



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNDCL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on October 19, 2021 (the “Application”). The Landlords applied as follows:

- For compensation for monetary loss or other money owed
- For compensation for damage to the rental unit
- To keep the security deposit
- For reimbursement for the filing fee

The Landlords filed an amendment May 03, 2022, changing the amount sought to \$13,098.12 (the “Amendment”).

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

The Landlords submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed served of the hearing package, Amendment and Landlords’ evidence.

The Landlords testified that the hearing package, Amendment and their evidence were served on the Tenant by email May 02, 2022. The Landlords had been granted an order for substituted service allowing them to serve the Tenant by email. The Landlords had submitted a copy of the emails sent to the Tenant.

Based on the undisputed testimony of the Landlords and documentary evidence of service, I am satisfied the Tenant was served with the hearing package, Amendment and Landlords' evidence as permitted in the substituted service decision dated December 09, 2021. Pursuant to the substituted service decision, the Tenant is deemed to have received the hearing package, Amendment and Landlords' evidence May 05, 2022. I am satisfied the Tenant received the documents in sufficient time to appear at the hearing and respond to the Application.

Given I was satisfied of service on the Tenant, I proceeded with the hearing in the absence of the Tenant. The Landlords were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. 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 monetary loss or other money owed?
2. Are the Landlords entitled to compensation for damage to the rental unit?
3. Are the Landlords entitled to keep the security deposit?
4. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	Electricity bills	\$287.21
2	Disposal of items left behind by Tenant	\$311.35
3	Interest paid on Visa for items purchased for repairs	\$64.63
4	Repairs	\$4,249.29
5	Fridge and stove	\$2,204.14
6	Disposal of items	\$31.50
7	Six months lost rent	\$5,850.00
8	Filing fee	\$100.00
	TOTAL	\$13,098.12

A written tenancy agreement was submitted. The tenancy started December 07, 2018, and was for a fixed term ending December 31, 2019. The Landlords testified that rent was \$975.00 per month at the end of the tenancy. Rent was due on or before the first day of each month. The Tenant paid a \$475.00 security deposit.

The Landlords testified as follows.

The Tenant moved out of the rental unit October 15, 2021.

The Tenant did not provide a forwarding address to the Landlords.

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

The parties did a move-in inspection but did not complete a Condition Inspection Report.

The parties did not do a move-out inspection and the Tenant was not offered two opportunities, one on the RTB form, to do a move-out inspection.

The Landlords testified as follows in relation to the compensation claimed.

In relation to electricity bills, the Landlords are seeking compensation for the electricity bills issued for electricity use after the tenancy was over. The electricity use was by the Landlords while doing repairs in the rental unit.

In relation to disposal of items left behind by the Tenant, the Landlords are seeking compensation for having to hire someone to attend the rental unit, collect the items left behind by the Tenant and dispose of them.

In relation to interest paid on the Landlords' Visa, the Landlords are seeking the interest they paid due to charging items purchased to repair the rental unit on their Visa. The Landlords said they had to charge items purchased on their Visa because they did not have the money to pay for the items otherwise.

In relation to repairs, the Landlords are seeking compensation for numerous repairs they had to do to the rental unit including the following:

- Fixing drywall damage due to holes in the walls and ceiling
- Repainting
- Fixing two broken doors and door frames
- Replacing a broken heater
- Replacing flooring, the bathtub and the vanity in the bathroom
- Fixing water damage in the bathroom
- Cleaning
- Fixing damage to the bedroom window

In relation to the fridge, the Landlords are seeking compensation for purchasing a new fridge because there was a lot of mold in the fridge at the end of the tenancy.

In relation to the stove, the Landlords are seeking compensation for purchasing a new stove because the Tenant ruined the stove glass and smashed the bottom drawer. The Landlords could not replace the broken parts of the stove and had to purchase a new one.

In relation to further disposal of items, the Landlords are seeking compensation for the cost of disposing garbage and waste from the repairs done to the rental unit.

In relation to lost rent, the Landlords are seeking six months of lost rent due to how the Tenant left the rental unit. The unit could not be re-rented in the condition it was left. The Tenant was supposed to repair the unit before they moved out but did not do so. There were very few people available in the location of the rental unit to do repairs and so Landlord B.G. had to do them. The repairs took a considerable amount of time to complete and Landlord B.G. could only work on them around their full-time work schedule. If the Landlords had hired someone to do the repairs, it would have cost \$20,000.00.

