Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

The Landlords seek the following relief under the *Residential Tenancy Act* (the "*Act*"):

- A monetary order pursuant to s. 67 relating to compensation for damages caused to the rental unit;
- A monetary order pursuant to s. 67 relating to compensation for monetary loss; and
- Return of their filing fee pursuant to s. 72.

The Landlords claim against the security deposit for their monetary claims.

M.G.S. and M.S. appeared as the Landlords. M.J. and D.C. appeared as the Tenants.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlords advised that the Notice of Dispute Resolution was served via registered mail in November 2021 and additional evidence was served via registered mail sent in May 2022. The Tenants acknowledge receipt of the Notice of Dispute Resolution and the Landlords' evidence. No objections were raised by the Tenants with respect to service. I find that the Landlords served the Notice of Dispute Resolution and their evidence in accordance with s. 89 of the *Act*.

The Tenants advise that they served responding evidence on the Landlords by way of registered mail sent on May 16, 2022. The Landlords acknowledge receipt of the Tenants' evidence. No objections were raised by the Landlords with respect to service. I

find that the Tenants served their responding evidence in accordance with s. 89 of the *Act*.

Preliminary Issue – Nature of the Claims

The nature of the parties' landlord-tenant relationship appears to have become strained at the end of the tenancy. Despite a relatively simple claim, the Landlords have submitted 162 pages of documentary evidence and the Tenants submitted 245 pages of evidence in response.

As often occurs in these types of cases, the monetary claim as stated in the Notice of Dispute Resolution differed from what was advanced at the hearing. The Notice of Dispute Resolution set out claims in the amount of $300.00 for damages and $2,562.00 for other compensation. At the hearing, the Landlords' claim increased to a total of $4,377.07. The Landlords did not file an amendment to their claim and simply submitted additional monetary order worksheets revising the amount claimed.

I am told that the Tenants are advancing a counterclaim and the Landlords expense increased in relation to responding to the counterclaim. The Tenants evidence includes a typed statement of counterclaim in which they seek $169,342.64. The Tenants tell me that they have filed a separate matter with the Residential Tenancy Branch in which they advance their claim. As I made clear to the Tenants at the hearing, the only application before me was the Landlords' and the Tenants' claim would be dealt with in its own time. I make no findings with respect to the specific amount claimed by the Tenants. However, I note that their claim greatly exceeds the $35,000.00 monetary claim limit for the Residential Tenancy Branch, which is imposed by the *Small Claims Act* and the associated *Small Claims Court Monetary Limit Regulation*.

Rule 2.2 of the Rules of Procedure sets clear expectations that a claim is limited to what is stated in the application. Here, the Landlords argued for amounts in excess of the amounts claimed in their application without filing an amendment under Rule 4.1 of the Rules of Procedure. The Landlords did not ask that I amend their application at the hearing pursuant to Rule 4.2. I would note that had I been asked to do so, I likely not have acceded to the request given the increased amounts were not reasonably anticipated as contemplated by Rule 4.2.

As there was no amendment to the Landlords' application, I limit their claim to what is stated in their application in accordance with Rule 2.2 of the Rules of Procedure.

Issue(s) to be Decided

1) Are the Landlords entitled to compensation for damages to the rental unit?
2) Are the Landlords entitled to compensation for other monetary losses?
3) Are the Landlords entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I put the parties on notice of Rule 7.4 of the Rules of Procedure, which requires a party to present the evidence they submitted. I have reviewed all written and oral evidence presented to me at the hearing. However, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details of the tenancy:

- The Tenants took occupancy of the rental unit on October 30, 2019.
- The Landlords obtained vacant possession of the rental unit on October 29, 2021.
- Rent of $2,400.00 was due on the first day of each month.
- The Tenants paid a security deposit of $1,200.00 and a pet damage deposit of $600.00.

The Landlords confirmed they retain the full security deposit and pet damage deposit.

