# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

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

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:10 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. Landlord E.M. (the "landlord") and her support person attended the hearing and were 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 landlord, her support person, and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served the notice of dispute resolution package by registered mail on May 23, 2018. I find that the tenant was deemed served with this package on May 28, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act.*

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?

2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?
5. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided undisputed testimony that this tenancy began on September 29, 2017 and ended on May 2, 2018. Monthly rent in the amount of $1,100.00 was payable on the first day of each month. A security deposit of $550.00 and a pet damage deposit of $250.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that the tenant was supposed to move out on April 30, 2018; however, the tenant overheld the subject rental property and did not vacate it until May 2, 2018. The landlord is seeking pro-rated rent from May 1-2, 2018 in the amount of $70.96.

The landlord testified that the tenant posted her forwarding address on the door at the subject rental property and the landlord discovered it on May 17, 2018. The landlord applied for dispute resolution on May 18, 2018.

The landlord testified that she and the tenant completed a move in inspection together on September 29, 2018; however, the landlord forgot the paper work and a move in inspection report was not drafted during the move in inspection. The landlord testified that she completed the move in inspection report alone after the move in inspection based on the move out inspection report from the previous tenant and some text messages from the tenant noting damage to the subject rental property. The text

messages from the tenant noting damage were entered into evidence. The landlord testified that she did not provide the tenant with a copy of the move in inspection report.

The landlord testified that she tried to attend at the subject rental property to complete the move in inspection report with the tenant after the initial walk through, but the tenant did not want the landlord to come over. The landlord entered text messages from between herself and the tenant in which the landlord offers to come over to the subject rental property to do repairs but the tenant states that she can make the repairs herself. The text messages from the landlord do not explicitly state that the landlord wants to attend at the subject rental property for the purpose of completing the move in inspection report.

The landlord testified that the tenant refused to complete a move out inspection report with the landlord. The landlord entered into evidence text messages from the tenant which state that the tenant will not complete the move out inspection report because a move in inspection report was not completed. The landlord testified that she completed a move out inspection and inspection report on May 2, 2018. The move in and move out inspection reports were entered into evidence.

The landlord testified that the subject rental property was very dirty when the tenant moved out. The landlord testified that it was the tenant's responsibility to maintain the yard and that the tenant left dog feces throughout the yard and did not mow the grass or keep the yard in good repair. The addendum to the tenancy agreement states: "renter is responsible for all lawn maintenance front and back of house". The landlord entered into evidence photographs showing that the subject rental property was left dirty and the yard at the subject rental property was unkept and contained dog feces.

The landlord submitted into evidence a calculation of the hours landlord P.M. spent cleaning both the inside and outside of the subject rental property which totaled 34.5 hours. The landlord is seeking reimbursement for the cleaning hours at the rate of $20.00 per hour for a total of $690.00.

The landlord testified that the tenant caused significant damage to the subject rental property. The landlord testified that the tenant's pet scratched the door, the door trim, the drywall around the door, and the floor in the mater bedroom. Photographic evidence showing same was entered into evidence. The landlord testified that the tenant left holes in the drywall throughout the subject rental property. Photographic evidence showing same was entered into evidence.

The landlord testified that the door, trim and drywall were original to the subject rental property which was built between 1940 and 1950. The landlord testified that the laminate flooring in the master bedroom was installed in October 2015. The landlord testified that the flooring in the master bedroom requires replacing due to scratch marks from the tenant's dog .

The landlord testified that the tenant removed the lazy Susan from the kitchen and took it with her when she vacated the subject rental property. The landlord testified that the lazy Susan was installed new in October 2015.

The landlord testified that the tenant broke an antique door handle that was original to the subject rental property. Photographic evidence showing same was entered into evidence.

