



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security and pet damage deposits (the deposits), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Landlords MK and KK (collectively, the landlords) and tenant KO (the tenant) attended the hearing. The landlords represented landlord SS. The tenant represented tenant TO. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Partial Withdrawal of the Application

At the outset of the hearing MK affirmed the landlords are no longer seeking compensation for broken windows and doors (claims 1, 5, 6 and 7 in the monetary order worksheet).

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the landlord's application to withdraw the claim for a monetary order for compensation for broken windows and doors.

Issues to be Decided

Are the landlords entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposits?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on November 15, 2017 and ended on May 15, 2021. Monthly rent was \$900.00, due on the 15th day of the month. At the outset of the tenancy a security deposit of \$450.00 and a pet damage deposit of \$450.00 were collected and the landlords hold them in trust. The tenancy agreement was submitted into evidence.

Both parties also agreed the tenants provided their forwarding address in writing on April 02, 2021 and the landlords received it on that date.

The landlords submitted the condition inspection report (the report) into evidence. Both parties signed it on the move in inspection and only the landlord signed it on the move out inspection. KK affirmed she completed part of the move out report after the inspection.

The report states: "End of tenancy. 2. [tenant] agree to the following deductions from my security deposit: \$450.00. Date: 03/11/2017."

MK stated when she completed the "End of tenancy.2" section of the report. The tenant testified she did not understand that she was authorizing the landlords to retain her security deposit on November 03, 2017.

The landlords are claiming \$1,290.00 for cleaning compensation. MK said that 4 people cleaned the main floor of the rental unit for 33 hours and later 2 other people cleaned the basement of the rental unit for 5 extra hours. The landlords are asking for monetary compensation of \$30.00 per hour for a total of 38 hours.

MK affirmed the main floor and the basement have 4 bedrooms and a total area of 2,700 square feet and the tenant rented both floors. KK stated the landlords had access to a separate part of the basement and the cleaning costs do not include the landlords' private basement area.

The tenant testified the main floor and the basement have 5 bedrooms and a total area of 3,200 square feet. The tenant said the landlords had access to part of the basement floor and stored their belongings in the basement.

MK affirmed the bedrooms, kitchen fan, cupboards, and windows were not clean. The landlords submitted 38 photographs showing the rental unit's cleanliness state.

The tenant stated the rental unit was reasonably clean when the tenancy ended. The tenants submitted 15 photographs dated May 20, 2021 showing the rental unit's cleanliness state. The landlord testified on May 20, 2021 she allowed the tenant to enter the rental unit but she did not have a camera.

The tenants submitted into evidence a letter from their friend dated September 17, 2021:

I am familiar with the house that [tenant] and her family rented from the [landlord] family located at [rental unit's address]. My partner and I helped them move some of their items into the home when they first moved in.

The [landlord] family had been storing personal belongings in the home in the cellar, the back room and in a portion of the basement. It was known to leave these spaces and the collective items alone.

I was present with [tenant] on May 10, 2021 when she was doing a final clean of the home. I even assisted. I would agree with [tenant] that it was cleaned to the best of our abilities and left in the same state that it had originally been moved into. Care was also taken not to touch the personal belongings of the [landlord].

The tenants submitted into evidence a cleaning service estimate dated May 21, 2021 indicating the rental unit needed 10 hours of cleaning at \$25.00 per hour.

The landlords are claiming \$90.00 for painting expenses. MK said the tenants damaged the bedroom wall; the tenants painted the bedroom wall when the tenancy ended but the landlords needed to re-paint the wall because the tenant painted it with a different colour. The landlords are asking for monetary compensation of \$30.00 per hour for a total of 3 hours. The landlords emailed the tenant on May 07, 2021:

We were at the property on Tuesday and notice some of the items that you will need to be addressed before you leave.

The spare room of the master bedroom must be repainted to the original state. I've attached pictures of the pre-move in.