A copy of the most recent tenancy agreement was put into evidence by the parties. The parties confirmed that the tenancy was for a fixed term that ended on January 31, 2022, which is supported by the written tenancy agreement.

The Landlords advise that they sold the subject residential property, which was a single detached home. The Landlords say the gave possession of the property to the buyer on November 24, 2021. It was unclear when the Landlords advised the Tenants that the property would be sold, however, it appears that this took place sometime in the summer of 2021.

The Tenants advised of a certain level of insecurity brought about by the impending sale of the property. I am told by the Tenants that they had previously moved during the holiday season and wished to avoid that from occurring once more. With the sale of the property, they were uncertain of the purchaser’s intentions and whether they would be

permitted to stay in the rental unit. It appears that the parties discussed coming to a mutual agreement to end the tenancy early, though no agreement was ever reached, this point being confirmed by the parties. I specifically asked the Tenants whether they received a two-month notice to end tenancy after the property had been sold. They confirmed that they did not.

I was directed to an email dated September 30, 2021 sent by the Tenants to the Landlords. The email was the Tenants notice that they would be vacating the rental unit on October 31, 2021. The email is reproduced below, though I have removed personal identifying information:

> Regarding the sale of the above home. It was our understanding that we had a rental agreement for a 1 year lease from February 1, 2021 to February 1, 2022 with the perception of long term.
>
> As the sale of the home is a material change to our agreement, we are giving out one month notice effective today, with a move out date of October 31, 2021.
>
> Please contact us about viewing the home so we can receive our damage deposit returned by November 1, 2021, a total of $1,800.00 was paid to you as a pet deposit and damage deposit. The recent viewings have noted the cleanliness and show quality that we live in. Also displaying that we have maintained the home in the condition that wwe entered it in.
>
> Please confirm that you have received this notice and also what time you would like to view for a return of the damage deposit.
>
> Thank you, we enjoyed our stay!

At the hearing, the Tenants argued that the tenancy was frustrated by the sale of the property, which permitted them to end the tenancy before the end of the fixed term. The Tenants did not direct me to any term in the tenancy agreement that was specifically breached. The Tenants did not explain how the tenancy was frustrated other than to make a general statement that this was the case due to the sale of the home.

The Landlords seek compensation for the lost rent for the month of November 2021. They seek the total amount of $2,400.00.

I was advised by the Landlords that the Tenants failed to pay a water utility bill in the amount of $162.39. The Landlords directed me to the utility statements and I take note of an email dated October 27, 2021 from the Tenant D.C. in which it is acknowledged that this amount is owed for the water service from July to September. The Landlords advise that the Tenants attempted to pay this amount in late 2021 but that they refused to accept the payment pending the outcome of this application. The Tenants did not deny or argue that the Landlords were incorrect with respect to the amount claimed for water utilities.

The Landlords also advance a claim for $300.00 related to painting the rental unit. I was advised that there was series of patches to the walls that were left behind by the Tenants. The Landlord estimate this cost based on 8-hours of work they personally put into painting the rental unit after the Tenant's vacated. The Tenants say they did patch the walls after leaving and that the holes were from drywall anchors for pictures and photographs hung on the walls.

A copy of the move-in and move-out condition inspection report was put into evidence. The Tenants directed me to the last page of the move-out report, which indicated that there was "no damage, condition same as move-in". The items were all listed as being in good condition.

The Landlords argue that the relationship was tense at the end of the tenancy and that move-out inspection was signed by the Landlord M.S. under threat by the Tenant D.C.. I am told that the Tenant refused to sign the move-out report or surrender the keys if it described the items as being in a different condition than good or the same as move-in. The Tenant D.C. denies this.

The Landlords say that the Tenants provided their forwarding address by way of email on November 4, 2021. However, the Tenants directed me to the move-out condition report completed on October 29, 2021, which indicates the Tenants forwarding address.

