



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with a landlord's application for compensation for damage to the rental unit and authorization to retain the tenant's security deposit.

Both the landlords and the tenants appeared for the hearing. The parties were affirmed and the parties were ordered to not make an unofficial audio recording of the proceeding.

The hearing was held over two dates and an Interim Decision was issued. The Interim Decision should be read in conjunction with this final decision.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation from the tenants in an amount that is equal to, or greater, than the amount of the security deposit?
2. Are the landlords authorized to retain all or part of the tenant's security deposit?
3. Award of the filing fee.
4. Disposition of the security deposit.

Background and Evidence

The tenancy started on August 17, 2018 and the tenants paid a \$900.00 security deposit. The tenancy ended on May 24, 2021.

A condition inspection report was signed by the parties at or about the time the tenancy started; however, the fields on the report were left blank except for the space that provides for recording the number of keys provided to the tenants. The landlord stated she was unaware she had to complete the fields on the inspection report that

correspond to the condition of the rental unit. The tenants stated the fields for recording the condition of the property were not completed because they had not inspected the unit when they signed the report. Rather, the tenants were presented with the move-in inspection report to sign to acknowledge receiving the keys, which they did. The landlords stated the parties did inspect the unit together.

As far as a move-out inspection report, both parties were in agreement that a move-out inspection was not conducted together and a move out inspection report was not prepared. The landlord stated that it had "slipped their mind".

The landlords took photographs of the unit after the tenants had vacated the unit. The tenants took photographs of the unit shortly before departing.

By way of this application, the landlords seek authorization to retain the tenant's security deposit in satisfaction of their damages and loss. The landlords submitted a list of four expenditures totalling \$3261.27 with a view to demonstrating their request to retain the \$900.00 is very reasonable. I reviewed the four components with each of the parties in the event the landlords were not successful or only partially successful in establishing entitlement to recovery. Below, I have summarized the parties' respective positions with respect to the four items comprising of the landlord's claim.

1. Carpet replacement -- \$630.00

The landlords submit that the tenants left the bedroom carpeting with a big stain by the entrance to the bedroom. The tenants had told the landlords that they had tried cleaning the stain but it did not come out. The landlords also tried cleaning the stain. The landlords suggested the stain could be from the tenant's cat. In any event, since the stain would not come out the landlords proceeded to have the carpeting replaced on June 2, 2021 at a cost of \$630.00, as evidence by the invoice. The landlords described the carpeting as being original to the building, which was constructed in 2014, but in good condition at the start of the tenancy.

The tenants acknowledge there was a stain on the bedroom carpeting but were of the position it was not that big or that obvious. The tenants denied their cat caused damage to the bedroom carpeting. The tenants suggested that if the stain could not come out with cleaning the landlords could have had the stained section removed and replaced as was done when the closet carpeting was stained by water damage during the tenancy. The tenants also submitted that the landlords have not taken into consideration that the carpeting was 7 years old already and the landlords ought to

expect to see wear and tear in the carpeting. The tenants suggested that the landlord's decision to replace the carpeting was motivated by the landlords trying to sell the unit. After the landlords replaced the carpeting and repainted the unit, the landlords increased the listing price by \$30,000.00 as evidenced by the real estate listings submitted as evidence.

The landlords were of the position the stain was noticeable. The landlords explained that the listing price was increased as part of their realtor re-listing the property to make it appear to be a new listing. The landlords doubted the carpeting could be patched and stated the closet carpeting was not patched; rather it was lifted and dried and then cleaned to deal with the water damage. The landlords stated that they would not have replaced the carpeting had it not been stained; however, the landlords are open to a reasonable award to reflect depreciation of the original carpeting.

2. Damaged walls and baseboards -- \$630.00

The landlords submitted that some baseboards and trim boards were damaged by swelling, likely the result of leaving wet items such as an umbrella near the trim. Also, a number of walls were scratched beyond wear and tear. In particular, a large area of paint was peeled off the bathroom wall, most likely where a hook had been placed. The landlords provided an invoice for \$630.00 for repairing and repainting trim and repairing damaged walls.

