



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASA RENTAL MANAGEMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On January 15, 2021, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On January 18, 2021, this Application was set down for a hearing on May 18, 2021 at 1:30 PM but was subsequently adjourned for reasons set out in my Interim Decision dated May 18, 2021. On May 19, 2021, these matters were set down for a reconvened hearing on September 16, 2021 at 9:30 AM.

N.D. attended the reconvened hearing as an agent for the Landlord, and all three Tenants attended the reconvened hearing as well. At the outset of the reconvened hearing, I explained to the parties that as the hearing was a teleconference, neither party could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, the parties were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

During the original hearing, all parties confirmed service of documents. As such, I have accepted all evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 1, 2020 and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on December 31, 2020. Rent was established at an amount of \$2,800.00 per month and was due on the first day of each month. A security deposit of \$1,400.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

A copy of the move-in inspection report dated December 31, 2019 was submitted as documentary evidence for consideration by the Landlord; however, it does not appear to be signed by either the Landlord or the Tenants.

N.D. advised that a move-out inspection report was conducted with the Tenants on December 31, 2020. A copy of this report, signed by both an agent for the Landlord and by one of the Tenants, was submitted as documentary evidence for consideration.

Tenant D.C. advised that the property manager went to inspect the rental unit with the owner, and that the Tenants did not join them because of the Tenants' fears due to COVID. The Tenants sat in their car and waited until the move-out inspection was completed. The property manager came out with the report and the Tenants signed it, although they did not know what was noted on the report. She believes items were

added to the report later. She stated that the Tenants left after this as one of the Tenants had to go to work.

All parties agreed that a forwarding address in writing was provided to the Landlord by email on January 15, 2021.

N.D. advised that the Landlord is seeking compensation in the amount of **\$167.95** to clean the carpet. She submitted that the Tenants did not vacuum the carpet, and the carpet required being cleaned at the end of tenancy, as per the tenancy agreement. She referenced pictures, provided as documentary evidence, of the before and after condition of the carpet. As well, she cited the invoice submitted to support the cost of the carpet cleaning at the end of the tenancy. With respect to the invoice that the Tenants submitted as documentary evidence, she noted that this does not indicate the address of the property that was cleaned. She stated that she emailed this company for confirmation, but she received no response.

D.C. advised that they did pay to have the carpet cleaned prior to giving up vacant possession of the rental unit and she referenced the invoice that they submitted to corroborate this expense.

N.D. advised that the Landlord is seeking compensation in the amount of **\$178.49** for the cost of repairing a faucet that the Tenants attempted to fix but was ultimately left broken at the end of the tenancy. She referenced emails submitted as documentary evidence from the Tenants where they acknowledged breaking the faucet and attempting to fix it before a plumber could come in and make the appropriate repair. She submitted an invoice of the cost of the repair to support this claim.

D.C. advised that they sent a message to the property manager on August 31, 2020 because there was low water pressure coming from the faucet. An offer was made to send out a repair person; however, the Landlord wanted to wait until September 4, 2020 for the owner to assess the issue. D.C. stated that her husband unscrewed the cap of the faucet, that he removed dust from the ring, that he replaced these parts, and that the faucet was fine after this. She submitted that the owner overreacted and brought a plumber in. This person replaced the ring in October 2020, and he questioned why he was even called out for this job. She then contradictorily stated that her husband cleaned the dust from this ring cap, but he did not replace the cap afterwards.

Tenant M.S. advised that the property manager told him that this ring could be replaced.

N.D. submitted that the Landlord sent in a plumber because the Tenants informed them that they took the faucet apart and that they had also had a leak.

N.D. advised that the Landlord is seeking compensation in the amount of **\$609.53** for the cost to clean the rental unit as per the deficiencies in the move-out inspection report. She stated that food debris was left uncleaned, that there were scuffs on the walls, that the floors were not cleaned, that there was grease in the hood fan, and that there was food splattered on the walls and windows. She referenced the invoice of cleaning submitted to support this claim.

D.C. advised that they hired a cleaning company, and four employees came to clean the rental unit. She gave the cleaning list to this company to outline what needed to be cleaned. She referenced the invoice submitted to support their position that they paid to have the rental unit cleaned.

N.D. reiterated that this cleaning invoice does not state the address of where this cleaning was completed.

N.D. advised that the Landlord is seeking compensation in the amount of **\$94.50** for the cost to landscape the yard as there was an ongoing issue with the Tenants not maintaining the yard. Basic maintenance was a requirement in the tenancy agreement. She referenced the pictures and the quote for the cost of landscaping to support this claim.