Analysis

The Landlords claim for damages and compensation at the end of the tenancy. These claims are advanced against the security deposit.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a

tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38. Further, a landlord's right to claim against the security deposit for damages to the rental unit can be extinguished if they fail to comply with their obligations to complete move-in and move-out condition inspection reports under ss. 24 and 36.

Policy Guideline 17 provides guidance with respect to the retention or return of deposits and states the following:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
    - a landlord's application to retain all or part of the security deposit; or
    - a tenant's application for the return of the deposit.

    Unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

In other words, despite this being the Landlords' application, I must consider whether any or all of the security deposit or pet damage deposit is returnable to the Tenants. This includes the potential application of s. 38(6) of the *Act*, which requires the doubling of the deposit if a landlord fails to comply with the requirements under s. 38(1).

I have reviewed the condition inspection report provided by the Tenants and I find that the parties have complied with their respective obligations under ss. 24 and 36. The move-in and move-out condition inspection reports were properly completed and the parties' right to the security deposit and pet damage deposit were not extinguished.

The condition inspection report also clearly lists the Tenants' forwarding address and that the move-out inspection was conducted on October 29, 2021. I find that the Tenants provided their forwarding address on October 29, 2021 as set out in the move-out inspection report.

This means that the Landlords had 15-days from October 29, 2021 to file their claim against the security deposit and pet damage deposit. Upon review of the information on the file and having regard to Rule 2.6 of the Rules of Procedure, I find that the Landlords filed their claim on November 12, 2021. Therefore, I find that the Landlords filed their application within the 15-day window imposed by s. 38(1). The doubling provision of s. 38(6) does not apply.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Dealing first with the unpaid water bill, I have reviewed the tenancy agreement and it is clear that water was not included in rent. The Landlords indicate that the Tenants failed to pay water in the amount of $162.39, which is supported by the Tenant D.C.'s email to the Landlords on October 27, 2021. The Tenants did not dispute this amount nor did they argue that they were not obliged to pay the water bill. I find that that the Tenants breached their obligation under the tenancy agreement to pay the water bill and further find that the Landlords have suffered a loss of $162.39. The Landlords have demonstrated this portion of their claim.

Secondly, the Landlords claim $2,400.00 for November 2021 rent due to the Tenants vacating the rental unit before the end of the fixed term lease. The tenancy agreement sets out that the term was to end on January 31, 2022, a point that is confirmed by the Tenants email of September 30, 2021, which is reproduced above. There is no dispute between the parties that this was a fixed-term lease. There is no dispute between the parties that there was no agreement to end the tenancy early.

Section 45(2) of the *Act* sets out how a tenant may give notice to a landlord to end a tenancy for a fixed-term lease. It states the following:

> 45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,
(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(Emphasis Added)

Section 45(2) is clear that a tenant cannot unilaterally end a fixed-term tenancy on a day that is earlier than the end date specified in the tenancy agreement, which in this case is January 31, 2022. On its face, the Tenants appear to have breached their obligations under the fixed-term tenancy agreement and s. 45 of the *Act*.

The Tenants argued that the Landlords breached the tenancy agreement and that the tenancy agreement was frustrated by the sale of the property.

Section 45(3) of the *Act* provides the following:

> 45 (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I have reviewed the tenancy agreement, which is in the standard form provided by the Residential Tenancy Branch. It includes no term prohibiting the Landlords' from selling the property. The Tenants did not direct me to a separate addendum nor did they argue that there was a collateral oral term of the contract. I find that the Landlords did not breach a material term of the tenancy agreement by selling the property.

