



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAPLE LEAF PROPERTY MANAGEMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, MNRT, MNDT, FFT
MNRL-S, MNDL-S, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenants’ Application for Dispute Resolution was made on June 9, 2021. The Tenants applied to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued June 7, 2021, for an order for the Landlord to comply with the Act, for a monetary order for monetary loss or other money owed, for a monetary order for to recover their costs for making emergency repairs and the return of their filing fee.

The Landlord’s Application for Dispute Resolution was made on July 16, 2021. The Landlord applied for a monetary order to recover unpaid rent, for a monetary order for losses due to the tenancy, permission to retain the security deposit and to recover their filing fee.

Two Agents of the Landlord (the “Landlord”) and one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary matter

At the outset of the hearing, the Landlord testified that he had not received the Tenants notice of hearing documents.

The Tenant testified that they had not served the notice of hearing documents for their application on the Landlord.

I find that the Tenants have not served the Notice of Hearing documents for their application in accordance with section 89 of the *Act*. Therefore, I dismiss the Tenants' application with leave to reapply.

I will continue in these proceedings on the Landlord's application.

Issues to be Decided

- Is the Landlord entitled to monetary order for unpaid rent and utilities?
- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that this tenancy began on July 1, 2016, as a one-year and fifteen-day fixed term tenancy ending on June 30, 2017 and rolling into a month-to-month tenancy after the initial fixed term. The parties agreed that rent in the amount of \$1,490.00 was to be paid by the first day of each month and that the Tenant had paid a \$675.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Tenant and the Landlord testified that the Tenants moved out of the rental unit in accordance with a 10-Day Notice to End Tenancy for Unpaid Rent on June 30, 2021.

The Landlord testified that there was \$1,490.00 in unpaid rent outstanding at the end of this tenancy for the month of June 2021.

The Tenant agreed that they had not paid the rent for June 2021 for this tenancy.

Both parties testified that the move-in inspection report had been completed in the presence of both parties at the beginning of the Tenancy. The parties also agreed that the move-out inspection was not completed by the Landlord and that the Tenants were not present at the end of this tenancy.

The Landlord testified that they made two offers to the Tenants to schedule the move-out inspection, the second by email, but that the Tenants never responded. The Landlord testified that they conducted the move-out inspection themselves, taking pictures of the rental unit, but that they did not complete the move-out inspection form. The Landlord submitted a copy of the move-in inspection report and 25 pictures into documentary evidence.

The Tenant testified that they did not receive an email from the Landlord with an offer of a second opportunity to schedule the move-out inspection. The Tenant testified that the Landlord never offered them the final written second attempt to schedule the move-out inspection for this tenancy.

The Landlord testified that the Tenants had returned the rental unit to them uncleaned and that they had to hire a professional cleaner at the end of the tenancy. The Landlord referenced the 25 pictures taken of the rental unit already submitted into evidence to support this portion of their claim. The Landlord also submitted a copy of the invoice for cleaning into documentary evidence.

The Tenant testified that they completed all cleaning and that they returned to the rental unit to the Landlord reasonably clean at the end of the tenancy. The Tenant testified that they should not be responsible for the additional cleaning the Landlord is requesting.

The Landlord testified that the Tenant had been issued a replacement/second access fob in July 2020 and that the payment for that extra fob had been returned by the bank. The Landlord is requesting \$50.00 for this extra fob. The Landlord submitted a copy of the tenancy ledger into documentary evidence.

The Tenant testified that they were required to pay the \$50.00 for the replacement fob before they were given the new fob and that the payment they made had not been returned by their bank.

When asked by this Arbitrator, the Landlord testified that they had not issued a demand for this payment to the Tenant when the original payment was returned to them in July 2020. The Landlord testified that the tenancy ledger would show that the Tenants were initially charged twice for the fob but that this error had been corrected and that the Tenants' account remained outstanding for the \$50.00 fob.

The Landlord testified that they are also claiming \$300.00 to patch and repaint walls at the end of this tenancy. The Landlord testified that there were several holes and scrapes on the walls at the end of tenancy and that they need to be filled and the walls repainted. When asked by this Arbitrator, the Landlord testified that the last time the rental unit had been painted was in 2015.

The Tenant testified that they did not damage the walls during the tenancy and that they should not have to pay the requested amount for the Landlord need to repaint.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed-upon testimony of these parties that the Tenants moved out, in accordance with a 10-Day Notice to End Tenancy for Unpaid Rent on June 30, 2021.

I also accept the agreed-upon testimony of these parties that the Tenants were not in attendance for the move-out inspection for this tenancy. Section 35 of the *Act* places the responsibility on the Landlord to ensure that the move-out inspection is scheduled and conducted in accordance with the Act, stating the following:

Condition inspection: end of tenancy

35 (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

*(a) on or after the day the tenant ceases to occupy the rental unit,
or*

(b) on another mutually agreed day.

- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
- (3) The landlord must complete a condition inspection report in accordance with the regulations.*
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or*
 - (b) the tenant has abandoned the rental unit.**

Pursuant to section 35(2), a landlord is required to offer at least two opportunities to a tenant to schedule the inspection; section 17 of the *Residential Tenancy Regulations* (the “*Regulations*”) provided further clarity on the requirement of these two opportunities, stating the following:

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.*

During the hearing, the parties offered conflicting verbal testimony regarding Landlord’s attempt to schedule a second opportunity to conduct the move-out inspection. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Landlord.

