



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 12, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit
- For compensation for monetary loss or other money owed
- To keep the security deposit

The Landlord appeared at the hearing with Legal Counsel. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Landlord and Legal Counsel who did not have questions when asked. I told the Landlord and Legal Counsel they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

Legal Counsel advised at the outset that the Landlord is not seeking to keep the security deposit because it was dealt with on File 4720. Legal Counsel confirmed that File 4720 has no other affect on the Application and that the Landlord’s previous application was dismissed with leave to re-apply.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

Legal Counsel stated as follows. The hearing packages and first part of the evidence were served on the Tenants by email pursuant to the substituted service decision on file. A second package of evidence was served on the Tenants by email October 20, 2021.

The Landlord submitted documentary evidence of service including emails sent to the Tenants June 09, 2021 and October 20, 2021.

S.T. was originally named on the Application. Legal Counsel stated that the hearing package and evidence were sent May 25, 2021 to S.T. by registered mail to a forwarding address provided by the Tenants September 03, 2020. Legal Counsel advised that two addresses were provided by the Tenants as their forwarding addresses, S.T. was not included in the email and the email did not state which address, if either, was associated to S.T. Legal Counsel advised that registered mail packages addressed to S.T. were sent to both addresses.

Based on the undisputed statements of Legal Counsel and the emails in evidence, I am satisfied the Tenants were served with the hearing packages and Landlord's evidence by email June 09, 2021 and October 20, 2021 in accordance with the substituted service decision. Pursuant to the substituted service decision, I find the Tenants are deemed to have received the hearing package and Landlord's evidence June 12, 2021 and October 23, 2021.

I note that the Landlord did not comply with rule 3.1 of the Rules in relation to the timing of service of the hearing packages. However, I find the Tenants received these June 12, 2021, more than four months before the hearing, and therefore in sufficient time to prepare for, and appear at, the hearing.

I find the Landlord did comply with rule 3.14 of the Rules in relation to the timing of service of the Landlord's evidence.

I am not satisfied S.T. was sufficiently served with the hearing package and Landlord's evidence because I am not satisfied based on the evidence provided that the package was sent to S.T.'s residence or a forwarding address provided by S.T. Given this, I have removed S.T. from the Application which is reflected in the style of cause.

As I was satisfied of service of the Tenants, I proceeded with the hearing in the absence of the Tenants. The Landlord and Legal Counsel were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony and submissions of the Landlord and Legal Counsel. 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 compensation for monetary loss or other money owed?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Cleaning	\$300.00
2	Landscaping	\$94.50
3	Mental anguish	\$5,000.00
4	Utility – water	\$239.17
5	Utility – electricity	\$1,842.52
6	Utility – gas (estimate)	\$1,000.00
7	Internet hardware	\$302.40
	TOTAL	\$8,778.59

A written tenancy agreement was submitted as evidence. The tenancy started December 01, 2019 and was a month-to-month tenancy. Rent was \$3,100.00 due on the first day of each month. The Tenants paid a \$1,550.00 security deposit.

The Landlord and Legal Counsel stated as follows.

The tenancy ended September 01, 2020.

A move-in inspection was not completed because the rental unit was brand new at the start of the tenancy. A receipt has been submitted showing the rental unit was cleaned prior to the start of the tenancy.

The Landlord and Property Manager did a move-out inspection with the Tenants. The Property Manager completed the Condition Inspection Report (the "CIR") in evidence. The Tenants did not agree with the cleaning issues noted on the CIR and stormed out without signing the CIR.

Cleaning

The rental unit was not clean at move out. The floor had not been vacuumed. There were fingerprints on walls and glass throughout the unit. The appliances were dirty. There was debris left outside that had to be taken to the dump. The Landlord hired two cleaners to clean the unit. The cleaners spent six hours cleaning the unit. An invoice for the cleaning has been submitted.

Landscaping

The rental unit was a single dwelling house and the Tenants rented the entire house. The Tenants let the lawn die during the tenancy and there was dog feces throughout the lawn at the end of the tenancy. The Landlord had a landscaper attend and clean up the yard as well as water and fertilize the lawn so that it would grow back. A copy of the landscaping receipt has been submitted. A witness statement from the Property Manager has been submitted in relation to this issue.

Mental Anguish

The Tenants were aggressive towards the Landlord during the move-out inspection. The Tenants discriminated against the Landlord. The Tenants yelled at the Landlord, called the Landlord inappropriate names, made racist remarks to the Landlord and recorded the Landlord without the Landlord's permission. The Landlord was shaken and upset due to the Tenants' behaviour during the move-out inspection.

Legal Counsel relied on Policy Guideline 16 for the submission that an arbitrator can award aggravated damages. Legal Counsel relied on section 95(2) of the *Residential Tenancy Act* (the "*Act*") as the basis for the amount of compensation sought.

I asked Legal Counsel what breach of the *Act*, *Residential Tenancy Regulation* or tenancy agreement the Landlord is relying on for this issue. Legal Counsel stated they are relying on Policy Guideline 16 and the authority for an arbitrator to award aggravated damages. Legal Counsel could not point to another section of the *Act*, *Residential Tenancy Regulation* or tenancy agreement that was breached.

Utility – water

The Tenants were responsible for paying for utilities during the tenancy. The Tenants did not pay for utilities as required. The Landlord submitted text messages between the parties about utilities. The amounts on the Monetary Order Worksheet are correct and are reflected in the bills submitted.

The water bill was issued by the city and could not be put into the Tenants' names. The Tenants were supposed to go into the Landlord's account and pay the bills but never did.

