



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AVAUN PROPERTIES INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

On September 19, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

M.S. attended the hearing as the Landlord’s agent on behalf of the Landlord and the Tenant attended the hearing, with K.D. as his advocate. All in attendance provided a solemn affirmation.

The Landlord advised that a friend of the caretaker served the Tenant the Notice of Hearing package and his evidence by hand on September 23, 2018 and the Tenant acknowledged that he received this. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenant was served the Landlord’s Notice of Hearing package and evidence.

The Tenant advised that he served his evidence to the Landlord by registered mail on December 20, 2018 and the Landlord confirmed that he received this evidence. I am satisfied that this evidence was served in compliance with Rule 3.15 of the Rules of Procedure, and as such, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord advised that his company purchased the building three or four years ago but he is not sure when the Tenant's original tenancy started. However, the Tenant did sign a new tenancy agreement on Labour Day of 2017, to commence December 1, 2017. This tenancy agreement had both month to month and fixed term boxes checked off and noted that the fixed term ended on February 1, 2019.

The Tenant advised that his tenancy started on January 6, 2005 and he did acknowledge that he signed the new tenancy agreement. He stated that he gave written notice on October 13, 2017 to end his tenancy on November 30, 2017 and this is the date that the tenancy ended as this is the date that he gave up vacant possession of the rental unit. Rent was established at \$550.00 per month, due on the first day of each month. A security deposit of \$262.50 was also paid.

The Landlord advised that he is not sure if a move-in inspection report was conducted with the Tenant and that he did not receive a copy from the previous owner. The Tenant does not believe a move-in inspection report was ever conducted. The Landlord stated that the caretaker conducted a move-out inspection report on November 30, 2017; however, the Tenant refused to sign it or return the keys. The Tenant eventually returned the keys three days later, but the Landlord had already changed the locks.

The Tenant advised that this move-out inspection report was just a piece of paper with handwritten notes on it and was not an actual report.

The Landlord submitted that he is seeking compensation in the amount of **\$62.42** for the cost of re-keying the locks as the Tenant did not return the keys. As the Landlord was concerned about the safety of the rental unit, he changed the locks. He attached an invoice for the cost of the locks being changed.

The Tenant advised that when he returned the keys four or five days after the end of the tenancy, he does not believe that the locks were changed. He stated that the invoice that the Landlord submitted is dated December 8, 2017; therefore, the Landlord could not have changed the locks on the date that he alleges.

The Landlord submitted that he is seeking compensation in the amount of **\$649.49** for the cost of new flooring to be installed in the bedroom to replace the carpet. He stated that two building inspections were conducted and noted that the rental unit was a “disaster with garbage everywhere”. He stated that at the end of the tenancy, the carpet was wet, moldy, and full of mildew and had to be replaced, so vinyl flooring was installed in its place. He attached an invoice for the cost of the new flooring. He advised that he did not know how old the existing carpet was.

The Tenant advised that he had cleaners come in and they cleaned the carpets as well. He estimated that the carpets were 20 years old and were in the rental unit when he first moved in. He referenced pictures submitted as documentary evidence to show the condition of the carpet and he submitted a copy of the invoice for the cleaners as well.

The Landlord questioned the authenticity of the receipt for cleaning. The Tenant advised that the person that the receipt was made out to was his sister, who takes care of some things for him.

The Landlord submitted that he is seeking compensation in the amount of **\$435.10** for the cost of replacing a broken fan and installing lights. He stated that certain light switches were not working, that some light covers were broken, and that a ceiling fan was broken but he replaced this with a flush mount light. He attached an invoice for the cost of the new lighting repairs.

The Tenant advised that the fan was broken when he originally rented the unit and he simply lived with it in that condition. He stated that everything else with respect to the lighting was working fine.

The Landlord submitted that he is seeking compensation in the amount of **\$783.16** for the cost of replacing the refrigerator as it had to be replaced due to being very old. He stated that the appliance was leaking but acknowledged that the Tenant did not damage this appliance. He attached an invoice for the cost of the new refrigerator.

The Tenant stated that he had no problems with the refrigerator and that it was working adequately.

The Landlord submitted that he is seeking compensation in the amount of **\$496.19** for the cost of replacing the hot water tank and the kitchen sink. He advised that the plumber told him to replace the hot water tank as it was old. As well, he stated that the kitchen sink was broken but he did not believe that the Tenant broke it. However, he advised that it was his belief that the manner with which the Tenant lived in the rental unit led to faster deterioration of the condition of the rental unit. He stated that if the Tenant had notified the Landlord of some issues, the rental unit would not have fallen into such a state of disrepair. He attached an invoice for the cost of the new hot water tank and sink.

The Tenant advised that he did not have any issues with the hot water tank or sink during the tenancy.

The Landlord submitted that he is seeking compensation in the amount of **\$306.92** for the cost of replacing a leaking, damaged toilet which was dripping onto the floor. Consequently, he had to replace the vinyl flooring as well, which was ripped, peeling, moldy, and discoloured. He advised that he did not know how old the toilet, or the vinyl flooring was. He attached an invoice for the cost of the new toilet and flooring.

The Tenant advised that the toilet and flooring were original when he moved into the rental unit and that the toilet was not leaking when he lived there.

The Landlord submitted that he is seeking compensation in the amount of **\$750.00** for the cost of repainting the rental unit as the Tenant lived like a hoarder and this led to the degradation of the condition of the rental unit. He had no idea when the rental unit was last painted. He attached a visa bill in the amount of \$311.07 for the paint purchase and advised that the difference of \$438.93 is the cost of labour; however, he did not have a receipt for this.

