



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 11, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit
- To recover unpaid rent
- To keep the security deposit
- For reimbursement for the filing fee

The Agent for the Landlord appeared at the hearing. The Tenants appeared at the hearing. 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.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and documentary evidence submitted. 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 keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Clean and door repair	\$500.00
2	Washing machine repair	\$416.08
3	Half month's rent for December 2020	\$1,190.00
4	Three month's rent for 2021	\$7,140.00
5	Filing fee	\$100.00
	TOTAL	\$9,346.08

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started October 01, 2020 and was for a fixed term ending September 30, 2021. Rent was \$2,380.00 per month due on the first day of each month. The Tenants paid a \$1,190.00 security deposit and \$1,190.00 furniture deposit.

The parties agreed the tenancy ended December 16, 2020.

The parties agreed the Landlord still holds the \$1,190.00 security deposit and \$1,190.00 furniture deposit.

The parties agreed the Tenants provided a forwarding address to the Landlord on December 23, 2020.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy.

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 parties agreed on the following. A move-in inspection was done and a report was completed. Both parties participated in the move-in inspection. Both parties signed the report. The report was shared online with the Tenants the same day as the inspection.

The Agent for the Landlord testified as follows. The Landlord did a move-out inspection on their own without the Tenants. The Tenants were outside the rental unit at the time of the inspection. It was the Landlord's choice not to do the inspection with the Tenants.

A Condition Inspection Report was not completed at move-out. Photos of the rental unit were taken at move-out and were sent to the Tenants by email December 18, 2020.

Tenant J.W. testified that the Tenants agreed to do a move-out inspection but the Landlord's agent refused to do a move-out inspection with the Tenants. Tenant J.W. testified that the Tenants received the December 18, 2020 email with photos of the rental unit attached.

#1 Clean and door repair \$500.00

The Agent testified as follows. This item should be \$550.00 and is for cleaning, door repair and painting. The parties had email communications about the Tenants' obligation to clean and restore the rental unit to what it was at the start of the tenancy; however, the Tenants ignored this. The Landlord had to hire professional cleaners to clean the rental unit. An invoice for the cleaning, door repair and painting has been submitted. The December 18, 2020 email with attached photos showing the state of the rental unit at move-out has been submitted.

Tenant J.W. testified as follows. The move-in inspection report shows that the bathroom door was broken and chipped at move-in. There was no chipped paint in the rental unit, other than on the bathroom door. Tenant J.W. cleaned the rental unit at the end of the tenancy. The Tenants agreed to pay for carpet cleaning because the vacuum did not clean the carpets.

#2 Washing machine repair \$416.08

The Agent testified as follows. The washing machine broke during the tenancy. A part in the washing machine burned out and had to be replaced. The washing machine was eight or nine years old at the time.

I asked the Agent what evidence the Landlord is relying on to show that the washing machine broke due to something the Tenants did or did not do versus due to normal use over eight to nine years. The Agent said there is no evidence to show that the washing machine broke due to the Tenants and that this is hard to determine.

Tenant J.W. testified as follows. The drain pump in the washing machine burned out due to regular wear and tear over nine years, not due to the Tenants. The Tenants' use of the washing machine was normal. The Tenants should not be responsible for repair of reasonable wear and tear on the washing machine.

#3 Half month's rent for December 2020 \$1,190.00

#4 Three month's rent for 2021 \$7,140.00

The Landlord sought compensation for loss of rent. The Landlord had agreed to the Tenants ending the tenancy based on the Tenants telling the Landlord there was mold in the rental unit and that they were experiencing related health problems. In March of 2021, the Landlord had the air quality in the rental unit tested and there was no issue found. The Landlord took the position that the Tenants' reason for terminating the tenancy agreement was false and not legitimate. The Agent relied in part on the liquidated damages clause (term 18) in the tenancy agreement.

Tenant J.W. took the position that there was a mold issue in the rental unit.

Analysis

Furniture deposit

The parties agreed the Landlord collected a \$1,190.00 security deposit and \$1,190.00 furniture deposit and that the Landlord still holds these.

Policy Guideline 29 deals with security deposits and states:

The Residential Tenancy Act permits a landlord to collect a security deposit. Under that Act the issue often arises as to what a landlord may collect as a deposit or payment, other than the rent, at the commencement of a residential tenancy. The Act contains a definition of "security deposit", which also contains exclusions. As a result of the definition of a security deposit in the Residential Tenancy Act and the regulations, **the following payments by a tenant, or monies received by a landlord, irrespective of any agreement between a landlord or a tenant would be, or form part of, a security deposit:**

- The last month's rent;
- A fee for a credit report or to search the records of a credit bureau;
- A deposit for an access device, where it is the only means of access;
- Development fees in respect of a manufactured home site;
- A move-in fee in respect of a manufactured home;
- Carpet cleaning deposit or other monies paid to secure possible future expenses;

- Blank signed cheques provided as security, where the amount could exceed one-half of one month's rent;
- **A furniture deposit in respect of furnished premises.**

The Residential Tenancy Act requires that a security deposit must not exceed one-half of one month's rent. If one or more of the above payments, together with other monies paid, exceeds one-half of one month's rent then the remedies afforded by the Act would be available to a tenant. In addition, the Act provides that a landlord who contravenes these provisions commits an offence and is liable, on conviction, to a fine of not more than \$5,000.

(emphasis added)

Further to Policy Guideline 29, the furniture deposit forms part of the security deposit and the Landlord is considered to hold a security deposit of \$2,380.00. I note that the Landlord breached the *Residential Tenancy Act* (the “*Act*”) by collecting a security deposit and furniture deposit that totalled \$2,380.00, more than one-half of one month's rent.

