



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-S, MND-S

Introduction

This hearing convened to deal with the landlords' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlords applied on September 15, 2021 for compensation for a monetary loss or other money owed, compensation for alleged damage to the rental unit by the tenants, and authority to keep the tenants' security deposit to use against a monetary award.

The parties listed on the style of cause page of this Decision attended, the hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited.

The parties confirmed receipt of the other's evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation from the tenants and recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on April 1, 2021, and ended on August 31, 2021. The monthly rent was \$1,550 and the tenants paid a security deposit of \$775 and a pet damage deposit of \$775. The landlord submitted they retained the security deposit and returned the pet damage deposit to the tenants.

The landlords' monetary claim is comprised of \$546 for an electrician's charge for an emergency call-out, with access denied, \$64.01 for cleaning supplies, \$574.18 for drywall damage repair, and \$325.87 for baseboard heater replacement.

Electrician charges -

In their application, the landlords wrote:

The tenant refused entry by an electrician on 4 separate occasions attempting to repair an electrical issue and the electrician invoiced us for her lost time on emergency call outs.

The landlord testified that they received a request from the tenants regarding electrical issues in the rental unit. The landlord testified that the tenants were asked to leave the rental unit for 12 hours for their own health and safety, but refused. The landlords testified that they usually leave tradespersons to communicate with tenants to arrange a mutually agreeable time to enter the rental unit to do the work, for the reason that getting tradespersons now is more difficult.

The landlord testified that there was constant communication in order to resolve the repair matters.

The landlord submitted that the tenants should be responsible for the charge for the electrician call-outs when they refused access. Included in the filed evidence were copies of communication between the parties, an invoice and a written timeline of events.

The tenant testified that there was a conference call with tenant JH, after which they talked to the electrician, who told them they did not have to leave the rental unit. The tenant submitted that it was not easy to leave their home for 12 hours with their children and dog. The tenant denied allowing access as they showed the electrician around the rental unit. Included in the filed evidence of the tenants were unlabelled text message screen shots and photographs, a written response, and email communication between the parties.

The tenant submitted that there were constant issues with the electrical in the home, which triggered other problems. The tenant submitted that towards the end of their tenancy they were receiving a number of notices to enter the rental unit from the landlord and the electrician and still the problems were never corrected.

Cleaning supplies –

The tenant agreed to this claim.

Drywall damage, baseboard heater –

The landlords wrote in their application:

The tenant left 2 separate areas of drywall damage that has to be repaired, we agreed on instead of hiring a professional cleaner that I would purchase supplies for the new tenant to do their own cleaning as agreed by the new tenant and there was damage done to the baseboard heater in the living room and it had to be replaced.

The landlord testified that the baseboard heater was replaced shortly before the tenancy began and required replacement. The replacement required repairs to the drywall.

Filed in evidence were emails between the parties, photographs, and invoices.

The tenant testified they replaced the drywall underneath the window, but did not have the time to mud or tape the wall. The tenant submitted that the replacement of the baseboard heating caused greater damage to the drywall damage.

The tenant submitted they agreed to some of the drywall damage on the move-out condition inspection report (Report), but not the amount claimed by the landlord, as it seemed excessive.

The tenant testified that the baseboard heater was damaged when they moved in and never worked properly during the tenancy, as reported to the landlords.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Under the Act, tenants are required to leave the rental unit reasonably clean when they vacate. The tenants are responsible for paying cleaning costs where the property is left at the end of the tenancy that does not comply with the Act. Tenants are not responsible for cleaning of the rental unit to bring the premises to a higher standard.

Electrician charges -

I have reviewed the parties' documentary evidence. The tenants asserted that they only denied access to the electricians twice, once when her children were asleep and once when the electrician's apprentice was attending the rental unit to make repairs.

I have also reviewed the landlord's documentary evidence, which included communication on the day in question when the electrician attended the rental unit, or July 20, 2022.

