



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord October 22, 2021 (the “Application”). The Landlord applied as follows:

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

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

The Landlord and Tenant D.J. submitted evidence prior to the hearing. I addressed service of the hearing package and Landlord’s evidence.

The Agents testified that the hearing package and Landlord’s evidence were sent to the Tenants by registered mail October 28, 2021.

In relation to Tenant D.J., the Agents provided Tracking Number ending 125. I looked up Tracking Number ending 125 on the Canada Post website which shows the package was delivered November 05, 2021. The Agents testified that the package was sent to Tenant D.J.’s home address provided on the application to be a guarantor in relation to the tenancy agreement.

In relation to Tenant N.J., the Agents provided Tracking Number ending 955. I looked up Tracking Number ending 955 on the Canada Post website which shows the package was delivered October 29, 2021. The Agents testified that the package was sent to a forwarding address provided by Tenant N.J.

In relation to Tenant J.J., the Agents provided Tracking Number ending 941. I looked up Tracking Number ending 941 on the Canada Post website which shows the package was delivered November 01, 2021. The Agents testified that the package was sent to Tenant J.J.'s home address provided on the application to be a guarantor in relation to the tenancy agreement.

In relation to Tenant H.J., the Agents provided Tracking Number ending 111. I looked up Tracking Number ending 111 on the Canada Post website which shows the package was delivered October 29, 2021.

Based on the undisputed testimony of the Agents and Canada Post tracking information, I find the Tenants were served with the hearing package and Landlord's evidence in accordance with sections 88(c), 88(d), 89(1)(c) 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 October 29, 2021, November 01, 2021 and November 05, 2021, well before the hearing. Further, I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Rule 7.4 of the Rules states:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

I have not considered the materials submitted by the Tenants because they did not attend the hearing to present their materials.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agents were given an opportunity to present relevant evidence and make

relevant submissions. I have considered all admissible relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to compensation for damage to the rental unit?
3. Is the Landlord entitled to keep the security and pet damage deposits?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Painting	\$ 4,357.50
Bulbs	\$ 37.62
Junk Removal	\$ 532.00
Lock Change	\$ 179.68
Cleaning	\$ 630.00
Repair to Damages	\$ 580.13
Pump Pool	\$ 210.00
Remove Pool	\$ 94.50
Quote for Stucco, Gutters	\$ 299.25
Yard Remediation	\$ 228.51
Blind Cleaning	\$ 218.23
(June/ July + August/September)	\$ 526.77

The Landlord submitted a written tenancy agreement. The agreement names Tenants D.J. and H.J. as tenants and Tenants J.J. and N.J. as guarantors. The tenancy started October 01, 2020. The Tenants paid a \$1,875.00 security deposit and \$1,875.00 pet damage deposit. All four Tenants signed the tenancy agreement.

The Agents testified as follows.

The tenancy ended September 30, 2021.

The Landlord claimed against the pet damage deposit in part for the painting cost claimed.

Tenant D.J. provided a forwarding address to the Landlord in writing October 12, 2021.

The Landlord did not have an outstanding Monetary Order against the Tenants at the end of the tenancy and the Tenants did not agree to the Landlord keeping the deposits.

The parties did a move-in inspection October 01, 2020. The parties completed a handwritten Condition Inspection Report ("CIR"), which they signed. C.G. later transferred the information onto a CIR on the RTB form. A copy of the final CIR was sent to the Tenants by email October 06, 2020.

C.G. did a move-out inspection on their own. C.G. emailed the Tenants about scheduling a move-out inspection. C.G. attended the rental unit while the Tenants were still moving out. C.G. told the Tenants they would come back later that day. C.G. did attend the rental unit later that day. The Tenants were not at the rental unit, so C.G. conducted the inspection and completed the CIR submitted. C.G. posted a Notice of Final Opportunity in relation to conducting a move-out inspection on the door of the rental unit prior to the Tenants removing all their belongings and returning the keys. The Tenants never attended to complete a move-out inspection. A copy of the final CIR was emailed to the Tenants October 01, 2021.

In relation to painting, the Landlord seeks compensation for damage to the walls of the rental unit. Further, the Landlord had to restore parts of the rental unit that had been changed into a bedroom by the Tenants. As well, the Landlord had to repair water damage to the rental unit. In addition, the Landlord had to address issues with doors and door frames in the rental unit. Finally, the Landlord had to re-paint rooms the original color because the Tenants painted them red and blue. The Agents testified that the rental unit looked "trashed" at the end of the tenancy and the painting required was more than just touch-up painting. The Agents relied on an invoice in evidence to support their position.

