



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MND, MNSD, FF

Introduction

The landlord and the tenant convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for damages;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follow:

1. Return all or part of the security deposit.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary and procedural matters

This hearing commenced on May 9, 2019, and was adjourned due to insufficient time. The interim decision should be read in conjunction with this decision.

On November 20 2018, the landlord obtained an order of possession which was effective two days after it was served upon the tenant and a monetary order for unpaid rent.

Issues to be Decided

Is the landlord entitled to a monetary order for loss of rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the tenant entitled to the return of the security deposit?

Background and Evidence

The parties agreed that the tenancy began on January 1, 2015. Rent in the amount of \$930.00 was payable on the first of each month. The tenant paid a security deposit of \$450.00. The tenancy ended on or about November 30, 2018, by an order of possession issued by the director.

The parties agreed that at the end of the tenancy there was balance owed of rent in the amount of \$165.00 on the outstanding monetary order issued on November 20, 2018, which is an issue in the landlord's application

Under section 38 of the Act the landlord is entitled to keep that amount from tenant's security deposit, in full satisfaction of that ward. Therefore, I do not need to consider this portion of the landlord's claim.

The balance of the security deposit remaining after the amount of \$165.00 is deducted is the amount of \$285.00, which the tenant gave the landlord permission to keep towards damages.

The parties agreed a move-in condition inspection was completed.

The landlord claims as follows:

a.	Front door replacement
b.	Window Blinds replacement
c.	Small bedroom repairs <ul style="list-style-type: none">• Wainscoting trim• Heat register• Cleaning walls, ceiling and floor
d	Living room floors scrapping, cleaning & waxing
e.	Kitchen drawer repair and cleaning
	Large bedroom repairs <ul style="list-style-type: none">• Bi-fold doors replacement• Wainscoting repair

	<ul style="list-style-type: none"> • Door knob replacement
f.	Bathroom repairs <ul style="list-style-type: none"> • Towel rack • Baseboards • Toilet seat • Cleaning walls
g.	Laundry room, cleaning, and door repair
h.	Dump fees
i.	Loss of rent for December
j.	Filing fee
	Total claimed \$3,143.45

Front door

The landlord testified that the front door was kicked by the tenant's partner and the door had to be replaced and the casing redone. The landlord stated that the cost of the new door was \$408.50, plus labour.

The landlord testified that in November, 2018, there was to be an inspection of the rental unit and they could not gain access to the unit because the front door lock was changed and the backdoor was barricaded with a cabinet. The landlord stated that they had to install a new lock. The landlord seeks to recover the cost of changing the lock in the amount of \$72.92. Filed in evidence is a video showing the landlord could not gain access to the unit.

The tenant testified that they had permission to change the lock. The tenant stated that they did not give a key to the landlord.

Window Blinds

The landlord testified that all the blinds were broken at the end of the tenancy and they were new prior to the tenancy commencing. The landlord stated that they seek compensation for replacement of the blinds in the amount of \$132.40. Filed in evidence are photographs of the blinds.

The tenant testified that the only blind that was broken was in the child's room. The tenant denies any damage to the other blinds.

Small bedroom

The landlord testified that the heat registered was damaged as there was melted plastic in the grate. The landlord stated that the cost to replace the heater was \$44.99, plus taxes and it took them approximately 30 minutes to replace. Filed in evidence is a photograph of the heater.

The landlord testified that there was a lot of felt pen, grease and household dirt on the walls that required cleaning. The landlord stated that it took them approximately 60 minutes to clean and seek compensation at the rate of \$12.00 per hour. Filed in evidence are photographs of the walls.

The landlord testified that the floor was dirty and sticky, which they had to be scraped off the dirt. The landlord seeks compensation for cleaning the floors which took approximately 90 minutes. Filed in evidence are photographs of the floor.

