Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSDB-DR, FFT, MNDL-S, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On August 12, 2022, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for a return of double the security deposit and pet damage deposit pursuant to Section 38 of the *Residential Tenancy Act* (the "*Act*") and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On October 11, 2022, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit and pet damage deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

These Applications were originally set down for a hearing on June 26, 2023, at 1:30 PM and then were subsequently adjourned for reasons set forth in the Interim Decisions dated June 27 and July 25, 2023. These Applications were then set down for a final, reconvened hearing on August 22, 2023, at 9:30 AM.

Both Tenants and Landlord K.J. attended the final, reconvened hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was

prohibited, and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for a return of double the security deposit and pet damage deposit?
- Are the Tenants entitled to recover the filing fee?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit and pet damage deposit towards this debt?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that tenancy started on August 20, 2021, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on June 30, 2022. Rent was established at an amount of $3,500.00 per month and was due on the first day of each month. A security deposit of $1,750.00 and a pet damage deposit of $1,750.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

K.J. confirmed that neither a move-in inspection report nor a move-out inspection was conducted with the Tenants. As well, Tenant R.L. advised that their forwarding address in writing was served to the Landlords by registered mail on July 22, 2022. K.J. confirmed that they received this “around that time”, and that they did not return the deposits in full or file an Application to claim against those deposits within 15 days of

receiving that forwarding address in writing. She acknowledged that they are still holding those deposits in trust.

As this addressed the Tenants' claim in their Application at the original hearing, the focus turned to the Landlords' Application for damages. K.J. advised that they were seeking compensation in the amount of **$2,518.61** for the cost to remove garbage that the Tenants left on the property. She referenced their outlined estimate of the cost to rent a truck and drive to the dump, as well as the cost for their personal vehicle and her "medical consulting rate" of $150.00 per hour, plus the amount of labour to support their claims of disposal of this refuse. They did not submit any documentary evidence to substantiate the legitimacy of their suggested costs in the estimate.

R.L. acknowledged that they left items behind after the tenancy had ended; however, he advised that these items were related to the house, such as matching tiles and paint. It was their belief that these were items that would have been reasonable for the Landlords to keep. He referenced their evidence to support their position that these items matched the rental unit. As well, he stated that the garbage bins left behind belonged to the municipality. He testified that they offered an alternative to the Landlords to remove these items if they so chose. Tenant J.B. stated that a move-out inspection would have addressed these items. R.L. then agreed that they left corroded extension ladders and a rubber hose, and stated that there was no discussion with the Landlords regarding what should be disposed of.

At the reconvened hearing dated July 25, 2023, K.J. advised that they were seeking compensation in the amount of **$1,684.00** for the cost to replace a damaged garage door. She testified that the Tenants informed them that the door was "rotting due to the wind and sea/salt air"; however, it is their position that the door was damaged due to the Tenants' negligence. She referenced pictures of the damage, and she stated that a home inspection report noted this damage. This report was not submitted as documentary evidence for consideration, however. She stated that it is possible that the door was as old as the property (2010), and that they replaced this door at a cost of $784.00. A receipt for this was not submitted as documentary evidence for consideration either. She claimed that Landlord D.J. completed the work to install this new door and that it took him six hours to complete, at $150.00 per hour. They did not submit any evidence to substantiate that a certified contractor would charge the equivalent rate, or that it would have taken this person six hours to complete the work.

R.L. advised that they informed the Landlords of the condition of this door on February

26, 2022, by text message, that the Landlords acknowledged this, and that they stated that they will “leave it be for now”. He referenced pictures of the door and text messages of their interactions to support their position. He stated that the damage was likely caused by the wind, and it was their understanding that the Landlords were taking responsibility for this door.

J.B. advised that the door swung outwards, that it always functioned despite its challenges, and that they notified the Landlords as it became progressively worse naturally.

On the Landlords’ Monetary Order Worksheet, they indicated that they were seeking compensation in the amounts of **$116.48** and **$8,395.98**; however, K.J. stated that they were withdrawing these claims.