The tenants stated they did not notice the damage seen in the landlord's photographs upon moving out and question when the landlords took the photographs. However, the tenants also acknowledge that the walls did show signs of wear and tear and pre-existing damage. The tenants stated that there was a hook on the bathroom wall that was there when they moved in. The tenants did not try to remove the hook and did not cause the damage to the wall. The tenants suspect the landlord did this after their tenancy ended. The tenants are of the position that the landlords' claim is unreasonable as it does not take into account the expectation of wear and tear over 7 years and damage that was not caused by them. The tenants are of the position the repainting was needed due to its age and the repainting was motivated by the landlords trying to sell the rental unit.

The tenants also suggest the invoice presented by the landlords is illegitimate as their research showed that painting costs are closer to \$2 per square foot.

The landlord stated she took the photographs the day after the tenancy ended and sent them to the tenant right away. The landlord denied removing a hook from the bathroom wall and causing damage and stated it would not make sense for the landlord to damage her own walls and then have to repair them. The landlords stated the hook was not there when the tenancy started and that the rental unit was in good condition at the start of the tenancy considering her previous tenants received their security deposits back. Although the landlords put the rental unit up for sale after the tenancy ended, repainting would have been required if the landlord had put the rental unit for rent as it was too damaged to list for sale or rent.

3. Water damage

The landlords submitted that on March 1, 2021 the tenants reported water damage in the bedroom closet, including wet carpet and mould on the walls. A restoration company attended to remediate and repair the water damaged area. The restoration company did not note a source of the water damage and the landlords paid the restoration company's invoice of \$1901.27. At that time, the landlords accepted the tenant's statements that they did not cause the water damage and that it was the result of issues with the building construction. The landlord originally thought the water damage was the result of condensation and they waited to see if it would happen again; however, after the tenancy ended the landlords had a handyman working in the unit and in his opinion the cause of the water leak was from not closing the bedroom window completely, allowing rain water to enter. The landlords point to images of a rusty hinges in the bedroom window and water damaged window sill that is not present in the living room windows.

The landlords stated that their realtor told them that during a showing the realtor noticed a cat in the rental unit and the bedroom window was open. The landlord suggested the window was left open by the tenants to reduce the odour associated with cats. As such, the landlords are of the position the water damage was most likely the result of the tenants leaving the window open, or not closing the window completely, when it rained.

The landlords submitted that the water damaged area was quite large and that it probably took quite some time to accumulate. As such, the landlords were of the view the tenants could have notified the landlords sooner and reduced the cost to remediate the water damage.

The landlords acknowledged that they re-rented the unit after it did not sell but they have not gone to the rental unit to confirm that water damage has not recurred. Rather,

the landlords take the current tenant's silence as an indicator that there are no water leaks recurring.

The tenants testified that they observed the water ingress in late February 2021 and informed the landlord immediately. The landlord was reluctant to deal with the issue and directed the tenants to deal with the building manager, which the tenants did in sending an email to the building manager. In the email to the building manager, the tenant suggested the water ingress could be the result of snow. The water ingress caused wet carpeting to the left of the window and into the closet, as well as mould to form on the closet walls.

The tenants testified that shortly after reporting the issue to the building manager, a handyman was sent to the rental unit 1 – 2 times per month to place dehumidifiers and repair the water damaged areas. The landlords also brought in restoration company in April 2021. The tenants were told by these people that the water was the result of poor construction of the building that has led to problems with the building envelope including condensation, leaky windows and leaks on the roof and that other units and common areas were having the same issues. The tenants pointed to a photograph of a dehumidifier in the common hallway.

The tenants further testified that during the tenancy the landlords made no allegations that the tenants caused the water ingress. Rather, the landlord asked the tenants not to say anything about the water leaks to the realtor or prospective buyers when the landlords listed the property for sale, as evidenced by the landlord's email/text message to the tenant.

The tenants pointed out that the landlords have been inconsistent in describing the cause of the water damage. Previously, the landlords referred to it as being from condensation but later changed their position to claim there was leaking from the tenants leaving the window open.

The tenants deny leaving the window in the bedroom open during the rainfall. Also, the water leak was off to the left of the opening part of the window and in the closet. Rust on the bottom of the window hinge is evidence that there are issues with the window seals.

4. Burned telephone jack

The landlords submitted that the tenants burned or melted the telephone jack in the rental unit. The tenants took responsibility for damaging the telephone jack.

The landlords submit that to replace the telephone jack cost \$100.00. The landlords acknowledge they did not obtain a receipt to have the jack replaced.