The landlord entered into evidence a quote from a renovation company which provided the following price breakdown for the items to be replaced and or repaired:

| **Item** | **Amount** |
|---|---|
| Door and door frame | $150.00 |
| Door trim and innards for broken door handle | $100.00 |
| Paint and drywall materials | $150.00 |
| Flooring | $500.00 |
| Lazy Susan | $150.00 |
| Wages without flooring | $400.00 |
| Flooring wages | $250.00 |
| **Total** | **$1,700.00** |

The quote entered into evidence has a total of $2,050.00; however, I am unable to determine how that total was calculated. My calculations arrive at a total of $1,700.00. The landlord testified that the repairs have not yet been made because the landlords lack the financial resources to complete them at this time.
The landlord testified that due to the damage and grime on the walls, the subject rental property required re-painting. The landlord submitted into evidence a calculation of the hours landlord P.M. spent painting the subject rental property which totaled 28 hours. The landlord is seeking reimbursement for the painting hours at the rate of $20.00 per hour for a total of $560.00. The landlord testified that the subject rental property was last painted between May and June of 2017. The landlord is also seeking reimbursement for

the materials purchased to paint the subject rental property which totaled $104.41. The landlord entered into evidence a receipt totaling $104.41 for painting materials.

The landlord testified that when the tenant moved out she did not return the keys. The landlord testified that for security reasons a new lock was purchased for the subject rental property. The landlord entered into evidence a receipt for a lock in the amount of $33.59. The landlord testified that the lock that was replaced was purchased in September of 2017.

The landlord testified that the tenant ruined the washing machine at the subject rental property which was approximately 2 years old. The landlord testified that the washing machine required replacing. The tenancy agreement states that there is a washing machine available for the tenant's use and that the tenant is responsible for its maintenance. The landlord entered into evidence a copy of the advertisement for a used washing machine which was purchased to replace the damaged washing machine. The advertisement lists the price of the used washing machine at $250.00. The landlord testified that the used washing machine was 2 years old and that the landlords paid $250.00 for it.

Analysis

Monetary Claim

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Policy Guideline #40 states that the useful life of a door is 20 years. At the time the tenant moved out, the door was approximately 68-78 years old. I find that as the door, door trim and door handle were past their useful life, the landlord is not entitled to recover damages for them. However, I find that, pursuant to Residential Policy

Guideline 16, the landlord is entitled to receive nominal damages because while no significant loss has been proven, it has been proven that there has been an infraction of a legal right, that being that the landlords' property was damaged. I find that the landlord is entitled to receive $50.00 in nominal damages for the damage to the door, door frame and door handle.

The landlord testified that the lock on the front door was purchased new in September of 2017. I find that the useful life of the lock was 10 years (120 months). Therefore, at the time the tenant moved out, there was approximately 112 months of useful life that should have been left for the door lock of this unit. I find that since the lock required replacing after only 8 months, the tenant is required to pay according to the following calculations:

$33.59 (cost of lock) / 120 months (useful life of lock) = $.28 (monthly cost)

$.28 (monthly cost) * 112 months (expected useful life of lock after tenant moved out) = $31.36

Policy Guideline #40 states that the useful life of drywall is 20 years. At the time the tenant moved out, the drywall was approximately 68-78 years old. I find that as the drywall was past its useful life, the landlord is not entitled to recover damages for it. However, I find that, pursuant to Residential Policy Guideline 16, the landlord is entitled to receive nominal damages because while no significant loss has been proven, it has been proven that there has been an infraction of a legal right, that being that the landlords' property was damaged. I find that the landlord is entitled to receive $50.00 in nominal damages for the drywall.

Policy Guideline #40 states that the useful life for interior painting is four years (48 months). Therefore, at the time the tenant moved out, there was approximately 36 months of useful life that should have been left for the interior paint of this unit. I find that since the unit required repainting after only 12 months, the tenant is required to pay according to the following calculations:

$664.41 (cost of painting) / 48 months (useful life of paint) = $13.84 (monthly cost)

$13.84 (monthly cost) * 36 months (expected useful life of paint after tenant moved out) = $498.24

Policy Guideline #40 states that if a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the

table or information published by the manufacturer. Policy Guideline #40 states that the useful life for tile and carpet flooring is 10 years. I find that the useful life of laminate flooring is also 10 years (120 months). At the time the tenant moved out, the flooring was approximately 31 months old. The quote submitted from the landlord is not clear in regard to the wages to be paid for installing the flooring. At one point in the quote the "wages without flooring" is quoted at $400.00 and later in the quote "flooring wages" is quoted at $250.00. The landlord did not provide clarification of this issue. I find that the landlord has not adequately quantified her damages for labour and so her claim for the labour for the installation of the flooring cannot succeed; however, her claim for the flooring itself, can go forward. I find that since the master bedroom required new flooring after only 31 months, the tenant is required to pay according to the following calculations:

