



# 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

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*;
- a Monetary Order for damages pursuant to section 67 of the *Act*;
- an Order allowing the landlord to retain the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both the landlord and the tenant attended the hearing. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Both the landlord and the tenant confirmed receipt of each other's evidentiary packages, and the tenant also confirmed receipt of the landlord's Application for Dispute Resolution. All parties are found to have been duly served in accordance with the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to:

- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*;
- a Monetary Order for damages pursuant to section 67 of the *Act*;
- to retain the security deposit pursuant to section 38 of the *Act*; and
- to recover the filing fee from the tenant pursuant to section 72 of the *Act*.

### Background and Evidence

The testimony at the hearing from both parties confirmed that the tenancy began July 1, 1997, and ended on November 30, 2017, because of the tenant moving out. The tenancy was

originally a one-year fixed term that was later converted to a month to month tenancy. In 2017, rent was \$1,600.00 per month. A security deposit of \$525.00 was collected at the outset of the tenancy. The accrued interest on the security deposit is \$68.66, making the total \$593.66, that the landlord continues to hold.

On October 30, 2017, the tenant sent the landlord an email to say she was moving out at the end of November. The landlord stated she accepted this as valid notice to end the tenancy as of November 30, 2017.

On November 2, 2017, the tenant put a stop payment on the cheque she had given the landlord for the November rent. She sent the landlord an email on November 3, 2017, saying she was doing this as she felt that she had overpaid rent during the 20 years she lived in the rented premises.

In fact, the tenant brought an Application for Dispute Resolution as against the landlord seeking a monetary order for compensation or loss under the *Act*, pursuant to section 67. This application was brought under the file number listed on the coversheet of this decision, and the hearing took place on January 24, 2018. The tenant filed a copy of the Decision also dated January 24, 2018, together with all the evidence she had filed in support of her application, in response to this application. The tenant's application seeking payment of the sum of \$12,289.10 under the other file noted, was dismissed in full without leave to reapply.

On November 6, 2017, the landlord mailed to the tenant a copy of a document entitled "Vacating Procedure". This document set out in some detail the areas the landlord was going to examine during the move out inspection and, confirmed that any work not done by the tenant would be charged to the tenant at the rate of \$75.00 per hour.

On November 22, 2017, the landlord sent to the tenant via registered mail another copy of the Vacating Procedure document and, a copy of the original Tenancy Agreement. At the same time the landlord set November 30, 2017, at 1:00PM to do the move out inspection with the tenant.

On November 30, 2017, the tenant sent the landlord an email to say she would not be at the premises that day to do the move out inspection and, that there was some garbage left that her son would pick up the next day. The landlord responded and requested that the tenant attend on December 1<sup>st</sup> for the move out inspection. The tenant did not return to the premises to do a move out inspection and, no one came to pick up the garbage that had been left behind.

The landlord testified that after the tenant moved out, she discovered that numerous aspects of the home and property had been damaged and she was seeking a monetary award to recover her alleged loss under the tenancy. She also wished to retain the security deposit as a credit against her loss.

The landlord filed a one-page summary which confirmed that the total sum she paid to paint and make repairs to the premises after the tenant moved out was \$12,582.90. She is only claiming the sum of \$2,707.24, from the tenant on the basis that this sum represents the cost to deal with only those items that went beyond normal wear and tear over a twenty-year tenancy.

The various claims on the one-page summary are taken from and supported by a series of three invoices which were filed in evidence by the landlord. Each of these invoices shows the full amount paid by the landlord to each supplier/trade and breaks out the portion being sought as against the tenant. Each of these invoices describes the specific items of work done and/or materials supplied and the cost thereof. In her affirmed testimony the landlord reviewed each of the invoices and explained why the portions being sought to be repaid by the tenant went beyond reasonable wear and tear.

The tenant's evidence generally was that she had taken good care of the landlord's home; that after 20 years there was a lot of reasonable wear and tear; that she had left the premises in good condition and clean; that some garbage was left behind; that she did not have to move any appliances to clean behind them based on the wording of the *Act*; that she did not attend for a move out inspection with the landlord as she felt uneasy after she had moved out.

### Analysis

There was extensive documentary evidence including many photographs filed by both parties. I have reviewed all the documentary evidence however I only refer below to the key pieces of evidence that led to my findings.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. To claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove her entitlement to the monetary awards being claimed.

