



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) by the landlord seeking remedy under the *Residential Tenancy Act* (“Act”) for a monetary order in the amount of \$2,535.69 for damage to the unit, site or property, and to recover the cost of the filing fee.

The landlord, an agent for the landlord (“agent”), and the tenant appeared at the teleconference hearing and gave affirmed testimony. The hearing commenced on May 6, 2019, and after 61 minutes, the hearing was adjourned to allow additional time for the parties to present their evidence. An Interim Decision dated May 8, 2019 was issued, which should be read in conjunction with this decision.

During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Neither party raised any concerns regarding service of documentary evidence. As both parties confirmed that they were served with documentary evidence from the other party and had the opportunity to review that documentary evidence, I find the parties were sufficiently served in accordance with the *Act*.

### Preliminary and Procedural Matter

At the outset of the hearing, the parties confirmed their email addresses. In addition, both parties confirmed their understanding that the decision will be sent by email to the parties. If a monetary order is granted, it will be sent by email for service on the other party as necessary.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on April 1, 2016 and reverted to a month to month tenancy after March 31, 2017. Monthly rent in the amount of \$3,200.00 was due on the first day of each month. A security deposit of \$1,600.00 was paid by the tenant, which the parties confirmed has already been returned to the tenant.

The landlord has applied for a monetary claim in the amount of \$2,535.69, which is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Damage to the rental unit	\$1,986.19
2. Move out cleaning	\$220.50
3. Rent loss due to condition of rental unit left by tenant	\$329.00
<b>TOTAL</b>	<b>\$2,535.99</b>

Regarding item 1, the landlord has claimed \$1,986.19 for damages to the rental unit and referred to an invoice dated 12/03/2018 submitted in evidence, which I have referenced below by sub-items A through T for ease of reference. For the remainder of this decision I will refer to each sub-item for item 1 by the corresponding letter in the table below.

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| <ul style="list-style-type: none"> <li>A. To repair laundry room cabinets and adjust all the cabinet doors</li> <li>B. To remove plywood from garage wall to expose drywall damage</li> <li>C. To supply and install 2 door locks and door handles where missing</li> <li>D. To reverse door lock on exterior garage door for security</li> <li>E. To repair damaged drywall on corners, on walls behind door handles, top of the stairs</li> <li>F. To repair multiple gauges (<b>gouges</b>) in woodwork around door casings and baseboards</li> <li>G. To scour and clean glass stove top (may need to be replaced – extensive damage)</li> </ul> |
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- H. To replace missing faucet cap in bathroom
- I. To soak in ammonia and wash grime off all bathroom fans
- J. To replace cracked light switch covers
- K. To buy replacement toilet seat due to damage
- L. To replace missing drain plugs in bathtubs and basins
- M. To replace closet shelving which was removed
- N. To replace missing lightbulbs and remove and clean ceiling globe light fixtures
- O. To replace missing smoke detector
- P. To seal extensive cracks in grout in ensuite shower
- Q. To match wood cabinet stain and restain and re lacquer multiple damages areas on kitchen cabinets
- R. To remove chewing gum off hardwood floor
- S. To bleach and clean all black mold (**mould**) from multiple window frames
- T. To reimburse for Materials [receipts listed]

[Spelling corrected in bold]

The landlord confirmed that an incoming Condition Inspection Report ("CIR") was not completed at the start of the tenancy. There is no dispute that an outgoing CIR was scheduled for December 1, 2018 and that the tenant did not attend the outgoing CIR as the tenant stated that he was not anticipating any issues at the outgoing walkthrough so did not attend as a result.

Regarding sub-item A, the landlord referred to a hinge photo submitted in evidence which was not clear. The tenant denied damaging the laundry room cabinets and stated that they were in that condition at the start of the tenancy and that an incoming CIR was not completed at the start of the tenancy.

Regarding sub-item B, the landlord referred to a photo of a hole alleged by the landlord was disputed by the tenant stating that the hole was not in the drywall, and was in the bathtub due to a bathtub handle for a senior that was clamped on too tightly and was like that when the tenant moved into the rental unit.

Regarding sub-item C, the missing handles raised by the landlord and agent, the tenant confirmed that he removed an office door handle to install a locking deadbolt, and accidentally must have packed the original handle with him when he vacated the rental unit. As a result, the missing door handle was not reinstalled by the tenant before vacating the rental unit.

