim of \$116.48 for replacement pavers.

Given that the testimony of the landlord included permission for the tenants to put in a pool and the landlord was aware that would damage the sod, I dismiss the landlords' claims of \$93.80 for sod replacement and \$100.00 for the landlords' labor.

I have also reviewed the photographs, and I am satisfied that given the amount of garbage and items left behind the landlords have established a claim of \$50.00 to pressure wash the deck.

The landlords have not provided enough evidence, such as pay stubs or other confirmation of loss of work, and I dismiss the \$2,452.00 claim.

In summary, I find that the landlords have established the following claims, totalling \$5,103.43:

- \$2,000.00 compensation given to the tenants;
- \$2,000.00 unpaid rent for September, 2020;
- \$193.80 for the damaged door and frame;
- \$359.22 for painting, supplies and labor;
- \$301.09 for the bin;
- \$18.00 for the dump fee;
- \$150.00 for garbage clean-up;
- \$31.32 for the drapes;
- \$50.00 for pressure washing.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

Since the landlords did not ensure that the move-out condition inspection report was completed in accordance with the regulations, the landlords' right to claim against the security deposit or pet damage deposit for damages is extinguished. However, during the course of the hearing the tenant agreed that the landlords keep the deposits, which amount to \$1,000.00 for the security deposit and \$500.00 for the pet damage deposit. Having found that the landlords have established a monetary claim of \$5,203.43, I set off the \$1,500.00 deposits from that amount, and I grant a monetary claim in favour of the landlords for the difference totalling \$3,703.43.

Conclusion

For the reasons set out above, I hereby order the landlords to keep the \$1,000.00 security deposit and the \$500.00 pet damage deposit, and I grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,703.43.

This order is final and binding and may be enforced.

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: July 15, 2021

Residential Tenancy Branch