



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

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

The Landlords applied on February 18, 2022 for:

1. A Monetary Order for damages to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. A Monetary Order for unpaid rent or utilities - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenants applied on July 17, 2022 for:

1. An Order for the return of the security deposit - Section 38;
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.

Preliminary Matter

The Landlord states that they reduced their claim amount to \$15,436.60 and provided the Tenant with a monetary order worksheet (the “MOW”) detailing the costs claimed for this amount. The Tenant confirms receiving the MOW. As the Tenant has knowledge of the reduced claim amounts in that MOW and makes no objections to the change, I accept the reduced claims as set out below.

Issue(s) to be Decided

Are the Parties entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on December 1, 2018 and ended on December 3, 2021. Rent of \$1,200.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit. No move-in or move-out inspection was conducted by the Parties. No inspection reports were completed.

The Landlord states that they obtained the Tenants forwarding address at a hearing on March 8, 2022 and that this address had previously been provided by the Tenants' legal counsel. The Landlord cannot recall this date. The Tenant states that they provided their forwarding address on January 1, 2022. The Tenants claim return of the security deposit.

The Landlord states that they obtained an order of possession of the unit in a Decision dated November 19, 2021. The order of possession was effective two days after service on the Tenants and was served on the Tenants on November 24, 2021. The Landlord states that the Tenants applied for a review consideration and this decision, dated December 1, 2021, was received by the Landlord on December 2, 2021. The Landlord states that they obtained a Writ of Possession and on December 3, 2022 the Tenants were removed by the bailiff. The Landlord claims the bailiff costs of \$3,206.58 and the court fees of \$122.00. The Landlord provides an invoice from a bailiff dated December 7, 2021. The Tenant disputes this cost as they argue that it was an illegal eviction.

The Landlord states that the Tenants left all walls damaged and claims \$2,310.00 as the repair costs. The Landlord states that the kitchen walls were left with marks and dents

and the washroom walls with nicks. The Landlord provides photos of the kitchen walls. The Landlord states that the walls were previously painted in mid November 2018. The Tenant states that the walls were not freshly painted at move-in and that the Landlord damaged the walls while making repairs to the unit. The Tenants provide photos of the unit while work was being done, including photos of the kitchen cabinets. The Landlord does not dispute that repairs were being made to the unit but that the washroom and kitchen areas where drywall was removed had been repaired by August 25, 2021.

The Landlord states that the Tenants left the kitchen cabinets misaligned, chipped and with drawers falling out. The Landlord does not know the age of the cabinets. The Landlord claims \$3,412.50. The Tenant states that they did not damage the cabinets and that they were more than 25 years old.

The Landlord states that the Tenants left all doors, door frames and baseboards in the unit damaged, in particular the washroom door was left with gouges. The Landlord states that they have no idea of the age of the doors and that the doors were purchased in 2012 when renovations were done to the unit. The Landlord claims \$2,310.00 and provides an invoice. The Tenant states that all the doors had damages at move-in, that the Landlord caused damages during the repair work and that the Tenants did not cause any further damage.

The Landlord states that the Tenants left the pull strings on the living room blinds damaged. The Landlord states that the blinds were new in 2012 and that they are made of plastic. The Landlord claims \$145.60 as cost to replace. The Tenant states that while there was no damage to the living room blinds at move-in they did not damage the blinds. The Tenant states that the photos taken on November 11 and November 18, 2021 show no damage. The Landlord states that the photos referred to by the Tenant are exterior photos. The Landlord states that they saw the Tenants' children fiddling with the blinds. The Tenant states that their children are too young to reach the blinds.

The Landlord states that the Tenants left the range hood clogged from cooking. The Landlord states that the hood was not working at move-out and was never reported as damaged by the Tenants. The Landlord states that the hood was replaced without a repair inspection and claims \$392.92. The Landlord states that the hood was new in 2012. The Tenant states that the hood was working to the end of the tenancy and that at move-in it seemed very old.

