



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT
 MNDL-S, FFL

Introduction

This hearing dealt with applications from both the tenant and landlord pursuant to the *Residential Tenancy Act* (the *Act*).

The tenant applied for:

- return of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee for the application from the landlord pursuant to section 72 of the *Act*.

The landlord applied for:

- a Monetary Order for compensation of damage/loss caused by the tenant, and authorization to retain the tenant's security deposit in satisfaction of this claim pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

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

As both parties were present, service of documents was confirmed. The parties testified that they were in receipt of each other's application and evidentiary materials. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit? And if so, is the tenant entitled to any statutory compensation equivalent to the amount of the security deposit for the landlord's failure to comply with the *Act*?

Is the landlord entitled to a monetary award for compensation as a result of damage or loss? If so, is the landlord entitled to retain the security deposit in satisfaction of that claim?

Is either party entitled to recover the cost of the filing fee from the other party?

Background and Evidence

The two parties in this matter presented divergent versions of events and there was very little common ground found where the parties agreed on the facts. While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

Both parties agreed that this fixed term tenancy began December 1, 2017 and was scheduled to end December 31, 2018. The monthly rent was \$1,000.00 payable on the first of the month. The tenant paid a security deposit of \$500.00 which is held by the landlord. The tenant testified that he decided to end the tenancy early and moved out on the evening of March 30, 2018. The landlord testified that she discovered the tenant had moved out on March 31, 2018, although she is unsure whether the tenant moved out late March 30 or on March 31, 2018.

The parties provided conflicting testimony regarding the provision of the tenant's forwarding address, completion of move-in and move-out inspection reports, and landlord's claim for damages. Below, I have addressed each of these issues separately.

Tenant's Forwarding Address

On March 29, 2018, the tenant stated that he personally handed the landlord a note with his forwarding address written on it, and that on the evening of March 30, 2018, he personally handed the keys to the landlord when leaving the rental unit for the last time.

The landlord stated that she never saw or spoke with the tenant on March 29, 2018 and therefore she never received the tenant's forwarding address. She testified that she found the keys left on the rental unit kitchen counter on March 31, 2018.

A photo of the hand-written note with the tenant's forwarding address and a witness statement from the tenant's boyfriend attesting to the tenant's version of events was submitted into evidence by the tenant in support of his claim. Further to this, the tenant submitted into evidence a police report regarding an incident between the tenant and the landlord on April 18, 2018, in which the tenant attended at the landlord's home seeking mail and the return of his security deposit. The situation escalated when the landlord told the tenant he would not get his security deposit returned "due to required cleaning and maintenance". The tenant became verbally aggressive; the landlord felt threatened and called police. The tenant asserts that

because his address is noted on the police report, he believes it was provided to the police by the landlord, in support of his claim that she had his forwarding address.

The landlord referenced a text message she sent to the tenant on March 27, 2018 reminding him to provide her with his forwarding address as evidence in support of her claim. She stated that she did not provide the police with the tenant's address – she provided them with the tenant's cell phone number and asserts that the police were able to ascertain the tenant's address through their own investigative means.

Condition Inspection Reports

The landlord claims that a move-in walk-through inspection was done with the tenant on December 1, 2017. She stated that she twice asked him to sign it, and then left it on a desk for him in the laundry area, which was in a shared space used by both the landlord and the tenant.

The tenant claims that there was no condition inspection walk-through done when he moved in as he was never asked to do one. He further stated that he had never seen the condition inspection report until receiving it with the landlord's Notice of Dispute Resolution Proceeding package for this hearing.

The tenant claims that a move-out condition inspection walk-through was done with the landlord on the evening of March 30, 2018, but that the landlord did not have a report with her, he did not sign any report and he did not receive a report. The tenant referred to text messages that he submitted into evidence, which indicate that he returned to the rental unit at approximately 6:30 p.m., had to clean the fridge and floors, and was ready for the inspection by 7:06 p.m.

The landlord claims that there was no condition inspection walk-through done before the tenant moved-out because the tenant was not at the rental unit in the early evening of March 30, 2018 when the walk-through had been scheduled, and she left to go out for dinner between 6:45 – 7:00 p.m. The landlord stated that she did not follow up with the tenant to offer another time for the walk-through inspection as she assumed he would get in touch with her to let her know when he was available. On March 31, 2018, when the landlord stated she discovered that the tenant had moved out, she completed the inspection report on her own. As the landlord claims that the tenant did not provide a forwarding address, she did not provide the tenant with a copy of the condition inspection report.

Tenant's Claim for Return of the Security Deposit

The landlord confirmed that she did not return the security deposit to the tenant as she claims that she only received the tenant's forwarding address when she received the tenant's Application for Dispute Resolution on May 1, 2018. The landlord submitted her Application for Dispute Resolution on May 3, 2018 seeking to claim damages against the security deposit.

The tenant confirmed that he did not agree in writing to any deductions from the security deposit to be retained by the landlord.

