Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction
This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the "*Act*") for:

- A monetary order for unpaid rent pursuant to sections 26 and 67;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages or compensation pursuant to section 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants did not attend this hearing although I left the teleconference connection open throughout. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue – service of the Notice of Dispute Resolution Hearing
The landlords testified that they served each of the tenants with the Notice of Dispute Resolution Proceedings packages via registered mail on August 13, 2022. The tracking numbers for the mailings are recorded on the cover page of this decision.

The landlord testified that the tenants did not provide a forwarding address at the end of the tenancy. The landlord "did some digging" and discovered the name of the tenant KE's employer. KE's employer confirmed with the landlord that both tenants had moved into a house owned by KE's employer.

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The landlord called the KE's employer a witness. (JC). JC testified that the tenants named on this application for dispute resolution moved into a property owned by him on July 1, 2022. They remained occupying this residence until September 22, 2022. The address was the one listed in this landlord's application.

JC testified that during the tenancy, he received a call from Canada Post telling him his tenants had registered mail waiting for them at the post office. JC testified that the tenants knew the package at the post office was the landlord's Notice of Dispute Resolution Proceedings and refused to pick it up. Eventually, the packages ended up in JC's Post Office box. When JC tried to give the package to the tenant MD, she refused to accept it, saying, *"It's our old landlord. We owe him rent money".* The other tenant KE told JC that as far as anyone knows, they don't live in JC's rental house. KE asked that JC not tell anyone they lived there.

Residential Tenancy Branch Policy Guideline 12, [service provisions] states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Based on the testimony of the witness, I find the tenants were residing at the address owned by the witness JC at the time the tenants were actively avoiding service of the landlord's Notice of Dispute Resolution Proceedings. As such, pursuant to sections 71 and 90, I deem both tenants effectively served with the landlord's Notice of Dispute Resolution Proceedings on August 18, 2022, the fifth day after being sent via registered mail.

This hearing proceeded in the absence of the tenants.

Issue(s) to be Decided

Is the landlord entitled to compensation?
Can the landlord retain the tenants' security deposit?
Can the landlord recover the filing fee?

Background, Evidence and Analysis

The landlord gave the following testimony. The rental unit is a house built in 1968, purchased by the landlords in 2009 and fully renovated by 2018. The tenancy began on

May 1, 2018 with rent set at $1,950.00 per month. Over the course of the tenancy, the rent was increased to 2,100.00 per month when the detached garage was included in the rent at a later date. The landlord collected as security deposit of $975.00 which he continues to hold.

The landlord testified that he did a condition inspection report with the tenants at the commencement of the tenancy, however they neglected to sign it. The tenancy ended by a settlement agreement before an arbitrator and the last day of tenancy was June 30, 2022.

When the tenants moved out, they only paid $248.72 of the $2,100.00 rent. 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 this 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. I find that the tenants failed to pay the full rent for the month of June, 2022 and the landlord is entitled to the remainder of June's rent, **$1,851.28.**

Near the end of the tenancy, the tenants became hostile and uncommunicative with the landlords. They refused the landlord's dates for a move-out condition inspection report and failed to attend the landlord's final opportunity for condition inspection, provided as evidence. Due to the hostility of the tenants and the unclean, damaged condition of the unit at the end of the tenancy, the landlord was unable to find prospective tenants for the month of July 2022. The landlord seeks an additional month's rent from the tenants, $2,100.00.

Residential Tenancy Branch Policy Guideline-3 [claims for rent and damages for loss of rent] states at part D:

D. Loss of rent due to damage

When a tenant vacates a rental unit or manufactured home site, they must leave it reasonably clean and undamaged except for reasonable wear and tear (section 37 of the *RTA* and section 30 of the *MHPTA*). If a tenant does not comply with this requirement and the premises are un-rentable because of this, then in addition to compensation for the damage to the property or for cleaning, the landlord can also seek compensation for loss of rent. The landlord is required to mitigate this loss by completing the cleaning or repairs in a timely manner.

I have viewed the photographs of the unit taken at the end of the tenancy and I find that the unit sustained enough damage that it was not able to be rented for the month of

July, 2022. The carpets appear unvacuumed, the dishwasher appears broken, there is damage to the garbage bin and the fridge drawer requires replacement. I accept the landlord's undisputed testimony that the hostility of the tenants made it difficult to advertise for new tenants while the tenants remained in the unit. I find the landlord is entitled to additional compensation of one month's rent, or **$2,100.00.**

The landlord testified that 3 new barstools were included in the tenancy agreement under section 4C provided as evidence. The tenants took the barstools with them when they vacated the unit and the landlord seeks replacement value. The landlord provided photos of the barstools at the beginning of the tenancy and examples of replacement ones as evidence. I find the landlord is entitled to the full replacement value of the barstools**, $1,306.99.**

Policy Guideline-1 [Landlord & Tenant – Responsibility for Residential Premises] states:

RENOVATIONS AND CHANGES TO RENTAL UNIT

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

MAJOR APPLIANCES

At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.