The landlord testified that there was some sort of substance on the ceiling, which they had to scrap off and repair. The landlord stated that it took them approximately 30 minutes to clean and repair the ceiling. The landlord seeks compensation at the rate of \$12.00 per hour. Filed in evidence is a photograph of the ceiling

The landlord testified that there was a hole in the door, which had to be repaired with plaster and the hinge side of the door need to be replaced and new hinge grooves carved. The landlord stated that the door and frame need two coats of paint. The landlord stated that it took approximately 90 minutes to repair the door. Filed in evidence is a photograph of the door.

The landlord testified that the small part of the wainscot trim was damaged and they had to repair the trim. Filed in evidence is enlarged photograph.

The tenant testified that the plastic in the heater was likely from one of their children putting something in it.

The tenant testified that there was no felt pen on the walls. The tenant stated that they did not have time to clean the walls or floor as they were forced out.

The tenant testified that the spot on the ceiling was from a child's toy.

The tenant testified that the door was old and broke from normal use and regular wear and tear. The tenant stated there was a hole in the door from the children playing.

Living room floors scrapping, cleaning & waxing

The landlord testified that the living room floor needed to be cleaned and scrapped to remove dirty and then they had to apply two coats of wax. The landlord stated that it took them approximately 1 ½ hours to clean at the rate of \$12.00 per hour and the cost of the wax of \$10.40. Filed in evidence are photographs of the floor.

The tenant testified that they did not have time to clean the floors as they were forced out. The tenant stated that the floors were never maintained by the landlord nor waxed.

Kitchen drawer repair and cleaning

The landlord testified that the front panel on the kitchen drawer was removed. The landlord stated that they were able to turn the drawer around and reattach the front panel. The landlord stated that it took them approximately 45 minutes to make the repair and seek compensation at the rate of \$12.00 per hour. Filed in evidence is a photograph of the drawer.

The landlord testified that the kitchen required lots of cleaning, the light fixtures, walls, oven, hood fan, cabinets, and back splashed had to be cleaned. The landlord stated that the drain also had to be unplugged. The landlord stated that it took about six hours to clean the kitchen and seek compensation at the rate of \$12.00 per hour. Filed in evidence is a video recording.

The tenant testified that they did not rip off the front panel of the kitchen drawer that it just fell off from normal wear and tear.

The tenant testified that they were forced to move and did not have time to clean, but they did the best they could under the circumstances. The tenant stated that there was a plumbing issue with the sink and it would back up.

The advocate submits that the tenant left a few food items behind in the refrigerator and freezer; however, the appliance does not look dirty.

Large bedroom

The landlord testified that they had to replace two bi-fold doors in the bedroom and they had to be custom cut and trimmed. The landlord stated the holes in the door looked like someone had punched them. The landlord stated that they are claiming for two hours of labour at the rate of \$12.00 and for the cost of materials in the amount of \$124.78. Filed in evidence are photographs of the doors.

The landlord testified that they had to do some trim work on the wainscot as it was missing. The landlord stated that it took them approximately 30 minutes to repair.

The landlord testified that the door to the bedroom had a key lock installed at some point during the tenancy. The landlord stated that they had to change the door knob.

The tenant testified that the door knob is the same one that was there when the tenancy started. The tenant stated that the door locks by pressing the door knob, not a key.

The tenant testified that the doors with the hole are in the child's room. The tenant stated that the children play lots and that they have to get after them quite a bit.

The tenant testified that the trim work is regular maintenance and that they did not see any problem with the trim.

Bathroom repairs

The landlord testified that the baseboards were damaged by water, which caused the baseboards to swell. The landlord stated that they spent approximately 1/12 to repairs. Filed in evidence is a photograph.

The landlord testified that the towel rack need to be reinstalled and the old holes patched.

The landlord testified that the toilet seat was stained and had to be replaced. The landlord stated that it took them approximately 15 minutes to install and new toilet seat and the cost of the toilet seat was \$18.98, plus taxes. Filed in evidence is a photograph.

The landlord testified that the entire bathroom had to be cleaned, including the walls.

The tenant testified that there was water damage from a plumbing issue and was there before they moved in.

The advocate for the tenant submits that appears to be a maintenance issue with the floor cocking.

