



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            FFL MNDCL-S MNDL-S

### Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for damages;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

This matter commenced on July 9, 2018; however, was adjourned due to insufficient time. An interim decision was made which should be read in conjunction with this decision.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Issues to be Decided

Is the landlord entitled to a monetary or unpaid rent?

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to keep the security deposit?

Is the tenant entitled to the return of the deposit?

### Background and Evidence

The tenancy commenced on June 1, 2016 and ended on September 30, 2017. During this period there were three (3) separate agreements. The tenant paid a security deposit in the amount of \$5,000.00

Term one (1) began June 1, 2016 and expired on August 31, 2016;. Rent and utility fees totaled the amount of \$18,750.00. This amount was paid at the start of the tenancy.

Term two (2) September 1, 2016 and was to expire on August 31, 2017. Rent in the amount of \$51,000.00. Tenant paid in advance the amount of \$50,000.00. Utilities were required to be in the tenant's name

Term three (3) for one (1) month September 2017. Rent was the amount of \$4,000.00. Utilities were required to be in the tenant's name

The original tenancy agreement shows the landlord was entitled to an additional monthly sum of \$1,000.00, when the pool and hot tub are operational.

#### Landlord's application

The landlord claims as follows:

a.	Unpaid utilities	\$ 241.58
b.	Winterize pool	\$ 427.59
c.	Smoke fee	\$ 250.00
d.	Replace kitchen table	\$ 1,258.95
e.	Cost to remove nailed wood from theater wall	\$ 75.00
f.	Gate hinge	\$ 350.00
g.	Cost to move TV to original wall mount	\$ 75.00
h.	Term 1 June 1, 2016 to August 31, 2016, pool fee	\$ 1,500.00
i.	Term 2 – September 1, 2016 to August 1, 2017, pool fee	\$ 4,000.00
j.	Term 3 - September 2017, pool fee	\$ 1,000.00
k.	Replace pool heater	\$ 2,310.00
l.	Repair water softener	\$ 453.60
m.	Repair downstairs ceiling	\$ 997.50
n.	Repair downstairs wall	\$ 892.50
o.	Thermal steam unit	\$ 350.00
p.	Hifi Attic – service call	\$ 125.00
q.	Hifi Attic – replace blown speaker	\$ 1,261.05
r.	Dishwasher repair	\$ 99.25
s.	Patio furniture damage	\$ 250.00
t.	Professional clean	\$ 350.00
	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$ 16,367.47</b>

#### Items a to d

At the outset of the hearing the tenant's agent stated that they are not disputing the following: unpaid utilities, the cost to winterize the pool, the smoking fee and the cost of replacing the kitchen table in the amounts claimed in the landlord's application

Items e to g.

During the hearing the landlord withdrew the items listed e to g, noted in the above table above.

Items h to i

The landlord's agent testified that the tenant paid the full amount of rent at the start of each term of the tenancy. The agent stated that in addition to the monthly rent that the tenant was to pay the pool fee when the pool was operational due to the seasons. The agent stated that they did not receive the pool fee from the tenant.

The landlord's agent testified that for term one (1) the pool was operational for approximately half the month of July 2016 and seek to recover a prorated amount of \$500.00 and the full amount of August 2016. The landlord seeks to recover for term one (1) the amount of \$1,500.00.

The landlord's agent testified that for term two (2) the pool was operational from May 2017 to August 2017. The landlord seeks to recover for term two (2) the amount of \$4,000.00.

The landlord's agent testified that for term three (3) the pool was operational for the month of September 2017. The landlord seeks to recover for term three (3) the amount of \$1,000.00. The tenant's agent testified that they acknowledged that there was a term of the contract that required the tenant to pay the pool fee for term one (1). The tenant's agent acknowledge that the tenant did not pay the pool fee for term one (1).

The tenant's agent testified that the tenant did not sign the agreement for term two (2) or term (3) and they should not be responsible for the pool fee. The tenant's agent stated that they do not know if the when the pool was opened in May 2017.

The landlord's agent argued that the tenant was given a contract for each term that they resided in the rental premise. Filed in evidence copies that were sent to the tenant.

Item k

The landlord's agent testified that the pool heater was new and under warranty when the tenancy commenced. The landlord stated that they were informed by the tenant that the heater was broken, only after the tenant attempted to repair it. The agent stated that because the tenant tried to make the repair, it voided the warranty on the heater and they had to pay to have

a new one installed. The landlord seeks to recover the cost of the heater in the amount of \$2,310.00.

The tenant's agent testified that they were told by the tenant that they never touched the pool heater. The agent stated that there is no evidence that the heater was broken by the tenant and maintenance is the responsibility of the landlord.

