



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MND MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on March 22, 2019, and a second hearing was held on May 23, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act; and,
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The Landlord was present at the hearing. One of the Tenants, L.M. attended the hearing. All parties provided testimony.

The Tenant confirmed receipt of the Landlord's Notice of Hearing and evidence. The Landlord stated she did not get the Tenant's evidence. However, the Tenant was able to provide registered mail tracking information, which corroborated that she sent the Landlord her evidence by registered mail on March 6, 2019, to the address the Landlord listed as her address for service on her application. Pursuant to section 89 and 90 of the Act, I deem this evidence is served on March 11, 2019, the fifth day after it was mailed.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

During the hearing the parties indicated that they already had a hearing where the security deposit was ordered to be returned. As such, I dismiss this portion of the Landlord's application, pursuant to the doctrine of *Res Judicata*, as the issue of the security deposit has already been determined. I will proceed to hear the Landlord's application for monetary compensation, below.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit, for damage or loss under the Act, and for unpaid rent?

Background and Evidence

Written Tenancy Agreement

The Landlord provided a copy of the tenancy agreement into evidence. This agreement is missing several dates, including an end date within the fixed term section, and it is also missing the address of the rental unit. The Tenants stated they were under the impression it was a month-to-month tenancy. However, the Landlord stated she believed it was a 1-year fixed term.

Mutual Agreement to End Tenancy

A mutual agreement to end tenancy was uploaded into evidence by the Tenants. However, this version of the document was not signed by the Tenants. Although the Tenants stated they signed it, no complete (signed by both parties) mutual agreement was provided.

During the hearing, both parties agreed that:

- monthly rent was \$2,195.00 and was due on the first of the month.
- The Landlord no longer holds a security or pet deposit.
- The Tenants sent, and the Landlord received, the Tenants' forwarding address in writing on August 31, 2017. Included in this letter was the Tenants' written notice that they would be moving out at the end of September 2017.
- A move-out inspection was done on October 1, 2017, and the Tenants moved out by this day.

The Landlord is seeking several monetary items as follows:

1. \$250.00 - Rent

The Landlord is looking to recover \$250.00 in rent for October 1-3, 2017, because the Tenants left the rental unit dirty and cleaning was required before it could be re-rented. The Landlord stated that they had to clean the carpets after the Tenants left, because they did not do so. The Landlord re-rented the unit at a rate of \$2,500.00 on October 4, 2017, and she is looking to recover a per diem rate (\$2,500.00/30 days) for the 3 days it was empty, as the unit was un-rentable prior to the carpets being cleaned. The Landlord stated that she did not charge the new Tenant for these 3 days, and she believes this Tenant ought to be responsible for this amount, as it was their mess left behind.

The Tenants acknowledged that they did not do a proper cleaning prior to moving out and could have cleaned more, but stated it wasn't as bad as the Landlord said.

2. \$251.55 - Unpaid Utilities

The Landlord provided a receipt showing that the Tenants failed to pay their water and garbage utility bills. The Tenants agreed that they owe this amount, as it was something they agreed to pay under the tenancy agreement.

3. \$22.66 – Background check fee to find new tenant

4. \$1,130.00 – Property Manager fee for finding new tenants

The Landlord stated that since the Tenants moved out early (broke the fixed term tenancy agreement), they should be responsible for the costs associated with re-renting the unit. The Landlord provided evidence to show she paid these amounts to the property manager.

The Tenants stated that they provided proper notice (over 1 month) that they were ending the tenancy, so they should not be liable for any of this. The Tenants stated that it was their understanding that they were on a month-to-month tenancy because the tenancy agreement was not properly filled out and did not have an end date on the agreement.

5. \$165.75 – Cleaning fee
6. \$367.50 – Carpet Cleaning fee

The Landlord provided receipts and evidence to show that she paid for the above noted expenses to clean up the rental unit at the end of the tenancy. The Landlord stated that it was a 3900 square foot house and the walls, windows, and carpets all needed to be cleaned after the Tenants moved out.