She then advised that they were seeking compensation in the amount of **$3,136.00** for the cost to repair and replace flooring and windowsills that were allegedly damaged by the Tenants’ pet, and from dragging furniture on the floors. She referenced the Tenants’ pictures submitted, and their own, to support their claims for damages. She was unsure how old the flooring was, and she stated that the amount claimed was determined by an online estimate she obtained. She stated that she “believed” the flooring was “maple or oak”, but despite this, she inputted cedar into this online estimate.

R.L. referenced an email from November 12, 2022, where a realtor noted that there were many tenants who had dogs prior to when the Tenants lived there. As well, he compared their photos to the Landlords’ pictures, to demonstrate that the scratches were the same at the start of the tenancy.

J.B. advised that the flooring was constructed out of maple, and that the trim and windowsills were made out of fir, which is very hard. He stated that the windowsills upstairs were always damaged due to a pet, and that he applied varathane over this damage. He testified that their pets only lived in the rental unit for three months.

At the final, reconvened hearing, K.J. advised that they were seeking compensation in the amount of **$500.00** for the cost to repair an area of grass that was damaged due to the Tenants burning their garbage. She stated that the Tenants agreed that they burned this area before, but it is much larger now. She indicated that this amount sought was a quote to complete this work; however, she was unsure of the actual cost. As well, she stated that they have not paid to have this repaired yet. She referenced pictures

submitted to corroborate this damage.

R.L. advised that there was a fire pit in the yard well before the tenancy started, and that there were no terms in the tenancy agreement prohibiting having fires. He testified that this burned area is no larger than when the tenancy commenced, and he referenced timestamped pictures to support this position.

K.J. then advised that they were seeking compensation in the amount of **$165.98** for the cost to replace a hose bib that the Tenants left that was corroded and fixed in place. She stated that the Tenants were aware of this damage and that they were negligent for it. She submitted that the replacement parts cost $15.98, but she did not submit an invoice to support this claim. As well, she stated that D.J. completed the labour and it took him one hour. She claimed that a typical tradesperson in that area would cost between $100.00 to $200.00, but she did not provide any documentary evidence to substantiate this.

R.L. advised that they replaced this four months prior to the start of tenancy, and that they were not negligent for this. He referenced documentary evidence submitted of exchanges with a plumber confirming that this was replaced. As well, he stated that it was corroded due to the harsh environment, and that they left this because it could not be removed by hand.

On the Landlords' Monetary Order Worksheet, they indicated that they were seeking compensation in the amounts of **$560.00** and **$208.81**; however, K.J. stated that they were withdrawing these claims.

On the Landlords' Monetary Order Worksheet, they indicated that they were seeking compensation in the amount of **$406.00**; however, K.J. advised that they were actually seeking compensation in the amount of **$206.00** for the cost of replacing a damaged light fixture that was left hanging by the Tenants. She did not submit an invoice to support the cost of the fixture, nor was there anything provided to substantiate the cost of the purported one hour of labour.

R.L. acknowledged that they removed part of the light fixture in May 2020 in order to paint the walls behind it. He stated that they forgot about this fixture because there was a desk there, and they did not notice. He could not recall if the glass part of the fixture was left or not.

J.B. advised that he could not recall either if the light shade was left, and it is possible that it was not there at the end of the tenancy.

Finally, K.J. advised that they were seeking compensation in the amount of **$200.00** for the cost to repair and repaint the ceiling because something was sprayed on it. She stated that the entire room was painted at a cost of $3,000.00, but the ceiling would only amount to $200.00. They did not submit an invoice to substantiate the cost of painting the room.

R.L. acknowledged that the Landlords made an error in their Monetary Order Worksheet, and understood that the total amount of $406.00 was separated into two, different claims. He indicated that they were prepared to proceed with this second claim. He testified that their son likely sprayed something on the ceiling, and that had they seen this, they would have fixed it.

J.B. confirmed that their son was 11 years old, and that this was likely an oversight. He apologized for this.

