



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act"), for:

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two landlords, male landlord ("landlord") and "female landlord," and the female tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 70 minutes.

The tenant confirmed that she had permission to represent the "male tenant" that did not attend this hearing (collectively "tenants").

Both parties provided their email addresses for me to send this decision to them after this hearing.

At the outset of this hearing, I informed both parties that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The two landlords and the tenant all separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Both parties confirmed that they were ready to proceed with this hearing, they did not want to settle this application, and they wanted me to make a decision. Neither party made any adjournment or accommodation requests.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' application.

The tenant confirmed that she served a copy of the tenants' evidence package to the landlords by email on January 7, 2021. The landlords claimed that they did not receive the tenants' evidence package, but only an email screenshot of the evidence that the tenants submitted to the RTB, without any attachments that could be opened. The landlords provided a copy of this screenshot, with their evidence for this hearing. The tenant agreed that she forwarded the submitted documents confirmation that she received from the RTB, to the landlords. As the tenants did not provide a full copy of their evidence with attachments that could be opened by the landlords, I find that the landlords were not served with the tenants' evidence, so I did not consider it in this decision.

Amendment to Landlords' Application

During this hearing, the landlords stated that they did not amend their application to add a window glass replacement cost of \$302.60. They provided an invoice, dated June 23, 2021, for the above cost. However, they did not amend their application to add this cost. They claimed that they added it to their monetary order worksheet and submitted it to the RTB. I informed the landlords that I only received a blank monetary order worksheet from them, in the online RTB system.

I notified the landlords that since they knew about the above cost when they filed this application on June 24, 2021, and they did not file an amendment form to add this claim prior to this hearing on January 20, 2022, they could not amend their application to add this claim at this hearing. The landlords had ample time of almost 7 months to amend their application, prior to this hearing. The details and particulars of the landlords' full monetary claim and evidence is due at the time they file their application, and no later than 14 days prior to this hearing, as per Rules 3.1 and 3.14 of the *RTB Rules of Procedure*. The landlords are required to amend their application to increase their

monetary claim at least 14 days prior to this hearing. I informed the landlords that adding a cost to a monetary order worksheet was not an amendment to their application and was not the proper procedure, as per the RTB *Rules of Procedure*, to amend and increase their monetary claim.

I provided the landlords with an opportunity to withdraw their entire application and reapply, to add the above cost, but they declined to do so. I notified them that they could not divide or split their damages claim to add this cost at a later date, as it was contrary to Rule 2.9 of the RTB *Rules of Procedure*. The landlords stated that they wanted to proceed with this hearing and abandon their claim for the window glass replacement of \$302.60, since it could not be added at this hearing. I informed them that they could not reapply for this cost in the future at the RTB. I notified them that they were not entitled to the above cost of \$302.60 from the tenants. Both landlords confirmed their understanding of and agreement to same.

Issues to be Decided

Are the landlords entitled to a monetary award for unpaid rent and for damage to the rental unit?

Are the landlords entitled to retain the tenants' deposits?

Are the landlords entitled to recover the filing fee paid for this application?

Background and Evidence

The landlord and the tenant agreed to the following facts. This tenancy began on June 15, 2019 and ended on June 15, 2021. Monthly rent in the amount of \$1,610.00 was payable on the first day of each month. A security deposit of \$805.00 and a pet damage deposit of \$805.00 were paid by the tenants and the landlords continue to retain both deposits in full. A written tenancy agreement was signed by both parties. Move-in and move-out condition inspection reports were completed for this tenancy. The move-out condition inspection report was completed by the tenants' agent, who the tenants appointed to attend the move-out condition inspection. The tenants did not provide written permission for the landlords to keep any amount from their deposits. The landlords' application to retain the tenants' deposits was filed on June 24, 2021.

The tenant stated that she provided a written forwarding address to the landlords on June 17, 2021, by way of email. The landlords stated that they did not receive this email from the tenant.

The landlords seek a monetary order of \$3,322.33 plus the \$100.00 application filing fee. During this hearing, the tenant agreed to pay \$250.00 for a door frame, \$300.00 for contractor labour, and \$20.00 for paint, totalling \$570.00. The tenants dispute the remainder of the landlords' claims for \$2,752.33.

The landlord testified regarding the following facts. The landlords sold the rental property house on July 15, 2021. The tenants owe rent of \$1,610.00 for June 2021. Actually, it was back-rent owed for April 2021. The rent was actually for May 2021. The tenants were entitled to the last month of rent free from May 15 to June 15, 2021. The landlords issued a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") to the tenants in April 2021. The 10 Day Notice was actually issued in May 2021. As per the 10 Day Notice submitted for this hearing, it was actually issued in June 2021. The landlords did not find out until the last minute that the tenants were moving out. The landlords received two weeks notice from the tenants on June 1, 2021 that they were moving out by June 15, 2021. The late rent fee is actually \$25.00, not \$35.00. The landlords are entitled to damages of \$1,687.33 from the tenants. The landlords seek \$396.90 for a new door, \$3.70 for door parts, and \$31.35 for a new door handle. The landlords seek \$80.38 for paint and drywall putty. The landlords seek \$1,100.00 for a contractor that had to paint and repair the door for 32 hours at a cost of \$35.00 per hour. The landlords seek \$75.00 for cleaning for three hours at a rate of \$25.00 per hour.

