



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNDL-S, FFL
For the tenant: MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) by both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The landlord applied for a monetary order for damage to the unit, site or property, for authorization to keep all or part of the tenant’s security deposit, and to recover the cost of the filing fee. The tenant applied for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of their security deposit, and to recover the cost of the filing fee.

The landlord and tenant attended the teleconference which began on February 4, 2019. The parties were affirmed and were given the opportunity to ask questions about the hearing process. After 60 minutes, the hearing was adjourned to allow additional time to hear further evidence from the parties. An Interim Decision dated February 4, 2019 was issued which should be read in conjunction with this decision.

On April 4, 2019, the parties reconvened and after an additional 60 minutes, the hearing concluded. A summary of the testimony and documentary evidence presented is provided below and includes only that which is relevant to the matters before me. The parties were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

Neither party raised any concerns regarding service or receipt of documentary evidence.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is either party entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A fixed-term tenancy began on August 1, 2016 and reverted to a month to month tenancy as of July 31, 2017. Monthly rent in the amount of \$1,200.00 was due on the first day of each month. The tenant paid a security deposit of \$600.00 at the start of the tenancy, which the landlord continues to hold. The parties disputed the end of tenancy date. The tenant affirmed that they vacated the rental unit on August 1, 2017. The landlord stated that he was not aware the tenant vacated the rental unit until September 4, 2017.

Evidence related to landlord's claim

The landlord submitted a monetary claim of \$2,251.86 comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. 3 door and paint supplies (Aug 5, 2017)	\$167.13
2. Carpet cleaner	\$62.27
3. <i>Less carpet cleaner deposit refund</i>	<i>-\$25.00</i>
4. Carpet for living room	\$1,300.00
5. Paint supplies and screws (Aug 9, 2017)	\$102.19
6. Paint supplies (Aug 11, 2017)	\$50.98
7. Paint supplies (Aug 12, 2017)	\$64.43
8. Handle set for refrigerator	\$79.86
9. Invoice for repair and paint (April 18, 2017)	\$450.00
TOTAL	\$2,251.86

Regarding item 1, the landlord has claimed \$167.13 for three doors and paint supplies. The landlord confirmed that there was no incoming Condition Inspection Report ("CIR")

completed with the tenant, which the tenant confirmed. The landlord did not supply before photos to show the condition of the doors at the start of the tenancy. The tenant stated that the doors did not look like the after photos in July 2017. The tenant confirmed that his ex-wife and her husband were guests of his and did not vacate the rental unit when the tenant did and remained in the rental unit. The landlord denied that he established a tenancy agreement with the tenant's guests and that all occupants should have left the rental unit at the same time the tenant vacated the rental unit as the tenancy ends for the tenant and all occupants.

The landlord referred to several photos submitted by the tenant, which the tenant indicates showed the condition of the rental unit at the start of the tenancy during a walk through in July 2016. The landlord stated that those are the same doors that were damaged during the tenancy and that had to be repaired. The landlord submitted receipts supporting the \$167.13 being claimed. The after photos show dents in the doors and damage to the locks of the doors.

Regarding items 2 and 3, the landlord has claimed \$62.27 for the cost to rent a carpet cleaner to clean the rental unit carpets. The landlord has deducted \$25.00 from that amount for the deposit refund of \$25.00 which I find results in a net amount claimed for the carpet cleaner in the amount of \$37.27. The landlord submitted a receipt supporting items 2 and 3. The photo evidence submitted by the landlord was blurry which I will discuss later in this decision.

The tenant claims that he cleaned the carpets on August 1, 2017 before vacating the rental unit. In support of his testimony was a receipt which indicates a carpet cleaning machine was rented at 11:30 a.m. on August 1, 2017 and returned at 1:30 p.m. on the same day.

