



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's' dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

After reviewing the landlords' monetary claims, the landlord confirmed that due to time constraints and evidence deadlines, they were only able to submit one quotation for the repairs to the landscaping on time for the hearing. The landlords testified that they were able to find a contractor to perform the work for a lesser amount, but did not have the opportunity to submit this in evidence. After considering their options, the landlords withdrew this portion of their claim, with request to reapply. Accordingly, this portion of the landlords' monetary claim is cancelled, and no decisions will be made on the merits of this portion of the landlords' original claim. Liberty to reapply is not an extension of any applicable timelines.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order for damage to the unit, site, or property, money owed or compensation for loss under the *Act*, regulation or tenancy agreement?

Are the landlords entitled to recover the cost of the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on July 1, 2012, and ended on February 28, 2021 following the issuance of a 2 Month Notice to End Tenancy for Landlord's Use on December 28, 2020. Monthly rent was set at \$2,070.00, payable on the first of the month. The landlords collected a security and pet damage deposit in the amount of \$950.00 each deposit. The landlords returned \$625.00 to the tenant, and still hold the remaining amounts. The tenant testified that a forwarding address was provided by way of text message to the landlords on March 7, 2021.

The landlords filed an application for monetary compensation as follows on March 22, 2021 (claim for landscaping withdrawn as noted earlier in this decision):

Item	Amount
Estimate for cleaning: 18.25 h @30.00/hour	\$547.50
Clean garage 1.5h @ 30.00/h	45.00
Estimate for wall repairs: 9h @30.00/h \$270.00 (pet damage: \$112.50 tenant \$157.50)	270.00
Repair damaged hardwood flooring (pet)	175.00
Repair damaged tile & carpet	110.00
Steam Clean Carpet (pet)	60.00
Clean & repair vacuum 2 h @30.00/h	60.00
Curtains, blinds 1.25 h \$30.00/h	37.50
Stove Top, Fridge, Strainer for sink	110.00
Mailbox keys	29.00
Doors	300.00

Total Monetary Order Requested	\$1,744.00
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The landlords submitted a spreadsheet of the above losses for their monetary claim. The landlords were informed in the hearing that the formatting of the form submitted for this hearing may not appear the same as the Arbitrator's copy as the copy that was uploaded is fourteen pages, and the last column appears separately on pages eight through fourteen. The landlords did not submit a separate document that is normally titled "monetary order worksheet", and the total above differed from the monetary amount on the online application which was \$2,535.00 plus the filing fee. The landlords testified in the hearing that they were seeking the losses as summarized in their evidence on this fourteen page document.

The landlords are seeking the above losses associated with the tenant's failure to leave the home in reasonably clean and undamaged condition. The landlords testified that a move-out inspection was scheduled with the tenant in the first or second week of January 2021, and made recommendations for repairs or cleaning that needed to be done. The landlords testified that they had informed the tenants that they expected a clean house, but the home was returned dirty and damaged. The landlords testified that due to issues and delays with moving on both ends, the scheduled move-out inspection times had to be changed, and they arrived at the home to find out that the move-out was not complete. The landlords testified that they were unable to perform the scheduled move-out inspection as the tenant was not finished moving and cleaning by the end of the tenancy. The landlords testified that they performed an inspection without the tenant on March 1, 2021. The landlords listed the outstanding issues they found on the referenced worksheet that was submitted in evidence. The landlords also submitted photos to support their claims.

The tenant testified that the landlords failed to provide them with the required two opportunities to perform a move-out inspection, and disputes the claims made by the landlords. The tenant testified that much of the described "damage" was due to at least eight years of wear and tear.

The tenant disputes the landlords' testimony that the tenant did not completely move-out on time, and testified that it was the landlords who were responsible for the delay as they were running late. The tenant submitted an invoice to show that they had paid for professional cleaning of at eight hours on February 28, 2021.

