Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDL, FFL
Tenants: FFT, MNSD, MNRT

Introduction

This hearing dealt with cross applications by the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for the following:

- a monetary order for damage pursuant to section 67 of the *Act* and;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72(1) of the *Act.*

The tenants applied for the following:

- a monetary order for return of the security of the security and pet damage deposit pursuant to section 38(1)(c) of the *Act.*
- a monetary order for the cost of emergency repairs pursuant to section 33(5) of the *Act*.
- authorization to recover the filing fee for this application from the landlord pursuant to section 72(1) of the *Act.*

The landlord and both tenants appeared at the hearing and were given the opportunity to make submissions as well as present affirmed testimony and evidence.

The landlord testified that the tenants were served with the Application for Dispute Resolution by registered mail sent on March 7, 2020. The landlord affirmed that she sent the evidentiary package to the tenants on April 22, 2020. The tenants confirmed receipt of the Application for Dispute Resolution and evidentiary documents and I find that the tenants were served in accordance with section 88 and 89 of the *Act.*

The tenants affirmed that the landlord was served with their Application for Dispute Resolution and evidentiary package by registered mail sent on January 9, 2020. The landlord confirmed receipt of the Notice of Dispute Resolution and evidentiary documents and is found pursuant to sections 88 and 89 of the *Act,* to have been served with the package in accordance with the *Act*.

A further evidentiary package was forwarded and filed by the tenants on May 5, 2020 via registered mail to the landlord. The landlord received the evidentiary package and disputed it as late evidence.

On reviewing the evidence, I am satisfied that the late evidence does not prejudice any of the parties in this process and in accordance with the Residential Policy Procedure Rules. I accept this evidence was filed to the Residential Tenancy Branch on April 29, 2020 and forwarded to the landlord by registered mail on May 5, 2020.

The landlord and tenants provided the Canada Post tracking numbers listed on the cover page of this decision.

Issues to be Decided

Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee from the tenants pursuant to section 72 of the *Act?*

Are the tenants entitled to a monetary order for return of the security of the security and pet damage deposit pursuant to section 38 of the *Act?*

Are the tenants entitled to a monetary order for the cost of emergency repairs undertaken during the tenancy pursuant to section 33 of the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act?*

Background and Evidence

While I have turned my mind to the documentary evidence and the landlord's testimony, not all details of the submissions and arguments are reproduced here. The relevant aspects of this matter and my findings are set out below.

The tenants have the burden of proof to establish the tenants' monetary claims. The landlord has the burden of proof to establish the landlord's monetary claims.

The rental property is an 85-year-old "Vintage home". The landlord testified the one-year fixed term tenancy began on October 14, 2018. The tenants affirmed that they vacated the property on October 30, 2019. The monthly rent was $1575.00. A copy of the tenancy agreement was submitted in evidence.

At the outset of the tenancy, the tenants provided a pet damage and security deposit in the amount of $ 787.50 each which are held in Trust by the landlord.

The tenant SC affirmed that the property was old and that the windows in the property were original except for the windows in the two bedrooms. She affirmed that the landlord did not complete a condition walk through with the tenants on moving in, but the landlord left the report with the tenants requesting the tenants to complete the report themselves as the landlord was quoted as stating "I find it just easier that way". The landlord affirmed that she did this so that the process was "easier for the tenants" when they moved in.

The landlord testified that after the tenants vacated the unit on October 30, 2019, a move-out condition inspection was conducted by the landlord. The landlord testified that the tenants were requested to attend the move-out inspection, but the tenants failed to do so. The move-out inspection report was conducted on October 31, 2019 solely by the landlord. The landlord submitted a copy of the condition inspection report of the rental unit in evidence and forwarded a copy to the tenants by registered mail on December 6, 2019.

The landlord also submitted photographs of the rental unit taken shortly after the tenants vacated supporting her testimony that the garbage required removal, the kitchen required cleaning, the garden was unattended and there was damage to the trim and wall whilst the tenants hung up an "antique heritage chest".

The tenants disputed the damages and cleaning claimed by the landlord and argued that the move-in condition report was never properly completed, and the landlord only provided one opportunity to attend the move-out inspection.

The tenant SC affirmed that she left the rental property extremely clean, she testified that she “wiped the walls, swept the floors and vacuumed”. The tenant RP testified that the cleaning was “above and beyond” and affirmed that the house was a vintage home and there were several issues of dampness and mould in the bathroom.

The landlord testified that the new carpet in the bedroom was not cleaned and the floor in the living room had been scratched. The tenant SC disputed this and affirmed that they had steam cleaned the carpet and that the living room floor was covered with a large rug to avoid any scratches to the original wood. Tenant SC maintained that the property was old and that the wooden floor had several scratches in the wood before they moved in. The tenants submitted photographic evidence of the large rug covering the living room floor as evidence.

