Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent of $2,400.00; for a monetary order of $1,500.00 for damages for the Landlord, retaining the security deposit to apply to these claims; and to recover their $100.00 Application filing fee.

The Tenants and the Landlords appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlords testified that they served the Tenants with the Notice of Hearing documents and evidence by email on July 25, 2022. The Landlords said the Tenant confirmed that she could receive communications from the Landlords via email. In the hearing, the Tenants confirmed having received these documents from the Landlords.

The Landlords also said they served the Tenants with a few more photographs on March 26 or 28, 2023. However, pursuant to Rules 3.14, an applicant must serve the respondent with all evidence on which they intend to rely "not less than 14 days before the hearing". This provides the respondent with a week to consider and respond to the applicant's evidence. Further, a respondent, such as the Tenants, must submit their evidence at least seven days prior to the hearing, under Rule 3.15.

As explained further below, the latest the Landlord could provide new evidence was on March 19, 2023, The latest day that the Tenants could submit evidence to the RTB and the Landlords was March 26, 2023. The Landlords said they did not receive anything from the Tenants before March 28, 2023, and as such, I find I cannot consider the Tenants' evidence, as it was provided late under the Rules.

Within the definition section of the Rules, "Days" is defined to include:

> c) In the calculation of time expressed as clear days, weeks, months, or years, or as "at least" or "not less than" a number of days, weeks, months, or years, the first and last days must be excluded.
>
> [emphasis added]

Accordingly, since the hearing was on April 3, 2023, seven days prior is March 26, since the first and last days must be excluded. Fourteen days prior is March 19, 2023. As such, I find that the Tenants' evidence delivered on March 28, 2023, is too late to consider, as is the Landlords' evidence provided on March 26, 2023. However, I can consider the Landlords' evidence provided to the RTB and the Tenants in July 2022.

The Tenants said they served the Landlords with their evidence via forwarding them a gmail link with all of their evidence on October 29, 2022. However, the Landlords said they received the Tenants' evidence on March 28, 2023, and not before.

Preliminary and Procedural Matters

The Landlords provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on September 3, 2020, with a monthly rent of $2,400.00, due on the first day of each month. They agreed that the Tenants paid the Landlords a security deposit of $1,150.00, and a $350.00 pet damage deposit ("Deposits"). They agreed that the tenancy ended when the Tenants moved out on June 29, 2020. They agreed that the Landlord retained the Deposits to apply to this claim. The Parties agreed that the Tenants vacated the rental unit on June 30, 2022, and provided their forwarding address to the Landlords via email on July 5, 2022.

The Parties agreed that they did not conduct an inspection of the condition of the rental unit at the start of the tenancy, and therefore, no condition inspection report ("CIR") was produced for comparing the condition at the start to the end of the tenancy. However, the Landlord submitted a video dated September 1, walking through the empty rental unit prior to the tenancy starting on September 4, 2020. I find that no damage or dirt was apparent anywhere in the rental unit.

The Landlords said that it was a "new unit", which the Tenants questioned. The Landlords said that the residential property was new in 2019; however, I note that the Tenants moved into the unit on September 4, 2020. They agreed that the rental unit has three bedrooms and two and a half bathrooms.

The Landlords' first claim was for compensation for unpaid rent.

#1 A MONETARY ORDER FOR UNPAID RENT → $2,400.00

The Landlords explained this claim, as follows:

> [The Tenants] decided they would move out at the end of June, and we were in agreement with them leaving early, but instead of no rent payment in May, they also decided not to pay us in June. So that's why I want to get our rent back for June.

The Tenants responded:

> Part of the agreement was to move out at the end of June, which we agreed to conditionally. They offered to cover a month's rent – that's a requirement. We were not prepared for this; we operated a home based business, as well as using it as a home. Moving us and our business where housing rates were prohibitive

> to anything comparable. We put out a lot of expenses to make this happen. We asked if they would please waive May and June rent, so that we could be in a position to accommodate them.
>
> Basically, they were asking us to leave, and not in September, because that would be a hard time for us. But we would not have moved out if they were just going to re-rent the place as is what happened here.

I asked the Tenant if the Landlords re-rented the rental unit, rather than selling it. The Tenants said:

> Correct, they didn't even list it. We were trying to accommodate their need to sell it. We wouldn't have been as amenable to their request, if we knew they were not going to sell it. It felt like we were forced to move out. And doing it in September would have been too hard. We wouldn't have moved out if we had known that we didn't have to.
>
> They were very persistent, because they needed to sell in the summer time. We said we can pull it together, but we need your assistance – there was a whole bunch of expenses we weren't counting on - additional expenses in a very short amount of time. They were in such a financial position that they required to sell property. We would have done things very differently. We felt very misled.