D.C. confirmed that they left leaves on the lawn, but part of the reason they did this is because the crows would dig up the lawn and this would deter them. As well, she stated that they did not have the required skills to maintain the yard.

N.D. advised that the Landlord is seeking compensation in the amount of **\$682.50** for the cost to repaint the rental unit because the Tenants left damage and tape on some doors, excessive nail holes in the walls, and marks on the ceiling. Their patching of nail holes was poor. The Tenants were never given permission to mount items on the walls and the tenancy agreement outlines the expectations of the Tenants to repair any damages. She referenced the pictures and the quote for the cost of painting to support this claim. She was not sure when the rental unit was last painted.

D.C. advised that they did not put anything on the door frame and the one damaged frame was in the garage at the time of move-in. She confirmed that they put art on the

walls, and they tried to patch these holes. However, they did not mount any TVs or furniture to the walls.

N.D. advised that the Landlord is seeking compensation in the amount of **\$492.45** for the cost to replace a damaged bottom drawer and the damaged seal of the fridge. She referenced the pictures and the quote for the cost of repairing these parts of the fridge to support this claim.

D.C. advised that the fridge was not clean at the start of the tenancy. She stated that they did not inspect the fridge at the start of the tenancy, but the lining of the fridge was not torn by them. She confirmed that they damaged the bottom drawer; however, this only broke through the ordinary use of the fridge.

N.D. advised that the Landlord is seeking compensation in the amount of **\$41.83** for the cost to replace burnt out lightbulbs that were not replaced by the Tenants. She stated that every room had at least one bulb burnt out and that a total of ten bulbs were replaced. She referenced the invoice submitted to support the cost of replacing these bulbs.

M.S. advised that some of the lightbulbs were in areas that were inaccessible, but he provided replacement bulbs to an agent of the Landlord to replace the burnt-out ones. D.C. advised that something was wrong with one of the light fixtures as the bulbs would sometimes turn off for no reason. She also stated that there were some bulbs missing at move-in.

N.D. advised that the Landlord is seeking compensation in the amount of **\$47.25** for the cost to replace a bent window screen. She referenced the picture and invoice submitted to support the cost of replacing this frame.

D.C. advised that this frame was damaged at the time of move-in, but it was not noticed until the spring.

Finally, N.D. advised that the Landlord is seeking compensation in the amount of **\$12,076.49** for the cost to repair scratches in the bamboo flooring. She stated that at the time of move-in, the Tenants were informed to use felt pads on their furniture, and floor pads were provided to the Tenants. Despite this, the Tenants scratched the flooring so significantly that the damage in some areas spanned six different boards. She stated that a flooring company could not sand this damage to repair it, that replacing just the affected boards would cause more damage to the flooring, and that the replacement

boards could not be colour matched anyways. She referenced pictures and the invoice submitted to support the cost of repairing the flooring.

D.C. advised that they used felt pads on their furniture, but some of their furniture was not level with the floor so small scratches were caused. She stated that they had minimal furniture but “accidents happen.” It is her belief from her research that cheaper options were available to fix this damage.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the inspection reports, as the move-in inspection report does not appear to be signed by an agent of the Landlord or any of the Tenants, I am not satisfied that the Landlord complied with the requirements of the *Act* in completing this step.

Regarding the move-out inspection report, I do not find that the Tenants' absence from being physically present from participating in this inspection report would detract from the accuracy of that report. It was the Tenants' own choice not to participate in the move-out inspection, and their opportunity to review the condition of the rental unit with the Landlord was available to them on December 31, 2020. However, as it does not appear that a move-in inspection report was completed in accordance with the *Act*, I find that the Landlord has extinguished the right to claim against the deposit.

Furthermore, without a move-in inspection report to rely on, I find that this could detract from the weight placed on the Landlord's submissions when assessing claims for damages.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenants' security deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, while this Application was made on the same day that the forwarding address was provided, I note that the Landlord extinguished the right to claim against the deposit for damage. However, as the Landlord made claims for items that would not be considered damage, I find that the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlord's claims, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

In addition, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlord's claim for compensation in the amount of \$167.95 for carpet cleaning, when reviewing the totality of the evidence before me, I do not find that the picture of the carpet at the end of the tenancy demonstrates that the carpet was cleaned, despite the Tenants' invoice indicating such. Given the picture and the move-out inspection indicating that the carpet was not cleaned, I am satisfied on a balance of probabilities that the carpet was, at the very least, not cleaned to a manner with which would be acceptable for re-renting. As such, grant the Landlord a monetary award in the amount of **\$167.95** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of \$178.49 for repair of the faucet, given that the Tenants acknowledged that they dismantled a part of the faucet contrary to the Landlord's October 8, 2020 email indicating that this was not authorized, I am satisfied that the Tenants should be responsible for the cost of this expense. As such, I grant the Landlord a monetary award in the amount of **\$178.49** to rectify this issue.

