



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNRL-S FFL

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$9,105.17 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 2:06 pm in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 pm. The landlords attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 testified they served the tenants with the notice of dispute resolution form and supporting evidence package (the "**Application Materials**") via registered mail. They testified that the tenants provided them with their forwarding address on November 7, 2019, by writing it on the move-out condition inspection report. They testified that the last digit of the address was difficult to read (they were unsure if it was an "8" or a "9"). Landlord GP testified that he called tenant TT for clarification, and TT swore at him and refused to provide any clarity.

The landlords testified they first sent the Application Materials by registered mail to the forwarding address with the last digit of “8” on November 7, 2019, but it was returned by Canada Post as “undeliverable”. The landlords testified that they next sent the Application Materials by registered mail to the forwarding address with the last digit of “9”, on December 9, 2019 but that it was never picked up by the recipients.

Upon review of the handwritten forwarding address, and in light of the tenants’ refusal to provide clarity as to the forwarding address, I am satisfied that the landlords have served the Application Materials on the tenants via the December 9, 2019 mailing. Accordingly, pursuant to sections 88, 89, and 90 of the Act, I deem the tenants served with the Application Materials on December 14, 2019, five days after their mailing.

The tenants have not provided any documentary evidence in response to the landlords’ claims.

Issues to be Decided

Are the landlords entitled to:

- 1) a monetary order of \$9,105.17;
- 2) recover their filing fee; and
- 3) retain the security deposit in partial satisfaction of any monetary order made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlords, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlords’ claims and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement starting July 1, 2018. Monthly rent was \$2,450. The tenants paid the landlords a security deposit of \$1,225. The landlords still retain this deposit.

The tenancy agreement required the tenants to pay for utilities such as water, sewage disposal, and electricity.

The parties agreed, by way of a settlement agreement made at a prior arbitration hearing, that the tenancy would end on October 31, 2019. The landlords testified that the tenants did not vacate the rental unit until November 1, 2019.

The parties conducted a move-in condition inspection report on June 17, 2018. Landlord JA and tenant TT conducted a move-out condition inspection on November 1, 2019. Tenant TT refused to sign the report and indicated on the report that he disagreed that the report fairly represents the condition of the rental unit. Instead of writing what parts of the report he disagreed with, tenant TT wrote “we will let the judge figure it out”.

The landlords claim \$9,105.17, representing the following:

September and October Rent	\$4,900.00
Utilities (water and sewage)	\$1,665.85
Utilities (electricity)	\$430.81
Removal of oil barrel	\$216.95
Flooring repair	\$466.56
Stolen shelving replacement	\$1,125.00
Broken cabinets	\$300.00
Total	\$9,105.17

1. Rental Arrears

The landlord testified that the tenants did not pay any rent for the months of September or October 2019 and are in arrears of \$4,900.

2. Utilities

a. Water and Sewage

The landlords testified that the tenants did not pay for any of the water or sewage expenses for the duration of the tenancy (July 1, 2018 to October 31, 2019), despite these expenses not being included in the rent. The landlords testified that water and sewage utilities are billed to them annually by the municipality. They submitted a water and sewage invoice from the municipality for the year of 2019 in the amount of \$1,665.85. This invoice also showed that the landlord paid \$1,469.76 in these same expenses for 2018.

At the hearing, the landlords acknowledged that \$1,665.85 represents payment for the full 2019 year of utilities, and that the tenants did not occupy the rental unit for 2019. They suggested that an alternate method of calculating the amount owed for this expense would be to pro rate the payments for 2018 and 2019 and hold the tenants responsible only for those months that they occupied the rental unit.

b. Electricity

The landlords testified that the municipality in which the rental unit is located has a monopoly over providing electricity to residents. They testified that the tenants set up an electricity account with the city, and then failed to pay their electrical bills. The landlords testified that they received a charge, in the form of a property tax, from the city for unpaid electric arrears in the amount of \$430.81. The submitted a copy of this invoice into evidence.

