



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the Tenants and an application by the Landlords pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlords applied on February 9, 2022 for:

1. An Order for damages to the unit - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants applied on February 20, 2022 for:

1. An Order for the return of double the security deposit - Section 46;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties each confirm receipt of each other's evidence. The Parties each confirm that they are not using a recording device for the hearing.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed or undisputed facts: The tenancy started on October 15, 2016 and ended January 31, 2022. Rent of \$2,500.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,250.00 as a security deposit and \$500.00 as a pet deposit. The Parties mutually conducted both a move-in and move-out inspection with completed reports. The Landlord was represented by

their contractor at the move-out inspection. The Tenant provided their forwarding address on the move-out inspection dated January 31, 2022. The tenancy ended as the Landlord gave the Tenants a two month notice to end tenancy for landlord's use dated October 4, 2021 (the "Notice"). The Notice sets out an effective date of January 31, 2022 and that the unit will be occupied by the landlord or the landlord's spouse. The Landlord did not pay the Tenants the equivalent of one month's rent for having given the Notice. The Landlords listed the unit for sale on February 21, 2022 and it was sold on April 12, 2022. The Landlord has not returned the security and pet deposits.

The Tenant claims the equivalent of one month's rent for having received the Notice. The Tenants submit that the Landlord returned \$587.50 on Feb 15, 2022 and \$250.50 on Feb 16, 2022. The Tenants claim the equivalent of 12 month's rent for the Landlord not occupying the unit, less the amounts already received for a total claim of \$1,662.00. The Tenant claims the return of double the security deposit.

The Landlord states they were unaware of their obligation to compensate the Tenants for having given them the Notice.

The Landlord states that although they intended to occupy the unit at the time the Notice was given, their circumstances changed to pursue a business opportunity. The Landlord states that in late November 2021 they explored a business investment opportunity out of country. The Landlord states that they then moved to that country on December 20, 2021. The Landlord argues that the circumstances are the same as leaving to pursue an employment opportunity and that they are extenuating circumstances that prevented the Landlord from occupying the unit. The Landlord states that they did not offer to withdraw the Notice to continue the tenancy of the unit as they had learned at some point that the Tenants had purchased a property in the same complex. The Landlord provides no supporting evidence.

The Tenant state that the Landlord was not told of their purchase of the other property until the middle of January 2022 when the Landlord was insisting that they pay the rent for that month. The Tenants argue that the Landlord's decision to move was made before the effective date of the Notice and there was ample time to cancel the Notice or come up with another solution. The Tenants argue that the Landlord chose to move away of their own volition and that this was well within their control.

It was noted at the hearing that the Landlord's invoice provided for their monetary claims is dated February 6, 2022, sets out no contractor name or address and sets out estimates along with a notation under the body of the invoice that payment was received. The Landlord states that they provided an invoice dated February 2, 2022 for all the costs being claimed containing the contractor's name. The Tenant confirms receipt of this invoice. The Landlord states that they received the estimate before the invoice was provided. The Landlord cannot explain why the Tenant has a different invoice than the one provided to the Residential Tenancy Branch for this hearing. The Landlord states that the invoice was paid by e-transfer. The Landlord did not provide a copy of the e-transfer. The Landlord states that they likely have no receipts for any of the supplies and that as they knew the contractor, they accepted the amounts without question. The Landlord does not know what the contractor's hourly rate was.

The Landlord states that the fridge, new in 2014, was left with broken door shelves at move-out. The Landlord states that the doors were not damaged at move-in. The Landlord claims \$300.00 for their replacement. The Tenant states that the fridge was manufactured in 2012 and that the brand shelves are known to be prone to cracking. The Tenant states that the shelves did crack during the tenancy but were repaired and functional.

The Landlord states that the two under counter light fixtures, with an age of 20 years, were left unworking at the end of the tenancy. The Landlord claims \$550.00 for the cost of materials and labour.

The Landlord states that the Tenants failed to remove rust from the tub drain, the age of which is 20 years. The Landlord states that they are not sure how this was caused. The Landlord claims \$160.00 for the rust removal. The Landlord states that the Tenants also left rust in the tub. The Landlord claims \$240.00 for the removal of the rust. The Landlord states that they cannot recall the contractor's hourly rate. The Tenant states that rust was caused by the water and argues that given the age of the tub, the damage is reasonable wear and tear. The Tenant states that the enamel on the tub was also cracked at move-in.