$500.00 (cost of new flooring) / 120 months (useful life of flooring) = $4.17 (monthly cost)

$4.17 (monthly cost) * 89 months (expected useful life of flooring after tenant moved out) = $371.13

Policy Guideline #40 states that the useful life for cabinets is 25 years. As the lazy Susan is a component in a cabinet, I find that it has a useful life of 25 years (300 months). At the time the tenant moved out, the lazy Susan was approximately 31 months old. I find that since the lazy Susan required replacing after only 31 months, the tenant is required to pay according to the following calculations:

$150.00 (cost of lazy Susan) / 300 months (useful life of lazy Susan) = $0.50 (monthly cost)

$0.50 (monthly cost) * 269 months (expected useful life of paint after tenant moved out) = $134.50

The landlord testified that the tenant overheld the subject rental property for two days and is seeking rent for May 1-2, 2018. Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 67 of the *Act*, I find that the tenant was obligated to pay the landlord rent for May 1-2, 2018 as per the below calculation:

$1,100.00 (rent) / 31 (days in May 2018) = $35.48 (daily rate)
$35.48 (daily rate) * 2 (overheld days in May 2018) = $70.96

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord and the landlord's testimony, I find that the rental unit required significant cleaning and yard maintenance. The landlord submitted into evidence a calculation of the hours landlord P.M. spent cleaning the subject rental property and maintaining the yard which totaled 34.5 hours. The landlord is seeking reimbursement for the cleaning and yard maintenance hours at the rate of $20.00 per hour for a total of $690.00. I find that the tenant is responsible for these cleaning and yard maintenance fees.

The landlord testified that the tenant broke the two-year-old washing machine at the subject rental property and that a used two-year-old washing machine was purchased to replace it in the amount of $250.00. I find that the landlord is entitled to recover the $250.00 from the tenant for the washing machine.

Condition Inspection Report

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 24(2) of the *Act* states that 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 does not offer the tenant two opportunities to complete the condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the "Regulations"), the second opportunity must be in writing.

The landlord testified that a move in condition inspection was completed with the tenant but a move in condition inspection report was not completed with the tenant. The landlord testified that she completed the move in condition inspection report after the tenant moved in and did not provide a copy to the tenant. Based on the text messages entered into evidence, I find that the landlord did not explicitly offer the tenant two opportunities to complete the move in condition inspection and inspection report. The

text messages from the landlord to the tenant were about repairs to be made, not the completion of the condition inspection report. Responsibility for completing the move in inspection report rests with the landlord. I find that the landlord did not complete the condition inspection and inspection report in accordance with the Regulations, contrary to section 24 of the *Act.*

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in inspection and inspection report, I find that the landlord's eligibility to claim against the security deposit and pet damage deposit for damage arising out of the tenancy is extinguished.

Security Deposit Doubling Provision

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

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

While posting a forwarding address on the door of the subject rental property does not conform with the service requirements of section 88 of the *Act*, I find that the landlords were sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*, on May 17, 2018 as that is the day the landlord's received the tenant's forwarding address.

Section C(3) of Policy Guideline 17 states that unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

In this case, while the landlord made an application to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing, she is not entitled to claim against it due to the extinguishment provisions in section 24 of the *Act.* Therefore, the tenant is entitled to receive double her security deposit and pet deposit as per the below calculation:

$550.00 (security deposit) * 2 (doubling provision) = $1,100.00
$250.00 (pet damage deposit) * 2 (doubling provision) = $500.00
**Total = $1,600.00**

Section 72(2) states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under sections 24 of the *Act*.

As the landlord was successful in her application, I find that she is entitled to recover the $100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

| **Item** | **Amount** |
|---|---:|
| Door and frame- nominal damages | $50.00 |
| Drywall- nominal damages | $50.00 |
| Lock | $31.36 |
| Painting | $498.24 |
| Flooring | $371.13 |
| Lazy Susan | $134.50 |
| Washing machine | $250.00 |
| Cleaning fee | $690.00 |
| Rent May 1-2, 2018 | $70.96 |
| Filing Fee | $100.00 |
| Less doubled deposits | -$1,600.00 |
| **TOTAL** | **$646.19** |

The landlords are provided with this 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.

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: November 07, 2018

Residential Tenancy Branch