The Tenants stated that they are “not going to fight this charge”, and admitted that, although they didn’t leave a large mess, they could have cleaned more. The Tenants also stated that they did not clean the carpets at the end of the tenancy, despite having pets. The Tenants stated that they are willing to pay for the carpet cleaning.

7. \$999.50 – Repaint and replace doors, repaint walls

The Landlord stated that the Tenants damaged a couple of doors and left marks all over the walls. The Landlord stated that it cost \$800 for 3 days’ worth of labour to replace and repaint 2 doors, and also to repaint a couple of walls. The Landlord stated that the material cost for this work was \$199.50. The Landlord provided photos of the two doors showing scratches and damage. The Landlord also provided photos of the wall in the TV room, showing many scratches all over. Since the scratches were so numerous, she had to repaint this wall completely. The Landlord also provided photos of other walls that were heavily scratched, and stated that she had to repaint these walls as well.

The Landlord stated that she just bought the house in April of 2017 (days before the tenancy started). The Landlord stated that she believes the previous owner repainted the house when they were selling it.

The Tenants provided a couple of photos which they took at the start of the tenancy, and they show that the doors were already scratched and damaged. The Tenants also pointed out some photos which show the walls were scratched and the paint was not new, as the Landlord has alleged. The Tenants pointed out that the door damage was never pointed out or noted on the move-out portions of the condition inspection report.

The move-in portion of the condition inspection report shows that some scratches were noted on the walls, and in the closets.

8. \$233.32 – Costs to repair broken downspout

The Landlord stated that it cost \$200.00 for the labour and \$33.32 for the materials required to fix the broken downspout near the driveway. The Landlord provided receipts for these items. The Landlord further stated that the downspout was in working order at the start of the tenancy, but at the end it was broken. The Landlord provided a photo of the broken downspout. However, she did not specify when this photo was taken.

The Tenants deny doing any damage to the downspout and stated it was working fine when they moved out. The Tenants pointed to the move-out portion of the condition inspection report to show that there was no mention of the broken downspout.

9. \$1,114.26 – Carpet replacement – Labour

10. \$1,668.66 – Carpet replacement – Materials

The Landlord stated that there were two main areas where the carpet had to be replaced after the Tenants moved out: the basement living room, and the upper living area. The Landlord stated that it took her a year to replace the carpets because she did not have the money to do the repairs, but she stated the new renter was not happy with their condition. The Landlord stated that around a year after these tenants moved out, she had them replaced.

The Landlord provided a photo of the stained carpets in the upper living room, plus a photo of the ripped carpet in the lower living room. The Landlord stated she took these photos at the end of the tenancy. The Landlord stated that the Tenant had 2 dogs that did a lot of damage to the lower carpets (rips). The Landlord provided a receipt for the material cost, and an estimate from the contractor who did the labour to replace the floors. These two items are as listed above. The Landlord stated she is unsure how old the carpets are.

The Tenants stated that the carpets were old, and had damage at the time they moved in. The Tenants pointed to the photos they took at the start of the tenancy to show that there was already a rip in the carpet. The Tenants deny damaging the

carpets such that they would need replacing. The Tenants stated that if the carpets were that bad, then they question why the Landlord would re-rent the unit for a year prior to replacing them.

The condition inspection report shows the flooring was mostly in good condition at the start of the tenancy, except for some minor damage in one of the rooms. The move-out portion also shows that there were some dirty areas in the upper living room, which were not present at the start, and also that the lower carpets were dirty.

The Landlord stated she had to clean the carpets 3 times. However, the stains did not come out, which is partly why she replaced them the following year.