The Landlord states that the Tenants failed to pay rent for October, November and December 2021. The Landlord claims \$3,600.00. The Landlord states that the Tenants were removed from the property on December 3, 2021. The Tenant states that they offered to pay rent for these months and the Landlord never responded to the offers. The Tenant states that the Landlord told the Tenants to leave and find another place as the Landlord still had repairs to be done. The Tenant states that they sent a text September 28, 2021 for the Landlord to collect the rent for October 2021 and additional texts offering November and December 2021 rents without response from the Landlord. The Landlord states that the Tenants never sent any texts offering rent for September 2021 and that on September 28, 2021, in a conversation with the Landlord, the Tenant indicated that they wanted rent relief for the repairs being done to the unit. The Landlord states that they previously obtained a monetary order for September 2021 rent. The Landlord states that the Tenants never offered to pay the rent being claimed herein and that the Tenants refused to pay the rent.

The Tenant states that on August 24, 2021 they were asked by the Landlord to leave the unit for a couple of hours while the Landlord made repairs to damage from the upper unit. The Tenant states that upon return the repairs were not completed and the unit was left with open ceiling areas, wall holes, construction materials and tools, exposed pipes and dust all over. The Tenant states that the Landlord was present and told the Tenants to "just take stuff" and leave. The Tenant states that the Landlord never informed the Tenants of a completion date or time and only said that the Tenants would be called when the unit was ready. The Tenants spent the nights of August 24 and 25,

2021 in the unit while they left for the days. The Tenant states that the kitchen was completely unusable, and the Tenant's children were exposed to the dust and construction debris. The Tenants asked the Landlord to provide alternate accommodation for them however the Landlord told the Tenants they must stay in the unit. The Tenant states that they found hotel accommodation without a kitchen and stayed for 5 nights from August 26 to August 31, 2021. The Tenant states that the Landlord never communicated with them and did not inform them that the unit was ready. The Tenant states that they texted the Landlord on August 30, 2021 and asked the Landlord to have the unit cleaned from the repairs before they move back in. The Tenant states that at this point they informed the Landlord that they were staying at a hotel. The Tenant states that upon return no cleaning had been done. The Tenant claims the hotel costs of \$1,421.00 and provides the receipt. The Tenant states that there is nothing in writing to support that the Tenant made requests but that a video taken August 24 or 25, 2021 is provided showing their request to the Landlord.

The Landlord states that repairs were completed by August 30, 2021 with only painting and clean up to finish. The Landlord states that the Tenants never gave the Landlord notice that they needed alternate accommodation and never asked the Landlord to provide such accommodation. The Landlord states that had the Tenants asked the Landlord would have found something for them. The Landlord argues that the Tenant's evidence of having spent the nights of August 24 and 25, 2021 shows that the unit was liveable. The Landlord argues that the Tenants stayed at an expensive hotel with no kitchen and therefore failed to mitigate the costs claimed. The Landlord argues that the stay was more like a vacation. The Landlord states that the Tenant's video evidence is not in English and no translation was provided. The Landlord states that they were not informed of the hotel until September 12, 2021.

The Tenant states that because of COVID at the time only two hotels were available and that they chose the one with reasonable rates. The Tenant states that they did not have the finances to go anywhere else overnight for August 24 and 25, 2021 and that

because of COVID at the time there was only two hotels available. The Tenant states that they chose the hotel with the most reasonable rates. The Tenant states that they had no family members who could offer the family a place to sleep. The Tenant states that they asked the Landlord several times for different accommodation. The Tenant states that they have a video of them making this request taken on August 24 or 25, 2021.

The Landlord does not dispute the Tenants' claim of **\$304.45 and \$285.00** for the costs of cleaning the carpet and unit left dirty from the repair work.

The Tenant states that their tenancy does not include access to laundry facilities. The Tenants claim \$40.00 as the costs to clean the sofa covers and bedding that was also left dirty from the repairs. The Tenant states that the cleaning was done by themselves at a laundromat. The Landlord disputes this claim as not being supported by evidence of the cost claimed.

The Tenants claim \$231.00 for the costs of food while away from the unit for the period August 24 to 31, 2021. The Tenants provide no receipts. The Landlord agrees that the Tenants would reasonably have food costs however the Tenants could have selected a hotel with a kitchenette that the Landlord states were open at the time.