The female landlord testified regarding the following facts. The landlords actually got notice on June 14, 2021 that the tenants were vacating on June 15, 2021. The tenants are required to pay a late fee of \$35.00, which is an "administration fee" contained in the addendum to the tenancy agreement. The landlords do not pay any fees to anyone, including the bank, this is just an "administration fee" for late rent, as per the addendum.

The tenant testified regarding the following facts. Full rent was paid by the tenants to the landlords for April 2021. The tenants were entitled to one-month free rent for June 2021, but only received two weeks free rent from June 1 to 15, 2021, since the tenants moved out on June 15, 2021. Therefore, the tenants do not owe rent of \$1,610.00 or a late fee of \$25.00 to the landlords. The tenants dispute that the landlords are entitled to full costs to replace the door at the rental unit. Only the door frame was broken, so the landlords should not have purchased a new door or handle. The tenant had to kick in

the door to enter because the landlords would not provide the keys to her. She emailed the female landlord, who ignored her, and the landlord blocked her number. The tenants only agree to pay a total of \$250.00 for fixing the door frame that was broken. The tenant does not believe that painting was necessary at the rental unit. She already patched up the walls at the rental unit but not did not have time to put a finishing coat of paint on it. The landlords already had paint leftover at the rental unit that could have been used, so no extra paint needed to be purchased. Therefore, the tenants only agree to pay \$20.00 for painting. The tenants only agree to pay for \$300.00 towards the landlords' cost of \$1,100.00 for labour, because painting was not necessary, and the door did not require replacement. The tenants dispute the landlords' entire cleaning costs of \$75.00, because the tenant cleaned for three hours, as per the RTB guidelines. The tenants did not leave any urine under the sink, as claimed by the landlords. It was oil, as per the addendum to the tenancy agreement, which required that the tenants did not dispose of oil down the drain.

Analysis

Credibility

I find that the tenant was a more credible witness, as compared to both landlords. She provided her testimony in a calm, candid, forthright, straightforward, and consistent manner. Her testimony did not change throughout this hearing, depending on the questions I asked. She admitted when events were unfavourable to her, when she was responsible for damages, and agreed to pay for damages during this hearing.

Conversely, I found that the landlords were less credible witnesses, as compared to the tenant. They provided their testimony in an angry, upset, agitated, and inconsistent manner. Their testimony frequently changed throughout this hearing, depending on the questions I asked. They repeatedly argued with me and interrupted me when I asked them questions or tried to answer their questions. They repeatedly argued with and interrupted the tenant, while she was testifying. The landlords frequently interrupted each other, spoke at the same time as each other, and provided different answers and contradictory testimony regarding their monetary claims.

Rules

The following RTB *Rules of Procedure* state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlords did not properly present their evidence, as required by Rule 7.4 of the *RTB Rules of Procedure*, despite having the opportunity during this hearing, as per Rules 7.17 and 7.18 of the *RTB Rules of Procedure*. During this hearing, the landlords failed to properly go through their claims and the documents submitted in support of this application.

During this hearing, I repeatedly asked the landlords whether they wanted to add any information, present any further submissions, and respond to the tenant's testimony. The landlords repeatedly stated that they did not have any information or submissions to add. This hearing lasted 70 minutes, so the landlords were given ample opportunity to present their application and respond to the tenant's claims.

Rent

As per section 26 of the *Act*, the tenants are required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, Residential Tenancy *Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply.

I find that the landlords failed to provide sufficient evidence that the tenants owe rent of \$1,610.00 and a late fee of \$25.00, totalling \$1,635.00. This claim is dismissed without leave to reapply. I find that the landlords agreed that the tenants were entitled to one-month free rent for June 2021. I accept the tenant's affirmed testimony that she paid full rent for April 2021, to the landlords. Therefore, I find that the tenants do not owe any unpaid rent or late fees, to the landlords.

The landlords were confused during this hearing, as to the amount of the late fee and the month of rent that was unpaid. The female landlord claimed that the late fee was \$35.00, while the landlord claimed that it was \$25.00. The landlords did not provide a copy of the addendum to the tenancy agreement, which they claim contained the late “administration fee” amount.

In their online RTB application details, the landlords claimed that they were seeking unpaid rent of \$1,635.00 for June 2021. The landlord initially claimed that the unpaid rent was for June 2021, then said it was for April 2021, and then claimed it was for May 2021. He maintained that the 10 Day Notice for unpaid rent was for April 2021, then May 2021, and when I told him that the landlords submitted a 10 Day Notice for June 2021, he agreed it was for June. He stated that the tenants were entitled to one month of free rent from May 15 to June 15, 2021. The tenant agreed that her rent for the month of June 2021 was free, as agreed by the landlords, so the tenants did not pay rent for June 2021.