3. Oil Barrel Removal

The landlords testified that tenant TT operated an unauthorized mechanic repair shop out of the rental unit's garage. They testified that when the tenants vacated, they left a barrel full of a mixture of oil and fuel in the garage. The landlord testified that since it was a mixture of oil and fuel, they could not have it recycled for free. They testified that they had to pay for its removal and safe disposal. They submitted an invoice showing this cost to be \$216.95.

4. Flooring Repair

The landlord testified that the tenants ripped part of the linoleum flooring, creating a tripping hazard in laundry room. They submitted a photograph of the damaged flooring in corroboration of this. This damage was noted on the move-out condition inspection report addendum. They testified that the flooring was approximately eight years old.

The landlord submitted an invoice from their property management company indicating a cost of \$466.56 for replacing the linoleum flooring.

5. Stolen Shelving

The landlords testified that the tenants took three steel-framed shelves from the garage when they moved out. This was noted on the move-out condition inspection report addendum. Landlord JA testified that, at the move-out inspection, tenant TT told her that the shelves were broken, and the tenants threw them out. JA testified that TT had not mentioned this to her prior to the inspection, and the tenant offered her no proof that it was true.

The landlords testified that the shelves were five years old. They submitted screenshots from Costco.com showing the make and specifications of the shelves but which do not include the cost of the item. Landlord GP testified that when he initially viewed the web site, he observed that the cost of the shelves was \$375 each, but when he returned to the site to print off the evidence, the shelves had been discontinued and no price was available.

6. Ikea Cabinets

The landlords testified that two Ikea cabinets were located in the bedroom at the start of the tenancy. They testified that one cabinet was removed completely, and the other was significantly damaged and needed to be replaced. They testified that these cabinets were five years old. They submitted a photograph of damage to the remaining cabinet showing damage to the joinery, with the side wall coming apart from the top panel.

The landlord submitted a screenshot from Ikea.com showing the price of each cabinet to be \$149.

Analysis

1. Rental Arrears

I find that the tenants were obligated to pay rent to the landlords for the months of September and October 2019. I accept the landlords' uncontroverted testimony that the tenants did not pay rent for these months. Section 26 of the Act states:

Rules about payment and non-payment of rent

26 (1) 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.

The tenants have breached this section of the Act and must pay the landlords \$4,900 representing the rental arrears owed.

2. Utilities

a. Water and Sewage

I accept the landlords' uncontroverted testimony that the tenants did not pay any amount of the 2018 or 2019 water or sewage utilities. I find that these utilities were not included in the monthly rent, and that the tenants were therefore responsible for paying these expenses. I find that, as a result of this non-payment, the landlords have incurred monetary loss.

The appropriate method of determining the loss suffered by the landlord is to calculate the annual cost of these utilities on monthly basis for 2018 and 2019, and assign the amount paid by the landlord for the months of July 2018 to October 2019 (inclusive) to the tenants. Accordingly, I order the tenants pay the landlord \$2,123.10 for unpaid water and sewage utilities, calculated as follows:

	Total Paid	Per Month (total/12)	Tenant's <i>Pro Rata</i> Share
2018	\$1,469.79	\$122.48	\$734.90
2019	\$1,665.85	\$138.82	\$1,388.21
		Total	\$2,123.10

b. Electricity

I accept the landlords' uncontroverted testimony, supported by the documentary evidence submitted, that the municipality where the rental unit is located levied a property tax of \$430.81 against the landlords for unpaid electrical bills at the rental unit.

As with the water and sewage utilities, electricity is not included in the monthly rent and is the tenants' responsibility. Accordingly, I find that by not paying the electrical bills, the tenants have breached the tenancy agreement, and the landlords have incurred a loss as a result. I order that the tenants pay the landlords \$430.81 in compensation for this loss.