The landlord testified that when the tenants vacated, the landlord noted that the large grey garbage bin outside had not been emptied and that the tenants had failed to maintain the yard and pick up the leaves in accordance with their tenancy agreement. The landlord provided estimates for the removal of garbage, gardening, cleaning and repairs from two firms for the sum of $1,500.00 and $2,551.00.

The Tenant PR provided testimony that they vacated the residential property in late October and that he had cut the grass and cleared the yard but could not prevent the leaves from falling from the neighbouring trees. He argued that the photographic evidence provided by the landlord depicted leaves gathered up in the corner end of the garden.

The landlord provided testimony that she was also claiming for compensation and damages to an antique heritage chest and argued that the tenants had damaged and cracked the glass when it was fixed to the kitchen wall by tenant RP. The landlord argued that the tenant RP had also damaged the wooden trim and part of the wall.

The tenant PR affirmed in testimony that he is a carpenter by trade and restored the heritage chest carefully which had been lying in the “dirty basement floor” for several years. The tenant RP provided testimony that when the chest was removed from the basement, the glass in the unit was already “cracked” and that the landlord was aware of this when they sought permission to bring the chest upstairs. Tenant RP affirmed that there was no conversation with the landlord about relocating the chest back to the basement.

Tenant PR disputed the landlord’s claim for the cleaning of the basement. He affirmed that when they moved in, the basement was dirty, damp and contained junk and several paint cans belonging to the landlord.

Tenant SC testified that in December 2018 the furnace in the rental unit broke down in sub-zero temperatures. The tenants were concerned that the temperature was going to drop further during the evening. Tenant SC affirmed that they called the landlord on her cell number on three or four occasions with no response. Tenant SC affirmed that they had no alternative but to pay for the emergency repairs for the furnace for the sum of $307.65. The landlord reimbursed the tenants for the sum of $100.00 for the repair of the furnace. The tenants seek reimbursement for the cost of furnace repairs in the amount of $207.65.

The landlord testified that they knew the furnace repair company and that the tenants did not provide her with two opportunities to repair the furnace. She testified that her husband works in an industrial and maintenance role and would have carried out the repairs himself if the tenants had provided her with the opportunity.

Tenant SC affirmed that the landlord had also agreed to pay for the air purification and filters in the property but only contributed $75.00. The landlord affirmed that the tenant wanted to pay for the air purification herself as she suffered from “allergies”. The tenant SC affirmed that the air purification company had confirmed that the filters had not been cleaned in the property for several years and were extremely dirty. The tenants submitted photographs of the remnants of dirt and debris from the filters provided by the air purification company. The tenants are seeking the sum of $399.63 deducting the $75.00 that the landlord has reimbursed.

The landlord testified that she had obtained advice from the Residential Tenancy Branch (“RTB”) on three separate occasions and the “RTB Officers” had informed her that the tenants had extinguished their rights under the *Act,* based on the fact that she provided the tenant with two opportunities to attend the move out condition inspection.

The landlord submitted a letter in evidence confirming that she wrote to the tenants on December 4, 2019 declining to give back their pet damage and security deposit. The landlord also provided affirmed testimony that new tenants have moved into the property and that she has not carried out the repairs in the rental unit.

The Tenant SC affirmed that based on their contact with the RTB Information Services they are of the opinion that they are entitled to doubling of the deposit as the landlord failed to return their deposit within 15 days of vacating and providing their forwarding address.

Both tenants testified that they had provided the landlord with their forwarding address on the advice of the ("RTB"). The tenants affirmed they provided their forwarding address by text on October 30, 2019 and followed this up with written correspondence on November 18, 2019. This letter was submitted in evidence by the tenants.

Tenant SC affirmed that the landlord had other properties in the area and retains the security and pet damage deposits from tenants.

Analysis

Based on the testimonies of the parties provided during the hearing, the documentary evidence before me and on the balance of probabilities, I find the following:

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish all of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

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 tenants have the burden of proof to establish the tenants' monetary claims. The landlord has the burden of proof to establish the landlord's monetary claims

Carpet cleaning

Section 37(2) of the Act states that the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, as follows:

> *(2) When a tenant vacates a rental unit, the tenant must*
> *(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, [….*

It is the tenant's responsibility to ensure that the carpets in the rental unit are left reasonably clean under section 37(2) of the *Act.*

The parties were in dispute in relation to the cleaning of the carpet. Both tenants testified that they steam cleaned the carpet in the room.

I find that the tenant's testimony convincing that they did steam clean the bedroom carpet and note that the photograph provided by the tenants in evidence depicts that the carpet was left "reasonably clean" in accordance with section 37(2) of the *Act*.

I dismiss the landlord's claim for the sum of $350.00 for cleaning of the carpet.

Cleaning costs

Section 37(2) of the Act states that the tenant must leave the rental unit **reasonably clean,** and undamaged except for reasonable wear and tear.