The landlord's agent argued that the issue is not whether the tenant broke the heater. The issue was that the tenant took the heater apart, without their consent or knowledge, which void the warranty of the heater. The agent stated that they personally spoke to the tenant and they admitted over and over again that they attempted to fix it.

#### Item l

The landlord's agent testified that the tenant caused damage to the water softener appliance. The agent stated that the tenant was instructed at the start of the tenancy on how to use the hose to fill the water of the pool up by overriding the water softener appliance and then to return it back to the proper position. The agent stated that the tenant used the hose; however, the tenant did not return the system back to the proper position and this caused damage to the water softener appliance. The landlord seeks to recover the cost of the repair in the amount of \$453.60. Filed in evidence is an email giving instructions to the tenant. Filed in evidence is a receipt.

The tenant's agent testified that is possible that the tenant did not return the system back to the proper position. The agent stated that it would not have been intentional if they did.

#### Items m to n

The landlord's agent testified that the tenant rented the property fully furnished and the tenant was required to inform them if they were bringing any personal furnishing into the rental premise. The agent stated that the tenant brought in a pool table and it appears that the pool cubes hit the ceiling causing damages, by denting. The landlord seeks to recover the cost of the repair in the amount of \$997.50. Filed in evidence are photographs and an estimate for repair.

The landlord's agent testified that the wall was also damaged, by scrapes and dents which had to be repaired. The landlord seeks to recover the cost of the repair in the amount of \$892.50. Filed in evidence is an estimate for repair.

The tenant's agent testified that the tenant did bring in a pool table to the premise. The agent stated that the tenant denies causing the damage. The agent stated that in any event this could have been there when the tenancy started.

The landlord's agent argued that they went through the rental unit with the tenant and there was no damage which was photographed.

Item o

The landlord's agent testified that the thermal steam unit was not working at the end of the tenancy. The agent stated that it was approximately seven years old. The agent stated that the tenant did not inform them during the tenancy that it was not working and they can only assume that the tenant took it a part in the attempt to fix it; like the tenant did with the pool heater. The landlord seeks to recover the cost of the estimated repair in the amount of \$350.00.

The tenant's agent testified that there is no evidence that the thermal steam unit was broken by the tenant.

Item p to q

The landlord's agent testified that there was a speaker system throughout the rental unit which consisted of 11 different zones. The agent stated that when they tested the system at the end of the tenancy, zone one (1) was not working. The agent stated that they had to pay to have the system diagnosed.

The landlord's agent testified that that it was determined that the tenant had removed the plug for zone one (1) from the system without their consent or knowledge. The landlord seeks to recover the service call in the amount of \$125.00. Filed in evidence is a receipt.

The landlord's agent testified that when zone (1) one was plugged back into the system they found that the speaker to zone (1) had been blown, likely from loud music. The agent stated because of the tenant's neglect, that they had to replace the speaker. The agent stated that due to the age of the speaker they had to replace both speakers in the room so they cosmetically match. The landlord seeks to recover the amount of \$1,261.05. Filed in evidence is a receipt.

The tenant's agent testified that the tenant did unplug the zone one (1) from the system as the tenant notice the speaker was making crackly sounds. The agent stated that the tenant denies that they caused any damage to the speaker.

Item r

The landlord's agent testified that the tenant caused damage to the dishwasher toe kick and it was found to be in a closet. The agent stated they have to have the toe kick repaired. The

landlord seeks to recover the cost of the repair in the amount of \$99.25. Filed in evidence is a receipt and photographs.

The tenant's agent testified that this is maintenance of the appliance and the tenant is not responsible for the cost.

#### Item s

The landlord's agent testified that the tenant caused damage to the outside cushions on the patio furniture by not properly storing them during the winter. The agent stated that the cushions were approximately five (5) years old at the time. The landlord seeks to recover the cost of \$250.00.

The tenant's agent testified that this is normal wear and tear for outside patio furniture. The agent stated they are not responsible for the cost of the cushions.

#### Items t

The landlord's agent testified that the tenant did not have the rental unit professionally cleaned as required by the tenancy agreement. The agent stated the landlord cleaned the premise and there was dust on the baseboards, the lights and windows required cleaning. The landlord seeks to recover the cost of \$350.00.

The tenant's agent testified that the tenant was very clean during their tenancy and they believe the rental unit was cleaned at the end of the tenancy.

The landlord's agent argued that the tenant was required to use a professional cleaner as stated in the tenancy agreement.

#### Tenants' application

The tenant's agent indicated that there application for the return of the security was simply to have it offset with the landlord's application.

#### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

#### items a to d

The tenant's agent agreed that they are responsible for the costs for items a to d, as noted in the above table. Therefore, I find the landlord is entitled to recover the total amount for these items in the amount of **\$2,178.12**.

#### Items e to g

During the hearing the landlord withdrew the items listed e to g, in the above table. Therefore, I find it not necessary to consider these items further.

#### Items h to j

In this case, I am satisfied that the tenant was required to pay a pool fee of \$1,000.00 per month for when the pool was operational as written in the tenancy agreement.

Under the Act, when a new tenancy agreement has not been signed by the parties the original terms continue, this would include the pool fee. I am satisfied that the tenant failed to pay the pool fee for the amount claimed by the landlord. I find the tenant breached the tenancy

agreement and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the pool fee for the three terms they rented the premises in the total amount of **\$6,500.00.**

Item k

In this case, the evidence of the landlord's agent was that the tenant voided the warranty on the pool heater, by attempting to repair it. This was denied by the tenant's agent.

However, even if I accept the landlord's version of events, I find the landlord has not provided any supporting documents to support the manufacture would not honor the warranty. Further, the landlord has not provided a copy of the receipt for me considered. I find the landlord has failed to provide sufficient evidence to support their claim. Therefore, I dismiss this portion of the landlord's claim.

Item l

I accept the evidence of the landlord's agent that the tenant did use the water to fill the pool and placed in the water system in the override position and when doing so did not return the system back to the correct position. The tenant's agent did not deny that this was likely an oversight of the tenant.

While I accept this was not intentional, I find the tenant is still responsible for their action or neglect. I find the tenant did breach the Act, when they caused damage to the water softener. I find the landlord is entitled to recover the cost of the repair in the amount of **\$453.60.**

Items m to n

I accept the evidence of the landlord's agent that the tenant had moved a pool table into the rental unit. The evidence of the landlord was the pool cube caused damage to the ceiling. The tenant's agent denied that the tenant caused damage.

In the case the evidence support that there were four small marks in the ceiling. Since the landlord has not supplied photographs of the same location at the start of the tenancy, I cannot determine whether these small marks were there. Further, I find the amount claim in the estimate is extremely high.

Furthermore, I am not satisfied that there was damage to the wall caused by the action or neglect of the tenant. No photographs of the wall was provided for my review or consideration.

Based on the above, I dismiss this portion of the landlord's claim.

Item o



The evidence of the landlord was that the steam unit was not working at the end of the tenancy, which was approximately seven (7) years old at the time. Even if I accept the landlord's evidence, I find there is no supporting evidence that this was caused by the action or neglect of the tenant. I find the landlord failed to prove this portion of their claim.

Item p to q

In this case the tenant unplugged zone one (1) from the speaker system. The landlord had to pay to have the system diagnosed only to determine the plug was removed. I find the tenant is responsible for the service call as this was a direct result of the action of the tenant. Therefore, I find the landlord is entitled to recover the service fee in the amount of **\$125.00**.

However, I am not satisfied that the tenant is responsible for the replacement of the two speakers. The speakers were approximately seven (7) years old at the end of the tenancy and one speaker was not working. This could simply be from wear and tear and the aging process. Further, I find that simply because the landlord had to purchase a second one to cosmetically match the replacement speaker, is not the tenant's responsibility.

I find based on the above that the landlord is not entitled to recover the cost of the speakers. Therefore, I dismiss this portion of the landlord's claim.

Item r

In this case, the toe kick of the dishwasher was removed and found broken on a shelf in the rental unit. I found the tenant has breached the Act, when they failed to repair the toe kick of the dishwasher. I have reviewed the receipt and the amount claimed is reasonable. Therefore, I find the landlord is entitled to recover the cost of the repair in the amount of **\$99.25**.

Item s

The exterior patio cushions were five (5) years at the time they were replaced. I find it more likely than not that the cushions were damaged from normal wear and tear and the aging process, even if they were left out in the elements.

This is not uncommon for exterior patio furniture. I find the landlord has failed to prove the tenant caused damage to the cushion on the patio furniture. Therefore, I dismiss this portion of the landlord's claim.

Items t

I accept the tenant did not have the rental unit professionally cleaned; however, the photographs do not support that the rental unit was not left reasonable clean as defined in section 37 of the of the Act. I find the landlord has failed to prove a violation of the Act. Therefore, I dismiss this portion of the landlord's claim.

I find the landlord has established a total monetary claim of **\$9,355.97** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$5,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$4,355.97**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

#### Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 24, 2018

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Residential Tenancy Branch