Landlord's Claim for Damages

The landlord was able to re-rent the unit and is only seeking compensation for cleaning and damages to the rental unit, not rental loss as a result of the tenant ending the fixed term tenancy early. The landlord submitted a Monetary Order Worksheet with the following claims:

Item	Amount
Cleaning quote	\$308.70
Painting (4 hours at minimum wage)	\$50.60
Cabinet repair (3 hours at minimum wage)	\$37.95
Carpet steam cleaning quote	\$104.85
Total	\$502.10

The landlord submitted into documentary evidence the condition inspection report, which she completed alone. The report lists the flooring in every room as “dirty”, many of the walls as “dirty”, the entry wall as “dirty” and “scratched”, the kitchen cabinets as “dirty” and “scratched”, the living room wall as “dirty” and “damaged”, the kitchen stove and refrigerator as “dirty”, and the bathroom as “dirty +”.

The landlord stated she spent four to five hours cleaning the rental unit as there was food and hair in the refrigerator, dirt left on the stove, urine around the toilet, and the carpets were not clean. She testified that she rented a steam cleaner at a cost of approximately \$100.00 and cleaned the carpets herself. The landlord provided quotes as an estimate for the costs of these damages, not the actual loss incurred, as she stated she had tried to mitigate the loss by doing the work herself.

The landlord is also claiming compensation for time spent patching and painting the walls as well as the kitchen cabinets which she alleges were scratched, and repairing a crack in a wooden storage cabinet in the kitchen.

The landlord did not submit any photographic evidence of the conditions of the rental unit.

The landlord testified that the basement suite rental unit had been installed approximately 10 years ago. She claims that the rental unit had been painted and the carpets steam cleaned prior to the tenant moving in. The tenant acknowledged that the carpets looked clean and the unit was in good shape when he moved in. He was unsure whether the kitchen cabinets and walls had been painted, but he confirmed that the bathroom was in the process of being painted, but not finished, when he moved in.

In response to the condition inspection report, the tenant stated that section Z. of the report pertaining to damage caused by the tenant is blank. The tenant acknowledged that a “twoonie-sized” piece of plaster had come off the wall in one spot. The landlord claims it was a four-inch “chunk” of plaster that required patching prior to painting.

The tenant denied that he caused damage to the wooden storage cabinet as he stated it was already cracked when he moved in.

The tenant acknowledged that he did not vacuum the carpets but claims that it was his understanding that the landlord would vacuum the carpets after he moved out.

The tenant referred to the witness statement provided by his boyfriend in support of his claim that the rental unit was cleaned before he moved out.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure sets out the burden of proof required in matters determined in a hearing under the *Act*.

6.6 The standard of proof and onus of proof:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

In this case, the parties disagreed on key facts relevant to making a decision in this matter. Therefore, before I can apply the legislation, policy and rules related to residential tenancies to the circumstances in this case, I must first make findings of fact based on the testimony and evidence presented, on a balance of probabilities, in relation to the following issues in dispute.

Tenant’s Forwarding Address

The tenant provided as evidence a photograph of a written note with his forwarding address and a witness statement from his boyfriend attesting to his claim that he personally served the landlord with this written note on March 29, 2018.

The landlord denied the tenant’s version of events. However, I note that the police report regarding an incident between the tenant and landlord on April 18, 2018, submitted into documentary evidence, states that the landlord told the tenant that he would not be getting his security deposit returned as a result of cleaning and maintenance costs. This infers that the landlord had already made a decision to retain the security deposit, and calls into question the reliability of her evidence as to whether or not she had received the tenant’s forwarding address.

On a balance of probabilities based on the evidence and testimony presented by both parties, I give slightly more weight to the tenant’s evidence as it is supported by a witness statement,

albeit from his boyfriend as opposed to an independent party, to confirm service of the written forwarding address to the landlord.

As such, I find that the landlord was provided with the tenant's forwarding address in writing on March 29, 2018, served in accordance with section 88 of the *Act*.

Condition Inspection Reports

In order to determine if the tenant is entitled to the return of the security deposit or a portion of it, I must consider whether or not either party extinguished their rights to the security deposit.

Section 23 of the *Act* sets out the requirements for a landlord and tenant to undertake a condition inspection report of the rental unit upon the tenant taking possession of the unit, as follows:

- 23(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
 - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.

Section 24 of the *Act* sets out the consequences for not fulfilling the condition inspection report requirements, as follows:

- 24(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
 - (a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and

- (b) the tenant has not participated on either occasion.
- (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
 - (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this case, the landlord claims a move-in condition inspection was done with the tenant, but the tenant denies this. The tenant claims a move-out condition inspection was done with the landlord, but the landlord denies this.