Considering the photographic evidence and testimonies. The tenant SC testified that she "wiped the walls, swept the floors and vacuumed". The tenant RP testified that the cleaning was "above and beyond"

I find that the photographs provided by the tenants depict that the rental unit was left in a clean condition, consequently, I dismiss the landlord's claim for the cleaning of the kitchen, bathroom, living room and the rest of the rental unit.

I find the landlord has not met the burden of proof on a balance of probabilities that the tenants left the rental unit in an unreasonably clean state.

Furnace

The tenants testified that the landlord did not maintain the furnace and the furnace broke down in December 2018 and they had no alternative but to undertake repairs to the furnace.

Section 32 of the *Act* reads in part, as follows:

> ***32*** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> > *(a) complies with the health, safety and housing standards required by law, and*
> >
> > *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant...*
>
> *(4) A tenant is not required to make repairs for reasonable wear and tear.*
>
> *(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement...*

Based on the tenant's undisputed affirmed testimony and the receipt filed, I find that the tenants have established that the landlord has not maintained the premises in accordance with section 32 of the *Act*.

I also note that the furnace repairs fall within the category of emergency repairs as defined in the following portion of section 33 of the *Act*:

> ***33*** *(1) In this section,* ***"emergency repairs"*** *means repairs that are*
> *(a)urgent,*
> *(b)necessary for the health or safety of anyone or for the preservation or use of residential property, and*
> *(c)made for the purpose of repairing*
> *(i)major leaks in pipes or the roof,*

(ii)damaged or blocked water or sewer pipes or plumbing fixtures,
(iii)the primary heating system,
(iv)damaged or defective locks that give access to a rental unit,
(v)the electrical systems, ...

The tenancy agreement clearly states that in the event of an emergency the tenants are required to make at least two attempts to call the landlord and the landlord did not respond until later in the evening. The tenants testified they made three or four calls to the landlord and proceeded to make repairs in an emergency situation.

Both tenants provided affirmed testimony that the temperature outside was sub zero in December 2018. The tenant's provided testimony that they called and retained the services of a licenced plumber (listed on the furnace) to inspect and repair the furnace in the rental unit.

I find that the tenants have provided evidence in the form of a receipt from the plumbing company for the sum of $307.65 to support their claims and that the landlord was neglectful and failed to meet her obligations under sections 32 and 33 of the *Act.*

The tenant's filed a receipt for the sum of $307.65 and both provided testimony that the landlord only contributed $100.00 towards the repair.

I allow the tenants claim for reimbursement in the amount of $207.65 for the repair and servicing of the furnace based on section 32 and 33 of the *Act,* as it is the landlord's responsibility to maintain, repair the furnace and to ensure that the tenant's heating in the property is regularly maintained and in a good working condition.

I dismiss the landlord's claim of $350.00 for the furnace and filter change filed in her estimate dated November 5, 2019 from WW Contracting, as the furnace was repaired and serviced by the tenants together with the filters in December 2018. It is also the landlord's responsibility to maintain the furnace in accordance with section 32 of the *Act.*

Air Purification and Filter Cleaning

The Residential Policy Guideline Procedure Rules #1 states that it is the landlord's responsibility to clean the air vents. I find cleaning and purification of these items are the responsibility of the landlord.

The landlord's claim that the tenant suffered from allergies is not consistent with the landlord's duty of responsibility to maintain and repair.

Landlord and tenant obligations to repair and maintain

32 (1)A landlord must provide and maintain residential property in a state of decoration and repair that

(a)complies with the health, safety and housing standards required by law, and

(b)having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenants provided testimony and submitted photographic evidence from the Air Purification Company that the air vents had not been cleaned for over 10 – 15 years. The photographic evidence illustrates that the landlord has not maintained the air purification and filters in the rental property.

The cleaning of the central air purification system is included in the invoice submitted by the tenants and is the responsibility of the landlord, thus I allow the tenants reimbursement for the sum of $399.63 for the Air purification and filters deducting the $75.00 reimbursed by the landlord for this claim.

Heritage Chest

A key issue with respect to this aspect of the landlord's claim is whether the heritage chest as noted by the landlord in testimony and documentary evidence, are "damages", for which the tenant must compensate the landlord.

The Guideline #1 *Landlord & Tenant – Responsibility for Residential Premises* states in part as follows:

> *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.*

The Guideline #1, states that "landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement item".

The landlord testified the heritage chest in the kitchen had been destroyed by tenant RP when he removed it from the basement floor and hung the chest onto the kitchen wall. The landlord's evidence is supported by the condition inspection report.

The Residential Policy Guideline 1 indicates that a tenant is only required to paint or repair where damage has occurred or where the work is necessary, otherwise it is not enforceable.