The parties were afforded many opportunities to settle these matters over the three hearings; however, those efforts proved to be unsuccessful.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlords and Tenants must inspect the condition of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlords and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlords must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulation* (the "*Regulation*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlords or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlords to claim against a security deposit or pet damage deposit is extinguished if the Landlords do not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlords provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the inspection reports, as neither a move-in inspection report nor a move-out inspection was conducted with the Tenants, I am satisfied that the Landlords failed to comply with the requirements of the *Act* in completing these reports. As such, I find that the Landlords have extinguished the right to claim against the deposits.

Section 38 of the *Act* outlines how the Landlords must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlords' claim against the Tenants' security deposit and pet damage deposit, Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposits. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposits, and the Landlords must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, given that a forwarding address in writing was served to the Landlords by registered mail on July 22, 2022, and that K.J. confirmed that they received this "around that time", the Landlords were required to either return the deposits in full or file an Application to claim against them within 15 days. As the Landlords are still holding the deposits in trust, and only filed their Application on October 11, 2022, I am satisfied that the Landlords failed to comply with

their obligations under Section 38 of the *Act*. Thus, the doubling provisions apply to the security deposit and pet damage deposit in this instance, and I grant the Tenants a monetary award in the amount of **$7,000.00**.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlords prove the amount of or value of the damage or loss?
- Did the Landlords act reasonably to minimize that damage or loss?

I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlords' claims for compensation in the amount of $2,518.61 for the cost of refuse disposal, when reviewing the pictures of the items that were left by the Tenants, I accept that most of these items appear to be related to the house and could possibly be utilized in future. In my view, they do not appear to be useless "garbage", with the exception of two corroded ladders that the Tenants acknowledged they left behind. More significantly, I note that the burden of proof is on the Landlords to establish the existence of their loss. However, the Landlords failed to provide any

documentary evidence to legitimize any of their estimates to remedy this issue. Moreover, I reject their claims of $150.00 per hour for their “medical consulting rate”, as it is entirely possible that they could have hired a company to complete this work at a market rate. As they indicated in their own written statement that they estimated labour at $100.00 per hour, it is not clear how they could then logically seek to claim for more than this.

As well, given that the tenancy ended over a year ago, and given that there was no indication that this “garbage” was disposed of by the Landlords, I find that this would lead to a reasonable conclusion that the items that were left behind were not as significant a burden as claimed by the Landlords. Based on my assessment of this claim, given that I am not satisfied that much of these items are “garbage” as purported by the Landlords, and given that there was no documentary evidence to support the Landlords’ claims for their suggested costs, I dismiss the majority of this claim in its entirety. As the Tenants acknowledged that they left two corroded ladders behind, I grant the Landlords a monetary award in the amount of **$50.00** to remedy this matter.

It should be noted that there was a similar pattern in all of the Landlords’ claims for compensation as they claimed for issues that were generally unsubstantiated with documentary evidence supporting the actual issue, or supporting their claims for loss. In my view, it was evident that the majority of the claims made in this Application were verging on unnecessary, and unreasonably frivolous or vexatious.

Regarding the Landlords’ claim in the amount of $1,684.00 for the cost to replace a damaged garage door, I note that the Landlords have provided no documentary evidence to support their claims that the door damage was caused by the Tenants’ negligence. As well, they did not even submit a copy of a home inspection report as evidence to support their suggested claim. Moreover, they did not submit a copy of a receipt to confirm that they spent $784.00 for a replacement door. Finally, while it allegedly took D.J. six hours to install a new door, there has been no evidence submitted that would demonstrate that he has the appropriate qualifications or skills to replace this door. Furthermore, there has been no evidence submitted to prove that it would have taken a certified contractor the same amount of time, or that this person would have billed at the same rate as their “medical consulting rate”. As such, I reject this claim in its entirety as I am not satisfied that the Landlords have proven that the Tenants were negligent for this damage. As well, I find it unjust to award a claim for labour that appears to be for D.J.’s time practicing DIY handiwork. I also find that the excessive and unfounded nature of the above unsubstantiated claims cause me to

question the reliability and credibility of the Landlords' submissions in general.

