



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: MNDL MNDCL FFL

Introduction

The landlords seek compensation from their former tenants pursuant to sections 7, 67, and 72(1) of the *Residential Tenancy Act* (the “Act”).

Both landlords and one of the tenants attended the hearing on November 21, 2022. The parties were affirmed before giving testimony or presenting evidence, and no issues of service arose.

Issues

1. Are the landlords entitled to compensation?
2. Are the landlords entitled to recover the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began August 1, 2019 and ended on December 31, 2021. Monthly rent was \$2,200.00. The tenants paid a security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00. Both deposits were retained by the landlords at the consent of the tenants. There is a copy of a written tenancy agreement in evidence.

The landlords seek \$2,200.00 in compensation for loss of rent and \$12,250.35 (minus the \$2,200.00 security and pet damage deposits) for a total claim of \$14,450.35. In addition, the landlords seek \$100.00 for the cost of the application filing fee. A Monetary Order Worksheet itemizing the breakdown of the claims was submitted by the landlords and is reproduced on the next page:

Document Number	Receipt/Estimate From	For	Amount
1	Budget Blinds (Paid)	Multiple Window Covering Replacement	\$2,249.64
2	Century Glass (Paid)	Screen/Window Fix	\$442.29
3	Painting Pros (Paid)	Repaint and drywall/door repair (40% of invoice)	\$2,965.20
4	Cleaning Done Right (Paid)	House Cleaning	\$220.00
5	Total Carpet, Upholstery and Vent Cleaning Ltd. (Paid)	Carpet Cleaning	\$147.00
6	Rapid Cool Mechanical (Paid)	Furnace Cleaning	\$308.74
7	Accurate Window Cleaning (Paid)	Outside Window Cleaning	\$166.95
8	Home Hardware (Paid)	Furnace filter, outside light bulbs, screen door handle, door stoppers	\$50.60
8	Save-On Foods (Paid)	LED Light Bulbs, batteries	\$99.93
		Loss of rent for January	\$2,200.00
		Kalin's time so far (40 x \$40/hr)	\$1,600.00
		Russ time so far (24 x \$75/hr)	\$1,800.00
Subtotal			\$12,250.35
Minus Damage/Pet Deposit			-\$2,200.00
Grand Total			\$10,050.35

The landlords gave evidence that the rental unit was left in such a state that repairs to the window screens and walls were required, light bulbs needed replacing, the carpets needed cleaning, and additional cleaning was needed.

In support of their claims the landlord submitted a Condition Inspection Report (completed at the start of the tenancy) and numerous photographs of the interior and exterior of the rental unit at the end of the tenancy.

Also included were copies of invoices and receipts for the various repairs and cleaning. A detailed written submission and summary of the various repairs and costs was submitted into evidence.

The landlords testified that they spent quite a bit of time putting the property back into a condition where they could rent it out to new tenants. Given the state and condition of the property the landlords claim for a loss of rent for the month that they were unable to rent it out. They “could not rent it out in January” of 2022 because of the condition of the rental unit. New tenants were found for February 1, however.

While the landlords did try to do a pre-move out inspection to try to tackle some of the issues (hoping that perhaps they could get the place ready in time for a new tenant in January), they were unable to do so.

The tenant testified that some of the damage was “obviously damage caused by a previous tenant.” He admitted that yes, the property was not in a pristine condition when it was relinquished to the landlords, but he “didn’t trash the whole house.”

He lived in the property over a period of 4 years and there were anywhere between 8 and 9 children also in the house. He added that there was no condition inspection report completed during the tenancy. In respect of the landlords’ claims the tenant did not dispute the landlords’ retention of the security and pet damage deposits.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine whether a party is entitled to compensation, there is a four-part test which must be met, and which is based on the above sections of the Act: (1) Was there a breach of the Act, the tenancy agreement, or the regulations by the respondent? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant do whatever was reasonable in minimizing their loss?

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.

1. Claim for Loss of Rent

Section 37(2)(a) of the Act requires that a tenant “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear” when they vacate.

While the tenants did not, I find, comply with this section of the Act, I am not persuaded that the landlords were barred entirely from finding a new tenant for January 2022. The property was certainly in need of repairs and cleaning, but it was not uninhabitable.

There is no evidence before me to find that there was not at least *one* tenant would not have been prepared to take occupancy before February (even if for a reduced rent while the repairs and cleaning were undertaken). In other words, while the landlords undoubtedly suffered a loss, not taking any steps to find a tenant for January is not taking a reasonable step in minimizing losses.

As such, I decline to award the landlords for this specific claim.

2. Claim for Repairs, Painting, Cleaning, Furnace Filter, Light Bulbs, Et al.

The sworn oral and documentary evidence, including the many colour photographs, and the tenant’s admission that the property was not pristine (or clean) at the end of the tenancy, leads me to conclude that the tenants breached section 37(2)(a) of the Act.

But for the tenants’ breach of the Act the landlords would not have needed to spend money and time on repairs and cleaning. While the individual damages and uncleanliness were not the most egregious of damage that I have seen, the number and extent of those damages is significant. There were, as it were, a lot of miscellaneous repairs on top of the larger damages.

Certainly, with 8 or 9 children living within a house there is going to be some damage, and likely a full amount of reasonable wear and tear is to be expected. However, ripped out window screens, large amounts of grime and dust atop the counters, broken locks, and so forth cannot be said to be reasonable. A tenant is, it is worth noting, responsible for replacing burned out light bulbs.

Taking into consideration all of the oral and documentary evidence before me, it is my finding that the landlords have proven on a balance of probabilities that they are entitled to the amounts claimed, with the exception of the amounts related to the furnace (which is explained in greater detail below).

They would not have suffered losses resulting in these claims but for the tenants' breach of the Act. And the amounts claimed have been established through invoices and receipts. The amounts claimed are reasonable.

As briefly mentioned during the hearing, landlords are responsible for taking care of the furnace in their property. *Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises*, on page one under "Furnaces" states that

The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

Therefore, I decline to award the landlords' claim for furnace cleaning (\$308.74) and for the furnace filter (\$7.83, including the GST and PST) purchase.

3. Claim for Landlords' Time

It is incumbent upon a party claiming a loss to support their claim with documentary evidence. In respect of the landlords' claims for \$3,400 for their time (Mr. J. at \$1,800 and Ms. J. at \$1,600), while I have no doubt that they both spent considerable time getting the property back to a half-decent condition, neither landlord produced any log, or contemporaneous proof of time actually spent.

The time spent appears to be an estimate only, and I am not prepared to award this amount of compensation based on an estimate unsupported by evidence. In the absence of any such evidence I am unable to grant compensation for this claim.

4. Claim for Application Filing Fee

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to another party. When an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant's filing fee.

In this dispute, as the landlords were largely successful in their application, they are entitled to an award of \$100.00 for the filing fee.

Summary of Award and Monetary Order

The landlords are awarded a total of \$4,233.78, and the tenants are ordered, pursuant to section 67 of the Act to pay this amount to the landlords. A monetary order in this amount is issued with this Decision to the landlords. It is the landlords' responsibility to serve a copy of the monetary order on the tenants.

For clarification, the above-noted amount of the award is calculated as follows: initial claim of \$12,250.35 + \$100.00 filing fee – \$316.57 (furnace claim) – \$2,200.00 (rent claim) – \$3,400.00 (time spent claim) – \$2,200.00 (security and pet damage deposits).

Conclusion

The application is hereby granted, in part.

The landlords are awarded \$4,233.78.

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: November 22, 2022

Residential Tenancy Branch