The tenant PR affirmed in testimony that he is a carpenter by trade and restored the heritage chest carefully which had been lying in the "dirty basement floor" for several years. I am not satisfied that the tenant PR has damaged the heritage chest.

The landlord has not provided any evidence of the chest depicting the state and condition of the chest before the tenant's moved in. I decline the monetary award for the chest sought by the landlord for the repair costs.

Wall repair

A key issue with respect to this aspect of the landlord's claim is whether the holes in the wall, as noted by the landlord in testimony and documentary evidence, are "damages", for which the tenant must compensate the landlord, or "reasonable wear and tear", for which the tenant need not compensate the landlord.

Guideline 1. Landlord & Tenant – Responsibility for Residential Premises states in part as follows:

The Guideline #1, referenced above, states that "landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement item". The landlord testified the walls were undamaged in the rental unit. The landlord's evidence is supported by the condition inspection report.

Guideline 1 states as follows:

> *1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.*
>
> *2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.*
>
> *3. The tenant is responsible for all deliberate or negligent damage to the walls.*

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the tenant RP left the wall of the unit damaged together wit the trim when he hung up the antique chest.

I have viewed the landlord's photographs and accept the landlord's evidence with respect to the damage to the trim and wall. Accordingly, I find that the landlord is entitled to the monetary sum of $400.00 for the repair to the wall and trim.

Security Deposit and Pet Damage Deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit. The tenants testified that they had not authorized the landlord to retain any portion of the security deposit.

Section C(3) of Residential Tenancy Branch Policy Guideline 17 states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing.

Based on the testimony of the tenants, I find that the landlord was served with the tenant's forwarding address by text on October 30, 2019 and followed up with written correspondence on November 18, 2019. This letter was submitted in evidence by the tenants.

I find the landlord had 15 days from when the tenants vacated the rental property or provided a forwarding address to return the security deposit to the tenants or file an application for Dispute Resolution Proceedings. Based on the evidence before me, I find that the landlord did not return the tenant's security deposit within 15 days of the receipt of the forwarding address by text on October 30, 2019 and written correspondence dated November 18, 2019.

I find that the landlord did not file an application with the Residential Tenancy Branch to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address by text and in writing.

Therefore, pursuant to section 38 of the *Act* and Residential Tenancy Branch Policy Guideline 17, the tenants are entitled to receive double their security deposit.

Condition Inspection

The landlord testified that after the tenants vacated the unit on October 30, 2019. A move-out condition inspection was conducted by the landlord. The landlord argued that she provided the tenants with two opportunities to attend the inspection. This was disputed by the tenants who affirmed that only one opportunity was provided.

Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a)the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and

(b)the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a)does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b)having complied with section 35 (2), does not participate on either occasion, or

(c)having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

There was a conflicting dispute between the parties as to the discussions of the move-in inspection. The landlord did provided testimony that in the past she has provided her tenants with a copy of the move-in condition report for tenants to complete as she found "it easier that way". The landlord did so on this occasion as well.

The landlord claims that she called the tenant's twice to make appointments to conduct the move-out condition inspection report. I have reviewed my notes of the hearing and testimonies. The tenants affirmed that the landlord only called them once in relation to the move-out inspection and this date was not convenient to both parties. The landlord has failed to provide evidence of texts or emails to ascertain that she contacted the tenants to attend the move-out inspection.

If a landlord fails to comply with section 35 of the Act, the Arbitrator has to double the deposit, I find that the landlord has not provided evidence that she gave the tenant's two opportunities to attend the move-out inspection under section 36 of the *Act* and has extinguished her right under section 35 of the *Act.*

The landlord has provided two estimates, one on an excel spreadsheet without a valid GST number and another for the sum of $2,551.00 yet there is no evidence that any of the repairs have been undertaken. The landlord provided affirmed testimony that the new tenants had moved into the property and the repairs have not been undertaken.

In this instance and on the balance of probabilities the landlord has failed the remaining part of her monetary application. I find that the landlord has provided insufficient evidence to prove or verify the value of the loss or damages claimed. As the landlord was unsuccessful in her application, she may not recover the filing fee pursuant to section 72 of the *Act.*

As the tenants have been successful in their application, they may recover the $100.00 filing fee for this application.

ITEM	AMOUNT
Double security deposit ($787.50 x 2)	$1,575.00
Double Pet damage deposit (787.50 x 2)	$1,575.00
Furnace payment – (receipt)	$ 307.65
Air Filtering payment – (receipt)	$399.63
Filing fee for tenants	$100.00
Less $400.00 damage to the wall for landlord	($400.00)
Contribution by the landlord for furnace & Air purification	($175.00)
Total due to the tenants	**$3,382.28**

Conclusion

The tenants are granted a monetary award in the amount of $3,382.28

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file, the order in the Provincial Court (Small Claims) to be 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 25, 2020

Residential Tenancy Branch