The tenant testified that the towel rack fell off as it was not properly fastened to the wall. The tenant stated that this is normal wear and tear.

The advocate for the tenant submits that there are no anchors in the wall to hold the towel rack as you can see that in the photograph. The advocate submits this is normal wear and tear.

The tenant testified that toilet seat was really old and need to be replaced.

The tenant testified that the walls in the bathroom were clean. The tenant stated the landlord's photographs filed in evidence show that there is nothing wrong with the walls.

Laundry room, cleaning, and door repair

The landlord testified that laundry room needed cleaning and the exterior door needed a new door jamb installed with weather stripping. The landlord stated that the interior door lock was changed by the tenant and was locked and there no way to gain access, without prying open. The landlord stated that the door jam and hinge had to be repaired.

The tenant testified that the exterior door was really old. The tenant stated the interior door did not have a lock as it was a silver latch that slid across the door.

Dump fees

The landlord testified that they the tenant left garbage behind and they had to take 4 loads of garbage to the dump. The landlord stated that they paid \$69.60 for dump fees and it took them three hours. The landlord seeks to recover the cost of removing the garbage in the amount of \$143.68. Filed in evidence are photographs of items left behind and receipts.

The tenant stated they are not disputing this portion of the landlord's claim.

Loss of rent

No evidence was given on this portion of the claim.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Front door

I accept that the front door was damaged. However, I am not satisfied that the damage was caused by the action or neglect of the tenant or their guest.

In this case, it appears the door was damaged by the tenant's ex-partner breaking into the residence. However, this person was not an invited guest of the tenant. I find the tenant was a victim of domestic violence and cannot be held responsible for the actions of their ex-partner. Therefore, I dismiss this portion of the landlord's claim.

I accept the evidence of the landlord that the tenant changed the lock on the front door and did not have access to the rental unit. Even if I accept the evidence of the tenant that they had permission to change the lock, they were required to give a copy of the key to the landlord. Therefore, I find the landlord is entitled to recover the cost of the lock in the amount of **\$72.92**.

Window Blinds

I accept the evidence of the landlord that the tenant caused damage to the blinds that was above normal wear and tear. The move-in condition inspection reports show the blinds were in good condition at the start of the tenancy. The photographs show the blinds damaged at the end of the tenancy. The photographs do not support the tenant's version that only one blind was broken.

The Residential Tenancy Policy Guideline 40 defines the useful life of building elements. If the tenant damaged an item, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement.

I have determined based on the guideline that the blind had a useful life span of ten years. The blind was approximately four years old at the time of replacement. I find the landlord is entitled to the depreciated value of 60 percent.

The evidence of the landlord was it cost \$132.40 to replace the blinds, which I find reasonable. Therefore, I find the landlord is entitled to compensation for the cost of replacing the blinds in the amount of **\$79.44**.

Small bedroom

I accept the evidence of both parties, that the heater was damaged from mostly likely a plastic toy being logged in the heater grate. I find this is not normal wear and tear.

Although the Residential Tenancy Policy Guideline defines the useful life of a building element, I am unable to apply the guideline due to insufficient evidence as I did not have evidence on the age of the heater. I find it reasonable that both parties equally

share the cost of the new heater. I find the landlord is entitled to recover the amount of \$25.19 and the full cost of the installation of 30 minutes in the amount of \$6.00.

Therefore, I find the landlord is entitled to recover the amount of **\$31.19**.

I accept the evidence of the landlord that the walls and floor was not cleaned as required by Policy Guideline #1. While the evidence of the tenant was that they were forced out; however, that is not correct as the landlord had received an order of possession due to the tenant violating the Act. The tenant is responsible for the cost of the cleaning the walls and floor for a total of 150 minutes labour in the amount of **\$30.00**.

The evidence of the tenant was that the damage to the ceiling was from a child's toy. I find this is not normal wear and tear. I find the tenant is responsible for the 30 minutes of labour that it took to make the required repair in the amount of **\$6.00**.