With respect to the Landlord's claim for compensation in the amount of \$609.53 for the cost to clean the rental unit, while the Tenants may have hired someone to clean the rental unit, when weighing the totality of the evidence before me, I do not find that the rental unit was satisfactorily cleaned at the end of the tenancy. As such, I grant the

Landlord a monetary award in the amount of **\$609.53** as the cost of returning the rental unit to a re-rentable state.

Regarding the Landlord's claim for compensation in the amount of \$94.50 for landscaping of the yard, as the Tenants acknowledged that they did not maintain the yard as per the tenancy agreement, I grant the Landlord a monetary award in the amount of **\$94.50**.

With respect to the Landlord's claim for compensation in the amount of \$682.50 for the cost to repaint the rental unit, I am satisfied that the Tenants damaged the walls, doors, and ceiling beyond what would be considered reasonable wear and tear. Despite their attempts to patch the damage to the walls, I do not find that they have done a satisfactory job that did not require repainting. However, I find it important to note that Policy Guideline # 40 estimates that the average useful life of interior paint is four years. Given that N.D. did not know when the rental unit was last painted, and as the onus is on the Landlord to substantiate their claims, I find that this detracts from the amount that would be awarded. However, given that I am satisfied that the Tenants were responsible for the rental unit having to be re-painted, I am also satisfied that the Tenants should be culpable for some of this cost. As such, I grant the Landlord a monetary award in the amount of **\$200.00** that represents an amount commensurate with the value established by the Landlord's evidence of this loss.

Regarding the Landlord's claim for compensation in the amount of \$492.45 for replacing damaged parts of the fridge, there is no indication that the seal was damaged at the start of the tenancy, but there is also no move-in inspection report to refer to. However, the Tenants acknowledged that they damaged the bottom drawer during the tenancy. As there is insufficient evidence to support that the Tenants damaged the seal to the fridge, I do not find the Landlord has established this claim. Although, the Landlord should be awarded some compensation for the broken fridge drawer. As there are no specific details as to the cost of this item, I grant the Landlord a monetary award in the amount of **\$246.23** only, to satisfy this claim.

With respect to the Landlord's claim for compensation in the amount of \$41.83 for the cost of replacing burnt out lightbulbs, the consistent evidence is that there were burnt out lightbulbs that were not replaced at the end of the tenancy. While the Tenants claimed that they provided replacement bulbs at the end of the tenancy and that some bulbs were missing at the start of the tenancy, I do not find there to be sufficient evidence to support these submissions. I find the Landlord's evidence to carry more

weight on this point. As such, I grant the Landlord a monetary award in the amount of **\$41.83** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of \$47.25 for the cost of replacing a damaged window screen, without a move-in inspection report to rely on, it is unclear if this was damaged at the start of the tenancy. As such, I dismiss this claim in its entirety.

Finally, with respect to the Landlord's claim for compensation in the amount of \$12,076.49 for the cost to repair the damaged flooring, as the Tenants acknowledged that "accidents happen" and that some of their furniture caused this damage despite their use of pads, I am satisfied that they were likely responsible for the damage as described by the Landlord. However, I again note that the onus is on the Landlord to establish their claim and that N.D. could not indicate the age of this flooring. As this flooring was not likely brand new at the start of the tenancy, I find that the Landlord has already received some useful life out of the flooring. Policy Guideline # 40 estimates that the average useful life of similar flooring to be 20 years. While it is undisputed that the Tenants damaged this flooring, it appears as if the flooring is still functional, and this damage is mostly aesthetic. As I am not satisfied that the Landlord has sufficiently substantiated the amount being claimed for here, I grant the Landlord a monetary award in the amount of **\$2,000.00**, which I find represents the value of loss suffered by the Landlord, based on the evidence that has been presented.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
Carpet cleaning	\$167.95
Faucet repair	\$178.49
Cleaning	\$609.53
Landscaping	\$94.50
Painting	\$200.00

Fridge repair	\$246.23
Lightbulb replacement	\$41.83
Floor damage	\$2,000.00
Recovery of Filing Fee	\$100.00
Security deposit	-\$1,400.00
Total Monetary Award	\$2,238.53

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$2,238.53** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: October 13, 2021

Residential Tenancy Branch