The Landlords replied:

> No, we don't have a tenant in the property. After they moved out, we spent a whole month with various contractors repainting the whole townhouse, patching the holes they left, the dents in every wall. It was so much so, as per the [painter] – the drywall had to be fixed and every wall had to be repainted. It took us about a month to prepare it.
>
> We were talking to our realtor, but at that time the market had nosedived, so we decided at this time not to sell it. Basically, they advised us it wasn't advisable. So, our extended family are helping us out, and they use it as their home. So, we decided to keep it as our extended vacation home until the market goes back up.
>
> Once again, in our April conversation with [the Tenant], we didn't say 'you have to move out now'. We just said we're thinking of selling the townhouse, and as per the RTB, I didn't realize that the one month free rent was a requirement. We

> were 100% okay with continuation of the lease until the term ends. But as [the Tenant] stated, it would have been harder for them to move in September. Once we realized it could be a hardship for them, that's why it's 100% okay.

The Tenants submitted email correspondence between the Parties dated May 5, 2022. In this email, the Landlords agree to waive the requirement for the Tenants to pay the rent in May 2022; however, the Landlords did not agree for June 2022 to be rent-free, as well. Yet the evidence before me is that the Tenants failed to pay the Landlords any rent in May or June 2022. They moved out on June 30, 2022.

The Tenants also provided a copy of a Mutual Agreement to End a Tenancy, which was digitally signed by both Parties and which states that the Parties agree to end the tenancy on June 30, 2022.

#2 COMPENSATION FOR MONETARY LOSS → $1,500.00

The Landlords explained this claim in the hearing, as follows:

> I submitted the invoice for various damages to the townhouse and pictures. Carpet cleaning invoice was $315.00. And there were various holes that had to be repatched throughout the unit, but because the Tenants patched up the holes, but our contractor couldn't paint over them. He had to smooth out the walls, due to the nails still in the hole wall, so he had to go back into the holes, removed the nails, repair the drywall, and then paint to make the drywall new again. As per the invoice for that and various walls cost $700.00. He listed it under Drywall repair.

The Landlord continued to list the items and costs they quoted from the invoice, as set out in the following table:

Description/Job Phase	Quantity/Hours	Total ($)
Top landing floor repair (tread nose piece) -removal, replacement piece, paint & finish	1.00	$250.00
Drywall repair -screw extraction, install new drywall piece, Drywall taping, spackling to paint ready	1.00	$700.00
Granite table top repair	1.00	$250.00
Laminate flooring replacement	1.00	$190.00

Shelving unit removal, disposal, and dry wall repair (garage)	1.00	$105.00
Shelving unit removal, disposal, and dry wall repair (master bedroom)	1.00	$75.00
Replace/fix accordion door floor track bracket	1.00	$125.00
	Subtotal	**$1,695.00**
	Sales tax	$203.40
	Total	**$1,898.40**

While a table like this is part of the Landlords' evidence that I cannot consider, the Landlords listed the items and their costs in their testimony, therefore, I have reproduced this information in table form for ease of use.

The Landlord continued:

> There was the laminate floor that had to be removed, because it was broken when they moved in their piano. It had to be removed, replaced, and refinished**.** There was also the laminate flooring piece that was marked up. The granite table top repairs were required by the sink – another $250.00.
>
> There were shelving units they left behind – one in the garage had to be removed and some drywall repaired . Another shelving unit was left in the master bedroom – similarly it required disposal and drywall repair.
>
> Accordion door on main floor had to be replaced, because the bracket had been ripped out almost, so we had to replace that bracket, which cost $125.00.
>
> That came with taxes to $1898.40, minus the carpet cleaning; that was separate.

The Tenants responded:

> All of the nail holes – the Landlords didn't have a provision prohibiting nails and shelving, as necessary. I removed all the shelving and used a proper polyfilla to do that. There were no nails left in any holes. If there was, it was maybe one – completely accidental. I filled all the holes and sanded them down. I'm not a professional, but as I look at the RTA, it's not a requirement to fill nail holes, especially if there's no provision in tenancy agreement that has protocols in terms of hanging things from the walls.

It's not the responsibility of the Tenant to paint. It is prohibited. Any of the estimates was more than intimidation factor. As the Tenant, it's not my responsibility. I cleaned and washed all surfaces. Any dents were less than half a centimetre in depth. They were made when moving out accidentally, if at all. Any holes I made a point to make things easier for the painting that I knew wasn't our responsibility. So, none of that is excessive or negligent damage.

Holes to hang… is not considered damage as far as the Act. Any damages are normal wear and tear, but not excessive damage. All the pictures show that I made an attempt to make it easier for the Landlord to paint.

As for the invoice, and for carpet cleaning, in my emails I said you're welcome to keep the security deposit, because I didn't realize I was required to rent a machine or a cleaner. All those attempts to do that were declined. I offered to re-sand down any spots needing it. I was always ready to come back. But I was told not to come back to the house 'because I couldn't be trusted'. Our pet deposit – I said to keep, but return the security deposit .

Her brother invoiced her. There's no GST number, but they're claiming taxes. There's no business to this … It's just a list of things, I have experience in doing minor repairs. The accordion door bracket is $5.00 from [a building supply store], Those brackets fatigue over time. Again, I offered to come back buy the part and come and fix it. I offered to repair or replace the closer to their satisfaction. All offers were declined.