In relation to bulbs, the Landlord seeks compensation for replacing bulbs that were burnt out throughout the rental unit at the end of the tenancy. The Agents relied on a receipt in evidence.

In relation to junk removal, the Landlord seeks compensation for the cost of removing items and belongings, including furniture, left in the rental unit and yard at the end of the tenancy.

In relation to lock change, the Landlord seeks compensation for changing the locks to the rental unit because the Tenants did not return the keys and the locks had to be changed for security reasons.

In relation to cleaning, the Landlord seeks compensation for having to have the rental unit cleaned because the Tenants did not clean it at the end of the tenancy. The Agents relied on photos in evidence.

In relation to repairing damage, the Landlord seeks compensation for having to repair damage to the rental unit caused by the Tenants. The Agents referred to a July 14th letter outlining the damage that required repair and testified that the repairs included putting doors back on, fixing transition strips, fixing cupboard doors and fixing cracked tiles.

In relation to the pool-related claims, the Landlord seeks compensation for having to have the Tenants' pool drained and removed from the yard. The Agents testified that the Tenants set up the pool in violation of the tenancy agreement and were given two chances to drain and remove it but did not do so. The Agents testified that the Landlord had to have someone attend and drain and remove the pool. The Agents relied on photos submitted.

In relation to the stucco and gutter, the Landlord seeks compensation for repairing damage caused to the stucco and gutter of the rental unit by the Tenants installing an awning which pulled the gutter off the edge of the roof and required them to drill into the stucco.

In relation to yard remediation, the Landlord seeks compensation for damage the Tenants caused to the lawn by setting up the pool in the yard. The Agents relied on photos in evidence. The Agents testified that the Tenants said they would repair the lawn but never did. The Agents testified that the Landlord had to put soil and seed

down to repair the lawn. The Agents relied on an email in evidence from October 01st from the Tenants showing they were aware of the damage to the lawn and were expecting to pay for this.

In relation to blind cleaning, the Landlord seeks compensation for having the blinds in the rental unit professionally cleaned because they were left dirty. The Agents relied on the tenancy agreement requiring the Tenants to professionally clean the blinds at the end of the tenancy.

The last item claimed for is utility charges for June, July, August and September. The Agents testified that the Tenants owe \$526.77 in utilities and relied on the ledger in evidence.

The Landlord submitted documentary evidence including quotes, emails, invoices, photos, the CIR, utility bills, receipts, violation notices, emails about unpaid utilities, Notices of Final Opportunity, notices to end tenancy, a list of repairs needed, Tenant Ledger and the tenancy agreement.

Analysis

I note at the outset that I find it acceptable that the Landlord has claimed against all four Tenants, two of which were named guarantors in the tenancy agreement. RTB Policy Guideline 27 at page five states:

3. CO-SIGNERS AND GUARANTORS

A co-signer is a person who signs a tenancy agreement along with the tenant to guarantee the tenant performs the tenancy agreement, e.g., pays rent. A guarantor is a person who signs a separate agreement to guarantee the tenant performs the tenancy agreement, e.g., pays rent.

The director has jurisdiction to resolve disputes between co-signers and landlords because they are parties to the tenancy agreement. The director has no jurisdiction to resolve disputes between landlords and guarantors however, because they are not parties to the tenancy agreement.

I find Tenants J.J. and N.J. are co-signers of the tenancy agreement because they are named in the tenancy agreement and signed the tenancy agreement with Tenants D.J.

and H.J. Further, there is no separate agreement before me between Tenants J.J. and N.J. and the Landlord.

Security and pet damage deposits

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits 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 security and pet damage deposits at the end of a tenancy.

Based on the undisputed testimony of the Agents, I find neither party extinguished their rights in relation to the security or pet damage deposits pursuant to section 24 of the *Act*.

Section 36 of the *Act* states:

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [2 opportunities for inspection],
and

(b) the tenant has not participated on either occasion.

Based on the undisputed testimony of the Agents and documentary evidence, I accept that the Landlord offered the Tenants two opportunities to do a move-out inspection, one on the RTB form, and that the Tenants did not participate on either occasion. Given this, the Tenants extinguished their right to return of the deposits and the Landlord is entitled to keep the deposits.