Analysis

The Landlord is seeking monetary compensation for several items, as laid out above. These items will be addressed in the same order for my analysis. A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord 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 Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence (move in inspection, photos and invoices) and the testimony provided at the hearing, I find as follows:

Written Tenancy Agreement

I note there is a copy of the tenancy agreement provided into evidence. However, I note this agreement is missing the address of the rental unit. It is also missing several dates under both section 2 and 3 of the agreement (rent and fixed term sections). The Tenants were under the impression that they were on a month-to-month tenancy, and

the Landlord was under the impression it was a fixed term of 1-year (ending April 2018), yet this portion of the agreement was only half filled out. Having reviewed the tenancy agreement provided into evidence, I find there is some confusion and lack of clarity regarding the terms of the agreement. I note the following portion of the Act:

- 6** (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.
- (2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [*determining disputes*].
- (3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) **the term is not expressed in a manner that clearly communicates the rights and obligations under it.**

I find the manner in which the Landlord filled out the written tenancy agreement was unclear and lacked critical pieces of information, including the address of the subject property, and multiple date fields. There is no other written tenancy agreement provided into evidence. As this tenancy agreement has not been properly filled out, I find it is not a valid *written* rental agreement, and is not enforceable. That being said, I find there is sufficient evidence to establish that the parties had a verbal tenancy agreement, and both parties at the hearing confirmed that rent was \$2,195.00, and was due on the first of the month. The parties also agreed that the Tenants were responsible for utilities, and paid a \$2,195.00 security deposit, and a \$2,195.00 pet deposit (which have already been returned). Further, as there was no valid written tenancy agreement, I find this was not a fixed term tenancy, and the tenancy was month-to-month.

Next, I turn to the Landlord's monetary items, as laid out above. They will be addressed in the same order as above:

1. 250.00 - Rent

The Landlord is looking to recover \$250.00 in rent for October 1-3, 2017, because the Tenants left the rental unit dirty and cleaning was required before it could be re-rented. The Landlord stated that they had to clean the carpets after the Tenants left, because they did not do so. I note the Tenants acknowledge not cleaning the

carpets, despite having multiple pets. I find this likely contributed to the delay in being able to re-rent the unit. I note the Tenants moved out and a condition inspection was done on October 1, 2017. Given the Tenants left the rental unit unclean, I find they are responsible for the lost rent for these 3 days, as the Landlord would have had to clean the carpets and the rental unit prior to the new tenancy beginning. I find the Landlord is entitled to recover this amount, in full.

2. \$251.55 - Unpaid Utilities

The Landlord provided a receipt showing that the Tenants failed to pay their water and garbage utility bills. The Tenants agreed that they owe this amount, as it was something they agreed to pay under the tenancy agreement. I find the Landlord is entitled to recover this amount, in full.

3. \$22.66 – Background check fee to find new tenant

4. \$1,130.00 – Property Manager fee for finding new tenants

The Landlord stated that since the Tenants moved out early (broke the fixed term tenancy agreement), they should be responsible for the costs associated with re-renting the unit. However, I have already found the written tenancy agreement is not valid or enforceable, as it is missing critical pieces of information. I find the parties were on a month-to-month tenancy agreement. The basic elements of this oral tenancy agreement were confirmed in the hearing (rent amount, due date, utilities, deposit). Since the Tenants gave at least one month's notice that they would be ending the tenancy, I find they are not liable for this amount, as the tenancy was ended in accordance with the Act.

5. \$165.75 – Cleaning fee

6. \$367.50 – Carpet Cleaning fee

The Landlord provided receipts and evidence to show that she paid for the above noted expenses to clean up the rental unit at the end of the tenancy.

The Tenants stated that they are “not going to fight this charge”, and admitted that, although they didn't leave a large mess, they could have cleaned more. I find the Landlord is entitled to recover these amounts, in full.