Regarding sub-item D, the tenant confirmed during the hearing that he reverse the door lock on the exterior garage door and confirmed that he did not ask the landlord in advance for permission to do reverse the door lock. The landlord stated that she suffered a loss by having to pay the contractor to repair the lock that the tenant reversed without permission.

Regarding sub-item E, the tenant stated that they could not recall damaged drywall at the end of the tenancy. The tenant also did not specifically deny damaging drywall during the hearing. The tenant stated that the interior trim was not painted at the start of the tenancy, and that only the walls were painted. In one photo presented by the landlord, which appears to show a hole where a door handle damaged the drywall behind the door, the tenant stated that the hole was caused due to a missing doorstop. The tenant also confirmed that he did not advise the landlord of a missing doorstop and did not request for the landlord to replace the doorstop.

Regarding sub-item F, the landlord confirmed that they had no photographic evidence to present regarding this portion of their claim.

Regarding sub-item G, the landlord referred to a colour photo of what appears to be a dirty ceramic stove top. The tenant testified that he thought the stove had residue on it at the start of the tenancy. The tenant claims that he wiped down the stove top daily and does not agree with the landlord's claim that the stove top was ruined.

Regarding sub-item H, the tenant confirmed that the faucet top/cap went missing at the time he hired cleaners to clean the rental unit at the end of the tenancy. The tenant testified that the cleaners were not able to find the faucet top when asked to find it. The tenant stated that "it is just a cap".

Regarding sub-item I, the landlord referred to a colour photo of what appears to be a bathroom fan full of dust. The agent testified that there were a total of three fans, all plugged with dust and had to be rinsed in ammonia to be cleaned as they were so dirty. The tenant admitted that the bathroom fans were missed and also questioned whether bathroom fan cleaning was the responsibility of the tenants.

Regarding sub-item J, the landlord stated that there was a total of 8 cracked light switch covers at the end of the tenancy. The tenant stated "there is no evidence to support that I cracked the covers and that it would be regular wear and tear." The tenant went on to testify that he did not notice any cracks of the covers and that perhaps it was fatigue due to the 12 year age of the home, but that it could not be from his 2 year tenancy.

Regarding sub-item K, the landlord confirmed that there was no toilet photo submitted in evidence for my consideration.

Regarding sub-item L, the landlord confirmed that there was no missing drain plug photos submitted in evidence for my consideration.

Regarding sub-item M, the landlord confirmed that there was no before photos showing shelving in the rental unit submitted in evidence for my consideration.

Regarding sub-item N, the landlord confirmed that there was no before photos showing lightbulbs installed and working submitted in evidence for my consideration.

Regarding sub-item O, the landlord stated that that the tenant removed a total of 2 smoke detectors. The tenant confirmed that he removed both smoke detectors. The first one the tenant stated kept beeping and the other kept going off as it was too sensitive. The tenant confirmed that he did not complain to the landlord about the smoke detectors in writing, nor did he obtain permission to remove either smoke detector. The tenant was cautioned at this point in the hearing for interrupting the arbitrator after repeated warning not to interrupt the arbitrator. The tenant raised the issue of the policy guideline that requires a landlord to inspect smoke detectors on an annual basis.

Regarding sub-item P, the landlord stated that the tenant damaged the grout in the ensuite shower and referred to a photo, which shows a crack in the shower grout. The tenant stated that he had no idea about the crack and didn't notice it.

Regarding sub-item Q, the landlord referred to several colour photos submitted in evidence and stated that the tenant damaged the cabinets beyond normal wear and tear. The tenant responded by stating that the stain was a water-based stain and is normal wear and tear. The tenant also stated "what would I have done to cause this damage?" The tenant reiterated that there was no incoming CIR completed by the landlord or before photos submitted in evidence.

Regarding sub-item R, the landlord referred to a colour photo showing chewing gum on the hardwood flooring. The agent stated that it took over 1 hour to get the chewing gum off the hardwood floor without scratching the flooring. The tenant stated that he did not know anything about chewing gum and how it would have got there. The tenant speculated that perhaps it was from the move.

Regarding sub-item S, the landlord referred to a colour photo that was too blurry and of no evidentiary value as a result. The tenant referred to a photo of the basement suite that he sublet to a different tenant.

Regarding sub-item T, the landlord confirmed that they did not supply a copy of the receipts submitted in evidence, in support of the amounts listed on the invoice from the contractor. The landlord testified that the amounts paid were part of the invoice total supplied contractor SS.