The tenant disputes the accuracy of the photos submitted by the landlord, and submits that there is no way to determine when these photos were taken, and whether they

reflect the true state of the home when the tenant had moved out. The tenant also took issue with the fact that the landlord did not submit any receipts for the above claims, but instead submitted arbitrary estimates of what the landlords deemed to be appropriate or fair. The tenant also submits that they were provided with only one mailbox key, and the \$29.00 was to get new keys and a lock. The tenant testified that the claims made were retaliatory claims.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlord must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

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

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

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlords bear the burden of establishing their claims on the balance of probabilities. The landlords must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlords must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlords must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I will first address the tenant's concerns about the lack of an opportunity to perform a move-out inspection. Residential Tenancy Regulation further clarifies the requirements for how two opportunities for an inspection must be offered to the tenant:

Two opportunities for inspection

17 (1) *A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*

(2) *If the tenant is not available at a time offered under subsection (1),*

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) *When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.*

Based on the evidence and testimony before me, I find that the landlords did not provide a fair or reasonable opportunity for the tenant to attend the move-out inspection as required by the *Act* as set out above.

As noted in Residential Policy Guideline #17:

The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*

- *having made an inspection does not complete the condition inspection report.*

I must note, however, that the above does not exclude the landlords from being able to file a monetary claim for damages as noted in the policy guideline:

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- *to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- *to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- *to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

Accordingly, I will consider the landlords' monetary claims. The tenant disputes each of the claims above, stating that the landlords failed to support that the tenant had failed to return the home in reasonably clean and undamaged condition, and that much of the "damage" could be attributed to at least eight years of wear and tear. Furthermore, the tenant submits that the landlord failed to provide sufficient evidence to support the true state of the home as the tenant was not afforded the opportunity to attend the move-out inspection as summarized in the landlords' document. Lastly, the tenant testified that the landlord failed to establish the amounts and losses claimed, whether that be supported by invoices or receipts, or documents of similar nature.

As noted above, the burden of proof is on the applicants to support their claims. In this case, I find that the landlords fall short. In light of the disputed claims and evidence, and supporting documents such as invoices or receipts, and in light of the fact that a move-out inspection was conducted in the absence of the tenant, I do not find that the landlords had sufficiently supported any of the losses claimed.

There are multiple reasons why I am dismissing the claims submitted. The tenant had been living in the home since July 1, 2012, and moved out over eight years later. It is likely that much of the damage referenced was due to the fact that the items claimed have reached their useful life. Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. The following items were claimed as damaged by the landlords, with the useful life of the item in brackets as Section 40 of the Guideline notes.

- 1) Walls (paint-4 years)
- 2) Hardwood flooring (20 years)
- 3) Tile (10 years)
- 4) Carpet (10 years)

- 5) Curtains & blinds (10 years)
- 6) Stove (15 years)
- 7) Fridge (15 years)
- 8) Doors (20 years)

Although the landlord did not provide the specific age of each of these items, it is apparent that the tenant had resided in the home for at least eight years, meaning that the useful life must be contemplated in determining the remaining value of these items. Furthermore, the landlord did not submit receipts or invoices for these claims. I find that the tenant had provided a receipt for eight hours of cleaning, which further contradicts the testimony and submission of the landlords that the tenant failed to leave the home in reasonably clean and undamaged condition.

As noted in Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure*:

6.6 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.

I find that the landlords failed to meet the standards of proof required to support their claims. Accordingly, the landlords' claims are dismissed without leave to reapply.

As the landlords were not successful with their claims, I dismiss the landlords' monetary claim for recovery of the filing fee without leave to reapply.

As the landlords are still in possession of the tenant's security deposit of \$950.00, and the remaining \$325.00 of the pet damage deposit, I order that the landlord return the entire portions of these deposits to the tenant. As I find that the landlords had filed this application within the required 15 years of the provision of the tenant's forwarding address, I do not find that the tenant is entitled to any compensation as set out in section 38 of the *Act*.

Conclusion

The landlords withdrew their monetary claim related to the landscaping. Accordingly, this portion of the landlords' claim was cancelled. Liberty to reapply is not an extension of any applicable timelines.

The remainder of the landlords' application is dismissed without leave to reapply.

I issue a Monetary Order in the amount of \$1,275.00 in the tenant's favour for the return of their security deposit and remaining portion of the pet damage deposit. Should

the landlords fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: September 23, 2021

Residential Tenancy Branch