



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for compensation for monetary loss or other money owed of \$1,800.00; a monetary order of \$2,625.00 for compensation for damage under the Act, retaining the security deposit for these claims; and to recover her \$100.00 Application filing fee.

The Tenants, M.S. and A.J., and the Landlord, P.G., appeared at the teleconference hearing and gave affirmed testimony. An advocate for the Tenants, R.N., ("Advocate"), also attended and provided argument on their behalf.

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 Landlord 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 Landlord testified that she served each Tenant with the Notice of Hearing documents and her evidence by delivering it to each of them in person to their respective workplaces on August 24, 2022. The Landlord said that all of the evidence she uploaded to the RTB was contained in the envelopes she gave to each Tenant. The Tenants acknowledged having received an envelope from the Landlord; however, they all denied that she included any evidence in the envelopes. The Advocate said the Tenants did not provide her with any evidence they had received from the Landlord. The Tenants confirmed that they had not provided any documentary evidence to the RTB or the Landlord.

Without the Landlord having provided a witness statement or some form of proof of having served her evidence to the Tenants, the rules of administrative fairness dictate that I cannot consider the Landlord's documentary evidence. However, her testimony in the hearing is evidence before me.

Preliminary and Procedural Matters

The Landlord provided her email address in the Application and confirmed it in the hearing. The Tenants and the Advocate provided their email addresses in the hearing. The Parties confirmed their understanding that the Decision would be emailed to both the Tenants and the Landlord, and any Orders would be sent to the appropriate Party.

At the outset of the hearing, I 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

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of her \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the month-to-month tenancy began on February 1, 2022, with a monthly rent of \$1,800.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$900.00, and no pet damage deposit. The Landlord confirmed that she retained the deposit to apply to this claim. The Parties agreed that the Tenants vacated the rental unit on May 31, 2022.

#1 COMPENSATION FOR MONETARY LOSS → \$1,800.00

I asked the Landlord to explain her first claim, and she said:

When I checked the rooms, they used sticky glue on the wall, and when they moved it, the paint was ripped down, tiles were broken. The basement was dirty. It cost me more than \$1,000.00, plus their one month rent, because they drilled something and we have to cover that thing.

They were using marijuana in the suite, but we told them lots of times, please do not smoke in our house. Please just go outside the house; go far away from the building and smoke over there. Because when they smoked in our house there is a smell, and it should be gone with new paint, but it was not gone with the old or

cheap ordinary paint, so that's why I put \$1,800.00 there. And after that I changed lots of things where they put all the sticky glues. And then they didn't pass me the keys on time, so all of that's why we asked for \$1,800.00.

I hired someone because I am a full-time worker. It takes a week to clean each room, especially Mr. [A.J.'s] room, because it was full of marijuana smoke. I sent the receipt to you guys - everything that I submitted to the [RTB].

#2 MONETARY ORDER FOR DAMAGE → \$2,625.00

The Landlord then explained her second claim to me, as follows:

It was included with the new gas stove. Because all the burners were totally damaged and didn't work properly. They said because the burners are so expensive to repair, so I only got a simple gas stove.

The Tenant, M.S., replied:

When we moved in, we went in to see the place a week before and we were promised all appliances would be exchanged, but they never did exchange them. And the dishwasher and the stove was not working. Even after so many reminders, the dishwasher has bubbles coming out, and the stove was not working properly; they never fixed it for us. I think she bought a new stove, because her stove was not working properly.

They weren't working properly. When we came in, the suite was nice, but those appliances were very old, and we asked her if the appliances were going to be the same, and she said, yeah, we're going to exchange it, because it was under renovation. But when we moved in, she said, they just kept delaying it. If we knew they were not going to fix it, we would never have rented the place.

I asked the Tenant if a condition inspection had been done at the start of the tenancy, and she said there were no papers involved. Early in the hearing, I had asked the Landlord if a condition inspection had been done, and she said yes, but she acknowledged that there was not a condition inspection report ("CIR") produced, because she said the rental unit was new. Further enquiry led to her saying that it had been renovated in 2022, just before the Tenants moved in. She said the rental unit has three bedrooms and one bathroom. I find that the failure of the Landlord to do a proper inspection at the start of the tenancy was reasonable, given that the rental unit had been recently renovated. This is supported by the Tenants' testimony in the hearing that

– other than the appliances - the unit was “nice”.

The Tenants said that they did not participate in an official move-out inspection, but that they took photographs at the end for comparison to the new unit at the start; however, they chose not to submit any photographs into evidence for the hearing. Based on this particular set of circumstances – a newly renovated unit at the start and having taken photographs at the end - I find that the requirements of the move-in and move-out condition inspections were effectively complied with, as I find that both Parties had the opportunity to participate in the comparison of the before and after condition of the rental unit.

The Landlord said:

When they moved it out, that time our stove was working perfectly fine and laundry perfectly fine. They put the wrong soap in the dishwasher, not the kind that is made for dishwashers, so bubbles - like hand soap - not like dishwasher soap. That's why I told them lots of times. Before moving, I used it, and it was working perfectly fine, there was no bubbles. And I asked her, and she told me what kind of soap, and I told them this is not the perfect soap - that's why the bubbles are coming.