In this case, I find it clear the tenant had repeated instances of contact with the electrician through text messages, where the tenant raised several different repair requests. I find the evidence shows that the electrician tried to accommodate the repair requests in relation to the tenants' schedule and repeatedly asked the tenant what day worked best for her to attend the rental unit. This was in spite of the fact the electrician was at one point in the hospital on an emergency situation. The evidence shows the electrician accommodated the tenant's request by scheduling their associate to come to the rental unit on July 20, 2021.

While I find it is the landlord's usual obligation to arrange for tradespersons to make repairs to the rental unit and give a 24 hour notice, in this case, I find it reasonable that the landlord asked the tenant and the electrician to arrange a time convenient to the tenant to make the requested repairs, in light of the difficulty of scheduling tradespersons currently.

After reading the text message communication between the tenant JH and the electrician, I find the tenant gave their implied consent that the electrician attend the rental unit on July 20, 2021, to make the repairs. As a result, I find the tenants waived their right under the Act to be given a 24 hour notice of entry.

I find the landlords submitted sufficient evidence that the electrician was prevented from making the repairs on July 20, 2021, and they were charged for a call-out.

I find what is less clear is the evidence supporting the claim of \$546. The landlords' application mentions 4 call-outs, with denial of entry, whereas the invoice mentions only one call-out on July 20, 2021. I find the evidence supports that there were consistent, ongoing issues with the electrical system and I find it difficult to determine, with the conflicting oral and documentary evidence, whether the tenants denied access four times. The tenants confirmed that they denied access two times.

As I have found an inconsistency between the landlords' application of their allegation that the tenants denied access four times and the invoice referring only to the July 20, 2021 visit. I find the landlords submitted sufficient evidence of only one missed call-out, which I have previously addressed, and the tenant confirmed denying access twice. After a review of the invoice and the landlords' assertion of four missed call-outs, I find a reasonable interpretation of the invoice is that each missed call-out was charged at \$130 plus GST of \$6.50.

I therefore find the landlords have established a monetary claim of **\$273** (\$260 for two missed call-outs @ \$130 each, plus \$13 GST).

Cleaning supplies –

The tenant agreed to these charges and therefore find the landlords have established a monetary claim of **\$64.01**.

Drywall damage, baseboard heater –

As to the landlords' claim from the electrician for replacement of a baseboard heater and removal of damaged baseboard, I find the landlords submitted insufficient evidence that the tenants caused damage to the baseboard heater which required it to be replaced. I further find insufficient evidence of the age of the baseboard heater, and the tenants' evidence, the text message communication between tenant JH and the electrician raised sufficient doubt as to the state of the electrical system.

For these reasons, I **dismiss** the landlords' claim for **\$325.87** for a baseboard heater removal and replacement.

As to the landlords' claim for repairs for drywall damage, I find the landlords submitted sufficient evidence to support this claim. I have reviewed the move-out condition

inspection report and find these areas of concern were listed on the report and as well, the tenants agreed that their sons caused damage to the drywall.

I have reviewed the photographs of the damage, and find that the damage is beyond reasonable wear and tear. I have reviewed the invoice and I find the claim to be reasonable under the circumstances.

As a result, I find the landlords have established a monetary claim of **\$574.18**.

Using the offsetting provisions contained in section 72 (2)(b) of the Act, the landlords may keep the tenants' security deposit of \$775 in partial satisfaction their monetary award.

Conclusion

I issue a monetary order of **\$136.19** in favour of the landlords as follows:

ITEM	AMOUNT
1. Electrician charges, call-outs	\$273.00
2. Cleaning supplies	\$64.01
3. Drywall damage repair	\$574.18
4. Less security deposit	(\$775)
TOTAL	\$136.19

The landlords are provided with a Monetary Order in the above terms and the tenants must be served with this order as soon as possible to be enforceable. Should the tenants 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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 1, 2022

Residential Tenancy Branch