



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 was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on July 13, 2021 (the “Application”). The Landlords applied as follows:

- For compensation for damage to the rental unit
- To keep the security deposit
- For reimbursement for the filing fee

The Landlord appeared at the hearing and appeared for Landlord M.G. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

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

The Landlord testified that the hearing package and their evidence were sent to the Tenants at their forwarding address by registered mail. The Landlords submitted registered mail receipts and Canada Post tracking information for the packages with Tracking Number 852 and Tracking Number 866 on them. The registered mail receipts show the packages were sent August 25, 2021. The Canada Post tracking information shows the packages were delivered and signed for by the Tenants on August 30, 2021.

Based on the undisputed testimony of the Landlord, registered mail receipts and Canada Post tracking information, I find the Tenants were served with the hearing package and Landlords’ evidence in accordance with sections 88(d) and 89(1)(d) of the

Residential Tenancy Act (the “Act”). Based on the Canada Post tracking information, I find the Tenants received the packages August 30, 2021, in sufficient time to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for damage to the rental unit?
2. Are the Landlords entitled to keep the security deposit?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought to keep the security deposit amount of \$1,750.00 based on the following:

Item	Description	Amount
1	Remediate painting of dining and living rooms	\$1,312.50
2	Move out clean	\$560.00
3	Dumping garbage and yard waste	\$57.75

A written tenancy agreement was submitted. The tenancy started January 04, 2021 and was a month-to-month tenancy. Rent was \$3,500.00 per month due on the first day of each month. The Tenants paid a \$1,750.00 security deposit.

The Landlord testified that the Tenants moved out of the rental unit July 01, 2021.

The Landlord testified that an agent for Tenant D.K. attended the move-out inspection on July 01, 2021 and provided the Tenants’ forwarding address on the Condition Inspection Report (the “CIR”).

The Landlord acknowledged they did not have an outstanding monetary order against the Tenants at the end of the tenancy and the Tenants did not agree to the Landlords keeping the security deposit.

The Landlord testified as follows. The parties did a move-in inspection December 23, 2020. The CIR was completed and signed by both parties. The CIR was provided to the Tenants in person December 23, 2020.

The Landlord testified as follows. The Landlord, Tenant T.O. and the agent for Tenant D.K. did a move-out inspection July 01, 2021. The CIR was not completed with Tenant T.O. and the agent for Tenant D.K. due to the circumstances of the inspection. The Landlords completed the CIR later. The CIR was provided to the Tenants by email July 05, 2021 and by registered mail July 06, 2021.

#1 Remediate painting of dining and living rooms

The Landlord testified as follows. The Tenants painted the dining and living rooms during the tenancy without permission. The paint job was poorly done and needs to be re-done. A quote for the painting is in evidence.

#2 Move out clean

The Landlord testified as follows. The Tenants left numerous areas of the rental unit dirty at the end of the tenancy. The Landlords had to clean the rental unit which took four or five days. The Landlords included a quote for cleaning to show what hiring cleaners would have cost.

#3 Dumping garbage and yard waste

The Landlord testified as follows. The Tenants left garbage in the shed at the end of the tenancy which required dumping. The Landlords took the garbage to the dump themselves and are seeking compensation for the cost of doing so.

Documentary Evidence

The Landlords submitted the following relevant documentary evidence:

- Photos
- Text messages
- The CIR
- Emails
- Registered mail receipts

- Garbage and yard dumping receipts
- Cleaning quote
- Painting quote
- Correspondence

Analysis

Security deposit

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the undisputed testimony of the Landlord and documentary evidence, I find the Tenants did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlords extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlords have claimed for move-out cleaning as well as dumping garbage and yard waste, none of which is damage to the rental unit.

Based on the undisputed testimony of the Landlord and documentary evidence, I accept that the tenancy ended July 01, 2021.

Based on the undisputed testimony of the Landlord and documentary evidence, I accept that the Landlords received the Tenants’ forwarding address July 01, 2021.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from the later of the end of the tenancy or the date the Landlords received the Tenants’ forwarding address in writing to repay the security deposit or file a claim against it. Here, the Landlords had 15 days from July 01, 2021. The Application was filed July 13, 2021, within time. I find the Landlords complied with section 38(1) of the *Act*.

Compensation

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.

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...

Pursuant to rule 6.6 of the Rules, it is the Landlords as applicant who have 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.

I accept the undisputed testimony of the Landlord and based on it, as well as the documentary evidence, I find the following.

#1 Remediate painting of dining and living rooms

The Tenants painted the dining and living rooms during the tenancy without permission. The paint job was poorly done. The Tenants breached section 37 of the *Act* in this regard. The Landlords now must re-paint the dining and living rooms. The painting will cost \$1,312.50 which is a reasonable amount. The Landlords are entitled to compensation for this issue.

#2 Move out clean

The Tenants left numerous areas of the rental unit dirty at the end of the tenancy in breach of section 37 of the *Act*. The Landlords had to clean the rental unit which took four or five days. The Landlords are entitled to be compensated for their time. The Landlords did \$560.00 worth of cleaning. The Landlords are entitled to compensation for this issue.

#3 Dumping garbage and yard waste

The Tenants left garbage in the shed at the end of the tenancy in breach of section 37 of the *Act*. The Landlords had to take this garbage to the dump which cost \$57.75. The Landlords are entitled to compensation for this issue.

#4 Filing Fee

Given the Landlords have been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlords are entitled to keep the \$1,750.00 security deposit pursuant to section 72(2) of the *Act* for the following costs:

- Remediate painting of dining and living rooms (\$1,312.50)
- Move out clean (\$560.00)
- Dumping garbage and yard waste (\$57.75)

The Landlords are issued a Monetary Order for \$100.00 for the filing fee.

Conclusion

The Landlords can keep the security deposit and are issued a Monetary Order for \$100.00 for the filing fee. 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: February 23, 2022

Residential Tenancy Branch