There is no issue that the tenant put a stop payment of the cheque for \$1,600.00 payable for the November rent and, that the tenant occupied the premises until November 30, 2017. I find that the landlord is entitled to a Monetary Order in the amount of \$1,600.00 for unpaid rent pursuant to

section 67 of the *Act*. Any issue of overpayment of rent was resolved by the earlier Decision dated January 24, 2018, referred to above.

Section 37(2) of the *Act* states, “when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear,”. Section 32(4) of the *Act* states, “A tenant is not required to make repairs for reasonable wear and tear.”

I find that the evidence adduced by the landlord established on a balance of probabilities that the tenant left the premises in a state which could be considered unreasonable and, that the damages that the landlord is claiming for as particularized in the three invoices went beyond ‘reasonable wear and tear.’

I also find that the landlord is being measured in her application and is only claiming for the items that go beyond “reasonable wear and tear”, as noted above.

Where there was any conflict in the evidence as between the landlord and the tenant I found the evidence of the landlord to be more reliable. This was due in part to the fact that her evidence was supported by the documents such as the three invoices that she had obtained from third parties. I do not think the tenant was being intentionally dishonest in her evidence, rather she seemed to be giving mostly her subjective opinions which were unsupported by other evidence.

The first invoice is from Algoma Painting and is dated December 6, 2017. The portion being sought to be repaid by the tenant totals \$425.00. This is broken down as:

- excess drywall repair \$90.00
- Extra coat of paint on dark walls \$110.00
- Patch damaged doors and touch up \$110.00
- Oil based primer in living room due to cigarette smoke \$115.00

I find that the landlord is entitled to claim theses amounts as they went beyond reasonable wear and tear; the terms of the tenancy agreement did not allow the tenant to repaint other than with the consent of the landlord and she admitted to having done so in dark colors; the terms of the tenancy agreement prohibited smoking.

The second invoice is from Windmill Flooring Installations and is dated December 13, 2017. The portion being sought to be repaid by the tenant totals \$175.95. This was charged to remove a carpet and pad from the basement. The tenant admitted to having left the carpet behind when she moved out. The landlord said that the carpet had been damaged by water and both the carpet and the pad had to be removed and I find that the landlord is entitled to claim this amount.

The third invoice is from Art Ross - Handyman and is undated. The portion being sought to be repaid by the tenant totals \$2,106.50. This is broken down as:

- Installed two new alarms for heat/smoke/carbon monoxide; installed two new bathrooms mirrors to replace the ones removed by tenant, replaced missing floor furnace register from bedroom \$225.26
- Removed over 20 large wall anchors in preparation for painting; cleaned garage of junk left behind by tenants; disposed of garbage and recyclable materials left behind by tenant; removed junk left by tenant at both sides of house and in back yard; cleaned behind fridge and stove \$750.00
- parts and materials as itemized \$530.94

There is an entry on this invoice of \$600.00 for “Estimate for repairs to vinyl siding”, and the landlord testified that she has not in fact paid this sum. In her evidence the landlord was candid and admitted that she had no idea how the siding on the house was damaged. The tenant denied doing anything to damage the siding. Accordingly, the landlord is not entitled to recover this sum.

I find therefore that the landlord is entitled to claim the sum of \$1,506.50 in relation to the third invoice.

I find that the landlord is entitled to a Monetary Order in the amount of \$2,107.15 for damages pursuant to section 67 of the *Act*.

I find that the landlord is entitled to retain the security deposit plus accumulated interest totalling \$593.66, to set off as against the total owing to her.

As the landlord was successful in this application I find that she is entitled to recover her filing fee of \$100.00 from the tenant.

### Conclusion

I issue a Monetary Order in the landlord’s favour in the amount of \$3,213.79 against the tenant calculated as per the table below. The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

Item	Amount
Portion of Algoma Painting Invoice	\$ 425.00
Portion of Windmill Flooring Installations Invoice	175.95
Portion of Art Ross – Handyman Invoice	1,506.50

Rent owing for November 2017	1,600.00
Filing Fee	100.00
Deduct Security Deposit and accrued interest retained by landlord	(593.66)
<b>Total =</b>	<b>\$ 3,213.79</b>

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: June 21, 2018

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Residential Tenancy Branch