3. Oil Barrel Removal

Section 37 of the Act states:

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

I find that by leaving a barrel of oil and fuel at the rental unit after the tenancy ended the tenants left the rental unit unreasonably clean. As a result, the landlords are entitled to take reasonable steps to remove the barrel of oil and fuel so as to return the rental unit to a state of reasonable cleanliness. It cost the landlord \$216.95 to remove the barrel. I find this amount to be reasonable. I order the tenants pay the landlord this amount.

4. Flooring Repair

I find that the laundry room linoleum flooring was damaged to an extent where it had to be replaced. I accept the landlords' evidence that the replacement cost was \$466.59. This does not mean that the landlords are entitled to recover the full replacement cost, however; a reduction accounting for the age of the flooring is required. Policy Guideline 40 states:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item.

[...]

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

The linoleum flooring is eight years old. Policy Guideline 40 does not provide a useful life measurement for linoleum flooring. It does provide an estimate for tile floors (10 years) and hardwood floors (20 years). I find that linoleum floors are of a similar durability to tile floors. As such, I find that an 80% reduction to the cost of replacing the damaged linoleum flooring is appropriate. Accordingly, I order the tenants pay the landlord \$93.32 (20% of \$466.59).

5. Stolen Shelves

I accept the landlords' uncontroverted testimony that the tenants removed three steel shelves from the garage belonging to the landlord at the end of the tenancy. The tenants are not entitled to take property that does not belong to them. They must compensate the landlords for these items. I light of the lack of corroborating documentary evidence, I do not accept landlord GP's testimony that new shelves cost \$375 each. This amount seems unreasonably high, and I am not prepared to accept it as accurate without independent confirmation.

Accordingly, “nominal damages” should be awarded. Nominal damages are defined in Policy Guideline 16 as:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

As the landlords have not been able to prove the value of their loss, I find that nominal damages of \$300 (\$100 per shelf) are appropriate in the circumstances.

6. Ikea Cabinets

I accept the landlords’ uncontroverted testimony that the tenants removed one Ikea cabinet from the bedroom prior to the end of the tenancy and left another damaged beyond repair. As stated above, the tenants are not entitled to take property that does not belong to them and leave the rental unit damaged. I find that the damage to the remaining cabinet was not reasonable wear and tear. Accordingly, the tenants must compensate the landlords for these items. I accept the landlords’ testimony that new cabinets cost \$149 each.

I must note that, although identified as “cabinets” by the landlords, these items are used for storing clothing in the bedroom and are better described as “wardrobes”. Policy Guideline 40 sets out a useful life for “furniture” as 10 years. I do not find the useful life of “cabinets” in Policy Guideline 40 to be appropriate, as it is with reference to kitchen and bathroom cabinets specifically, which are not of a kind with the Ikea cabinets the landlords are claiming compensation for.

As the Ikea cabinets are five years old, I find that 50% reduction of the replacement cost is appropriate, per Policy Guideline 40. Accordingly, I order that tenants to pay the landlord \$149 (50% of \$298).

Pursuant to section 72(1) of the Act, as the landlords have been successful in their application, they may recover the filing fee from the tenants.

Pursuant to section 72(2) of the Act, the landlords may retain the security deposit in partial satisfaction of the monetary orders made.

In total, I order the tenants to pay the landlord \$7,088.17, representing the following:

September and October Rent	\$4,900.00
Utilities (water and sewage)	\$2,123.10
Utilities (electricity)	\$430.81
Removal of oil barrel	\$216.95
Flooring repair	\$93.31
Stolen shelving replacement	\$300.00
Broken cabinets	\$149.00
Filing Fee	\$100.00
Security Deposit credit	-\$1,225.00
Total	\$7,088.17

Conclusion

Pursuant to sections 67 and 72 of the Act, I order the tenants to pay the landlords \$7,088.17.

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: March 24, 2020

Residential Tenancy Branch