The Tenant advised that the rental unit was painted when he moved in and was not painted during his tenancy. He referenced the pictures that he submitted to demonstrate the condition of the walls upon move out.

The Landlord submitted that he is seeking compensation in the amount of **\$17,500.00** for the cost of rental loss that he suffered as the Tenant ended his tenancy before the new tenancy agreement that the parties signed commenced. He stated that the

caretaker did not advertise the rental unit until March 2018, that the rental unit sat vacant for December 2017, that renovations commenced in January 2018 through April 2018, and that the unit was re-rented on July 1, 2018. He changed his request for compensation to \$700.00 per month for the months of December 2017 to June 2018, totalling **\$4,900.00**.

The Tenant advised that the Landlord checked off both boxes on this new tenancy agreement indicating that the tenancy was a month to month tenancy and a fixed term tenancy. However, it was the Tenant's belief that this was a month to month tenancy and it was ended in accordance with the *Act*.

The Landlord submitted that he is seeking compensation in the amount of **\$7,500.00** for the cost of labour for a general contractor to complete repairs to the rental unit. He stated that this person completed the painting, installation of the new flooring, cleaning, drywall repair, and any other necessary repairs. He advised that he did not have any receipts for this work.

The Tenant stated that he was not aware that the rental unit was in such a state of disrepair as alleged by the Landlord and he referenced the pictures that he submitted to demonstrate the condition of the rental unit.

Finally, the Landlord submitted that he is seeking compensation in the amount of **\$1,398.54** for the cost of replacing flooring throughout rental unit as it was in disrepair due to the manner in which the Tenant lived in the rental unit. He did not submit any invoices for these costs.

The Tenant stated that the flooring was all original since he moved into the rental unit and he did not damage the flooring. He referenced his pictures to demonstrate the condition of the rental unit.

Both parties agreed that, as per a prior Dispute Resolution proceeding (the relevant file number is on the first page of this decision), the Landlord had 15 days from September 6, 2018 "to either return the security deposit to the tenant in full, obtain written consent to deduct a portion or keep the deposit, or make an Application to retain a portion or all of it."

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. However, these sections pertain to a Landlord's right to claim for damage, and as the Landlord also applied for rent owing, which is not a damage claim, the Landlord still retains a right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receive the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to section 38(6) of the *Act*.

The undisputed evidence is that the forwarding address in writing was established by the Dispute Resolution proceeding date of September 6, 2018 and the Landlord made his Application within the 15-day frame to claim against the deposit. As the Landlord was entitled to claim against the deposit still, and as he complied with Section 38(1) of the *Act* by making a claim within 15 days, I find that he has complied with the requirements of the *Act*. Therefore, the doubling provisions do not apply.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for \$62.42 for the cost of re-keying the locks, the consistent testimony was that the Tenant returned the keys within five days of November 30, 2017. Furthermore, the Landlord's invoice for the cost to re-key the rental unit was dated December 8, 2017. As it appears as if the Landlord received the keys to

the rental unit back prior to re-keying the locks, I am not satisfied that the Landlord has established the legitimacy of this claim. As such, I dismiss it in its entirety.

With respect to the Landlord's claims of \$649.49 for the cost of new flooring to be installed in the bedroom, \$435.10 for the cost of replacing a broken fan and installing lights, \$783.16 for the cost of replacing the refrigerator, \$496.19 for the cost of replacing the hot water tank and the kitchen sink, \$306.92 for the cost of replacing a leaking, damaged toilet and replacement of the vinyl flooring, \$750.00 for the cost of repainting the rental unit, and \$1,398.54 for the cost of replacing flooring throughout rental unit, I find it important to reference Policy Guideline #40 which outlines the approximate useful life of certain items and materials in a rental unit. Based on the testimony of the parties, most of the items that the Landlord claimed for were past their approximate useful life. Furthermore, the Landlord advised that for some items, he did not believe that the Tenant was negligent for causing the items to have to be replaced. Finally, the onus is on the Landlord to provide evidence to establish that compensation is due. As the Landlord has provided limited evidence to demonstrate that the Tenant was responsible or negligent for the items claimed by the Landlord, I find that the Landlord has failed to establish these claims. The Landlord's Application appears to be an attempt to charge the Tenant for renovations to the rental unit that were mostly necessary anyways due to the age of the rental unit. As such, I dismiss the Landlord's claims with respect to these items in their entirety.

Regarding the Landlord's claim for rental loss of \$4,900.00, there was some discrepancy over whether the new tenancy agreement was a month to month tenancy or a fixed term tenancy. However, even if this new tenancy was a fixed term tenancy, I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. As well, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

The Landlord advised that the rental unit was not even advertised in December 2017 or January 2018 as these are "slow months" and that the rental unit simply sat vacant in December 2017. Furthermore, he stated that renovations to the rental unit commenced in January 2018 through April 2018. Based on this testimony, I am not satisfied that the Landlord demonstrated that he made any reasonable efforts to re-rent the rental unit after the Tenant gave up vacant possession of the rental unit. As such, I dismiss the Landlord's claim on this issue in its entirety.

Regarding the Landlord's claim of \$7,500.00 for the cost of labour for the general contractor, I find it important to note that the Landlord has not provided any evidence to substantiate this cost. As such, I dismiss this claim in its entirety.

As the Landlord has been unsuccessful in establishing his claims, I have dismissed his Application in its entirety. I order that the Landlord return the Tenant's security deposit in full.

### Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$262.50** 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: January 21, 2019

---

Residential Tenancy Branch