Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding QRD (Q13) CONSTRUCTION INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

On October 22, 2021, the Landlord made an Application for a Dispute Resolution Proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit and pet damage deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was the final, reconvened hearing from the original Dispute Resolution hearing set for June 2, 2022. The original hearing was adjourned as per an Interim Decision dated June 2, 2022. The final, reconvened hearing was set down for October 3, 2022, at 9:30 AM.

L.W. and R.J. attended the final, reconvened hearing as agents for the Landlord. Tenant G.C. attended the final, reconvened hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant requested an adjournment because he had a conflicting meeting, and because the co-tenant could not attend the hearing either. He stated that they were not informed of this hearing date until they received an email on September 30, 2022, from the Residential Tenancy Branch. When it was brought to his attention that records indicated that an email with the new Notice of Hearing package was sent out to his email address on June 2, 2022, he stated that he never received it, even though his email address was confirmed. He stated that this was his personal work email address and that the co-tenant would not have had access to it. He submitted that the co-tenant asked him a week prior to the hearing if he had received any notification from the Residential Tenancy Branch about the date of the reconvened hearing, and he stated that he did not receive any email. He then stated that he attempted to email the branch back after receiving the reminder email on September 30, 2022. Given that the original hearing was on June 2, 2022, he was asked why they did not contact the branch if it had been over three months where they did not allegedly hear anything from the branch, and he stated that they were too busy during this time to contact the branch.

The Landlord was asked for their position on this adjournment request, and L.W. confirmed that they received a new Notice of Hearing email on June 2, 2022, as well as the reminder email on September 30, 2022. As such, it was the Landlord's position that this should not be adjourned.

When reviewing this request, I am skeptical that if the original hearing took place in June 2022, why the Tenants would not have contacted the Residential Tenancy Branch if they had not received any notification of the reconvened hearing after so many months. I do not find this to be reasonable or logical. Furthermore, I find it dubious that the Tenants coincidentally happened to have a conversation about the possibility of a reconvened hearing date just prior to receiving the reminder email from the branch on September 30, 2022. Moreover, the Tenant kept repeating that he did not "know too much about all that stuff" and that his "wife was in charge of all that stuff." However, he confirmed that the co-tenant never had access to his email account. I find it curious why they would have agreed at the original hearing that the new Notice of Hearing package would be sent to the Tenant's email address if the co-tenant, who was "in charge" of dealing primarily with the tenancy matters, did not have access to this email account. Moreover, I am skeptical that the Tenant did receive the reminder email on September 30, 2022, but he did not receive the new Notice of Hearing email on June 2, 2022, even though records indicate that these were both sent to the same email address for the Tenants.

When reviewing these submissions, I find that they cause me to doubt the truthfulness of the Tenant's testimony. Given these doubts, and that the Tenant appeared to lack credibility, I find it more likely than not that the Tenants were emailed the new Notice of Hearing package on or around June 2, 2022. As such, the Tenant's request for an adjournment was denied, and the hearing proceeded.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2020, as a one-year fixed term tenancy agreement ending on November 30, 2021. However, the tenancy ended when the Tenants gave up vacant possession of the rental unit on October 14, 2021, after an email dated September 30, 2021 indicated their intentions to end the tenancy. Rent was established at an amount of $2,650.00 per month and was due on the first day of each month. A security deposit of $1,325.00 and a pet damage deposit of $1,325.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The parties also agreed that a move-in inspection report was conducted on December 1, 2020, and that a move-out inspection report was conducted on October 14, 2021. As well, the Tenants provided their forwarding address in writing to the Landlord on October 14, 2021.

At the original hearing, L.W. advised that the Landlord was seeking compensation in the amount of **$1,520.00**, which was broken down as **$285.00** for power washing because the door, the walls, and the floor of the garage were covered in mud and straw from the Tenants' dog. In addition, this total amount of $1,520.00 was further broken down as **$150.00** for replacing a broken kitchen drawer, **$550.00** for the cost of repairing and replacing shelves, **$185.00** for the cost to replace a broken toilet seat, and **$350.00** for the cost to repair damage to the carpet caused by the Tenants' dog. She stated that these deficiencies were noted on the move-out inspection report, and that the Tenants signed off on this report. She referenced documentary evidence submitted to support the legitimacy of and the cost associated with rectifying these issues.