The Tenant states that during the repairs the Landlord damaged their television screen and claim the replacement cost of \$1,135.00. The Tenant states that the damaged television was about 4 or 5 years old with an original cost of about \$950.00. The Landlord states that they did not damage the television, that the Tenants' video evidence shows a missing television and that prior to the start of the repairs the Landlord saw the Tenants remove the television.

The Tenant states that the Landlord harassed the Tenants by being at the unit longer than the stated repair time of a couple of hours and by leaving the unit unliveable. The

Tenant states that their children had to leave their home because they were eating the mud left in the unit. The Tenant states that they missed an opportunity for a job because the disruption in their lives led to a missed interview. The Tenant states that they lost peaceful enjoyment of their unit. The Tenants claim \$20,000.00 for harassment by the Landlord and \$5,000.00 for the lost job opportunity. The Tenant argues that the Landlord caused the missed opportunity because the Tenant had extra duties with the displacement of their home and children and as a result had no time for the interview.

The Landlord states that they never harassed the Tenants and that they felt harassed by the Tenants. The Landlord argues that the Tenant had the assistance of the other Tenant and was already in the hotel at the time of the interview. The Landlord states that the Tenant also had opportunity to reinterview a few days later. The Tenant states that the second opportunity could also not be attended because of the Tenant's work at the unit and due to the Tenant being tired.

The Tenants claim \$1,680.00 as the fees from their legal counsel for this dispute.

Analysis

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. The Tenants' evidence is that they provided their forwarding address on January 1, 2022. The Landlord acknowledges receipt of the forwarding address at some point prior to the Landlords' application made February 18, 2022. I consider the Landlord's evidence to be sufficiently vague as to prefer the Tenant's evidence and find on a balance of probabilities that the Landlords received the forwarding address on January 1, 2022. As the Landlords made their application more than 15 days after receipt of the forwarding

address I find that the Landlords must now pay the Tenants **\$1,200.00** as double the security deposit.

Section 57(2) of the Act provides that the landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules. As the Landlords did not provide a copy of a writ of possession issued by the Supreme Court or a copy of any Supreme Court receipt showing the costs to obtain a writ of possession and given the Tenant's evidence of the eviction being without a legal basis I find on a balance of probabilities that the Landlords have not substantiated that they were able to take actual possession of the rental unit as done through the bailiff. I therefore dismiss the Landlords' claims for bailiff and court fee costs.

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. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Given the Tenants' photos depicting damage to the walls and the placement of work tools against the walls, the removal of some of the kitchen cabinets, as there is no dispute that these photos are not of the repair work being done by the Landlord prior to move-out and as there is no move out report to support damage done by the Tenants I find on a balance of probabilities that the Landlords have not substantiated that the walls and kitchen cabinets required repair as a result of the Tenants' actions or

negligence. I therefore dismiss the claims for \$2,310.00 and \$3,412.50. I also note that the Tenants' photos show aged cabinets and as the Landlord did not provide any evidence of their age I find that even if the Tenants left damage to the cabinets the Landlords have not substantiated that the cabinets were still within their useful life. Therefore, any costs to repair or replace the cabinets remain with the Landlords.

Given the lack of a move-in inspection report detailing the state of the doors and given the Tenant's evidence of pre-existing damage, I find on a balance of probabilities that the Landlords have not substantiated that the Tenants caused the need for door and other repairs. I therefore dismiss the claim for \$2,310.00.

Given the age and composition of the blinds and the pull strings I consider that any damage to the pull strings is only reasonably wear and tear in the circumstances and that the Landlords have not substantiated that the damage was beyond reasonable wear and tear. For this reason, I dismiss the Landlords' claim for \$145.60.

Given the photos of the range hood, I consider that it appears to be very aged. The Landlords have not provided any supporting evidence of the range hood being new in 2012. Further there is no supporting evidence that the range did not work and could not be repaired. As a result, I find that the Landlords have not substantiated that the Tenants caused the damage claimed and I dismiss the claim of \$392.92 for a new range.