With respect to the Landlords' claim for compensation in the amount of $3,136.00 for the cost to repair and replace damaged flooring and windowsills, I note that the Landlords have not submitted any documentary evidence to support the cost of this online estimate, or if whatever website they used was a legitimate business. Moreover, I note that this estimate was based on K.J. inputting an entirely different material, which I find could dramatically account for a difference in an estimate for a comparable material. Furthermore, I do not find that the Landlords have proven that the Tenants were negligent for this damage, on a balance of probabilities, as they did not even complete a move-in or move-out inspection report. Given how baseless this claim appears to be, I dismiss it in its entirety. Again, it should be noted that the dubious and unreasonable manner of what the Landlords are attempting to portray causes me to doubt, increasingly, the reliability or legitimacy of their submissions on the whole.

Regarding the Landlords' claim for compensation in the amount of $500.00 for the cost to repair a damaged area of grass, when I review the evidence presented before me, I do not see "significant damage to the landscaping" as portrayed by the Landlords. In my view, this appears to be a fire pit that accounts for a marginal area in a large yard. Moreover, even if I were to accept that this was significant and that the Tenants were negligent for this, the Landlords have submitted no documentary evidence to support the alleged cost to remedy this matter. As such, this claim is dismissed without leave to reapply.

With respect to the Landlords' claim for compensation in the amount of $165.98 for the cost to replace a corroded hose bib, in reviewing the evidence before me, this corrosion appears to have likely been caused by time and the elements, rather than any negligence caused by the Tenants. Again, even if I were to accept that the Tenants were responsible for this damage, there has been no evidence submitted to support the cost of the replacement hose bib, or that it would have taken a qualified professional the same amount of time, at the same cost, to fix this issue. Consequently, this claim is dismissed in its entirety.

Regarding the Landlords' claim for compensation in the amount of $206.00 for the cost of replacing a damaged light fixture, it appears as if the Tenants acknowledged that this was an issue that they overlooked. While I am satisfied that the Tenants should be accountable for this repair, I note that the Landlords have submitted no documentary evidence to substantiate that they purchased a new light fixture for $56.00.

Furthermore, there is no documentary evidence to demonstrate that a qualified professional would have charged $150.00 to complete this repair. As such, I find it appropriate to grant the Landlords a monetary award in the amount of **$75.00** to remedy this matter.

Finally, with respect to the Landlords' claim for compensation in the amount of $200.00 for the cost to repair and repaint the ceiling, I accept that the Tenants were likely negligent for this damage. However, the Landlords have submitted no documentary evidence to prove that they painted this room, that it cost them $3,000.00 to do so, and that the proportionate amount of the ceiling would be equivalent to $200.00. Regardless, as I am satisfied that the Tenants were negligent for this damage, I find it appropriate to grant the Landlords a monetary award in the amount of **$100.00**, which I find to be commensurate with the value of the loss justified by the Landlords' submissions.

As the Tenants were successful in their Application, I find that the Tenants are entitled to recover the $100.00 filing fee paid for their Application.

While the Landlords were nominally successful in their claims, due to the unreasonable and unsubstantiated nature of their submissions, I find that the Landlords are entitled to recover $25.00 of the $100.00 filing fee paid for their Application.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlords to the Tenants

Refuse disposal	-$50.00
Light fixture repair	-$75.00
Ceiling repainting	-$100.00
Landlords' filing fee	-$25.00
Doubling of security deposit	$3,500.00
Doubling of pet damage deposit	$3,500.00
Tenants' filing fee	$100.00
TOTAL MONETARY AWARD	**$6,850.00**

Conclusion

The Tenants are provided with a Monetary Order in the amount of **$6,850.00** in the above terms, and the Landlords must be served with **this Order** as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: September 20, 2023

Residential Tenancy Branch