T.C. advised that they complained of dog feces in the backyard at the start of the tenancy and that their dog did not live inside the rental unit. She stated that the carpet damage was caused by a mouse, that the drawer L.W. referred to was broken at move-in and was never fixed by the Landlord, and that the shelves in the closet were never provided to them at the start of the tenancy. She did confirm that they damaged the toilet seat, however.

The Tenant confirmed that they broke the toilet seat. He testified that the move-in inspection report indicated that the drawer was damaged already at the start of the tenancy. As well, he indicated that the shelves were not provided to them at the start of the tenancy either. He stated that a contractor installed a pipe in the rental unit which caused a water leak, and after this repair was completed, the shelves were never installed. He advised that their dog was fairly large, that the "garage gets dirty", that they did not clean the garage prior to giving up vacant possession of the rental unit, and that there was "probably more mud" in the garage at the end of the tenancy. He confirmed that they did not return the rental unit to the same condition as it was provided to them at the start of the tenancy.

L.W. submitted that if there were mice in the garage, the bedroom where the damaged carpet was located was two flights up, so the carpet damage was unlikely to have been due to a mouse. Furthermore, she stated that the move-in inspection report noted that the bottom of the drawer had a loose bracket; however, the drawer was broken entirely at the end of the tenancy.

L.W. advised that the Landlord was seeking compensation in the amount of **$454.70** for the cost to clean the carpets as the Tenants could not provide any proof that this was done at the end of the tenancy. She stated that there was a lot of dog hair left and that the move-out inspection report indicated that there were stains on the carpets.

T.C. advised that she did vacuum and wash the carpets at the end of the tenancy, and she stated that there were no stains on the carpet.

The Tenant advised that T.C. has her own carpet cleaning machine, that he did not remember a notation on the move-out inspection report indicating stains on the carpet, and that he did not review the report prior to signing it.

At the reconvened hearing, L.W. advised that the Landlord was seeking compensation in the amount of **$367.50** for the cost of cleaning the rental unit at the end of the tenancy. She stated that the rental unit was brand new at the start of the tenancy, but the Tenants allowed their dog inside the house. As a result, lots of dog hair was left in the rental unit. Moreover, the floors were dirty, and the garage was dirty and full of straw and dog hair. She stated that it took a team of three people approximately three to four hours to return the rental unit to a re-rentable state. She was unsure if the pictures or invoice for cleaning, that were submitted as documentary evidence, were provided to the Tenants.

The Tenant conceded that the garage was left dirty, and this was because there was no grass in the backyard for their dog. However, he stated that the co-tenant and their children cleaned “for hours”. He then contradictorily testified that they “wanted to get out of there due to intimidation” by the Landlord and that if “things happened” after they left, then “whatever”.

L.W. advised that the Landlord was seeking compensation in the amount of **$2,650.00** for October 2021 rent because the Tenants gave their notice to end the tenancy on September 30, 2021, and did not pay October 2021 rent.

The Tenant advised that they provided their notice to end their tenancy, but stated that it was given on the last day of August 2021 or on September 15, 2021; however, it was evident that he was confused about when this was done. Moreover, he acknowledged that they did not pay October 2021 rent and he claimed that there was a previous Decision from the Residential Tenancy Branch which permitted them to withhold this rent. However, he was unable to find this Decision and he confirmed that other than the original hearing on June 2, 2022, there had been no other hearings between the parties. When he was asked to produce this previous Decision, he stated that his “wife has all the documents”.

L.W. advised that other than the original hearing on June 2, 2022, there were no other hearings that involved the parties. As such, there was no Decision rendered that allowed the Tenants to withhold October 2021 rent.

