



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LL: MNDL-S, FFL, MNDCL**
 TT: MNDCT, FFT

Introduction

This hearing dealt with applications from both the landlords and tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlords applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that both parties submitted numerous pieces of individual evidence in a haphazard and poorly organized manner. The parties filed many individual files instead of a single pdf file with numbered pages. The file names are inconsistent and unclear as to their contents so that it is confounding for the reader. Files are uploaded non-sequentially in no discernable order and with little information as to its relevance to the matter at hand. The evidence was submitted in a haphazard manner so that locating individual pieces of evidence is difficult and time consuming. While I have not excluded any of the documentary evidence of either party, I find that the poor presentation detrimentally affects the strength of submissions and the parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?
Are the landlords entitled to retain the deposit for this tenancy?
Is either party entitled to recover their filing fee from the other party?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began on January 11, 2020 and ended in June 2021. The monthly rent during the tenancy was \$1,600.00 payable on the eleventh of each month. A security deposit of \$800.00 was collected at the start of the tenancy and is still held by the landlords. The parties prepared a move-in and move-out condition inspection report, a copy of which was submitted into evidence.

The parties agree that the rental unit suffered damage from water ingress during the tenancy. The parties disagree on the cause of the damage each attributing it to the other. The landlords submit email correspondence from the tenant dated March 24, 2021 where they report that they overflowed a sink causing damage to the bathroom floors. The tenants submit that there were other instances where the rental unit suffered water damage including an incident when a hot water tank malfunctioned and there was seepage from the foundation.

The landlords attribute the work done to restore the rental unit to the negligence of the tenants and seeks a monetary award in the amount of \$11,918.67 representing the cost of work, insurance deductible and the cost of their insurance premiums for 2020 and 2021.

The tenants dispute the landlord's claim, attributes any need for repairs to the landlord's failure to respond in a timely manner to requests made by the tenants and seeks a monetary award of their own in the amount of \$35,000.00 representing a return of all of the rent paid during the tenancy, moving costs, lost vacation time, stress and health effects and the difference in the rent paid for their new tenancy.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I am satisfied that the damage to the rental unit is attributable to the tenancy. I accept that there was an instance of water seepage that was reported in the tenant's email of March 24, 2021. While the tenant cites other instances of water damage I am satisfied that these other instances do not contribute to the insurance claim made by the landlords. The correspondence submitted demonstrates that the incidents are distinct and that the present claim is limited to the damage attributable to the overflowing water from the bathroom.

I find the condition inspection report prepared by the parties at the end of the tenancy to be evidence of the condition of the rental unit on that date pursuant to Residential Tenancy Regulation 21. While the tenants dispute that the rental unit required repairs and cleaning as claimed by the landlords, I find that their testimony and few pieces of evidence submitted to fall short of a preponderance of evidence to the contrary.

I accept that the landlord incurred an insurance deductible of \$1,000.00 for repairs to the rental unit attributable to the water damage from the tenant. I further accept that the landlord incurred some out of pocket expenses for repairs, cleaning and replacement of a fixture in the total amount of \$988.67. I am satisfied with the invoices provided by the landlord that the work is reasonable and commensurate with the state of the rental unit noted on the condition inspection report. Accordingly, I issue the landlords a monetary award in the amount of \$1,988.67 for the insurance deductible and cost of repairs and replacement.

I am not satisfied with the evidence that the cost of the insurance premiums are attributable to the tenant. I note that the landlords are claiming the entirety of their property insurance premium from August 2020 to August 2022. I do not find that the entirety of the insurance premium for the whole property is a cost that arises from the tenancy. It would be reasonable to expect that the landlord would need to insure their property in any event and they would be required to pay the same amounts. Even if the landlords were to claim the increase in their insurance premium, I find insufficient evidence that it is wholly attributable to the tenants. I find insufficient evidence that the rise in the premium is a result of the tenants and not a result of other claims, inflation or the rising cost of insurance. Consequently, as the landlord has not met their evidentiary burden I dismiss this portion of the application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

I find the tenants have not met their evidentiary burden to establish their monetary claim on a balance of probabilities. I find the tenants submissions consists of subjective accusations against the landlord and complaints which are not sufficiently reflected in the documentary evidence. I find that much of the tenants' claims are for items that are not attributable to the tenancy or have little basis in the evidentiary materials.

The tenants occupied the rental unit for the duration of the tenancy and I find no basis for their claim for a return of the full rent paid. I do find that the ongoing construction work had some impact on the value of the tenancy. I accept that the work required areas of the rental unit to be inaccessible or in a state of disrepair while work was conducted. While I find that the landlord acted reasonably in arranging for third-party companies approved by their insurers to attend upon issues being reported, I find that there was some negative impact on the tenancy.

Based on the evidence I find that this impact was minimal with the tenants able to reside in the rental unit at all times during the tenancy. Little evidence was submitted regarding the impact the ongoing work had on their daily routines. I find that the evidence shows that the construction work took some time to complete but that is the expected consequence of performing work while maintaining a tenancy with occupants residing in the rental unit. Based on the foregoing I find that a nominal monetary award in the amount of \$500.00 to be appropriate.

I find the tenant's claim for items such as their moving costs, vacation time or difference in the rent they are currently paying to not be attributable to any breach on the part of the landlords.

I find the tenants' claim for negative health effects to not be supported in the evidentiary materials. The mere presence of mold in a rental unit is insufficient to form the basis of a claim for damages. The tenant has provided little evidence that mold is attributable to the actions or neglect of the landlord rather than their own actions. The tenants' own expert report provides an opinion that there have been previous leaks in the rental unit including the water ingress caused by the tenants. The tenant chose to commission their own inspection of the rental unit. I find their choice to do so, and the costs of the report is not attributable to any breach on the part of the landlord.

Similarly, I find the tenants' deteriorating mental health is not something which I find sufficient evidentiary linkage to any breach on the part of the landlords. I find that the tenants have not established their claim on a balance of probabilities and consequently dismiss this portion of their claim.

As neither party was wholly successful in their application, I decline to issue an award to recover the filing fee to either party.

Conclusion

I issue a monetary order in the landlords' favour in the amount of ~~\$698.67~~ \$688.67 on the following terms:

Item	Amount
Landlord's Claim	\$1,998.67 <u>\$1,988.67</u>
Less Security Deposit	-\$800.00
Less Tenant's Claim	-\$500.00
TOTAL	\$698.67 <u>\$688.67</u>

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: November 9, 2021

Residential Tenancy Branch