



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 2:02 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent (the "agent") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the agent and I were the only ones who had called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that she was not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The agent confirmed the landlord's email addresses for service of this decision and order.

The agent testified that the tenants were each served with the landlord's application for dispute resolution via email on January 28, 2022. The January 28, 2022 serving email was entered into evidence as was RTB Form 51 in which the tenants provided the landlord with authorization to serve via email. I find that the tenants were served with the above documents in accordance with section 89((1)(f) of the *Act*.

The agent testified that the tenants were served with the landlord's evidence via email on August 9, 2022. The August 9, 2022 email was entered into evidence. I find that the tenants were served with the landlord's evidence in accordance with section 88(j) of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled retain the tenants' security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on June 1, 2021 and the tenants moved out at the end of November 2021. This was originally a fixed term tenancy set to end on May 31, 2022. Monthly rent in the amount of \$1,275.00 was payable on the first day of each month. A security deposit of \$637.50 and a pet

damage deposit of \$300.00 were paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that a move in condition inspection and condition inspection report were completed at the start and end of this tenancy, with the tenants. The move in and out condition inspection reports were not entered into evidence. The agent testified that she thought she uploaded the move in and out condition inspection reports.

The agent testified that the tenants were offered multiple opportunities to complete the move out condition inspection report but they refused. The agent testified that the offers to complete the move out condition inspection report were made verbally and via email.

The agent testified that the landlord received the tenant's forwarding address via email on January 2, 2022. The landlord filed for authorization to retain the tenants' deposit on January 16, 2022.

The agent testified that the landlord is seeking damages for flooring, cleaning, painting and loss of rental income.

Flooring

The agent testified that the flooring in the subject rental property was installed approximately 10 months before the tenants moved in and was in good condition at the start of this tenancy. The agent entered into evidence photographs from the start of the tenancy which show that the floors are in good condition.

The agent testified that at the end of the tenancy the floors were scratched and damaged by water and needed to be replaced. The agent entered into evidence photographs of the floor showing damage to the floors. The agent testified that the photographs were taken at the end of the tenancy.

The agent testified that the landlord replaced the flooring with stock he had previously purchased. The agent entered into evidence a merchandise and service summary dated 09.11.21 which states that 23.95 square feet of grey vinyl flooring costed \$895.60. The agent testified that the subject rental property is 950 square feet and that the landlord had to replace approximately 550 square feet of flooring.

Cleaning

The agent testified that the tenants did not clean the subject rental property when they moved out. The agent testified that she cleaned the subject rental property and charged the landlord \$200.00 for that cleaning. A receipt for same was entered into evidence.

Painting

The agent testified that the subject rental property was painted approximately 1.5 years before the tenants moved in. The agent testified that the paint and walls were in excellent condition at the start of this tenancy. The agent entered into evidence photographs of the subject rental property taken at the start of the tenancy which show that the walls were in good condition at the start of the tenancy.

The agent testified that the walls were heavily damaged at the end of this tenancy. The agent testified that there were animal scratches all over the walls and many holes in the walls. Photographs showing extensive wall damage at the end of the tenancy were entered into evidence.

The agent testified that she repaired and painted the walls and charged the landlord \$850.00 for that work. A receipt for same was entered into evidence.

Loss of rental income

The agent testified that the tenants gave notice to end tenancy three days before they moved out, breaching their fixed term tenancy agreement. The agent testified that the repair work/cleaning to the subject rental property was completed by the end of December 2021 and the landlord lost December 2021's rental income.

The agent testified that the landlord is seeking December 2021's rent from the tenants.

Analysis

Damages

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or 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; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Useful life of building elements

Residential Tenancy Guide #40 (PG #40) states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

....

If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer. Parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation from the manufacturer for the particular item claimed.

I find that when building elements are replaced, a useful life calculation is necessary to determine the loss suffered by the landlord.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Flooring

Based on the undisputed testimony of the agent and the photographs of the subject rental property taken at the start and end of the tenancy, I find that the tenants damaged the flooring at the subject rental property contrary to section 37(2)(a) of the *Act*. I accept the agent's testimony that the landlord had to replace 550 square feet (51.0967 square meters) of flooring.

I accept the agent's undisputed testimony that the landlord replaced the flooring from materials the landlord previously purchased at a price of \$895.60 for 23.95 square meters. I find that the flooring cost \$37.39457202505219 per square meter (\$895.60/23.95), rounded to \$37.39 per square meter. I find that cost of the flooring replaced is as follows:

$\$37.39$ (cost per square meter) * 51.0967 (square meters of flooring replaced) = $\$1,910.51$.