The Landlords sought an order that they be permitted to serve the Tenant any orders issued by email.

The Landlords submitted the following documentary evidence:

- Text messages between the parties
- Photos of the rental unit from before and after the tenancy
- Electricity bills
- Invoices
- Visa statement
- Receipts

Analysis

Security deposit

Sections 38(1) and 39 of the *Act* state:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

- (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

I accept the undisputed testimony of the Landlords that the Tenant did not provide a forwarding address to them. Given this, section 38(1) of the *Act* has not been triggered and the Landlords were entitled to claim against the security deposit when they filed the Application.

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 applicants 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 are as claimed.

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

The Landlords are not entitled to compensation for electricity bills. The Tenant is not responsible for paying for electricity used in the rental unit after the tenancy was over when the Tenant no longer lived in the unit and no longer used electricity in the unit. Further, I find it would be unfair to require the Tenant to pay for electricity used by the Landlords after the tenancy was over when the Tenant had no control over the amount of electricity used. This claim is dismissed without leave to re-apply.

I accept the Tenant left items in the rental unit at the end of the tenancy in breach of section 37 of the *Act*. I accept the Landlords had to have the items removed and that this cost \$311.35. I find the amount sought reasonable and note that the Tenant did not attend the hearing to dispute the amount. The Landlords are awarded \$311.35.

The Landlords are not entitled to compensation for interest paid on their Visa. Whether the Landlords had to charge their Visa for items purchased to repair the rental unit, and whether interest was then owed, is completely out of the control of the Tenant and the Tenant is not responsible to pay this cost. This claim is dismissed without leave to re-apply.

I accept the Tenant damaged the rental unit in breach of section 37 of the *Act*. I accept the Landlords had to repair the damage and that this cost \$4,249.29. The Tenant did not attend the hearing to dispute the amount sought. The Landlords are awarded \$4,249.29.

I accept the Tenant damaged the fridge and stove beyond repair in breach of section 37 of the *Act*. I accept the Landlords had to replace the fridge and stove and that this cost \$2,204.14. The Tenant did not attend the hearing to dispute the amount sought. The Landlords are awarded \$2,204.14.

I accept the Landlords had to dispose of garbage and waste due to the number of repairs needed in the rental unit due to the Tenant's breach of section 37 of the *Act*. I accept it cost \$31.50 to dispose of the garbage and waste and I find this amount reasonable. The Landlords are awarded \$31.50.

I award the Landlords half a month's lost rent being \$487.50 for October 15 to 31, 2021. I accept that the Tenant's breach of section 37 of the *Act* in relation to damage to the rental unit resulted in the Landlords not being able to re-rent the unit for a period. However, I find the request for six months lost rent unreasonable. I accept that it took some time to repair the damage to the rental unit; however, I do not accept that it was reasonable to take more than half a month in the absence of further compelling evidence to prove this. I award the Landlords \$487.50.

Given the Landlords have been partially 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 the following:

Item	Description	Amount
1	Electricity bills	-
2	Disposal of items left behind by Tenant	\$311.35
3	Interest paid on Visa for items purchased for repairs	-
4	Repairs	\$4,249.29
5	Fridge and stove	\$2,204.14
6	Disposal of items	\$31.50
7	Six months lost rent	\$487.50
8	Filing fee	\$100.00
	TOTAL	\$7,383.78

Pursuant to section 72(2) of the *Act*, the Landlords can keep the \$475.00 security deposit. The Landlords are issued a Monetary Order for the remaining \$6,908.78 pursuant to section 67 of the *Act*.

Given the order for substituted service in relation to the hearing package and evidence issued December 09, 2021, and pursuant to section 71(1) of the *Act*, I order that the

Monetary Order issued may be served on the Tenant by email at the email address set out in the decision issued December 09, 2021, and on the front page of this decision.

Conclusion

The Landlords can keep the security deposit. The Landlords are issued a Monetary Order for the remaining \$6,908.78. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The Order may be served on the Tenant by email at the email address set out in the decision issued December 09, 2021, and on the front page of this decision.

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: June 22, 2022

Residential Tenancy Branch