The tenants were of the position that the landlords' claim of \$100.00 is excessive considering a new telephone jack may be purchased for \$5.00 - \$10.00 at a home improvement store as evidence by their print out from a large home improvement store. The tenants were willing to compensate the landlords \$20.00 to take into account the cost to purchase a replacement telephone jack and some labour for their efforts.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages 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 burden of proof is based on the balance of probabilities. As the applicants, the landlords bear the burden of proof in this case. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

The landlords' claims against the tenants pertain to damage to the rental unit allegedly caused by the tenants' actions or negligence.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

It is important to note that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged that it requires replacement, an award will generally take into account depreciation of the original item. To award the landlord full replacement value of certain building elements that were several years old already would result in a betterment for the landlord. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation where necessary.

Pursuant to section 23 and 35 of the Act, a landlord is required to complete a move in and move out condition inspection report at the start of a tenancy and when a tenancy ends. Such reports, when properly completed, afford both the landlord and tenant an opportunity to review the condition of the rental unit at the material times, together, and make notes of any deficiencies and identify areas of disagreement. The landlords in this case failed to duly complete the move-in inspection report and it was under dispute whether there was a move-in inspection done. The landlords did not conduct a move-out inspection with the tenants or prepare a move-out inspection report. Unfortunately, the condition of the rental unit at the time the tenancy started and ended is now under dispute and the parties, nor I, do not have the benefit of inspection reports.

Upon consideration of everything before me, I provide the parties with the following findings and reasons.

1. Carpet replacement

Upon hearing from both parties and review of their evidence, I accept that the carpet stain occurred during the tenancy and the tenants are most likely responsible for the stain. The tenants provided a receipt to show they had the carpets shampooed at the

end of the tenancy. As such, I accept that the stain was permanent as it was still visible after cleaning.

The tenants suggested the stained area could have been cut out and replaced but I am unpersuaded that would yield a satisfactory result as doing so often results in seams and it is difficult to find an exact match to 7 year old carpeting.

The landlord's photograph of the stain shows a quite prominent yellow looking stain whereas the tenant's photographs of the stain show a more subdued looking stain; however, stains often appear worse after they dry following carpet cleaning. As such, I accept that the stain was rather obvious after the carpeting dried and, given the location of the stain near the entry of the room, I find it was quite visible and unlikely to be covered by furniture. Therefore, I find the landlord's decision to replace the carpeting was within reason.

At issue is the amount of compensation claimed by the landlords. The landlords seek recovery of the entire replacement cost and I find that unreasonable as it does not take into account the carpeting was already 7 years old and likely showing some signs of wear and tear and to award the landlords full replacement cost would amount to a betterment for the landlords.

Taking all of the above consideration, I find it reasonable to award the landlords the undepreciated value of the stained carpeting. Policy Guideline 40 provides that carpeting has an average useful life of 10 years. Therefore, I award the landlords $\$630.00 \times 3/10$, or \$189.00.

2. Damaged walls and baseboards

Upon hearing from both parties and reviewing their photographs, I find there is evidence of damage to the walls from scratches and gouges and removal of the top layer of the paint/drywall in the bathroom. I also accept the baseboard near the entry door was also damaged by what appeared to be water damage.

At issue was when the damage occurred as the tenants take the position, they did not cause damage beyond wear and tear and some damage was pre-existing or occurred after their tenancy ended. The landlords denied the tenant's position to be accurate and claim the damage occurred during the subject tenancy. However, I find the disputed oral evidence is insufficient for me to reach a conclusion as to whether the tenants are responsible. As I stated previously, had a move-in and move-out inspection been

conducted together, along with duly completed inspection reports, the condition at the start and end of the tenancy would likely have been less of a disputed issue. Since the landlords have the burden of proof, I find I am unsatisfied by the disputed evidence that that the tenants are responsible for the damage I see in the photographs.

Also of consideration is that the walls and trim had not been painted since originally constructed 7 years prior. Policy Guideline 40 provides that interior paint has an average life of 4 years. I am of the view that 7 years of occupancy will result in some wear and tear over the years and that it is likely that at least some of the wall and trim filling and sanding and painting would be appropriate to rectify wear and tear.

Considering all of the above, I dismiss the landlord's claims against the tenants for wall and baseboard repairs and painting.

3. Water damage

It was undisputed that there was water ingress in the rental unit during the tenancy. At issue is the cause of the water ingress and whether the tenants were responsible to pay for the remediation.