PG #40 states that tile flooring has a useful life of 10 years (120 months). Vinyl flooring does not appear in the table. I will use the useful life of tile flooring. I accept the agent's undisputed testimony that the flooring was 10 months old at the start of this tenancy. Therefore, at the time the tenants moved out, there was approximately 104 months of useful life that should have been left for the flooring of this unit. I find that since the unit required new flooring after only 16 months, the tenants are required to pay according to the following calculations:

$\$1,910.51$ (cost of flooring) / 120 months (useful life of flooring) = $\$15.92$
(monthly cost)

$\$15.92$ (monthly cost) * 104 months (expected useful life of flooring after tenants moved out) = **$\$1,655.68$**

I find that the landlord has proved that a loss of suffered as a result of the tenants' breach of section 37(2) of the *Act* and has proved the value of that loss as set out above. I find that no mitigation issues were presented in the hearing.

Cleaning

Based on the undisputed testimony of the agent I find that the landlord has proved, on a balance of probabilities, that the tenants did not clean the subject rental property at the end of the tenancy, contrary to section 37(2) of the *Act*.

I find that the landlord has proved that a loss in the amount of \$200.00 was suffered as a result of the tenants' breach of section 37(2) of the *Act*. I find that no mitigation issues were presented in the hearing.

I award the landlord the \$200.00 cleaning cost.

Painting

Based on the undisputed testimony of the agent and the photographs of the subject rental property taken at the start and end of the tenancy, I find that the tenants damaged

the walls and paint at the subject rental property contrary to section 37(2)(a) of the *Act*. I accept the agent's testimony that the landlord paid her \$850.00 to repair and paint the walls. I find that the landlord has proved that the tenant's breach of section 37(2) of the *Act* caused the landlord to suffer a loss in the amount of \$850.00.

PG #40 states that paint has a useful life of 4 years (48 months). I accept the agent's undisputed testimony that the paint was 1.5 years (18 months) old at the start of this tenancy. Therefore, at the time the tenants moved out, there was approximately 24 months of useful life that should have been left for the paint of this unit. I find that since the unit required re-painting after only 24 months, the tenants are required to pay according to the following calculations:

$\$850.00 \text{ (cost of painting)} / 48 \text{ months (useful life of paint)} = \$17.71 \text{ (monthly cost)}$

$\$17.71 \text{ (monthly cost)} * 24 \text{ months (expected useful life of paint after tenants moved out)} = \textbf{\$425.04}$

I find that no mitigation issues were presented in the hearing.

Loss of rental income

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Residential Tenancy Branch Policy Guideline #16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Residential Tenancy Branch Policy Guideline #3 states:

When a tenant vacates a rental unit or manufactured home site, they must leave it reasonably clean and undamaged except for reasonable wear and tear (section 37 of the RTA and section 30 of the MHPTA). If a tenant does not comply with this requirement and the premises are un-rentable because of this, then in addition to compensation for the damage to the property or for cleaning, the

landlord can also seek compensation for loss of rent. The landlord is required to mitigate this loss by completing the cleaning or repairs in a timely manner.

I accept the agent's testimony that the repairs to the subject rental property were completed at the end of December 2021. I find that this is a reasonable period of time to complete the repairs and that the landlord mitigated their damages by completing the repairs in one month. I find that the tenant's breach of section 37 of the *Act* resulted in a loss of rental income for the month of December 2021 because the subject rental property was not left in a rentable state. I also note that three days notice to end a fixed term tenancy is a breach of section 45 of the *Act*.

I find that the landlord has proved that the tenants' breach of sections 37 and 45 of the *Act* resulted in a loss of income in the amount of \$1,275.00. I award the landlord \$1,275.00.

Security Deposit

I accept the agent's undisputed testimony that a move in condition inspection and report were completed at the start of this tenancy and that the landlord provided the tenant with at least two opportunities to complete the move out condition inspection and report at the end of the tenancy. I accept the agent's testimony that the tenants refused to attend for the move out condition inspection and report.

Section 38(1) of the *Act* states that 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.

I accept the agent's undisputed testimony that the landlord received the tenant's forwarding address on January 2, 2022. The landlord filed for authorization to retain the tenants' security and pet damage deposits on January 16, 2022, 14 days after receipt of

the tenants' forwarding address. Pursuant to my above findings, I find that the landlord made an application for dispute resolution claiming against the security deposit and pet damage deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' security deposit in the amount of \$637.50 and the tenants' pet damage deposit in the amount of \$300.00.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Flooring	\$1,655.68
Cleaning	\$200.00
Painting	\$425.04
Loss of rental income	\$1,275.00
Filing Fee	\$100.00
Less security deposit	-\$637.50
Less pet damage deposit	-\$300.00
TOTAL	\$2,718.22

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. 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*.

Dated: September 07, 2022

Residential Tenancy Branch