



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords filed under the *Residential Tenancy Act* (the “*Act*”) for compensation for damages, compensation for my monetary loss or other money owed, for permission to retain the security deposit, and to recover the cost of the filing fee for this application. The matter was set for a conference call.

Both the Landlords and both the Tenants attended the hearing and were each affirmed to be truthful in their testimony. Each party was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter is described in this Decision.

Issues to be Decided

- Are the Landlords entitled to monetary compensation for damages under the *Act*?
- Are the Landlords entitled to retain the security deposit?
- Are the Landlords entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the tenancy began on March 1, 2016, as a one-year fixed term tenancy, and that they signed a new tenancy agreement in 2017, agreeing to another one-year fixed term that began on August 1, 2017. The parties also agreed that this tenancy ended as of April 30, 2022, in accordance with the Act, that at the end of tenancy rent in the amount of \$1,840.00 had been due and payable by the first day of each month and the Landlord continues to holding an \$825.00 security deposit. A copy of both the 2016 and 2017 tenancy agreements have been submitted into documentary evidence by these parties.

The parties agreed this rental property consists of two units an upper and a lower, with the Landlords living in the upper unit and the Tenants living in the lower unit. Both parties agreed that a move-in condition inspection report had been completed for this tenancy.

Both parties agreed that the move-out condition inspection report had been completed by the Landlords at the end of the tenancy but that due to scheduling issues, the Tenants did not attend the end of tenancy inspection. The Landlord submitted a copy of the condition inspection report into documentary evidence.

The Tenants testified that they had a verbal agreement with the Landlords to conduct the move-out inspection on April 20, 2022, at noon, which was before they were scheduled to depart on their move. The Tenants testified that the Landlords cancelled that appointment and insisted on only offering a time that was after they had left town, in order to, prevent them from attending the move-out inspection.

The Landlords testified that the Tenants emailed them requesting the move-out inspection be scheduled at 7:00 a.m. on August 20, 2022, the Landlord testified that they advised the Tenants that they would be at work during that time and suggested anytime after 1:00 p.m. on August 20, 2022, but that the Tenants never responded to their email. The Landlords submitted this email string into documentary evidence.

The Landlords testified that they issued the Notice of Final Opportunity to Schedule a Condition Inspection form to the Tenants on April 18, 2022, by posting it to the front door of the rental unit.

The Tenants confirmed that they received the Notice of Final Opportunity to Schedule a Condition Inspection but that they did not respond to the Landlords regarding the date and time offered in that notice.

The Landlords testified that they are claiming \$3,255.00 for painting the rental unit at the end of this tenancy. The Landlords testified that Tenants had patched nail holes in the wall at the end of the tenancy but that they had not matched the paint correctly which resulted in them having to repaint the entire rental unit. When asked the Landlords testified that the last time the rental unit had been painted was in February 2016 before this tenancy began. The Landlord submitted a copy of the painting bill into documentary evidence.

The Tenants testified that the paint in the rental unit was old and thin and that they should not be responsible for repainting the whole rental unit after a six-year tenancy.

The Landlords testified that the patchwork the Tenants had done to the walls in the rental unit caused them to have to pay for two coats of paint when normally only one coat would be required. The Landlord presented a witness to these proceedings, the contractor they hired to paint the rental unit. The witness testified that two coats of paint were required but that it is normal industry practice to apply two coats of paint to interior walls.

The Landlords testified that in December 2021 there had been a clog in the shower drain, in the rental unit, which required a plumber to repair at a cost of \$126.00. The Landlords testified that the Tenants had allowed long hair to wash down the drain and that the hair caused the clog. The Landlord is requesting the recovery of their plumbing costs. The Landlord submitted a copy of the plumbing bill and four pictures into documentary evidence.

The Tenants testified that all the plumbing pipes in the house are connected and that the hair the plumber removed may have been from the upper unit, in which the Landlords live. The Tenants submitted that they should not have to pay this bill as there is no evidence, they caused this clog. Additionally, the Tenants argued that there had been a hair clog in the pipes for the upper unit a few weeks prior to the clog in their unit and that whatever the plumber did to clear the upper clog had just pushed the issue to

their rental unit. To support this argument the Tenants submitted a letter from the Landlord into documentary evidence.

The Landlords responded that the clog was in a position in the pipe that would only have been caused by hair coming from the lower rental unit occupied by these Tenants.