The landlords had described the water ingress as being from "condensation" on some of the documents they prepared in filing their claim; however, during the hearing the landlords submitted that the "handyman" that they had attend the unit after the tenancy ended told them the water came in because the tenants must have left the window open or not entirely closed. The landlords point to the rusty bedroom window hinge and the proximity of the water damage to the window in support of their position.

The tenants were of the position the water ingress was the result of a leaky building envelope and pointed to what they were told when a handyman and/or restoration crew attended the unit shortly after they reported the issue. The tenants pointed to a photograph of dehumidifiers in the common areas. The tenants also point to the rusty window hinge in the bedroom window and the proximity of the water damage to the opening portion of the window in support of their position.

Based on the images of the rusty window hinge, water damaged windowsill and the wet carpeting and drywall near the window, I accept that that water likely came into the rental unit from the exterior and was not the result of water leaking or being spilt from the interior of the rental unit. However, I find the images not conclusive as to the reason the water entered from the exterior and I find both explanations put forth are possible.

When I turn to the documentation, I see only one document that points to a possible cause of the water ingress, which is the email where the tenant notifies the building manager of the water ingress and suggests it may be the result of snow. No other document before me points to another possible cause. The remediation quote and invoice presented by the landlords do not provide a cause despite the documents having a space on the form for describing the cause.

During the tenancy, the landlord also sought the tenant's compliance to not disclose the water leak issue with the realtors or prospective buyers which supports the tenants' position that the landlords did not place blame on the tenants until after the tenancy ended and the tenants sought return of the security deposit.

The landlords acknowledge that they did not determine the tenants were responsible for allowing water to enter the rental unit until they had a handyman attend the rental unit after the tenancy ended, which was months after the water damage occurred. In any event, the handyman was not called as a witness or prepare a report for me to examine. Rather, the landlords are essentially relying upon hearsay evidence and I note that both parties provided hearsay evidence, that was contradictory.

As I indicated previously, where one party provides a version of events in one way, and the other party provides a different version of events that are equally probable, the claim will fail for the party with the onus to prove their claim. The landlords bear the burden of proof in this case, as the applicants, and I find the contradictory evidence is insufficient in the absence of any other more compelling evidence to met their burden. Therefore, I dismiss this portion of the landlord's claim against the tenants.

4. Telephone jack

The tenants took responsibility for damaging the telephone jack and upon review of the photograph I accept that it was in need of replacement.

The landlords seek \$100.00 to replace the jack without any corroborating evidence. The tenants provided documentary evidence to show the cost of a replacement jack costs \$5.00 - \$10.00; however, I find their proposal to of \$20.00 to be too low when I factor in labour.

I find it reasonable to award the landlords \$50.00 which would include a replacement jack and approximately one hour of time to install. Therefore, I grant the landlords a partial award of \$50.00 for this claim.

5. Filing fee

The landlords had limited success in this application and I award them partial recovery of the filing fee they paid, in the amount of \$25.00.

Off-set and security deposit

Since the landlords failed to duly complete the condition inspection reports and inspect the rental unit with the tenants at the beginning and end of the tenancy, the landlords extinguished their right to make any claim for damage against the security deposit as provided under sections 24 and 36 of the Act. As such, the tenants are entitled to return of the security deposit.

Where a landlord extinguishes a right to claim against a security deposit, the landlord is still entitled to monetary claim against the tenant for damage. By way of this decision I have found the landlords entitled to compensation from the tenant in the sum of \$264.00 [\$189.00 + \$50.00 + \$25.00].

Pursuant to section 72 of the Act, I have the authority to offset an amount owing to a landlord against an amount owed to a tenant for the security deposit. Accordingly, I offset the landlords' awards totalling \$264.00 against the tenants' security deposit of \$900.00 and I order the landlords to return the balance of \$636.00 to the tenants without further delay. With this decision, I provide the tenants a Monetary Order in the amount of \$636.00 to ensure a refund is made.

Conclusion

The landlords were partially successful and established an entitlement to compensation from the tenants in the sum of \$264.00.

I have offset the landlords' awards against the tenants' security deposit and ordered the landlords to return the balance of the security deposit in the net amount of \$636.00 to the tenants without delay. The tenants are provided a Monetary Order in the amount of \$636.00 to ensure payment is made.

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, 2021

Residential Tenancy Branch