Utility – electricity

The Tenants refused to pay for electricity bills because the property address on the bills was different from the rental unit address. The reason for the different addresses is that the electrical company installed a meter prior to Canada Post changing the address for the rental unit which was brand new at the time. The electrical company was never notified of the address change and therefore the previous address was on the bills. The Tenants were provided with an email outlining the reason for the different addresses but would not pay the bills. The bills do relate to the correct meter on the rental unit.

Utility – gas (estimate)

The amount owed for gas is an estimate because the Tenants did not set up their own account as they were supposed to do. The gas bills were lumped in with the gas bills for the Landlord's company and therefore the Landlord cannot determine from the bills how much related to the rental unit versus other properties. The \$1,000.00 requested is an underestimate of what the Tenants would have used in a year.

Internet hardware

The Tenants demanded that the Landlord purchase a wireless modem for the rental unit because the internet provider had not yet brought lines to the house. The Tenants were supposed to reimburse the Landlord for the cost of the modem but did not do so.

Documentary Evidence

The Landlord submitted the following documentary evidence:

- Emails
- Utility bills
- Invoices
- Text messages
- The CIR
- Receipts
- The tenancy agreement
- A witness statement from the Property Manager

Analysis

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.

Cleaning

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...

I accept the undisputed testimony and submissions of the Landlord and Legal Counsel and based on these, as well as the documentary evidence submitted, I find the following. The Tenants did not leave the rental unit reasonably clean at the end of the tenancy and therefore breached section 37(2)(a) of the *Act*. The Landlord had to hire cleaners to clean the rental unit which cost \$300.00. I am satisfied this amount is reasonable and note that the Tenants did not appear to dispute the amount. I award the Landlord \$300.00.

Landscaping

Policy Guideline 1 states at page 7:

Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

I accept the undisputed testimony and submissions of the Landlord and Legal Counsel and based on these, as well as the documentary evidence submitted, I find the following. The Tenants were responsible for routine yard maintenance. The Tenants let the lawn die during the tenancy and there was dog feces throughout the lawn at the end of the tenancy. The Tenants breached section 37(2)(a) of the *Act* and failed to comply

with their obligations under Policy Guideline 1. The Landlord had to hire a landscaper to address the issues which cost \$94.50. I am satisfied this amount is reasonable and note that the Tenants did not appear to dispute the amount. I award the Landlord \$94.50.

Mental anguish

As set out in section 7 of the *Act* and Policy Guideline 16, the first step in proving entitlement to compensation is proving a breach of the *Act, Residential Tenancy Regulation* (the “*Regulations*”) or tenancy agreement. Although Policy Guideline 16 allows an arbitrator to award aggravated damages, the party seeking these damages still must show a breach of the *Act, Regulations* or tenancy agreement. Aggravated damages are simply a type of compensation that can be awarded for intangible damage or loss. The Landlord cannot be awarded aggravated damages without proving a breach of the *Act, Regulations* or tenancy agreement.

Legal Counsel was not able to point to a section of the *Act, Regulations* or tenancy agreement that was breached in relation to this issue and therefore the Landlord has failed to prove a breach and is not entitled to the compensation sought. This request is dismissed without leave to re-apply.

Utility – water

Pursuant to term 3 of the tenancy agreement, water was not included in rent.

I accept the undisputed testimony and submissions of the Landlord and Legal Counsel and based on these, as well as the documentary evidence submitted, I find the following. The Tenants were responsible for paying for utilities during the tenancy, including water. The Tenants did not pay for utilities, including water, as required. The Tenants owe the Landlord \$239.17 for water bills. The Landlord is awarded \$239.17.

Utility – electricity

Pursuant to term 3 of the tenancy agreement, electricity was not included in rent.

I accept the undisputed testimony and submissions of the Landlord and Legal Counsel and based on these, as well as the documentary evidence submitted, I find the following. The Tenants were responsible for paying for utilities during the tenancy,

including electricity. The Tenants did not pay for utilities, including electricity, as required. The Tenants owe the Landlord \$1,842.52 for electricity bills. The Landlord is awarded \$1,842.52.

Utility – gas (estimate)

Pursuant to term 3 of the tenancy agreement, gas was not included in rent.

I accept the undisputed testimony and submissions of the Landlord and Legal Counsel and based on these, as well as the documentary evidence submitted, I find the following. The Tenants were responsible for paying for utilities during the tenancy, including gas. The Tenants did not pay for utilities, including gas, as required. The Tenants owe the Landlord \$1,000.00 for gas bills. The Landlord is awarded \$1,000.00.

Internet hardware

Pursuant to term 3 of the tenancy agreement, internet was not included in rent.

I accept the undisputed testimony and submissions of the Landlord and Legal Counsel and based on these, as well as the documentary evidence submitted, I find the following. The Tenants demanded that the Landlord purchase a wireless modem for the rental unit. The Tenants were supposed to reimburse the Landlord for the cost of the modem but did not do so. The Tenants owe the Landlord \$302.40 for the cost of the modem and the Landlord is awarded this amount.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Cleaning	\$300.00
2	Landscaping	\$94.50
3	Mental anguish	-
4	Utility – water	\$239.17
5	Utility - electricity	\$1,842.52
6	Utility – gas (estimate)	\$1,000.00
7	Internet hardware	\$302.40
	TOTAL	\$3,778.59

The Landlord is issued a Monetary Order for \$3,778.59 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$3,778.59 and is issued a Monetary Order for this amount. This Order must be served on the Tenants. If the Tenants fail to comply with this 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: November 12, 2021

Residential Tenancy Branch