The Tenants testified that they used a hair catch during their tenancy and that they did not allow hair to go down the drain.

The Landlords testified that there was damage to the floors in the rental unit at the end of the tenancy. The Landlords are requesting \$800.00 to repair the floor, based on a verbal estimate they received. The Landlord submitted four pictures into documentary evidence.

When asked the Landlord testified that the floors are made from engineered wood planks, that they had no written estimate for how much the repair would cost and that the flooring was six years only at the time the tenancy ended.

The Tenants testified that they had not damaged the floor during the tenancy but agreed that there were some marks due to normal wear and tear but that they should not have to pay to repair normal wear.

The Landlords testified that when they first viewed the rental unit at the end of tenancy, they found it be reasonably clean but that later they noticed the rental unit required a deeper cleaning. The Landlords are requesting \$336.00 to have the rental unit cleaned at the end of the tenancy. The Landlord submitted a cleaning bill and 22 pictures into documentary evidence.

The Tenant testified that they had cleaned the rental unit at the end of the tenancy, that the unit was returned reasonably clean, and they should not be made to pay for the deep cleaning that the Landlords are requesting.

The Landlords testified that the kitchen countertop was damaged at the end of tenancy and that they are requesting \$130.00 for the purchase of a repair kit. When asked the Landlords' testified that the countertop was installed in 2016. The Landlord submitted one picture and two online estimates for the products required to repair the countertop into documentary evidence.

The Tenants testified that they never saw the damage to the countertop the Landlords are claiming but agreed there may be a small hole there due to normal wear and tear, as the countertop is old and covered in vinyl. The Tenants testified that they do not feel they should be charged to buy repair supplies for this item.

The parties, in this case, agreed that the Fortis Gas and BC Hydro bills had not been paid for the last month of this tenancy. The parties agreed that \$96.87 was due for Fortis Gas and that \$36.39 was due for BC Hydro for this tenancy. The Landlord submitted a Fortis Gas and BC Hydro bill into documentary evidence.

Analysis

Based on the undisputed testimony of the Landlord, the documentary evidence before me, and on a balance of probabilities, I find as follows:

In this case, the Landlords are claiming for several items totalling \$4,860.40 in compensation for damages and losses due to this tenancy. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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 who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Landlords are claiming \$3255.00 to recover their cost for painting the rental unit at the end of this tenancy. I have reviewed the move-out inspection report and the pictures entered into evidence by the Landlords and noted that they indicate that the rental unit required painting. In determining the suitable award, I must refer to the Residential

Tenancy Branch guideline # 40 Useful Life of Building Elements. The guideline sets the useful life of interior paint at 4 years.

I accept the testimony of the Landlord that the last time the interior of the rental unit had been painted was in February 2016, before this tenancy began. Therefore, I find that the interior paint of the rental unit was over six years old by the end of this tenancy, and past its life expectancy. Accordingly, I find that the Landlords are not entitled to the recovery of their costs to paint the interior of the rental unit, as regular maintenance painting was required by the date this tenancy ended. Therefore, I dismiss this portion of the Landlords' claim.

The Landlords are claiming to recover a plumbing bill in the amount of \$126.00, due to a clogged drain in the rental unit. The Landlords claimed that the clog was caused due to the neglect of the Tenants as they allowed long hair to go down the drain. The Tenants argued that there had been a clog in the drains from the upper unit just a few weeks prior and that the plumber who attended to fix that clog had pushed the clog further down into the pipes for the lower unit. Section 32 of the Act provides that both the landlord and the tenant have obligations to repair and maintain the rental unit and residential property.

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Pursuant to section 32, I find that a landlord has an obligation to repair and maintain the rental unit, except where the damage is the result of an action or neglect of a tenant. In this case, the parties offered conflicting verbal testimony regarding the cause of the clogged drain in the rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a

claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, it is the landlords who hold the burden of proving their claim.

I have reviewed the documentary evidence on this point, consisting of pictures of the removed clog, the plumbing bill and a letter from the Landlords. After reviewing these documents I find that the Landlords have not provided sufficient evidence to show that the clog had been caused by the direct actions or neglect of these Tenants. Therefore, I dismiss this portion of the Landlords' claim.