The Landlord states that the Tenants left the bathtub caulking with mold and dirt. The Landlord states that the caulking has previously been replaced in October 2016 as a refresh. The Landlord states that the caulking was removed and replaced to bring the unit back to the same order as at move-in. The Landlord claims \$240.00. The Tenant states that there was no fresh caulking at move-in as noted in the move-in report. The Tenant states that they removed and replaced the caulking themselves during the tenancy and left the caulking in similar shape as at move-in.

The Landlord states that the Tenants left the linoleum flooring in the main bathroom, new in 2012 or 2013, with water and mold damage around the bathtub. The Landlord states that the flooring was replaced by similar linoleum. The Landlord states that the subfloor was only cleaned. The Landlord states that they learned about the damage at move-out. The Landlord claims \$950.00 for the costs of materials and labour. The Tenant states that the Landlord never once made an inspection of the unit during the tenancy. The Tenant states that their photos taken at move-in show discoloring to the same area, that the contractor was informed about this in November 2021, that there have not been any floods or standing water and that the linoleum was only discolored. The Tenant states that in November 2021 the Landlord had the contractor inspect the unit for the Landlord's move into the unit. The Tenant argues that the contractor was motivated to find as many issues as possible.

The Landlord states that the Tenants left the bathtub rod with rust. The Landlord states that the rod was new in 2016. The Landlord claims \$240.00 for the labour and material to remove and replace the rod that included wall patching. The Tenant states that the rod was only rusty.

The Landlord states that the Tenants failed to leave the bathroom light fixtures clean and claims \$120.00 for the cleaning cost. The Landlord provides photos. The Landlord states that they think the contractor's hourly rate was \$85.00 to \$90.00 per hour. The Tenant states that they had a professional cleaner for the unit at move-out and that the fixtures were left clean. The Tenant provides photos.

The Landlord states that the Tenants left the towel rack area behind the bathroom door with damage requiring painting and sanding. The Landlord are unsure of what caused the damage. The Landlord claims \$60.00. The Tenant states that during the tenancy the Landlord's plumber left a small dent in the wall where it had previously been patched. The Tenant states that the wall had sank and the plumber made the repairs. The Tenant states that the Landlord had arranged for the plumber to attend without the Landlord present and that they have no idea if this damage and repair was discussed between the Landlord and plumber. The Landlord states that they were never informed of this damage.

The Landlord states that the Tenants left a light switch plate broken. The Landlord claims \$30.00 for its replacement. The Tenant states that the plate was plastic and had only a hairline crack that was barely noticeable.

The Landlord states that the Tenants left a windowsill and caulking damaged by mold. The Landlord states that they are not sure what caused the moisture around the window. The Landlord states that there was extensive mold and a significant state of disrepair to the sill. The Landlord claims \$120.00 for the removal of the windowsill mold

and caulking and \$240.00 for the sanding and painting costs. The Tenant states that they were continually cleaning mold from the area during the tenancy and that it had gotten into the caulking. The Tenant states that they never reported the problem to the Landlord. The Tenant states that there was considerable paint flaking at move-in, but it was not considered a big deal. The Tenant states that their photo at move-out does not show extensive damage. The Tenant states that the Landlord was not present at move-out and that the contractor who did both the inspection and repairs exaggerated the damage at move-out.

Analysis

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Based on the undisputed evidence that the Tenants received the Notice and was not provided with the required compensation, I find that the Tenants have substantiated an entitlement to **\$1,662.00**.

Section 51(2) of the Act provides that subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

- (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and
- (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Based on the undisputed evidence that the unit was never occupied by the Landlords I find that the Tenants have substantiated the entitlement to \$30,000.00 subject to the finding below.

