



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking a monetary order for unpaid rent or utilities; a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

One of the named landlords and both tenants attended the hearing. The landlord and one of the tenants gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenants for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenants for damage to the rental unit or property?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for replacement of keys?

- Should the landlords be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on January 15, 2021 and reverted to a month-to-month tenancy after January 31, 2022, which ultimately ended on October 31, 2022. Rent in the amount of \$2,400.00 was payable on the 1st day of each month. On December 29, 2020 the landlords collected a security deposit from the tenants in the amount of \$1,200.00 and collected a pet damage deposit on January 15, 2021 in the amount of \$1,200.00, both of which are still held in trust by the landlords. The rental unit is an entire house, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy, and a copy has been provided for this hearing. At the end of the tenancy the landlords scheduled the move-out condition inspection, but did not use an approved form to schedule a final opportunity. No move-out condition inspection report was completed, but the landlords just took photographs.

The landlords have provided a Monetary Order Worksheet seeing out the following claims totaling \$5,600.00:

- \$2,400.00 for Oct 2022 rent;
- \$3,000.00 for damages; and
- \$200.00 for lost key.

The tenants did not pay any rent for the final month of the tenancy, and the landlords claim \$2,400.00.

With respect to damages, the landlord testified that the total cost to make repairs was \$7,856.88 and an Invoice has been provided for this hearing.

In April, 2022 the tenants notified the landlords about water leakage in the bathroom due to a leaking tap. Prior to that, in March, 2022 the tenants notified the landlords about some wear and tear and wanted the landlords to reduce rent. Careless use caused worse damage, which the landlord found after the tenants moved out. A lot of mold existed and the drywall had to be dismantled, a tap had to be replaced and the pipe line. The landlords have tried to keep it reasonable because not all damage was caused by the tenants. However, the tenants didn't fix things from April to September,

2022 causing worse damage. The landlords claim \$3,000.00 of the Invoice, not the materials, however there were a lot of purchases required. The landlords claim 1/3 of the Invoice, being \$3,000.00.

The tenants did not give back the 3 keys, one of which was a remote control device. The move-in condition inspection report provides for \$100.00 for any loss of keys, which was written on the report when it was completed.

Before the tenants moved in, the landlords had a property manager. After 2 months the tenants wanted the property manager to be removed because they didn't believe the property manager provided good service. The landlord rejected that, but the tenants asked again a month later. The landlord was okay with that but highlighted that the landlord cannot provide timely service, and the tenants agreed they would take care of the house themselves.

In March, 2022 the tenants requested to reduce rent and gave the landlord a long list of repairs required. The tenants promised to fix the leak, and the landlord paid the tenants \$200.00 to be the property managers, but nothing had been done. The landlord had promised to pay the tenants for materials and labor. An email dated October 14, 2022 has been provided for this hearing wherein the landlord asked the tenants to be mindful of keys, garbage, cleaning, holes and nails in the walls, and a reminder about the list of repairs the tenants promised to complete. The property manager tried her best to fix repairs, and later the landlord allowed the tenants half a month's free stay and the tenant agreed to get it fixed himself because he said he could and wanted to move in. The original date to move in was January 1, 2022 but due to repairs required, such as broken appliances and no running water the tenants said they wouldn't move in until the 15th of January, which was why the tenants only paid half a month's rent while renovations were occurring; no one forced the tenants to move in. The landlord tried to satisfy that and the tenants stayed for 2 years.

The landlords received the tenants' forwarding address at some point during the 2nd half of October, 2022, prior to the end of the tenancy.

The tenant testified that a conversation started with the property manager when the tenants saw the home in early December, 2021, which was under renovations and the tenants were promised a January 1, 2022 move-in date. On January 1, 2022 the tenants met the property manager but were shocked to see multiple contractors working. The tenants were expecting to complete an inspection, but there was no running water so the tenants refused to participate.

There was not a lot of selection for a place to rent, so the tenants wanted to work with the landlords and property manager. Some of the tenants' belongings were moved to the garage between January 1 and 15 while renovations were occurring. The tenants agreed to meet the property manager on January 15, 2022 which was promised to be move-in ready. Prior to that, emails and communication was occurring. The move-in condition inspection was completed on January 15, 2022.

Over time the tenants started noticing that previous repairs that were there had issues that came back and the tenants communicated that with the property manager and got a run-around, who said, "This is what you can expect from an old home." The tenants didn't feel comfortable with the property manager and asked the landlords to deal with the tenants directly. The tenants were happy with the home in spite of some issues. The tenants sent photographs to the landlord, who said he was not concerned. It was a cold winter and the house was heated with a boiler system, which froze and only half of the house got heat. The tenant had a local company look but they couldn't figure it out and called specialist, who couldn't come out right away, and the pipe burst once weather went from -30 to +5.

The tenant called a local company, and they fixed it, but they had to take out drywall because the pipe was behind the drywall. It was during the height of COVID. The tenants found it difficult through the year due to contractors' unavailability, while contractors were building a hospital in a nearby town. Then the tub was leaking due to a crack in the fiberglass. It had been leaking for quite awhile, and photographs have been provided for this hearing.

Multiple contractors were called, but it was difficult to pin-point but located a small crack in the tub. The tenant got some flex seal and sealed it, which worked. The toilet started to leak, which is above the other bathroom. The tenant couldn't find where the leaks were coming from. There was a long list of emails with the landlord, the property manager and the tenant about a leak behind dishwasher which was repaired before the tenants moved in, which was in the same spot as where the drywall damage was. The tenants continued to try to find contractors, and the patch is holding.