Regarding item 4, the landlord has claimed \$1,300.00 to repair the carpet in the living room which the landlord stated was cut by either the tenant or the tenant's guests. Photographic evidence was submitted which showed a square hole of carpet cut from the middle of a room. The landlord also stated the rental unit and carpet smelled like smoke. The tenant denies smoking in the rental unit or that he damage the carpet during the tenancy. As the landlord failed to provide an incoming CIR, before photos of the carpet or a quote for the value of the carpet repair, this item is dismissed without leave to reapply due to insufficient evidence which I will discuss later in this decision. Regarding items 5, 6 and 7, the landlord has claimed \$102.19, \$50.98 and \$64.43 for paint supplies and screws to repair damage to the walls that the landlord alleges the tenant or his guests damaged before vacating the rental unit. Both parties referred to

many colour photos, most of which were blurry and of little evidentiary value. The landlord did refer to some of the tenant's photo which were clearer than those photos submitted by the landlord and of which showed some areas that where drywall putty was shown on areas of the walls at the start of the tenancy. The landlord stated that he would "fix those" after the tenant moved into the rental unit. The landlord submitted receipts in support of items 5, 6 and 7 which match the amounts claimed. The tenant denies damaging the walls of the rental unit.

Regarding item 8, the landlord has claimed \$79.86 to repair a broken fridge door handle. The landlord provided a photo which supports the broken fridge handle. The tenant claims that the broken handle was wear and tear and does not agree to the cost being claimed. The tenant did confirm that the handle broke during the tenancy. The landlord submitted a receipt to support the amount being claimed.

Regarding item 9, the landlord has claimed \$450.00 for "repair and paint". The landlord submitted an invoice that he stated he created and that the amount being claimed for the work performed is modest. The landlord indicates the following on the invoice:

10 hours	\$15/hour	Paint and custom hang 3 new door	\$150.00
4 hours	\$15/hour	Repair and patch holes in walls	\$60.00
6 hours	\$15/hour	New Paint of damage areas	\$90.00
4 hours	\$15/hour	Repair damage – entry door/jam & paint	\$60.00
6 hours	\$15/hour	Clean carpets, floors, bathroom, refrigerator, stove, cabinets	\$90.00

The landlord testified that he used to be a licensed contractor and has done a lot of repairs in the past which is why he feels the amount claimed is modest. The tenant responded by stating that his lease ended and his ex-wife and her husband remained in the rental unit. The landlord responded by stating that the tenant is responsible for his guests who remained in the rental unit, including any damages caused.

The tenant claims that the landlord started a new tenancy agreement with the people that stayed in the rental unit, which the landlord denied. The tenant did not have any documentary or witness testimony to support his allegation of a new tenancy agreement being formed.

Evidence related to tenant's claim

The tenant has claimed \$1,200.00 for the return of double his security deposit under the Act. The tenant claims he provided his written forwarding address dated August 31,

2017, which the landlord denies ever having been received. The tenant failed to submit a copy of a written forwarding address dated August 31, 2017 in evidence.

The tenant then stated that he provided his written forwarding address again on September 12, 2018. The landlord confirmed that he received the written forwarding address dated September 12, 2018; however, stated that it was beyond the one year timeline provided for under section 38 of the *Act*. The tenant stated that he did not give the landlord permission to retain any portion of the \$600.00 security deposit.

Analysis

Based on the documentary evidence before me, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on both applicants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the respondent. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did what is reasonable to minimize the damage or losses that were incurred.

Landlord's Claim

Item 1 - The landlord has claimed \$167.13 for three doors and paint supplies. Firstly section 23 of the *Act* states:

Condition inspection: start of tenancy or new pet

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.

[Emphasis added]

I find the landlord breached section 23 of the *Act* by failing to complete an incoming CIR. As a result, the landlord must rely on other evidence to prove what the condition of the rental unit was at the start of the tenancy. For this I find the landlord has referred to the tenant's evidence which I find has clearer photographic evidence than that of the landlord's photographic evidence. As the standard of proof only requires the landlord to reach a 51% threshold, I am satisfied based on the walk through photos submitted by the tenant that the tenant or a guest of the tenant damaged the rental unit beyond reasonable wear and tear based when compared to the after photos.

Section 37 of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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, and
(b) give the landlord all the keys or other means of access
that are in the possession or control of the tenant and that
allow access to and within the residential property.