7. \$999.50 – Repaint and replace doors, repaint walls

With respect to the Landlord's request to be reimbursed for the painting costs, I note there is insufficient evidence to establish when the rental unit was last painted. I note the Landlord bought the house a matter of days before the Tenants moved in, and she said the unit was painted by the previous owner. However, it is unclear how she would know, with any degree of certainty, when the unit was last painted. Further, the Tenants state they took photos at the start of the tenancy (uploaded into evidence) and the photos show scuff marks and paint blemishes. The Tenants stated that the paint was not new as the Landlord has alleged.

I turn to *Residential Policy Guideline #40 - Useful Life of Building Elements*, which states as follows:

This guideline is a general guide for determining the useful life of building elements for determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. The useful life of painted interior surfaces is 4 years.

I find the Tenants photos and testimony leads me to question whether or not the rental unit was painted right before the Tenants moved in, as the Landlord has alleged. Further, the Landlord was unable to substantiate how she would have known with any certainty when the unit was last painted, since it was done by the previous owner.

I find the Landlord has not met the burden of proof to show that the paint on the walls and doors was still within its useful life expectancy, and that the Tenants ought to be responsible for repainting costs for the walls or the doors.

With respect to the doors, I note the Landlord stated that 2 doors needed replacing, due to damage caused by the Tenants. However, I note this physical damage was not reflected on the move-out portion of the condition inspection. Only the paint scratches were noted on the move-out portion of the condition inspection report on a couple of different doors. I find there is insufficient evidence to show that the doors were damaged, such that they needed replacing. I dismiss this part of the Landlord's application.

8. \$233.32 – Costs to repair broken downspout

The Landlord further stated that the downspout was in working order at the start of the tenancy, but at the end it was broken. The Landlord provided a photo of the broken downspout. However, she did not specify when this photo was taken.

I note the Tenants deny doing any damage to the downspout and stated it was working fine when they moved out. I also note that the broken downspout was not reflected on the move-out inspection.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. I do not find the Landlord has sufficiently demonstrated when the photo of the downspout was taken, why it wasn't included on the move-out inspection, or that it was the Tenants who caused this damage. I dismiss this part of the Landlord's application.

9. \$1,114.26 – Carpet replacement – Labour

10. \$1,668.66 – Carpet replacement – Materials

The Landlord stated that there were two main areas where the carpet had to be replaced after the Tenants moved out: the basement living room, and the upper living area. I note the Landlord provided photos of the stained carpets in the upper living room, plus a photo of the ripped carpet in the lower living room. The Landlord stated she took these photos at the end of the tenancy. The Landlord stated that the Tenant had 2 dogs that did a lot of damage to the lower carpets.

I note the Tenants pointed to the photos they took to show that there was already a rip in the carpet. I also note the carpets were not new when they moved in. However, I find the carpet was substantially more damaged at the end, than at the beginning, as per the photos and the inspection report. I find the carpet damage goes beyond normal wear and tear, and the Tenants are liable for some of this damage. However, I also note that *Residential Policy Guideline #40* states that carpet has a useful life expectancy of 10 years. The Landlord specifically stated that she had no idea how old the carpets were. It appears they were worn and dated at the start of the tenancy. As such, it is difficult to determine how much useful life they had left, and it

is difficult to establish how much the Landlord should be entitled to recover, after considering the useful life expectancy.

I note an arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this case, I find it more likely than not that the Tenants caused carpet damage (beyond reasonable wear and tear) and they ought to be responsible for some of these costs to remedy the floors. However, given the lack of evidence surrounding the age of the carpets, I find a nominal amount is more appropriate. I award the Landlord a nominal award of \$200.00.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with her application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Claim	Amount
Rent losses	\$250.00
Unpaid Utilities	\$251.55
Cleaning/Carpet Cleaning	\$533.25
Carpet Replacement (nominal award)	\$200.00
Filing fee	\$100.00
TOTAL:	\$1,334.80

Conclusion

The Landlord is granted a monetary order in the amount of **\$1,334.80**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: May 24, 2019

Residential Tenancy Branch