The tenant asked that the landlord keep the security deposit and pet damage deposit to cover the last month of rent, but received no response, so the tenants took that as being agreed to.

The tenants had the utilities cut off at the end of the month of October. On October 7 the tenants weren't able to get the U-Haul that they wanted, and the couches wouldn't fit. The tenant told the landlords that he would be back at the end of the month to get them shipped to their new home in Ontario. However, the landlord said the tenants had

to be completely out by the 7th of the month, but the tenant argued that the tenants had possession until the end of the month, and the landlord didn't reply. The tenants were essentially evicted. The tenants were completely blind-sided and had to sell the couches at a lesser cost.

With respect to keys, the garage door opener was left in the garage, and the back door key was left on the counter. The other key was given to a guy that the landlord sent to retrieve them. The tenant told the landlord about an exit inspection, but the landlord said his person wasn't comfortable doing it. By leaving on the 7th of the month and giving the key to that person, the tenant agreed to give photographs to the landlord. That is the arrangement with the landlords as well as a pro-rated amount of rent. Photographs were taken and a walk-through video was taken on October 7.

The tenants agreed that the landlord may keep \$539.00 of the deposits and the landlord was to return the balance.

The tenants made an Application for Dispute Resolution regarding the security deposit and pet damage deposit, and on January 16, 2023 the application was dismissed. The tenants had applied for double, but the tenant didn't fill out the form properly for a forwarding address at that time.

SUBMISSIONS OF THE LANDLORD:

The landlord denies telling the tenants that they had to leave on October 7, 2022; it was their choice. The landlord gave the tenants the option of putting the couches in the garage so the house could be shown. The landlords had a person to collect the key and do the inspection but the tenants wouldn't allow the person to step into the house even to just get the key. The tenants never told the landlord where they left the keys, and the landlord never got them. The rental unit was re-rented in February, 2023. The landlords needed to do some repairs and wanted to re-rent to good tenants.

SUBMISSIONS OF THE TENANTS:

The landlord said that the tenants had to surrender the key during the phone call.

Analysis

Firstly, the tenants do not dispute that rent for the last month of the tenancy wasn't paid. Therefore, I find that the landlords have established a claim for unpaid rent in the amount of \$2,400.00.

Where a party makes a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlords claim 1/3 of the costs of repairs, testifying that not all of the repairs required were caused by the tenants. I have reviewed the Invoice provided by the landlords and there is nothing to satisfy me what parts the tenants may have been responsible for. The landlord testified that not all of the damage was caused by the tenants, but in the absence of a move-out condition inspection report or an itemized invoice or list, I cannot conclusively assume that the landlord has satisfied element 3 in the test for damages. The tenants agreed that the landlords may keep \$539.00 of the security deposit, and I am satisfied that the tenants acknowledge that amount.

It is very unusual for a tenant to be is or her own property manager, and is contrary to the law. That would make the tenant both a landlord and a tenant.

The parties disagree about what happened to keys, however the landlords indicated in the October 14, 2022 email that the keys were to be returned, which was 7 days after the tenants vacated. I am satisfied in the evidence that the landlords have suffered a loss of \$200.00.

The *Act* requires a landlord to ensure that the move-in and move-out condition inspection reports are completed, and the regulations go into great detail of how that is to happen. If the tenants are not available for the first scheduled date, the landlord must offer a second date, and must provide a Final Opportunity to Schedule Inspection in the approved form. If the landlord fails to do so, the landlord's right to claim against the security deposit or pet damage deposit is extinguished. Further, the landlord may only claim a pet damage deposit for damages caused by a pet. In this case, the landlords have not provided any evidence of damage caused by a pet, and did not serve or post a Final Opportunity to Schedule Inspection in the approved form.

I have also reviewed the Decision of the Residential Tenancy Branch dated January 16, 2023 wherein the tenants had applied for return of the deposits. It states that the tenants provided a forwarding address by text message, without including a reply from the landlord to confirm the landlord received it, and another attempt at providing the

forwarding address did not include proof of service. As a result, the tenants' application was dismissed without leave to reapply.

This application is not by the tenants, but from the landlords. A landlord must return a security deposit and/or pet damage deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address or must make a claim against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount to the tenants. Having found that the landlords' right to claim against the security deposit and pet damage deposit for damages is extinguished, the landlords had no other option but to return the pet damage deposit to the tenants. However, the landlords' right to claim against the security deposit for unpaid rent is not extinguished.

The landlord testified that the landlords received the tenants' forwarding address in writing during the second half of October, prior to the end of the tenancy. I find that the matter of proper service of that has already been decided. The tenants have provided for this hearing proof of serving the landlords with a forwarding address in writing through Legal Counsel, by registered mail on August 9, 2023, which is deemed to have been served 5 days later, and the tenancy effectively ended on October 31, 2022. The landlords made this application on December 8, 2022 which is within 15 days.

Having found that the landlords have established a claim of \$2,400.00 for unpaid rent for October, 2022 and \$200.00 for keys, and the tenants agreed that the landlords could keep \$539.00 for damages, I find that the landlords have established a total claim of \$3,139.00. Since the landlords have been partially successful with the application, the landlords are also entitled to recover the \$100.00 filing fee from the tenants, for a total of \$3,239.00.

However, having found that the landlords have retained a pet damage deposit without a claim for damages caused by a pet, I find that the tenants are entitled to double the amount, or \$2,400.00. I set off that amount from the landlords' proven claim, and I grant a monetary order in favour of the landlords for the difference of \$839.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$839.00.

This order is final and binding and may be enforced.

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: October 31, 2023

Residential Tenancy Branch