The Tenants argue that the tenancy was frustrated by the sale of the property. It is entirely unclear to me how this is the case. Policy Guideline 34 provides guidance with respect to the doctrine of frustration:

> A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the

> contract are discharged or relieved from fulfilling their obligations under the contract.
>
> The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.
>
> A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.
>
> The *Frustrated Contract Act* deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15th day of the month, under the *Frustrated Contracts Act*, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.
>
> (Emphasis Added)

The mere sale of the property does not render the tenancy frustrated. Residential tenancies run with the land, a point that is made clear by s. 93 of the *Act*. In other words, tenancies, and the obligations of a landlord under the *Act*, transfer with ownership. The Tenants were under no obligation to vacate the rental unit when they did nor was there any notice to end tenancy issued. The Tenants could very well still be residing within the rental unit at this very moment with the buyer as their new landlord. Their rights under the *Act* with respect to the tenancy were not impacted by the sale of the property in any way.

I find that the Tenants breached the fixed-term lease and the notice requirements of s. 45(2) of the *Act*. I am satisfied that the Tenants breach resulted in the Landlords loss of

rent payable under the tenancy agreement. The Landlords could not have mitigated their damages under the circumstances by re-renting the rental unit.

The Landlords claim the full amount of $2,400.00 for rent for November 2021. I do not think this is appropriate given that ownership was transferred to the buyer on November 21, 2021. Accordingly, I prorate rent payable to the Landlords taking into account that ownership was transferred on November 21, 2022, thus they owned the property for 20 days in November. I find that the Landlords are entitled to $1,600.00 for the Tenants breach of the fixed-term tenancy agreement ($2,400.00 ÷ 30 days for November x 20 days).

Finally, the Landlords claim $300.00 for paining the rental unit. The Tenants acknowledge that they patched the walls to fill nail holes for hanging photographs. The Landlords dispute this and indicate there were screwholes.

Section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property. Policy Guideline 1 defines reasonable wear and tear as the “natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.”

Policy Guideline 1 states the following with respect to nail holes:

> Nail Holes:
>
> 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
> 2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
> 3. The tenant is responsible for all deliberate or negligent damage to the walls.

The Landlords did not direct me to any rules they set for hanging items on the wall nor did they provide evidence with respect to the amount of nail holes that were left. Policy Guideline 1 is clear that some nail holes are to be expected through the course of a tenancy. Tenant's will hang pictures within the rental unit. No evidence was provided demonstrating that the amount of holes or their nature were excessive or that screwholes were left behind with extensive damage. The Tenants' did patch the walls, for which they were under no obligation to do. The extent to which this may have necessitated the painting of the wall is not relevant as nail holes fall within the reasonable wear and tear of a rental unit unless evidence is provided that it is excessive. Holes for pictures do not, on their own, constitute damage. Accordingly, I find that the Landlords have failed to demonstrate that the Tenants' breached their obligation to return the rental unit in a clean and undamaged state as required by s. 37(2) of the *Act*.

I would further note that the Landlord's provide a vague estimate of $300.00 for the damage to the walls based on 8 hours of their time. I would have also found that the Landlords' had failed to quantify this portion of their monetary claim in any event.

Taking the above into account, the Landlords have demonstrated a total monetary claim of $1,762.39 ($1,600.00 + $162.39) and I order that the Tenants pay this amount pursuant to s. 67 of the *Act*.

As the Landlords were largely successful in their claim, I find that they are entitled to the return of their filing fee. I order pursuant to s. 72(1) of the *Act* that the Tenants pay the Landlords' $100.00 filing fee.

I direct pursuant to s. 72(2) of the *Act* that the Landlords retain the security deposit and pet damage deposit in partial satisfaction of the amounts ordered under s. 67 and 72(1).

Conclusion

I make a total monetary order in favour of the Landlords taking the following into account:

Item	**Amount**
Partial rent for November 2021	$1,600.00
Unpaid water bill	$162.39
Landlord's filing fee	$100.00

Less security deposit and pet damage deposit to be retained by the Landlords pursuant to s. 72(2)	-$1,800.00
Total	$62.39

Pursuant to s. 67 of the *Act*, I order that the Tenants pay **$62.39** to the Landlords.

It is the Landlords obligation to serve the monetary order on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlords with 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*.

Dated: June 07, 2022

Residential Tenancy Branch