



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for a monetary order for damages to the unit, site or property, to retain the tenants' security deposit, for money owed for compensation for damage or loss under the *Act*, regulation or tenancy agreement, for unpaid rent or utilities, and to recover the cost of the filing fee.

The landlords attended the teleconference hearing and gave affirmed testimony. During the hearing the landlords were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The landlords testified that the Notice of Hearing, application and documentary evidence were served on the tenants; with one registered mail addressed to each tenant on April 13, 2018 and that both packages were addressed to the tenants at the tenant's new address discovered by the landlords through the use of a Private Investigator. The two registered mail tracking numbers have been included on the cover page of this decision for ease of reference.

According to the online registered mail tracking website the registered mail package were both signed for and accepted by the tenants on April 19, 2018. Based on the undisputed testimony before me and the registered mail tracking numbers provided which were confirmed by way of the online registered mail website information, I find the tenants were both served with the Notice of Hearing, application and documentary evidence on April 19, 2018 which is the date the tenants signed for and accepted the

registered mail packages. Therefore, the hearing continued without the tenants present and as such, I consider this application to be unopposed by the tenants.

Preliminary and Procedural Matter

The landlords confirmed the email addresses provided for the landlords and the tenants in their application at the outset of the hearing. Accordingly, the decision will be emailed to both parties and that any orders will be emailed to the appropriate party.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 15, 2017 and was scheduled to revert to a month to month tenancy after August 15, 2018. The landlords stated that the tenants vacated the rental unit on February 26, 2018 without returning the rental unit keys. During the tenancy monthly rent was \$1,150.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$575.00 which the landlords continue to hold and of which has accrued \$0.00 in interest.

The landlords' monetary claim of \$2,750.00 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. March 2018 and April 2018 loss of rent (\$1,150.00 x 2)	\$2,300.00
2. Cleaning and garbage disposal costs plus change of locks due to keys not being returned	\$240.00
3. Laminate flooring damage	\$150.00
4. Items removed from rental unit by tenants without permission of the landlords (Compost bin, plunger, multiplugs)	\$60.00

TOTAL	\$2,750.00
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Regarding item 1, the landlords testified that the tenants vacated the rental unit on February 26, 2018 without proper notice and that the tenants breached a fixed-term tenancy as a result. The landlords are seeking \$1,150.00 for loss of March 2018 rent. The landlords stated the tenants vacated on February 26, 2018 without leaving the rental unit keys behind for the landlords. The landlords are also seeking loss of April 2018 rent due to the time it took to clean and repair damage in the rental unit. The landlords testified that the tenants left the rental unit very dirty with damage that will be described further below, and that by the time the rental unit was cleaned of the tenants' garbage, and the floor repaired, the landlords were unable to find new tenants in time for April 2018 which resulted in a loss for the landlords of April 2018 rent in the amount of \$1,150.00.

The landlords testified that the tenants left a lot of garbage which took over 20 garbage bags to collect and which required disposal. In addition, the landlords stated that no cleaning was done by the tenants before they vacated, and that in adding to floor damage which will be described further below, the tenants also broke the fridge door handle, left marks on the walls and removed items from the rental unit without permission that belonged to the landlords.

Regarding item 2, the landlords have claimed \$240.00 which the landlords stated was for the cost of cleaning the rental unit, disposing of over 20 bags of garbage, and to change the rental unit locks as the rental unit keys were not returned by the tenants. The landlords also referred to the condition inspection report ("CIR") submitted in evidence. The CIR is dated August 16, 2017 for the incoming section and dated March 2, 2018 for the outgoing section. The landlords referred to a Notice of Final Opportunity to Schedule a Condition Inspection submitted in evidence also which scheduled the outgoing inspection for March 2, 2018. The landlords stated that the tenants failed to attend for the outgoing inspection so the outgoing CIR was completed without the tenants present.

The landlords stated that they paid a cleaning company \$100.00 to spend four hours cleaning the rental unit on March 10, 2018 and that the landlords had to spend another four hours cleaning the remainder of the rental unit, including removing the tenants' garbage. In addition, the landlords stated that they spent time to have the locks changed as the rental unit keys were not returned as required by the *Act*, and to have the laminate floor repaired. Receipts for the disposal costs and lock changes were submitted in evidence. The CIR supports this portion of the landlords' claim.

Regarding item 3, the landlords have claimed \$150.00 to repair damaged laminate flooring which supported by the CIR submitted in evidence and the photographic evidence submitted in evidence. The landlords testified that the gouges on the laminate flooring were not there at the start of the tenancy and certainly exceeded reasonable wear and tear by the tenants, which is supported by the CIR.

Regarding item 4, the landlords have claimed \$60.00 to replace what the landlords described were items provided for use by the tenants but were not given to the tenants to keep such as a compost bin, a plunger, and extensions cords. The landlords stated that they inspected the rental unit and are only claiming for items that were not left behind by the tenants which belonged to the landlords. The CIR supports this portion of the landlords' claim.

The landlords submitted in evidence colour photos, the CIR, correspondence with the tenants, receipts, notices, checklists, the tenancy agreement and other documents.

Analysis

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

As I have accepted that the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable. I also find that the tenant breached section 37 of the *Act* which requires the tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I find the tenant failed to leave the rental unit reasonably clean and damaged the areas claimed by the landlord beyond reasonable wear and tear.

In addition, section 45(2) of the *Act* applies and states:

Tenant's notice

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(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,
(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[My emphasis added]

Based on the above, I find the tenants breached section 45(2) of the *Act* by vacating the rental unit on February 26, 2018 without consent of the landlords which is earlier than the August 15, 2018 date listed on the tenancy agreement. I find this resulted in a loss of rent to the landlords. Therefore, I find the landlords could not minimize their loss further than they did under section 7 of the *Act* due to the dirty and damaged condition the rental unit was left in by the tenants resulting in significant cleaning and some repairs which resulting in a loss of rent for the months of March and April 2018 as claimed.

I also find the CIR, photographic evidence, and testimony of the landlords to support their entire claim. Therefore, I find the landlords have met the burden of proof in proving their entire claim of **\$2,750.00** as claimed.

As the landlords' claim was successful, I find the landlords are entitled to the recovery of the cost of the filing fee of **\$100.00** pursuant to section 72 of the *Act*, as their application was fully successful. Based on the above, I find the landlord has established a total monetary claim of **\$2,850.00** comprised of \$2,750.00 as claimed plus the \$100.00 recovery of the cost of the filing fee.

As the landlords continues to hold the tenants' \$575.00 security deposit and pursuant to sections 38 and 72 of the *Act*, I authorize the landlords to retain the tenants' full security deposit of \$575.00 which has accrued \$0.00 in interest, in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlords in the amount of **\$2,275.00**.

I caution the tenants to comply with sections 37 and 45(2) of the *Act* in the future.

Conclusion

The landlords' application is fully successful in the amount of \$2,850.00 as indicated above.

The landlords have been authorized to retain the tenants' full security deposit of \$575.00 including \$0.00 in interest, in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlords in the amount of \$2,275.00. The landlords must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

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: November 15, 2018

Residential Tenancy Branch