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 the parties, I find the Tenants participated in the move-in inspection and therefore did not extinguish their rights in relation to the security deposit pursuant to section 24 of the *Act*.

Based on the testimony of the parties, I do not find that this is a situation where the Tenants were offered two opportunities to do a move-out inspection and chose not to participate. Given this, I find the Tenants did not extinguish their rights in relation to the security deposit pursuant to section 36 of the *Act*.

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

Based on the testimony of the parties, I accept that the tenancy ended December 16, 2020.

Based on the testimony of the parties, I accept that the Tenants provided a forwarding address to the Landlord on December 23, 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 file a claim against it. Here, the Landlord had 15 days from December 23, 2020 to repay the security deposit or file a claim against it. The Application was filed March 11, 2021, well outside the 15-day deadline.

Section 38(6) of the *Act* states:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Section 38(6) of the *Act* applies and the Landlord must pay the Tenants \$4,760.00, twice the \$2,380.00 security deposit.

The Landlord is still entitled to claim for compensation and I consider that now.

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.

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

#1 Clean and door repair \$500.00

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...

The Landlord submitted an invoice for \$350.00 for house and carpet cleaning and \$200.00 for washroom's door repair and painting.

The parties disagreed about whether the rental unit was clean at the end of the tenancy. I accept based on the photos submitted by the Landlord that the carpet, bathtub, floor, dryer lint screen and one stove burner were not clean at move-out. I also note that Tenant J.W. agreed the carpet required further cleaning at move-out. I am satisfied the Tenants breached section 37 of the *Act* in relation to the areas noted. I am satisfied the Landlord had to hire cleaners to do some cleaning and to clean the carpet. I am satisfied based on the invoice submitted that the cleaning and carpet cleaning cost

\$350.00 and I find this amount reasonable for the type of cleaning required. I award the Landlord \$350.00 for cleaning.

I accept the testimony of Tenant J.W. that the bathroom door was damaged at the start of the tenancy as I find this is supported by the move-in inspection report and photos. The Tenants are not responsible for fixing pre-existing damage. The move-out photos do not show that other areas of the rental unit were damaged or required painting and therefore I am not satisfied further painting was required due to a breach by the Tenants. In the circumstances, I am not satisfied the Landlord is entitled to the further \$200.00 sought for repair of the bathroom door and painting and this request is dismissed without leave to re-apply.

#2 Washing machine repair \$416.08

Section 32 of the *Act* states:

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

The Landlord submitted an invoice showing the drain pump in the washing machine burnt out and required replacement. I am not satisfied based on the evidence provided that the drain pump burnt out due to the actions or neglect of the Tenants. I do not find it sufficient to show that the drain pump burnt out during the tenancy because the washing machine had been used by others for eight to nine years prior to the tenancy. In the absence of further evidence, I am not satisfied the Tenants caused the drain pump to burn out and am not satisfied the Tenants breached the *Act*. Given this, the Landlord is not entitled to compensation for this item and the request is dismissed without leave to re-apply.

#3 Half month's rent for December 2020 \$1,190.00

#4 Three month's rent for 2021 \$7,140.00

Section 44(1) of the *Act* states:

44 (1) A tenancy ends only if one or more of the following applies...

(c) the landlord and tenant agree in writing to end the tenancy...

I find that the documentary evidence submitted by the Tenants including photos, text messages and a letter from a restoration company about air quality concerns in the rental unit support that the Tenants believed there was a mold issue in the rental unit. Tenant J.W. maintained that there was a mold issue in the rental unit during the hearing.

I am not satisfied based on the evidence provided that the Tenants lied or intentionally provided false information to the Landlord which the Landlord then acted on in agreeing to end the tenancy. It may be that the Tenants and restoration company were mistaken about the condition of the rental unit and the mold issue. However, if the Landlord required further evidence of a mold issue, the Landlord should have obtained this prior to agreeing to end the tenancy based on what the Tenants told the Landlord. The Landlord chose not to obtain further evidence of a mold issue and agreed to end the tenancy. I do not find any breach of the *Act, Regulations* or the tenancy agreement by the Tenants given the Landlord agreed to end the tenancy.

Further, the liquidated damages clause (term 18) in the tenancy agreement states:

a) If the tenant terminates the tenancy before the expiry, a sum of equivalent to Two Months rent will be charged by the landlord and the tenant will pay this amount immediately, as a service charge for tenancy changeover costs, such as advertising, interviewing, administration and re-renting, for this short term tenancy. This is not a penalty. The Tenant is still liable for all terms and conditions of the Tenancy Agreement.

I do not find that term 18 of the tenancy agreement applies in these circumstances because it applies when tenants terminate the tenancy which is not what occurred here as both parties agreed to end the tenancy.

In the circumstances, I am not satisfied the Landlord is entitled to loss of rent and this request is dismissed without leave to re-apply.

#5 Filing fee \$100.00

Given the Landlord was partially successful in the Application, the Landlord is entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Clean and door repair	\$350.00
2	Washing machine repair	-
3	Half month's rent for December 2020	-
4	Three month's rent for 2021	-
5	Filing fee	\$100.00
	TOTAL	\$450.00

As explained above, the Landlord must pay the Tenants \$4,760.00. However, the Landlord can keep \$450.00 of this pursuant to section 72(2) of the *Act*. The Landlord therefore must pay the Tenants \$4,310.00 and the Tenants are issued a Monetary Order in this amount.

Conclusion

The Landlord must pay the Tenants \$4,760.00; however, the Landlord can keep \$450.00 of this. The Landlord therefore must pay the Tenants \$4,310.00 and the Tenants are issued a Monetary Order in this amount. If the Landlord fails to pay the Tenants \$4,310.00, this Order must be served on the Landlord. If the Landlord fails to comply with the 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: September 10, 2021

Residential Tenancy Branch