The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

CARPETS

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

WINDOW COVERINGS

The tenant may be liable for replacing internal window coverings, or paying for their depreciated value, when he or she has damaged the internal window coverings deliberately, or has misused them e.g. cigarette burns, not using the "pulls", claw marks, etc.

The landlord gave undisputed testimony that the tenants painted the hallway, kitchen and 3rd bathroom in the house without his approval. The landlord had to hire a painter to restore the rental unit back to its original colour at a cost of $1,023.74. I find the tenants' actions amount to a change in the rental unit that they are responsible for returning to it's original condition which they failed to do. I award the landlord the **$1,023.74** they seek.

The landlord testified all the appliances were purchased new in 2016. He testified that the soap dispenser in the dishwasher was broken and required replacement. The fridge drawers were also broken and needed replacement. The landlord provided an invoice for the replacement parts at **$333.59** and I award this amount to the landlord.

The built in recycling drawer was in new condition when the tenants moved in and was cracked and broken when the tenants moved out. The replacement cost for the bin was **$144.42** and I award this to the landlord as well, as I find the tenants did not leave the rental unit undamaged at the end of the tenancy.

The landlord provided photos of the carpets at the end of the tenancy which indicates the tenants did not shampoo or otherwise professionally clean the carpets at the end of the tenancy. I find the cost of **$94.50** to be reasonable and I award that amount to the landlord.

The landlord testified that two of the window screens that were put into the rental unit in 2016 were damaged and bent so badly by the tenants during the tenancy that they were no longer useable at the end of the tenancy. The landlord provided photos of the wrecked screens as evidence and I am satisfied the tenants are liable for replacing them at the cost of **$200.00.**

The landlord provided photos to corroborate his testimony that the fiberglass bathtub was damaged during the tenancy. The landlord believes the crack in the finish was caused by some kind of impact or excessive weight on the tub. The tenants failed to notify the landlord of the damaged tub during the warranty period of 5 years on the tub and the landlord had to find a fiberglass repairer at a cost of **$367.50** to repair it. Based on the undisputed testimony and evidence, I award the landlord this amount.

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

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. 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). (emphasis added)**

The tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to turn the rental unit over to a new tenant when it is at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean. If a landlord wants to turn over the unit to a new tenant at a very high level of cleanliness that cost is the responsibility of the landlord. Based on the photographs provided by the landlord, I find the unit was "reasonably clean" at the end of the tenancy and I dismiss their claim of $345.45 to have it professionally cleaned to a greater extent.

The landlord testified that their lawnmower, purchased in 2010 was disassembled and was no longer functioning at the end of the tenancy. The landlord took it to a small motor repair shop and it was determined not worth repairing. The landlord seeks the replacement cost of a new mower. While the barstools are specifically mentioned in the tenancy agreement, there is no mention of a lawnmower in the tenancy agreement, the condition inspection report or the "cleaning checklist" provided to the tenants. For this reason, I cannot determine the existence or the condition of the lawnmower at the commencement of the tenancy. Policy Guideline 40 states:

A person can replace damaged items with more expensive ones if they choose, but not at the expense of the party responsible for the damage. The person responsible for the damage is only responsible for compensating their landlord or tenant in an amount that covers the loss. The extra cost of the more extravagant, expensive or luxurious item is not the responsibility of the person who caused the damage.

The landlord did not provide comparison photos of the old lawnmower and the new one, making it difficult for me to determine if the quality of the new one is better than the one that was 12 years old at the end of the tenancy. Consequently, I award the landlord a nominal award for the damaged lawnmower, **$100.00.**

Lastly, I accept the landlord's undisputed testimony that the tenants did not return the keys at the end of the tenancy, as required under section 37 of the Act. The landlord is entitled to recover the **$16.77** they paid to have the keys replaced.

As the landlord's application was successful, the landlord is also entitled to recovery of the $100.00 filing fee for the cost of this application. In accordance with the offsetting provision of section 72 of the Act, the landlord may retain the tenant's security deposit in the amount of $975.00.

Unpaid rent for June	$1,851.28
unable to secure a new tenancy for July 1, 2022	$2,100.00
3 barstools	$1,306.99
Damage to kitchen appliances	$333.59
Damaged garbage/recycling bin	$144.42
Painting hallway/kitchen and 3rd bedroom	$1023.74
Damaged window screens -	$200
Carpet cleaning -	$94.50
Cracked bathtub -	$367.50
Keys not returned -	$16.77
Filing fee	$100.00
Less security deposit	($975.00)
TOTAL	**$6,563.79**

Conclusion

I award the landlord a monetary order in the amount of $6,563.79.

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: April 24, 2023

Residential Tenancy Branch