However, the value of a condition inspection is not in the inspection itself but in the completion of a report documenting the condition of the rental unit. The report represents the parties common understanding, if not agreement, on the rental unit condition. It is for this reason that section 18 of the Residential Tenancy Regulations (the Regulations) provides specific requirements for the time limits and method of service for the condition inspection report, as follows:

- 18 (1) The landlord must give the tenant a copy of the signed condition inspection report
 - (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and
 - (b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of
 - (i) the date the condition inspection is completed, and
 - (ii) the date the landlord receives the tenant's forwarding address in writing.
- (2) **The landlord must use a service method described in section 88 of the Act [*service of documents*].**

[My emphasis added]

The landlord claims that on move-in the tenant participated in the inspection but refused to sign the form. Section 23(6) requires that a landlord complete and sign the report regardless of whether or not the tenant participates in the condition inspection. Further to this, section 24(2)(c) sets out that the landlord's rights to claim against a security deposit are extinguished if the landlord does not give the tenant a copy of the form in accordance with the regulations.

As noted above, section 18 of the Regulations requires that a landlord use a service method described in section 88 of the *Act*.

Section 88 of the *Act* sets out the acceptable methods for providing, or serving, written notice as follows:

- 88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:
- (a) by leaving a copy with the person;
 - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
 - (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
 - (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
 - (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
 - (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
 - (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
 - (j) by any other means of service prescribed in the regulations.

In this case, the landlord stated that she left the move-in condition inspection report on a desk in the shared laundry area of the rental premises, which is not one of the acceptable methods of service for this document.

Therefore, I find that the landlord's right to claim against the security deposit for damages was extinguished as she did not serve the tenant with the move-in condition inspection report pursuant to section 24(2) of the *Act*.

Tenant's Claim for Return of Security Deposit

Section 38 of the *Act* requires that the landlord either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

I have already found that the tenant provided his forwarding address in writing to the landlord on March 29, 2018. However, in this case, the end date of the tenancy is the later date, and is the date which triggers the 15-day time limit. The tenant stated that he moved out on March 30, 2018; however, as he had paid rent until the end of the month, I find that the tenancy ended March 31, 2018.

As I have found that the tenant did not extinguish his rights to the security deposit, and the landlord did not return the tenant's security deposit or file an Application for Dispute Resolution within 15 days from the end of the tenancy, I find that the tenant is entitled to a monetary award equivalent to the value of double the security deposit retained by the landlord, which in this case is \$1,000.00 [\$500 x 2] with any interest calculated on the original amount only, in accordance with section 38(6) of the *Act*. No interest is payable for this period.

Landlord's Claim for Damages

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order 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 *Act* by 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 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,...

The tenant confirmed that the rental unit was in good condition when he moved in. The tenant acknowledged that he did not vacuum the carpets prior to moving out and that a "twoonie-sized" chip in the wall had occurred during his tenancy.

Text messages submitted into evidence by the tenant indicate that he had at most 36 minutes from the time he arrived home to clean the floors and the fridge, before stating his rental unit was ready for a move-out inspection. As this would not provide a reasonable amount of time to properly clean a fridge and floors, it lends credibility to the landlord's claims that the unit required cleaning to return it to the "reasonably clean" state required by the *Act*.

Based on these factors, I give more weight to the landlord's evidence and testimony that some cleaning and repairs were required as the rental unit was not reasonably clean, and that minor damage to the wall occurred, beyond reasonable wear and tear.

I do not find any evidence in the landlord's move-out condition inspection report that the wooden storage cabinet was cracked as it is not noted in the report. Therefore, I do not find there is sufficient evidence to support the landlord's claim for costs to repair this piece of furniture.

The landlord stated that she attempted to mitigate her losses by undertaking the cleaning, repair and painting work herself, only charging for labour (at a minimum wage rate) and not charging for any supplies. I find that the efforts by the landlord support her claim that she mitigated her losses.

Therefore, I find, on a balance of probabilities, that the landlord is entitled to a monetary award for compensation due to losses incurred as a result of cleaning, wall repair and painting, and carpet cleaning in a total amount of \$201.20. The breakdown is provided below:

Item	Amount Allowed
Cleaning (4 hours at minimum wage)	\$50.60
Wall repair & painting (4 hours at minimum wage)	\$50.60
Carpet steam cleaner rental	\$100.00
Total	\$201.20

As both parties applied to recover the filing fee, and both parties were found entitled to monetary awards, the applications offset each other, and as such, each party will bear their own costs for the filing fee.

In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the amount of \$1,000.00 to be paid by the landlord to the tenant, against the amount of \$201.20 to be paid by the tenant to the landlord. As such, I issue a Monetary Order in the tenant's favour for the remaining amount of the monetary award owing of \$798.80.

Conclusion

I issue a Monetary Order in the amount of \$798.80 in favour of the tenant. The breakdown is as follows:

Item	Amount
Return of security deposit withheld by landlord	\$500.00
Monetary award for landlord's failure to comply with s. 38 of the <i>Act</i> (equivalent to value of security deposit paid)	\$500.00
Amount of Monetary Award for Tenant	\$1,000.00
LESS: Monetary award to landlord for compensation (cleaning and repair costs)	\$201.20

Total Monetary Order in Favour of Tenant	\$798.80
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The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: June 26, 2018

Residential Tenancy Branch