[Emphasis added]

I disagree with the tenant's allegation that the landlord started a new tenancy with a guest of the tenant due to insufficient evidence to support such. At the very least, the tenant could have called his guests as witnesses, which the tenant failed to do.

Therefore, as I find the landlord is able to prove a negative in this situation, I find that I prefer the landlord's version of events over that of the tenant's as I find the tenant's version is highly unlikely and does not have the ring of truth to it.

As a result, and taking into account the receipts before me, I am satisfied that the tenant or the guests of the tenants, of which the tenant is responsible for under the *Act* until those guests vacate the rental unit, caused damage to the walls, doors, and flooring of the rental unit which exceed reasonable wear and tear. I find the tenant breached section 37 of the *Act* as a result. Therefore, I grant the full amount claimed for this item in the amount of **\$167.13** as I find that the landlord has presented evidence other than the incoming CIR to support that the tenant damaged the rental unit beyond reasonable wear and tear. In other words, I find the landlord has met the burden of proof.

In future, I remind the landlord to comply with section 23 of the *Act*.

Items 2 and 3 – As item 3 includes a credit to be deducted from item 2, I find that items 2 and 3 result in a net claim by the landlord of \$37.27 for the cost of carpet cleaning. I have considered the landlord's carpet photos and find them too blurry to support the need for additional carpet cleaning. Therefore, considering the tenant's receipt for carpet cleaning, I find the landlord has failed to meet the burden of proof for carpet cleaning costs. Therefore, the landlord's claim for carpet cleaning is dismissed without leave to reapply, due to insufficient evidence.

Item 4 – Although the landlord has claimed \$1,300.00 to repair the carpet in the living room which the landlord stated was cut by either the tenant or the tenant's guests, the

landlord failed to present a receipt or quote during the hearing for the cost claimed for the carpet. In addition, as the landlord failed to complete an incoming CIR, I find the landlord has failed to provide sufficient evidence to meet the burden of proof for the carpet claim. Therefore, I dismiss this portion of the landlord's claim without leave to reapply due to insufficient evidence. I find the landlord failed to meet all parts of the test for damages and loss for this item.

Items 5, 6 and 7 - The landlord has claimed \$102.19, \$50.98 and \$64.43 for paint supplies and screws to repair damage to the walls that the landlord alleges the tenant or his guests damaged before vacating the rental unit. Both parties referred to many colour photos, most of which were blurry and of little evidentiary value. The landlord did; however, refer to some of the tenant's photo which were clearer than the photos submitted by the landlord and of which showed some areas that where drywall putty was shown on areas of the walls at the start of the tenancy. The landlord stated that he would "fix those" after the tenant moved into the rental unit. The landlord submitted receipts in support of items 5, 6 and 7 which match the amounts claimed. Although the tenant denies damaging the walls of the rental unit, I find the before photos submitted by the tenant and the after photos submitted by the landlord prove otherwise.

I find the tenant or the tenant's guests did damage the walls of the rental unit beyond reasonable wear and tear and that the amounts claimed for items 5, 6 and 7 are reasonable. Based on the above, I grant the full amounts claimed for items 5, 6 and 7 and don't depreciate the amounts as I find the damage was due to negligence and not normal wear and tear during a tenancy. The tenant is responsible for all guests invited into the rental unit, even if those guests remain after the tenant vacates the rental unit. This is set out in Residential Tenancy Branch Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises. In addition, section 37 of the *Act* requires that the tenant must vacate the rental unit at the end of the tenancy which includes all guests and their belongings as the tenant is responsible for their guests and their actions under the *Act*. Therefore, I find the landlord has met the burden of proof and that the tenant has breached section 37 of the *Act* by failing to provide a vacant rental unit at the end of the tenancy. I grant the landlord the amount of **\$217.60** which I find is the total of items 5, 6 and 7 combined.

Item 8 - The landlord has claimed \$79.86 to repair a broken fridge door handle. While the tenant claims that the broken handle was a result of wear and tear, I disagree. I find that on the balance of probabilities that a fridge handle would not break during the normal course of opening and closing a fridge. Therefore, I find that it is more likely than not that the tenant either deliberately or accidentally broke the fridge handle, and is

responsible for the full cost as a result. Therefore, I find the landlord has met the burden of proof and I award the landlord **\$79.86** as claimed for this item.