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, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The meaning of “reasonable wear and tear” is set out in RTB Policy Guideline 01 as follows:

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of

premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Pursuant to rule 6.6 of the Rules, it is the Landlord as Applicant who has 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 Agents and based on it, as well as the documentary evidence submitted, I make the following findings.

I accept that the Tenants caused damage to the walls of the rental unit as described by the Agents and find the Tenants breached section 37 of the *Act*. I accept the Landlord had to repair the damage and that this cost \$4,357.50. I find the amount sought reasonable and note that the Tenants did not appear at the hearing to dispute the amount. The Landlord is awarded the amount sought.

The Tenants were responsible for replacing burnt out bulbs in the rental unit prior to the end of the tenancy pursuant to RTB Policy Guideline 01 (see page five). I accept that the Tenants did not replace burnt out bulbs prior to the end of the tenancy and therefore the Landlord had to. I accept that the Landlord spent \$37.62 replacing bulbs and I find the Tenants responsible for this amount. I find the amount sought reasonable and award the Landlord the amount sought.

I accept that the Tenants left items and belongings in the rental unit and yard and find the Tenants breached section 37 of the *Act*. I accept the Landlord had to have the items and belongings removed and that this cost \$532.00. I find the amount sought reasonable and note that the Tenants did not appear at the hearing to dispute the amount. The Landlord is awarded the amount sought.

I accept that the Tenants failed to return the keys to the rental unit and breached section 37 of the *Act*. I accept that the Landlord had to have the locks changed and that this cost \$179.68. I find the amount sought reasonable and note that the Tenants did not appear at the hearing to dispute the amount. The Landlord is awarded the amount sought.

I accept that the Tenants did not leave the rental unit reasonably clean at the end of the tenancy and therefore breached section 37 of the *Act*. I accept that the Landlord had to have the rental unit cleaned and that this cost \$630.00. I find the amount sought

reasonable and note that the Tenants did not appear at the hearing to dispute the amount. The Landlord is awarded the amount sought.

I accept that the Tenants damaged the rental unit in breach of section 37 of the *Act*. I accept that the Landlord had to have the damage repaired and that this cost \$580.13. I find the amount sought reasonable and note that the Tenants did not appear at the hearing to dispute the amount. The Landlord is awarded the amount sought.

I accept that the Tenants set up a pool in breach of the agreement with the Landlord. I accept that the Landlord had to have someone drain and remove the pool because the Tenants did not do so despite being given two opportunities. I accept that draining and removing the pool cost the Landlord \$210.00 and \$94.50 respectively. I find the amount sought reasonable and note that the Tenants did not appear at the hearing to dispute the amount. The Landlord is awarded the amounts sought.

I accept that the Tenants installed an awning and caused damage to the stucco and gutter of the rental unit in breach of section 37 of the *Act*. I accept that the Landlord must have the damage repaired and that this will cost \$299.25. I find the amount sought reasonable and note that the Tenants did not appear at the hearing to dispute the amount. The Landlord is awarded the amount sought.

I accept that the Tenants left the lawn damaged at the end of the tenancy in breach of section 37 of the *Act*. I accept that the Landlord had to have the lawn repaired and that this cost \$228.51. I find the amount sought reasonable and note that the Tenants did not appear at the hearing to dispute the amount. The Landlord is awarded the amount sought.

I accept that the Tenants left the blinds dirty at the end of the tenancy in breach of section 37 of the *Act*. I accept that the Landlord had to have the blinds cleaned and that this cost \$218.23. I find the amount sought reasonable and note that the Tenants did not appear at the hearing to dispute the amount. The Landlord is awarded the amount sought.

I accept that the Tenants were responsible for paying for utilities during the tenancy pursuant to the agreement with the Landlord. I accept that the Tenants owe the Landlord \$526.77 for utilities and award the Landlord this amount.

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

The Landlord is entitled to the total amount sought being \$7,994.19. The Landlord can keep the security and pet damage deposits towards this amount. The Landlord is issued a Monetary Order for the remaining \$4,244.19 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$7,994.19. The Landlord can keep the security and pet damage deposits. The Landlord is issued a Monetary Order for the remaining \$4,244.19. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: July 14, 2022

Residential Tenancy Branch