I have reviewed the Landlord's testimony and find that there is no evidence before me to show that the Landlord had served the Tenants with the second written request, on the approved Residential Tenancy Branch form, in accordance with section 17 of the *Regulations*. Accordingly, I find that the Landlord breach section 35(2) of the *Act*, by not offering the Tenants the second opportunity to schedule the move-out inspection, in accordance with the *Act* and *Regulations*.

Section 36(2) of the *Act* set out the consequences for a landlord when the requirement to offer two attempts to schedule the inspection, in accordance with the *Act*, are not met, stating the following:

Consequences for tenant and landlord if report requirements not met

36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Consequently, I find that the Landlord breached section 36 of the *Act* when they did not make the final offer to attempt to schedule the move-out inspection for this rental unit in writing and on the approved form. Therefore, I find that the Landlord has extinguished their right to make a claim against the security deposit for damage to the residential property. However, I find that part of the Landlord's application includes a request to recover outstanding rent for the rental unit, and therefore, the Landlord does have a right to claim against the security deposit for unpaid rent, in this case.

The Landlord is claiming for \$1,490.00 in unpaid rent for this tenancy; I accept agreed-upon testimony of these parties that the Tenants did not pay the rent for June 2021 as required by their tenancy agreement. Section 26 of the *Act* states the following:

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

In this case, I find that the Tenants breached section 26 of the *Act* by not paying the June 2021 rent for this tenancy and that this breach resulted in a loss of rental income to the Landlord. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that they took reasonable steps to minimize the losses due to the Tenants' breach. Therefore, I find that the Landlord has established an entitlement to the recovery of the outstanding rent for the month of June 2021. I award the Landlord the recovery of the \$1,490.00 in outstanding rent for this period. I grant the Landlord permission to retain the security deposit for this tenancy in partial satisfaction of this award.

As for the Landlord's claim for \$552.00 due to damage to the rental unit, consisting of

\$252.00 for cleaning, \$50.00 for a fob replacement, and \$300.00 for patching and painting walls at the end of tenancy. I will address each one of these items individually. First, the Landlord's request for \$252.00 in cleaning costs. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy.

Leaving the rental unit at the end of a tenancy

37 (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, and*
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

During the hearing, the parties offered conflicting verbal testimony regarding the condition of the rental property at the end of this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Landlord.

An Arbitrator normally looks to the inspection report as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy, as it is required that this document be completed in the presence of both parties and is seen as a reliable account of the condition of the rental unit. However, as the Tenants were not given the required opportunity to attend this inspection and the Landlord did not complete the move-out sections of this form, I am unable to rely on this document.

In the absence of a reliable inspection report, I must rely on the additional documentary evidence submitted by the Landlord to support this portion of their claim. I note that the Landlord submitted 25 pictures of the rental unit taken at the end of this tenancy to support their claim. After reviewing these pictures, I find that these pictures show a reasonably clean rental unit.

Pursuant to section 37(1a) of the *Act*, I find that the Tenants returned the rental unit in a reasonably clean state as required by the *Act*. Therefore, I must dismiss the Landlord's claim for \$252.00 in cleaning costs.

As for the Landlord's claim for \$50.00 for a replacement fob for this tenancy, again, I find that the parties offered conflicting verbal testimony regarding the payment for the

extra fob that was issued to the Tenant during this tenancy. As stated above, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Landlord.

I have reviewed the tenancy ledger submitted to support this portion of the Landlord's claim, and I find this document insufficient on its own to prove that the payment the Tenants had provided in June 2020 for this Fob had been returned. It is clear from this document that the Landlord had initially charged the Tenants twice for this Fob. however, I find the Landlords correction of this mistake is confusing and unclear. Therefore, in the absence of sufficient evidence to prove this portion of their claim, I must dismiss the Landlord's claim for \$50.00 for a replacement Fob.

Finally, the Landlord has claimed for \$300.00 for the patching and repainting of the walls of the rental unit at the end of this tenancy. I accept the Landlord's testimony that the last time this rental unit was painted had been in 2015, making the interior paint of the rental unit at least 5 and 1/2 years old as of the date this tenancy ended. The Residential Tenancy policy guideline #1 Landlord & Tenant – Responsibility for Residential Premises states the following:

“Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.”

In order to determine if repairs or maintenance are required to this rental property, I must also refer to the Residential Tenancy Branch guideline # 40 Useful Life of Building Elements. The guideline sets the useful life of interior paint at four years; as the interior paint of this rental unit was at least 5 years old at the end of tenancy, I find that the interior paint of this unit is past its natural life expectancy and now requires regular maintenance and that the Tenants are not responsible for the costs of regular maintenance required to this rental unit at the end of this tenancy. Consequently, I dismiss is portion of the Landlord's claim in its entirety.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

Overall, I grant the Landlord a monetary order of \$915.00, consisting of \$1,490.00 in unpaid rent \$100.00 in the recovery of their filing fee for this hearing, less the \$675.00 value of the security deposit for this tenancy.

Conclusion

I dismiss the Tenants' application with leave to reapply; however, this does not extend any applicable time limits under the legislation. I have not made any findings of fact or law with respect to the Application.

I find for the Landlord under sections 65 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$915.00**. The Landlord is provided with this Order 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