The transition piece was damaged, but I found the place that did the whole complex. A replacement piece would be $40.00. So, $250.00 is excessive.

The counter top – it was there as long as we were there, and since there was no condition inspection, there's nothing to compare it to. The shelving were not garbage. I never had issues leaving shoe racks or shelving units behind before. I offered to remove it, but it was declined. All efforts before coming to RTB was declined.

The Landlord replied:

[The Tenant] did send us the $40.00 nose piece to replace, and she did say that she could come back and repair any of the walls and what not, but the issue was in their initial try to patch up the walls - it actually cost us more money to repair. The contractor had to spend more time to remove what was there. He wasn't

> able to make it smooth.
>
> Please note I did not put any painting on the invoices, because I wasn't sure who was responsible.
>
> In terms of her offers, as she stated she was not a professional and to sell it, we had to get someone with experience to come do it quickly.

I asked the Landlords when they had determined that it was a bad time to sell the residential property. And they said:

> I still had optimism that we could still sell it. I still needed to get the townhouse repaired, because there was a lot – for example our 3 to 4 year old carpet, even after being professionally cleaned, it still looked 15 years old. It's kind of sad, because it was a fairly new unit. There was a lot of markings on the walls, dents and holes and extra material, that all had to be sanded down. The invoice relates to repairing the drywall. There's no paint costs in the invoice. There was a lot of disrespect to the property. The dents to the cabinets - I can't reasonably replace these individual panels.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I let them know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 ("PG #16")sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlords must prove:

1. That the Tenants violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlords did what was reasonable to minimize the damage or loss.

("Test")

#1 A MONETARY ORDER FOR UNPAID RENT → $2,400.00

Having considered the testimony and the evidentiary submissions before me, I find that there was no agreement between the Parties for the Landlords to allow the Tenants to not pay rent in June 2022. I find that the Landlords agreed to waive the rent requirement for May 2022, but not for June 2022. Despite this, I find that the Tenants failed to pay rent to the Landlords in both May and June 2022.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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."

There is no evidence before me that the Tenants had a right to deduct any portion of the rent from the monthly rent due to the Landlord in June 2022. I, therefore, **award the Landlords with $2,400.00** from the Tenants for the unpaid rent in June 2022 pursuant to sections 26 and 67 of the Act.

#2 COMPENSATION FOR MONETARY LOSS → $1,500.00

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to "leave the rental unit reasonably clean and undamaged." However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or

> maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in PG #16:

> 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. It is up to the party claiming compensation to provide evidence to establish that compensation is due.

I note the Tenants' testimony that they: "made a point to make things easier for the painting that I knew wasn't our responsibility". The Tenants attempted to repair holes in the walls; however, they acknowledge that they are not professionals, and from the Landlords' photographs, it appears that the repair attempts made the situation worse than if they had not done anything, or if they had arranged for a professional to do it.

The Tenants insisted that they were not responsible for painting the unit, however, the Landlord did not charge them for painting.

Based on the evidence before me overall, I find that the damage claimed by the Landlords is more than mere wear and tear. While the Tenants noted that the Parties did not do an inspection of the condition of the rental unit at the start of the tenancy, the Landlords submitted a video going through every room and wall of the unit prior to the tenancy starting. I find this evidence supersedes the absence of a CIR.

The Landlord has claimed $1,500.00 for repairs and cleaning, although, they provided invoices amounting to more than $1,500.00. However, as this is the amount claimed or requested in their Application, I **award the Landlords $1,500.00** for the required repairs to the residential property at the end of the tenancy. I make this award pursuant to sections 32, 37, and 67 of the Act.

Summary and Set Off

I have awarded the Landlord **$3,900.00**, for unpaid rent and repairs required at the end of the tenancy. Given their success, I also award the Landlords with recovery of their **$100.00** Application filing fee, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenants' $1,200.00 security deposit and $300.00 pet damage deposit ("Deposits") in partial satisfaction of the Landlords' monetary awards. I authorize the Landlords to retain the Tenants' $1,500.00 Deposits.

Further, pursuant to section 67 of the Act, I grant the Landlords a **Monetary Order** of **$2,500.00** for the remainder of the award amounts owed to the Landlords by the Tenants.

Conclusion

The Landlords are successful in their Application, as they provided sufficient evidence to support their burden of proof on a balance of probabilities. The Landlords are awarded **$3,900.00** from the Tenants for unpaid rent and required repairs at the end of the tenancy. The Landlords are also awarded recovery of the **$100.00** Application filing fee from the Tenants.

I authorize the Landlords to retain the **$1,500.00** of the Tenants' Deposits in partial satisfaction of the Landlords' monetary awards. Further, I grant the Landlords a **Monetary Order** of **$2,500.00** for the remainder of the award amounts owed to the Landlords by the Tenants.

This Order must be served on the Tenants by the Landlords and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: April 21, 2023

Residential Tenancy Branch