The tenant affirmed she did not damage the bedroom wall, she had some art on the wall because the landlords authorized her to paint on the wall. MK stated she did not authorize the tenants to paint on the wall.

The landlords submitted into evidence a monetary order worksheet.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. 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.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Report

Regulation 14 provides that “The landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act [condition inspections] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.”

Based on KK’s testimony, I find the landlords completed the move out inspection report after the inspection. Thus, the report does not comply with Regulation 14, as it was not completed by the parties during the inspection.

Section 35(3) requires the landlord to complete the report in accordance with the Regulations.

Section 36(2) of the Act states:

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.

Residential Tenancy Branch Policy Guideline 17 explains: “7. The right of a landlord to obtain the tenant’s consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.”

Thus, the landlords extinguished their right to claim against the deposits, per section 36(2)(c) of the Act.

Regulation 21 states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find the report has no evidentiary weight, as the landlord did not complete it in accordance with the Regulation.

Deposits

I find the tenant signed the report authorizing the landlords to retain the security deposit in error, as the authorization is dated November 03, 2017, before the tenancy started.

Section 38(1) of the Act requires the landlord to either return the deposit in full or file for dispute resolution for an authorization to retain the deposit 15 days after the later of the end of a tenancy and upon receipt of the tenant’s forwarding address in writing.

The landlords confirmed receipt of the tenants’ forwarding address in writing on April 02, 2021 and submitted this application for an authorization to retain the deposits.

In accordance with section 38(6)(b) of the Act, as the landlords extinguished their right to claim against the deposit and did not return the full amount of the deposits within the timeframe of section 38(1) of the Act, the landlords must pay the tenants double the amount of the deposits they retained.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline. It states:

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to a monetary award of \$1,800.00 (double the deposits of \$900.00).

Cleaning expenses

Section 37(2) of the Act states:

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

Residential Tenancy Branch Policy Guideline 1 states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Based on the tenant's more convincing testimony and the September 17, 2021 letter, I find the landlords had access to part of the basement floor.

Based on the landlords' more convincing testimony, I find the rental unit has 4 bedrooms and a total area of 2,700 square feet.

I find the photographs submitted by the tenants are not as detailed as the photographs submitted by the landlords.

Based on the landlords' testimony, the photographs, and the cleaning estimate, I find, on a balance of probabilities, the tenants breached section 37(2)(a) of the Act by failing to reasonably clean the rental unit when the tenancy ended and the landlords incurred a monetary loss because of the tenants' failure to comply with the Act.

I find the landlords failed to prove, on a balance of probabilities, a loss in the amount claimed. Based on the photographs submitted, the size of the rental unit and the

cleaning estimate, I find it reasonable to award 20 hours of cleaning at the rate of \$25.00 per hour.

Thus, I award the landlords \$500.00 for cleaning expenses.

Painting expenses

Residential Tenancy Branch Policy Guideline 1 states:

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

[...]

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used.

If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises.

The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

(emphasis added)

Based on the landlords' convincing testimony and the May 07, 2021 email, I find the landlords did not authorize the tenants to paint on the wall and the tenants breached section 37(2)(a) of the Act by failing to paint the damaged walls with the same colour as the other walls of the rental unit. I find it reasonable to award 3 hours of painting labour at the rate of \$25.00 per hour.

As such, I award the landlords \$75.00 for painting expenses.

Filing fee and summary

As the landlords were successful, I find the landlords are entitled to recover the \$100.00 filing fee.

In summary, the landlords are entitled to:

Expenses	\$
Cleaning	500.00
Painting	75.00
Filing fee	100.00
Total	675.00

Set off

The tenants are awarded \$1,800.00. The landlords are awarded \$675.00.

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

Thus, the tenants are awarded \$1,125.00.

Conclusion

Pursuant to section 38 of the Act, I grant the tenants a monetary order in the amount of \$1,125.00.

The tenants are provided with this order in the above terms and the landlords must be served with this order. Should the landlords 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: December 02, 2021