L.W. advised that the Landlord was seeking compensation in the amount of **$2,650.00** for November 2021 rental loss. She stated that an email was sent to the Tenants on October 4, 2021, advising them that they could be responsible for November 2021 rent due to their fixed-term tenancy. She testified that the Landlord posted ads online for the rental unit immediately after they received the keys back. However, she stated that they were unable to show the rental unit in the condition that the Tenants left it in, and it was only made re-rentable on November 1, 2021. She estimated that there were six showings of the rental unit, and that the Landlord was able to re-rent it on December 1, 2021.

The Tenant advised that the Landlord showed the rental unit before the end of October 2021, that the Landlord asked them if they could show the unit, and that they provided authorization for the Landlord to do so. Again, he claimed that they were somehow "discharged" from having to pay the rent; however, he could not refer to any previous Decision of the Residential Tenancy Branch that permitted them not to pay this rent.

Finally, L.W. advised that the Landlord was seeking compensation in the amount of **$1,325.00** because the Tenants ended the fixed term tenancy early, and there was a liquidated damages clause in the tenancy agreement. She referenced the clause in the tenancy agreement. As well, she indicated that this amount covered the time and effort of staff to vet applications, conduct credit checks, show the rental unit, and then re-rent the unit.

The Tenant did not make any submissions with respect to this claim.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet damage deposit is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the inspection reports, as all parties agreed that a move-in and move-out inspection report was conducted, I am satisfied that the Landlord complied with the requirements of the *Act* in completing these reports. As such, I find that the Landlord has not extinguished the right to claim against the deposits.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenants' security deposit and pet damage deposit, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, given that the forwarding address in writing was received on October 14, 2021, as the Landlord's claim against the deposits was made on October 26, 2021, I am satisfied that the Landlord made this Application within 15 days. As the Landlord has not extinguished the right to claim against the deposits, I find that the doubling provisions do not apply to the security deposit or pet damage deposit in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

As well, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlord's claim for $285.00 for power washing the garage, given that the Tenant acknowledged that they did not clean the garage prior to giving up vacant possession of the rental unit, that there was "probably more mud" in the garage at the end of the tenancy, and that they did not return the rental unit to the same condition as it was provided to them at the start of the tenancy, I am satisfied that the

Tenants were negligent for this. As such, I grant the Landlord a monetary award in the amount of **$285.00** to remedy this issue.

Regarding the Landlord's claim for $150.00 for replacing a broken kitchen drawer, I note that the move-in inspection report indicated that this drawer had a loose bracket at the start of the tenancy. While I do acknowledge that the Tenants could have broken this entirely during the tenancy, it is also possible that this broken drawer issue could have occurred because the bracket was already loose at the start of the tenancy. It is not entirely clear to me why the Landlord did not just fix this loose bracket at the start of the tenancy. As it is not wholly obvious if the Tenants were responsible for breaking this drawer, I dismiss this claim in its entirety.

With respect to the Landlord's claim for $550.00 for replacing shelves, I note that there was an issue as an agent for the Landlord had previously handled part of this Application, and it was not entirely evident to L.W. what documents were submitted and then served to the Tenants. As the burden of proof rests with the Landlord to substantiate this claim, I do not find that the Landlord has submitted sufficient documentary evidence to establish this claim. As such, this claim is dismissed in its entirety.

Regarding the Landlord's claim for $185.00 for replacing a broken toilet seat, as the Tenants confirmed that they were responsible for this damage, I grant the Landlord a monetary award in the amount of **$185.00** to remedy this issue.

With respect to the Landlord's claim for $350.00 for replacing carpet damage, the consistent and undisputed evidence before me is that there was damage to the carpet at the end of the tenancy. While the Tenants claimed that this was due to a mouse, there is no evidence before me that if there was a mouse infestation, that this was somehow as a result of the Landlord's negligence. Regardless of how the carpet was damaged, it appears as if the Tenants were responsible for this. As such, I grant the Landlord a monetary award in the amount of **$350.00** to remedy this claim.

