



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDL-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 a monetary order for unpaid rent of \$4,099.49; for a monetary order of \$1,000.00 for damages for the Landlord, retaining the security deposit to apply to these claims; and to recover her \$100.00 Application filing fee.

The Landlord and two agents for the Landlord, E.W. and A.W. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and her Agents, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about it. During the hearing the Landlord and Agents were given the opportunity to provide their evidence orally and to respond to my questions. 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.

As the Tenants did not attend the hearing, 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 documents. The Agent testified that she served each Tenant with these documents and the Landlord's evidence by Canada Post registered mailings, sent on July 28, 2022. The Agent provided Canada Post tracking numbers as evidence of service. I find that the Tenants were deemed served with the Notice of Hearing documents and evidence in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenants.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and confirmed these addresses in the hearing. She also confirmed her 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 Landlord that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised the Landlord that she was 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 the \$100.00 Application filing fee?

Background and Evidence

The Landlord confirmed that the tenancy began on September 1, 2020, with a monthly rent of \$1,700.00, due on the first of each month. She said the Tenants paid her a security deposit of \$850.00, and no pet damage deposit. The Landlord confirmed that she still holds the security deposit for this Application. The Landlord said the tenancy ended when the Tenants vacated the unit on September 2, 2021. The Landlord advised that the rental unit is a suite in a house and has three bedrooms and one bathroom.

#1 MONETARY ORDER FOR UNPAID RENT → \$4,099.49

The Agent explained that the first claim is for unpaid rent of \$1,700.00 for each of June and July 2021, and for \$699.49 of utilities owing. In answer to how the Landlord advised the Tenants of the utilities amount owing, the Agent said:

Text messages; [the Landlord] sent text messages and a copy of the bill. This was how much the utilities were. She sent this – it would have been every time she received the bill - she would take a picture of it and tell [the Tenant] what her portion is. Tell her how much she owes. And the amount was on the notice, the eviction notice – the 10 Day Notice – [the Tenant] had the number, too.

The Agent said that the Tenants only paid toward utilities at the beginning of the tenancy, and not at the end.

#2 COMP. FOR MONETARY LOSS OR OTHER MONEY OWED → \$1,000.00

The Landlord submitted a monetary order worksheet and we reviewed the items listed in it during the hearing.

	Receipt From	For	Amount
A	[S.L.]	Repair walls, paint, clean	\$700.00
B	[S.L.]	Stolen IKEA closets (3)	\$300.00
		TOTAL	\$1,000.00

A. REPAIR WALLS, PAINT, CLEAN → \$700.00

I noted that the Landlord had submitted a receipt for [S.L.'s] repair work, but it was just for the final amount. I asked the Landlord how the amount was determined, and the Agent said:

He told the owner how much it would cost. They did repaint the whole thing, but he didn't charge the whole thing to the Tenants. They made holes and [S.L.] fixed it up. That's the extra that he charged for all that. He charged a lot more for painting, but for patching the holes and patched up he charged this much.

The Landlord submitted a number of photographs, which showed the following damage to the rental unit:

- Mould above the shower in the bathroom;
- Garbage and debris left behind throughout;
- Multiple holes in the walls the size of a fist and a foot;
- Dirt marks on the walls;
- Unclean inside of refrigerator;
- Garbage in the kitchen sink and on the counters;
- Dirty bedroom floors;
- Dirty closet with garbage and debris, and damaged shelving;
- Pantry door removed from frame; and
- Multiple bags of garbage throughout.

I asked the Landlord how she found [S.L.] to do this work, and the Agent said: "I've been an agent for many years, and I have know him for over 15 to 20 years. So, I know he's reliable."

B. SCANDINAVIAN CLOTHING CLOSETS → \$300.00

The Agent said that the Tenants took three of the Landlord's Scandinavian-style closets with them when they moved. The Landlord failed to submit a receipt for the replacement of these closets, but the Agent explained, as follows: "No, I don't think so. We got them on [social media] marketplace second hand, but in new condition."

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 Landlord and Agents 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 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")

#1 MONETARY ORDER FOR UNPAID RENT → \$4,099.49

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.

Section 46 (6) of the Act sets out that a landlord may consider unpaid utilities as unpaid rent, if the landlord has served the tenant with a written demand for payment of them,

and if the utility charges are unpaid for more than 30 days after receipt of the written demand.

Based on the undisputed evidence before me on these matters, I find that the Landlord has provided sufficient evidence to support her burden of proof in this matter. I, therefore, **award the Landlord \$4,099.49** from the Tenants for two months' unpaid rent and unpaid utilities of \$600.49, pursuant to sections 26, 46, and 67 of the Act.

#2 COMP. FOR MONETARY LOSS OR OTHER MONEY OWED → \$1,000.00

A. REPAIR WALLS, PAINT, CLEAN → \$700.00

Section 32 of the Act requires a tenant to repair 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. . . .

As set out in Policy Guideline #16 ("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 find from the Landlord's testimony and her photographs of the rental unit at the end of the tenancy that there was significant damage to walls and closets, and considerable garbage and dirt left behind in the unit by the Tenants.

I find from the testimony of the Agents and the Landlord that [S.L.] included part of the cost of painting in the quote to cover the damaged walls that needed repainting, rather than including the cost to repaint the entire unit. I also find that the amount billed included work patching the walls and preparing them for painting, as well as cleaning and removing considerable garbage left behind.

When I consider all of the evidence before me in this matter, I find that the amount billed by the Landlord is reasonable. I, therefore, **award the Landlord with \$700.00** from the Tenants pursuant so sections 32, 37, and 67 of the Act.

B. SCANDINAVIAN CLOTHING CLOSETS → \$300.00

Based on the undisputed evidence before me in this matter, I find that the Landlord has provided sufficient evidence to meet her burden of proof on a balance of probabilities, and to fulfill the steps of the Test. As a result, I **award the Landlord with \$300.00** from the Tenants pursuant to section 67 of the Act.

Summary and Offset

<u>Awards</u>	<u>Description</u>
\$4,099.49	-unpaid rent and utilities owing;
700.00	-repair walls, paint, clean;
<u>300.00</u>	-closet replacements.
<u><u>\$5,099.49</u></u>	

Given her success in this Application, I also award the Landlord with recovery of her **\$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' **\$850.00 security deposit** in partial satisfaction of the Landlord's monetary awards.

I grant the Landlord a **Monetary Order of \$4,349.49** from the Tenants for the balance of the awards owed to her, pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in her claims, as she provided sufficient evidence to meet her burden of proof on a balance of probabilities. The Landlord is awarded **\$5,199.49**, including recovery of the **\$100.00** Application filing fee from the Tenants.

The Landlord is authorized to retain the Tenants' **\$850.00** security deposit in partial satisfaction of the awards. I grant the Landlord a **Monetary Order of \$4,349.49** for the remaining amount owed to the Landlord by the Tenants.

This Order must be served on the Tenants by the Landlord 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 19, 2023

Residential Tenancy Branch