The Landlords are claiming \$800.00 in compensation for damage to the floor of the rental unit. To support this part of their claim the Landlords have submitted four pictures of the floor in the rental unit. I have reviewed these pictures and note that three pictures depict minor scratches, which I find to be of a reasonable amount of wear and tear at the end of a six-year tenancy. However, the fourth picture depicts a hole in the floor, that is clearly damage caused during the tenancy. Therefore, I find that the Tenants were in breached section 32 of the *Act* when they returned the rental unit to the Landlord with damage to the floor at the end of this tenancy.

After reviewing all of the Landlords document evidence, I noted that the Landlords have failed to submit an invoice or an estimate to prove the cost to repair the floor into documentary evidence. As the Landlords has failed to provide any evidence to prove the cost of this loss, as required in Residential Tenancy Policy Guideline #16, I must decline to award the Landlord the requested amount for floor repair.

Regarding the Landlord's claim for compensation in the amount of \$336.00 for cleaning the rental unit at the end of this tenancy, I accept the testimony offered by the Landlords during these proceedings, that the rental unit was returned to them reasonably cleaning but that on further inspection a deeper cleaning of the unit was required. Section 37(2) of the *Act* states the following regarding cleaning at the end of the tenancy:

Leaving the rental unit at the end of a tenancy

37 (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, and*
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

Section 37 (2a) of the *Act* requires a tenant to return a rental unit to a landlord at the end of tenancy "*reasonably clean*", as this Landlord testified during these proceedings that the rental unit was reasonably clean at the end of tenancy, I must find that there has not been a breach of section 37 of the *Act* by the Tenants. Therefore, I decline to award the Landlords the return of their requested cleaning cost.

The Landlords are requesting \$130.00 to purchase two products to repair the countertop in the kitchen of the rental unit. I have reviewed the picture of the damage and the testimony offered by these parties on this point, and I find that there is sufficient evidence before me to show that the kitchen countertop was damaged during this tenancy. Therefore, I find that the Tenants were in breach of section 32 of the *Act* when they returned the rental unit to the Landlord with damage to the kitchen countertop at the end of this tenancy. Accordingly, I award the Landlord their requested costs to repair the countertop in the amount of \$130.00.

I accept the agreed-upon testimony of these parties that the Fortis Gas and BC Hydro bills for the last month of this tenancy remain outstanding. I find that the Landlord is entitled to a monetary award for these outstanding utility bills, consisting of \$96.87 for the Fortis Bill and \$36.39 for the BC Hydro bill.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have been partially successful in this application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application.

Finally, I find that the Landlord has established an entitlement to a monetary award in the amount of \$363.26; consisting of \$36.39 in the payment of an outstanding BC Hydro bill, \$96.87 in the payment of an outstanding Fortis Gas bill, \$130.00 in the recovery of costs to repair a countertop, and \$100.00 in the recovery of the filing fee for this hearing. I grant the Landlords permission to retain \$363.26 from the security deposit they are holding for this tenancy in full satisfaction of this award.

As for the remaining \$461.74 security deposit, the Landlords continue to hold for this tenancy. Normally, this amount would be ordered returned to the Tenants; however, in this case, the Tenants failed to attend the move-out condition inspection with the Landlords at the end of this tenancy. Section 35 of the *Act* states the following:

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

*(a) on or after the day the tenant ceases to occupy the rental unit,
or*

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

I accept the agreed-upon testimony of these parties that the Tenants did not attend the move-out inspection for this tenancy. Section 36 of the *Act* outlines the consequence for a tenant when the inspection requirements are not met.

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.

I have reviewed the Landlords' evidence including the email string between them and the Tenants, and the Notice of Final Opportunity to Schedule a Condition Inspection form. I find that the Landlords did offer the Tenants two opportunities to schedule the inspection and that the last opportunity was offered in writing. Therefore, the Landlords were in compliance with section 35(2) of the *Act* when they conducted the move-out condition inspection without the Tenants.

Therefore, I find that the Tenants breached section 35 of the *Act* when they did not attend the move-out inspection of the rental unit and, consequently they have

extinguished their right to the return of the remaining portion of the security deposit held by the Landlords for this tenancy.

Conclusion

I grant permission to the Landlord to retain \$363.26 of the security deposit they are holding for this tenancy in full satisfaction of the awards contained in this decision.

I find that the Tenants breached section 35 of the *Act*, by not attending the move-out inspection for this tenancy and have extinguished their right to the return of the remaining portion of the security deposit for this tenancy.

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: February 2, 2023

Residential Tenancy Branch