Regarding the Landlord's claims for compensation in the amount of $454.70 for the cost to clean the carpets and $367.50 for the cost of cleaning the rental unit, I note that the Tenants referred to the inspection reports during the original hearing. From this, I can reasonably infer then that they received a copy of the reports. While the Tenant claimed that his co-tenant and their children cleaned the carpets and the rental unit at the end of the tenancy, I note that he signed the move-out inspection report agreeing to the noted condition of the rental unit. As well, he also testified they did not return the rental unit to

the same condition as it was provided to them at the start of the tenancy, which was contrary to his testimony of the co-tenant and their children cleaning the rental unit. Given the condition that the Tenant admitted to leaving the garage in, and given the Tenant's contradictory testimony about the condition they left the rental unit, I do not find the Tenant to be credible, nor do I find his wavering testimony to be reliable. As such, I prefer the Landlord's evidence on the whole for these two issues. Consequently, I grant the Landlord monetary awards in the amounts of **$454.70** and **$367.50** to satisfy these claims.

Regarding the Landlord's claim for lost rent of $2,650.00 for October 2021, there is no dispute that the parties entered into a fixed term tenancy agreement from December 1, 2020 for a period of one year, ending on November 30, 2021. Yet, the tenancy effectively ended when the Tenants gave up vacant possession of the rental unit on October 14, 2021. Sections 44 and 45 of the *Act* set out how tenancies end, and they also specify that the Tenants must give written notice to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy.

Given that the Tenants ended their fixed term tenancy early, I do not find that this complied with the *Act*. Therefore, I find that the Tenants vacated the rental unit contrary to Section 45. Furthermore, there is no documentary evidence before me that permitted the Tenants to withhold October 2021 rent. Consequently, I am satisfied that the Landlord is entitled to a monetary award in the amount of **$2,650.00** to satisfy the loss for rent owing for the month of October 2021.

With respect to the Landlord's claim for lost rent of $2,650.00 for November 2021, I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation, and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, the Landlord must make reasonable efforts to re-rent the rental unit.

Based on the evidence before me, I accept that the Landlord posted the rental unit online as available for rent when the keys were returned, and that they showed the rental unit. Furthermore, as noted above, I was not satisfied that the Tenants left the rental unit in a re-rentable state at the end of tenancy. Moreover, given that the Tenants ended their tenancy on October 14, 2021, I find it more likely than not that most prospective tenants would have already found a place to live for November 1, 2021, and that any prospective tenants would be looking for accommodation for a later date.

As the Tenants only provided a notice to end their tenancy on September 30, 2021, with an effective date of October 14, 2021, I am satisfied that the Landlord was given little notice to start advertising to re-rent the unit. Ultimately, I am satisfied that the Landlord made reasonable efforts to effectively mitigate this loss and that they re-rented the unit as quickly as possible. Therefore, I am satisfied that the Tenants are responsible for November 2021 rent as well. As a result, I grant the Landlord a monetary award in the amount of **$2,650.00** to satisfy this claim.

Regarding the Landlord's claim in the amount of $1,325.00 for the cost of liquidated damages, Policy Guideline # 4 states that a "liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement" and that the "amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into". This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

Based on the consistent, undisputed evidence before me, I am satisfied that there was a liquidated damages clause in the tenancy agreement that both parties had agreed to. I am also satisfied that the Landlord sufficiently justified their efforts to re-rent the unit, and that this amount was a genuine pre-estimate of this loss. As such, I grant the Landlord a monetary award in the amount of **$1,325.00** to satisfy this issue.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit and pet damage deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
Power washing of garage	$285.00
Broken toilet seat	$185.00
Carpet damage	$350.00
Carpet cleaning	$454.70
Suite cleaning	$367.50
October 2021 rent	$2,650.00
November 2021 rent	$2,650.00
Liquidated damages	$1,325.00
Recovery of filing fee	$100.00
Security deposit	-$1,325.00
Pet damage deposit	-$1,325.00
Total Monetary Award	**$5,717.20**

Conclusion

I provide the Landlord with a Monetary Order in the amount of **$5,717.20** 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: October 12, 2022

Residential Tenancy Branch