Regarding item 2, the agent referred to a move-out cleaning invoice in the amount of \$220.50 and that the landlord called a total of 5 cleaning companies and only one could do two hours of cleaning on a Saturday and that most companies did not do cleaning on Saturdays. The agent testified that the cleaners advised them that they “only scraped the surface” in the two hours they charged the landlord for as more cleaning was necessary but did the best they could do in the two hours. The landlord referred to photographic evidence, which appears to show outlet dust/grime, a dirty light fixture, black dirt in a drain, an open alarm panel that the landlord claims the tenant purposely damaged.

The tenant’s response was that he did not touch or damage the alarm panel, had never used the alarm panel, and that the invoice is very vague as to what was cleaned. The tenant also presented a letter from MH, which states that MH assisted with cleaning.

The agent responded to the tenant by presenting a photo of the fridge still full of items and stated it was not cleaned and in fact damaged. The tenant speculated that the photo was taken once the new tenants moved into the rental unit and that the photo was not taken at the end of the tenancy. The tenant testified that the fridge already had a crack in it and that he used duct tape to prevent further damage.

Regarding item 3, the landlord has claimed \$329.00 for 4 days at \$82.25 per day, which the landlord stated was calculated by taking the new monthly rent of \$2,550.00 and dividing that amount by 31 days, which works out to a per diem rent of \$82.25 per day. The landlord also presented a document from the new tenants dated December 19, 2018 and which the landlord stated was received December 23, 2018, which states how bad the rental unit condition was at the start of the their tenancy, which contradicts the tenant’s claim that the rental unit was left reasonably clean at the end of the tenancy.

The landlord also presented a letter from the contractor who did the work for item 1 listed above, SS. In the letter from SS, the contractor stated in part:

"I can attest to the fact that the condition of the house was very good at the time [the tenant] moved in, as I was hired to go in and replaced outdated smoke detectors and install new batteries in the security/alarm system in April, 2016. At that time, I also replaced the door lock between the house and the basement."

In the letter from SS, the contractor confirms the repairs, damages, work performed and the condition of the rental unit after the tenant vacated the rental unit. Of note SS writes that the fridge shelving was damaged, that a fiberglass repair technician was required to patch hammer sized hole in bathtub, and to hire a security contractor to repair wiring in the alarm panel.

Finally, the landlord presented a letter from the agent, NJ, which supports what the letter from SS indicates above.

The tenant stated speculated that the bathtub was likely damaged when seniors may have lived in the rental unit before him and the grab bar in the bathtub was clamped on too tight. The tenant also stated that he would have been willing to pay for additional cleaning but feels that he fully complied with the *Act*.

The tenant also stated that for new tenants to spend four days somewhere else while they cleaned to a different standard than the tenant's, that the tenant should not be required to pay for that and that the landlord made the choice to compensate the new tenants. The tenant also questioned the invoice from SS as there was not hourly breakdown for each time or his hourly rate. The tenant also speculated that the landlord could have found someone cheaper than SS.

The landlord stated that the tenant was asked to forego his security deposit in lieu of the work required in the rental unit, including damages and cleaning, etc. The landlord stated that when the tenant refused, they returned his deposit and made this claim accordingly. The landlord also referred to an email from the tenant, in which they allege the tenant attempted to bully them in an effort to cancel the dispute resolution hearing. The tenant did not deny that he sent the landlord the email, which reads in part that if the landlord intends to continue with the hearing the tenant plans to report the landlord for alleged illegal/noncompliant basement suite, alleged electrical issues, alleged inadequate fireproofing, alleged lack of insulation, and alleged non-payment of taxes.

## Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

I will first deal with the landlord's failure to complete an incoming CIR. Section 23 of the *Act* requires a landlord to complete a condition inspection report at the start of the tenancy in accordance with the Regulation. As a result, I caution the landlord to comply with section 23 of the *Act* in the future. Section 21 of the Regulation also applies and states:

### **Evidentiary weight of a condition inspection report**

**21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In the matter before me, I must weigh the letter, invoice and documents submitted by the landlord, the contractor SS, the agent and the new tenants versus the evidence supplied by the tenant and his sub-tenant and cleaner. In considering the totality of the documentary evidence and testimony, I find that testimony of the landlord and agent were much more credible than that of the tenant. I have reached this finding by determining that much of the tenant's testimony contradicts the photographic evidence and is not reasonable. For example, the tenant has speculated that seniors living in the rental unit before him must have required a grab bar in the bathtub and that it broke from being too tight, yet failed to provide evidence that he ever complained about a significant hole in the bathtub during the tenancy, which I find to be highly unusual and unreasonable. In another example, the tenant claims that the fridge was cleaned by his cleaner, yet a photograph presented shows the fridge in what I find to be a dirty condition and full of items, which contradicts the testimony and documentary evidence of the tenant.