Section 51(3) of the Act provides that the director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and

(b) using the rental unit, except in respect of the purpose specified in section 49

(6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

The Landlord provided no supporting evidence of a move or a business opportunity. I note that the Landlords' address in their application is located in province. The Landlord's evidence of planning was unsupported and limited in detail and no evidence was given on why such planning to relocate could not be anticipated. There is no evidence that seeking a business investment out of country requiring a move was not within the control of the Landlord. For these reasons I find on a balance of probabilities that the Landlords have not sufficiently substantiated that extenuating circumstances prevented them from occupying the unit. I therefore decline to excuse the Landlords from paying the Tenants the compensation of **\$30,000.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. The Landlord's evidence is they accepted repair rates without question and gave evidence of investigating whether these rates were competitive or could be reduced. I note that

some of the damage amounts being claimed appear excessive and do not include any detail of supply costs for the item repaired. For these reasons I find that the Landlords have not substantiated that they took reasonable steps to mitigate the costs being claimed and that as a result the Landlord has not substantiated the full costs as set out on the invoice for the damages claimed. However, consideration is made for nominal damages as follows:

As the Tenants did not dispute leaving cracked shelves in the fridge, I find that the Landlords have substantiated nominal damages of **\$50.00**. The Landlord's evidence of staining of the flooring between move-in and move-out is supported by the photos, however the Landlord provides no supporting evidence of mold. There is no evidence that the flooring was no longer useable as flooring, and I consider the damage therefore to be cosmetic only. For this reason, I find that the Landlords have only substantiated nominal damages of **\$50.00**. Based on the undisputed evidence that the bathtub rod was left with rust I find that the Landlords have substantiated nominal damages of **\$50.00**. Given the Landlords' photos of the windowsills I find that there was damage to these areas. Considering the Tenants' evidence that the Landlords were never informed of the condensation problem, giving the Landlords an opportunity to address the problem, I find that the Landlords have substantiated nominal damages of **\$50.00** for the windowsill.

Policy Guideline #40 (the "Guideline") sets the useful life of light fixtures at 15 years. Based on the Landlord's evidence that the fixtures were 20 years old I find that the fixtures were beyond their useful life and with no value left. Any repairs to these items are at the Landlord's choice and are not the liability of the Tenants. I dismiss the claim in relation to the light fixtures. The Guideline sets the useful life of tubs at 20 years. Given the Landlord's evidence that the tub was 20 years old I find that the tub and all its parts are beyond their useful life and of no value. I therefore dismiss the claim for all repairs to the tub. The Guideline sets the useful life of waterproofing sealer at 5 years. Based on the undisputed facts that the bathroom caulking was 5 years old and as I

consider the caulking to be similar to waterproof sealing, I find that the caulking was beyond its useful life with no value left. I dismiss the claim for the cost of caulking. Similarly, as there is no evidence that the window caulking was replaced at anytime during the tenancy, I consider that the caulking was also beyond its useful life, and I dismiss the claim for window caulking.

Given the Tenant's evidence of having cleaned the light fixtures and as the Landlords' photos do not depict any uncleanliness, I find on a balance of probabilities that the Landlords have not substantiated that the Tenants left the fixtures unclean. I dismiss this cleaning cost.

Given the Landlord's uncertainty of how the wall in the towel rack area was damaged and as I consider that the Tenant's evidence of damage by a plumber to hold a ring of truth, I find on a balance of probabilities that the Landlords have not substantiated that the Tenants caused the damage to the wall. I dismiss the claim for these repairs.

The Landlords' photo of the light switch cover appears to depict an aged cover plate. For this reason and given the undisputed evidence that the cover was plastic I find on a balance of probabilities that the damage arose from reasonable wear and tear on plastic. The Landlords are therefore not entitled to repair costs, and I dismiss the claim for the cover. The Landlords have a total entitlement of **\$200.00**.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord made their application within 15 days of the end of the tenancy, I find that the Landlords are not required to pay the Tenant double the security deposit. Deducting the

Landlords' entitlement of **\$200.00** from the combined security and pet deposit of **\$1,750.00** plus zero interest leaves **\$1,550.00** to be returned to the Tenants.

As the Tenants' claims have been successful, I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$33,312.00**.

Conclusion

I order that the Landlord retain \$300.00 from the security **deposit** and interest of **\$1,750.00** in full satisfaction of their claims.

I grant the Tenants an order under Section 67 of the Act for **\$33,312.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: October 12, 2022

Residential Tenancy Branch