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. Rent is payable until a tenancy ends. Section 44(1)(d) of the Act provides that a tenancy ends if, inter alia, tenant vacates the rental unit. The only text that could be found in the Tenant's evidence in relation to the payment of rent was a text dated September 28, 2021. While this text offers rent for the Landlord to collect it

does not identify that the offer was for October 2021 rent. Further the Landlord's reply to that text indicates that the offer was made for unpaid September 2021 rent and that the Tenant was directed to deliver the rent to the Landlord's door. There are no texts or other evidence to support that the Landlord refused to accept rent. For these reasons, given the Landlord's evidence, as there is no dispute that the rents being claimed were paid, and as the unit was vacated on December 3, 2021 I find on a balance of probabilities that the Landlords have substantiated their claim for unpaid rent of **\$1,200.00** for October 2021, **\$1,200.00** for November 2021 and **\$116.13** for December 1 to 3, 2021 inclusive. I calculate the December 2021 rent portion of \$116.13 based on a per diem of \$38.71.

The Tenant's evidence of the disrepair of the unit while repairs were being made is well supported. Given this disrepair, I find on a balance of probabilities that the unit was not in a liveable state for the days that the Tenants were in the hotel. There is no evidence that the Landlord provided any rent relief for this disruption or made any offer of alternate accommodation. The tenancy agreement requires the Landlords to provide a liveable unit, and this did not occur. This is the Landlords' ongoing obligation, the Landlords were fully aware of the state of the unit and the Landlords should have known that the Tenants required alternate accommodation. I found the Tenant's testimony of having repeatedly asked the Landlord for alternate accommodation to hold a ring of truth and therefore prefer this evidence over the Landlord's denial of such requests. The Tenants' evidence of having spend a couple of nights in the unit does not detract from the state of the unit and the loss to the Tenants. Given the undisputed evidence of the presence of COVID I accept that there were limited hotel options available to the Tenants at the time. The Landlord provided no evidence of hotels available with lower costs at the time. For these reasons and given the evidence of costs incurred, I find on a balance of probabilities that the Tenants are entitled to the claim of **\$1,421.00**.

Given the Landlord's agreement to the carpet and unit cleaning costs claimed I find that the Tenants are entitled to the claims of **\$304.45** and **\$285.00**.

Given the undisputed evidence that the unit was left unclean by the Landlord's repairs and as the Landlord did not dispute that the sofa covers and bedding was also left unclean I find that the Tenant has substantiated cleaning costs for these items. As the claimed amount appears reasonable in comparison to what is likely cost had the items been send out for cleaning, I find that the Tenants are entitled to the costs claimed of **\$40.00**.

The Tenants provided no evidence of having incurred the costs claimed for food. For this reason I find that the Tenants have not substantiated the claimed amount. However as there is no dispute that the Tenants would have had to purchase food and meals during the hotel stay that was found to be the cause of the Landlord I find that the Tenants are entitled to a nominal amount of **\$100.00** for this cost

The Tenant provided no supporting evidence that their television was damaged by the Landlord. The Tenants provided no supporting evidence of the age of the television and no evidence of reasonable attempts to mitigate their loss, such as purchasing a used television. For these reasons and given the Landlord's evidence that they did not damage the television I find on a balance of probabilities that the Tenants have not substantiated their claim for the replacement costs of \$1,135.00 and I dismiss this claim.

Harassment is defined in Blacks Law Dictionary as "used in a variety of legal contexts to describe words, gestures and action which tend to annoy, alarm and abuse (verbally) another person." This behavior is repetitive in nature that serves no legitimate purpose. Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. The Tenants have not provided evidence of harassment by the Landlord. The Tenants' evidence appears to be applicable to the loss of enjoyment of the unit however the Tenants did not make this claim. For this reason I find that the Tenants have not substantiated their claim for \$20,000.00 as compensation from harassment and I dismiss this claim.

As nothing in the Act provides for the recovery of costs to participate in the proceedings other than the recovery of the filing fee and as the Tenants are claiming legal costs for these proceedings I find that the Tenant is not entitled to this claim and it is dismissed. As the Tenants claims have otherwise been met with substantial success I find that the Tenants are entitled to recovery of the **\$100.00** for a total entitlement of **\$3,450.45**.

As the Landlord's claims have met with some success I find that the Landlord is also entitled to recovery of their **\$100.00** for a total entitlement of **\$2,616.13**. Deducting the Landlord's entitlement from the Tenants' entitlement leaves **\$834.32** owed to the Tenants.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$834.32**. 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: February 15, 2023

Residential Tenancy Branch