Damages and Cleaning

At the outset of this hearing, I notified the landlords, that as the applicants, it was their burden of proof, to prove their monetary claims.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the landlords must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlords followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony of both parties and the documentary evidence of the landlords.

I award the landlords \$570.00 total for the door frame, contractor labour, and paint, because the tenant agreed to pay this amount during this hearing.

The landlords seek \$396.90 for a replacement door, \$3.70 for door parts, and \$31.35 for a door handle, totalling 431.95. The tenant agreed to pay \$250.00 towards the above costs, which I have awarded above. I dismiss the remainder of the landlords' door costs of \$181.95, without leave to reapply. The landlords did not review any of their documentary evidence, including receipts, invoices, photographs or other evidence, during this hearing. The landlords did not indicate when the above work was done or when it was paid. The landlords did not provide documentary proof that they were required to replace the entire door, rather than just repair the door frame, as alleged by the tenant during this hearing. The landlords provided an invoice for \$396.90 with a balance due. The receipt that they attempted to include on top of the invoice has been completely cut off and does not show any amount paid by the landlords for the purchase of the door.

The landlords seek \$80.38 for paint and drywall putty. The tenant agreed to pay \$20.00 towards the above cost, which I have awarded above. I dismiss the remainder of the landlords' paint and drywall costs of \$60.38, without leave to reapply. The landlords did not review any of their documentary evidence, including receipts, invoices, photographs or other evidence, during this hearing. The landlords did not indicate when the above work was done or when it was paid. The landlords did not properly explain why they incurred the above cost during this hearing. They did not state what walls and areas of the rental unit required paint or putty. The tenant claimed that she patched the walls and there was extra paint left behind at the rental unit. The tenants are not required to paint the rental unit, unless they caused excessive holes and damages to the walls, as per Residential Tenancy Policy Guideline 1. I find that the landlords failed to show that the tenants caused damages beyond reasonable wear and tear, requiring painting and drywall putty. The landlords provided a receipt for \$120.38, and someone crossed out the total with a pen, and wrote "-40.00" and "80.38" below that. The landlords did not indicate who made these changes to the receipt or why they were made.

The landlords seek \$1,100.00 for a contractor's labour to complete the painting and door repairs. The tenant agreed to pay \$300.00 towards the above cost, which I have awarded above. I dismiss the remainder of the landlords' contractor labour costs of \$800.00, without leave to reapply. The landlords did not review any of their documentary evidence, including receipts, invoices, photographs or other evidence, during this hearing. The landlords did not indicate when the above work was done or when it was paid. The landlords provided an invoice for \$1,215.43 with a balance due and "0.00 amount paid." The invoice includes a cost of \$1,100.00 for labour but does not indicate how many people completed the work, how long it took, or the hourly rate. The landlord stated that the work took 32 hours at \$35.00 per hour (which adds up to

\$1,120.00 not \$1,100.00) verbally during this hearing but did not refer to documentary evidence to support same. The invoice has the landlord's company name on the top of the document and does not state whether a third party completed the work, or the landlord did the work himself. The invoice does not include the rental unit number, only the general address of the rental property. I found above that the landlords failed to show that a door replacement and painting were both required at the rental unit, so I find that the above cost is excessive, beyond what the tenant agreed to pay during this hearing.

The landlords seek \$75.00 for cleaning, which is dismissed without leave to reapply. The landlords did not review any of their documentary evidence, including receipts, invoices, photographs or other evidence, during this hearing. The landlords did not indicate when the above work was done or when it was paid. The landlords provided an invoice for \$75.00 with a balance due and "0.00 amount paid." The invoice has the landlord's company name on the top of the document, and states that a different company completed the cleaning, but the landlords failed to provide a separate invoice from that other cleaning company. The invoice does not include the rental unit number, only the general address of the rental property. I accept the tenant's affirmed testimony that she cleaned the rental unit for three hours, prior to vacating. I find that the landlords failed to show that cleaning was required beyond reasonable wear and tear, as per Residential Tenancy Policy Guideline 1.

As the landlords were only partially successful in this application, based only on what the tenants agreed to pay during this hearing, I find that the landlords are not entitled to recover the \$100.00 application filing fee from the tenants.

Deposits

The landlords continue to hold the tenants' deposits totalling \$1,610.00. No interest is payable on both deposits during this tenancy. I order the landlord to retain \$570.00 from the tenants' security deposit of \$805.00, in full satisfaction of the monetary award.

I order the landlords to return the remainder of \$235.00 from the tenants' security deposit and \$805.00 from the tenants' pet damage deposit, totalling \$1,040.00, to the tenants. The tenants are provided with a monetary order for same. Although the tenants did not apply for the return of their deposits, I am required to consider it on the landlords' application to retain the deposits, as per Residential Tenancy Policy Guideline 17.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,040.00 against the landlord(s). The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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.

The remainder of the landlords' application is dismissed without leave to reapply.

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: January 20, 2022

Residential Tenancy Branch