Furthermore, the tenant admits to removing the only 2 smoke detectors in the home, which I find puts the landlord's property at significant risk, and then attempts to blame the landlord for not doing annual inspections, and admits that the tenant never complained about either smoke detector during the tenancy. In addition, the letter from the contractor, SS, states that the alarm panel had the battery replaced and that upon inspection at the end of the tenancy was open and wires pulled out of the panel, which required repair. Although the tenant denied touching the alarm panel, I find the tenant



not to be credible and find that on the balance of probabilities, that the tenant or a guest of the tenant damaged the alarm panel purposely as it would make no logical sense for the landlord to damage their own property. I find the photo of the alarm panel clearly shows that wires were pulled out and that the battery was missing from inside the alarm panel.

In addition to the above, I also find that the cleaning document from the tenant does not support the photographic evidence provided by the landlord, which I find does support a dirty bathroom fan, which is the responsibility of the tenant to clean. In addition, I find the photos support that there were dirty drains, dirty light fixtures, dirty appliances including the fridge and stovetop, dirty cabinets, gum on the flooring, damaged drywall, a broken bathtub, and damaged grout in the ensuite shower. I do not accept that the tenant could not have noticed the cracked grout in the ensuite shower and find that the tenant relied on the response "there is no evidence to support that..." and followed that statement with the fact the landlord failed to do an incoming CIR. I find "there is no evidence to support that" is a much different statement then specifically denying damaging something, which the tenant only did in a few instances during the hearing.

Also, I find the tenant admitted to a door damaging the drywall, yet never advised the landlord to either repair or install a doorstop, which is not reasonable. Therefore, I find that the tenant's lack of communication with landlord directly contributed to damage to the landlord's property.

For all of the reasons stated above, I afford the testimony of the tenant little weight and do not find the tenant to be credible. I find the landlord and the agent to be much more credible as the documentary evidence largely supports their claim, was consistent and is both reasonable and logical.

Furthermore, section 37 of the *Act* requires that a tenant leave the rental unit reasonably clean, less reasonable wear and tear. Based on the photos submitted by the landlord, I find the tenant breached section 37 of the *Act* by failing to leave the rental unit in a reasonably clean condition. I also find the tenant breached section 35 of the *Act* by failing to attend and participate in the outgoing CIR.

As the landlord has the onus of proof on the civil standard, the balance of probabilities, I am satisfied that that the tenant failed to leave the rental unit in a reasonably clean condition, damaged the rental unit as claimed by the landlord, and caused the landlord to suffer a loss of the 3 items as claimed. Therefore, I find the landlord has met the burden of proof and that the tenant more likely than not, damaged the rental unit as

claimed by the landlord, failed to leave the rental unit reasonably clean, all of which I find is supported by the letter from the new tenants, the invoice and letter from the contractor SS, which I afford significant weight, and the agent.

Therefore, I grant the full amount claimed by the landlord in the amount of **\$2,535.69**. As the landlord's claim had merit, I grant the landlord the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

**Monetary Order** – I find that the landlord has established a total monetary claim in the amount of **\$2,635.69** comprised of \$2,535.69 for items 1, 2, and 3, plus \$100.00 for the recovery of the cost of the filing fee. I grant the landlord a monetary order under section 67 for the amount owing by the tenant to the landlord of **\$2,635.69**.

I caution the landlord to comply with section 23 of the *Act* in the future.

I caution the tenant to comply with sections 35 and 37 of the *Act* in the future.

### Conclusion

The landlord's application is successful.

The landlord has established a total monetary claim in the amount of \$2,645.69. The landlord is granted a monetary order under section 67 for the amount owing by the tenant to the landlord of \$2,635.69. If the landlord requires enforcement of the monetary order, the landlord must first serve the tenant with the order of possession and then it 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 only for service on the tenant.

Both parties have been cautioned as indicated above.

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: July 17, 2019