I directed the Landlord to the stove, which the Tenants said was not working from the start. The Landlord responded:

How are they staying with us from February 1 until May 31st? How are they making their food? And moreover, they are ordering everyday from outside? She's the one who told me there is an Indian guy who delivers food, but they are telling you the lie, because sometimes they are using it. Sometimes they are cooking the Indian food on the same stove. And I am the only one who told them how the oven works. I'm the one who teach them, because they didn't know how to use it. They asked me, and I am the one who told them.

I asked the Landlord how old the stove was, and she said: “The stove was not that old, because it was just, the Landlord told us it was changed three or four years ago. It was not that that new, but it was working perfectly fine.”

The Advocate made the following statement.

The Tenants are seeking a dismissal of the Landlord's Application in its entirety. The reason for this is that the Landlord has not met her requirements under

section 23 and section 35 of the RTA.

At the time of move in and move out, the Landlord failed to provide or assign any condition inspection report, and therefore, the Landlord has no evidence to adequately determine who caused the alleged damage in the suite. And due to the Landlord's failure to fulfill their requirements surrounding the condition inspection report, she's pretty much extinguished her right to retain the Tenants' damage deposit. Moreover, she has not served the Tenants with any sort of evidence - any monetary order worksheet - and therefore, she hasn't satisfied her burden for a monetary claim against the Tenants. And so, we ask that the Application be dismissed and the Tenants be returned their damage deposit.

The Landlord said:

[The Advocate] told you I am not sure about my monetary loss. Because I am a common people; I am not a lawyer; whatever I see, I just fill it out. I honestly, I keep my word. And moreover, these people, how come they are saying they didn't receive any single thing [of my evidence], I already served by myself. I don't know why they are lying to you, because they are lying right now about the evidence. If I print out all the paper from RTB, why not give them evidence? . . . I'm not that dumb. I don't know why they are saying that. I don't know why they are ignoring it.

This is not acceptable. If you want to say okay, you guys are not granted with that monetary [award], I don't mind. I totally don't mind. But I need a particular lesson for them. If somebody's nice or somebody can give you a space to live, just respect that thing. If you can see lots of videos for the students – it was disgusting. You can ask [A.J.] whenever we came to see the place, we told them please don't do whatever all the students are doing.

Analysis

Based on 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 – a more likely than not standard. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord 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 Landlord did what was reasonable to minimize the damage or loss.

("Test")

Section 37 of the Act states that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the Parties' respective testimony in the hearing, I find the Landlord to be more credible than the Tenants. The Landlord's version of events rings true. I believe the Landlord is telling the truth and that it is more likely than not that the Tenants have lied about not having received the Landlord's evidence. However, in the hearing, I said I would not consider the Landlord's documentary evidence, and I have not done so.

The Tenants complained about the dishwasher not working; however, I believe the Landlord's version of events that the Tenants failed to use proper dishwasher soap, and that rather, they used hand or other dish soap, which resulted in bubbles coming out. I find that this is consistent with common sense and ordinary human experience for people who have used dishwashers, themselves. The Tenants did not deny any of the Landlord's version of events that they had used glue and had drilled in the walls. They merely said that they failed to receive her evidence in the Landlord's Notice of Hearing package, and that the stove and dishwasher were not working.

The Tenants' do not have the burden of proof in this matter; however, I find it notable that they did not deny the Landlord's allegations, as above. Rather, they pointed to the Landlord's failure to do a proper move-in condition inspection of the rental unit with the Tenants. However, as I found above, the Landlord said that the rental unit had been recently renovated and, therefore, it was in like-new condition to start the tenancy. This is supported by the Tenants' evidence that it was a "nice" place when they viewed it before living there. Further, the Tenants said they took pictures at the end of the tenancy, which they could have compared to a newly renovated unit; however, they did not submit any photographs into evidence. I find this detracts from their claim about not having had a chance to do a move-out inspection.

In this unusual set of circumstances, I find that the Landlord has provided sufficient, undisputed testimony to establish that the Tenants violated the Act, by not having left the rental unit reasonably clean at the end of the tenancy. I find this caused the Landlord to incur damage or loss to the residential property. As the undisputed evidence

was that the stove was not new like the renovated unit, I have not made a finding on how well the stove worked during the tenancy, given the lack of further evidence.

As I have not considered the Landlord's documentary evidence, I find I do not have supplementary evidence of the total amount it cost the Landlord to clean and repair the undisputed damage done during this tenancy. However, in this set of circumstances, I award the Landlord a nominal amount of **\$450.00**, which is approximately 10% of the Landlord's claim, for remedying the damage and dirt left behind by these Tenants. This is pursuant to sections 37 and 62 of the Act, and Policy Guideline #16.

The Landlord is authorized to **retain \$450.00 from the Tenants' \$900.00 security deposit** in complete satisfaction of this award, pursuant to section 72 of the Act. The Landlord is Ordered to **return the remaining \$450.00 of the Tenants' security deposit** to them as soon as possible. I have provided the Tenants with a **Monetary Order** in this regard for enforcement of this Order. The rest of the Landlord's claim is dismissed without leave to reapply, pursuant to section 62 of the Act.

Conclusion

The Landlord is nominally successful in her Application, as she provided sufficient evidence to support a nominal award of **\$450.00**. The rest of the Landlord's claim is dismissed without leave to reapply. The Landlord is **authorized to retain the Tenants' \$900.00 security deposit** in complete satisfaction of the monetary award.

The Tenants are awarded a **Monetary Order** of **\$450.00** for the return of their remaining security deposit. This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) 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: May 04, 2023

Residential Tenancy Branch