Item 9 - The landlord has claimed \$450.00 for “repair and paint”. The landlord submitted an invoice that he confirmed creating and stated that he believes the amount claimed is reasonable. The invoice states in part:

10 hours	\$15/hour	Paint and custom hang 3 new door	\$150.00
4 hours	\$15/hour	Repair and patch holes in walls	\$60.00
6 hours	\$15/hour	New Paint of damage areas	\$90.00
4 hours	\$15/hour	Repair damage – entry door/jam & paint	\$60.00
6 hours	\$15/hour	Clean carpets, floors, bathroom, refrigerator, stove, cabinets	\$90.00

I do not accept the tenant’s version of events that he left the rental unit in a reasonably clean condition as I find, and as stated above, the tenant is responsible for his guests who failed to vacate the rental unit when the tenant did and that the tenant is responsible for all the damage to the rental unit which I find was caused either by the tenant or the tenant’s guests. I find the amount claimed is reasonable considered the photos from the landlord which show what I find to be deliberate damage to the rental unit with multiple dents in several doors, broken locks, wall damage, dirty cabinets, dirty floors and a broken fridge. Therefore, I find the landlord has met the burden of proof and I award the landlord the full amount of **\$450.00** as claimed for this item.

Based on the above, I find that the landlord has established a total monetary claim of **\$914.59** as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. 3 door and paint supplies (Aug 5, 2017)	\$167.13
2. Carpet cleaner	Dismissed
3. <i>Less carpet cleaner deposit refund</i>	
4. Carpet for living room	Dismissed
5. Paint supplies and screws (Aug 9, 2017)	\$102.19
6. Paint supplies (Aug 11, 2017)	\$50.98
7. Paint supplies (Aug 12, 2017)	\$64.43
8. Handle set for refrigerator	\$79.86
9. Invoice for repair and paint (April 18, 2017)	\$450.00
TOTAL	\$914.59

As the landlord's claim had merit, I grant the landlord **\$100.00** pursuant to section 72 of the *Act* in full recovery of the cost of the filing fee.

Based on the above, I find the landlord's total monetary claim with filing fee included is **\$1,014.59**.

Tenant's Claim

The tenant has claimed \$1,200.00 for the return of double his security deposit under the *Act*. The tenant claims he provided his written forwarding address dated August 31, 2017, which the landlord denies ever having been received. The tenant failed to submit a copy of a written forwarding address dated August 31, 2017 in evidence. I find the tenant has provided insufficient evidence to support that he provided his written forwarding address to the landlord dated August 31, 2017.

I will now address the tenant's written forwarding address dated September 12, 2018. Section 39 of the *Act* states the following:

Landlord may retain deposits if forwarding address not provided

39 Despite any other provision of this Act, **if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,**

(a) **the landlord may keep the security deposit** or the pet damage deposit, or both, **and**

(b) **the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.**

[Emphasis added]

I find the tenant's written forwarding address dated September 12, 2018, is beyond the one year deadline under section 39 of the *Act* as the tenant claims he vacated on August 1, 2017 and the landlord stated the keys were returned September 4, 2017. As a result, I find the latest possible date to provide his written forwarding address would be September 4, 2018, which I find the tenant failed to do. Therefore, I find the tenant has extinguished his right to the security deposit and as such, I will not be offsetting any amount from the landlord's claim as the landlord is entitled to keep the entire deposit due to the tenant failing to comply with section 38 and 39 of the *Act*. Consequently, I

dismiss the tenant's application in full without leave to reapply, as I find the tenant failed to meet the burden of proof.

I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the total amount of **\$1,014.59**.

Conclusion

The landlord's claim is partly successful.

The tenant's application fails and is dismissed without leave to reapply.

The landlord has established a total monetary claim of \$1,014.59. The landlord is granted a monetary order in the amount of \$1,015.59 pursuant to sections 67 and 72 of the *Act*. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: April 24, 2019

Residential Tenancy Branch