I am not satisfied that the tenant caused damage to the door hinge and frame. While I accept that the landlord's video shows that in door is not attached at the lower portion of the door and a crack is showing at the top at the top hinge of the frame, this simply could be from normal use and the aging process. Therefore, I decline to award any cost for the repair.

However, I am satisfied the door does have a hole in it. This is not normal wear and tear. Therefore, I will grant the landlord 60 minutes of labour for the repair in the amount of **\$12.00**.

I decline to award any cost of painting as the useful lifespan of four years for paint has likely exceeded.

I further decline to award any cost to repair the small part of wainscot trim. The photograph provided is enlarged so big, that it appears that the trim may have been off as a result of coming unglued as you can see a large white patch. I cannot determine if this was damage caused by the neglect of the tenant. Therefore, I dismiss this portion of the landlord's claim.

Living room floors scrapping, cleaning & waxing

I accept the evidence of both parties that the tenant did not clean the living room floor. I accept the evidence of the landlord that the floors required cleaning as scrapping. I find

a reasonable amount for cleaning is 60 minutes. Therefore, I grant the landlord compensation in the amount of **\$12.00**.

While I accept the landlord applied two coats of wax; however, I find that was to bring the floors to a higher standard than required by the Act. Therefore, I decline to grant compensation of the labour to wax the floor and the cost of the wax.

Kitchen drawer repair and cleaning

The parties agreed that the front panel to the kitchen drawer was off. I find it more likely than not the front panel fell off under normal use and the aging process. I find the landlord has failed to prove that the panel was broken from the neglect of the tenant. Therefore, I dismiss this portion of the landlord's claim.

I accept the evidence of the landlord that the kitchen required cleaning; this is supported by the video as you can see dishes in the sink and items on the counter. I am satisfied that the oven was not cleaned.

While I accept the inside of the refrigerator looks reasonably clean, there was food items left inside which was required to be removed. I do not find it unreasonable that the landlord would clean the refrigerator after the items were removed. I also find the tenant had placed sticker of the refrigerator which would have to be removed. I find four hours for labour is reasonable. Therefore, I grant the landlord for cleaning the kitchen the amount of **\$48.00**.

Large bedroom

I accept the evidence of the landlord that the bi-fold doors were broken. This is supported by the photographs that show there is a hole in the door. This is not normal wear and tear. The landlord indicated that the doors were installed in 2008.

I have determined based on the guideline that the blind had a useful life span of 20 years. The doors were approximately ten years old at the time of replacement. I find the landlord is entitled to the depreciated value of 50 percent. Therefore, I grant the landlord the amount of **\$62.39**.

I find the landlord is entitled to one hours of labour for the installation of the doors in the amount of **\$12.00**.

I decline to grant compensation for painting as the useful lifespan of the paint had likely exceeded its useful life span of four years.

I am not satisfied that the tenant caused damage to the wainscot trim due to insufficient evidence. Therefore, I decline to award any cost for the repair.

I am also not satisfied that the tenant had changed the bedroom door knob, the landlord did not provide a before picture of what handle was on the door. I find the landlord has failed to provide sufficient evidence. Therefore, I decline to award any cost for the door knob.

Bathroom repairs

I am not satisfied that the tenant caused damage to the towel rack, baseboards or toilet seat. The towel rack likely fell off due to poor installation and normal use. The baseboards do show some damage; however, I am not satisfied this was caused by the action of the tenant and there appears to be no cocking sealing the baseboards to the floor. The toilet seat, although there is a large yellow stain, I cannot determine if this was caused by neglect of the tenant or due to the aging process. Therefore, I decline to award any cost for these items.

However, I am satisfied that the tenant did not clean the bathroom to a reasonable standard as the photographs show the floors, sink and toilet dirty. I find it reasonable to grant the landlord one hour of labour in the amount of **\$12.00**.

Laundry room, cleaning, and door repair

In this case, I am not satisfied that the landlord has provided sufficient evidence that the tenant caused damage to the laundry room doors or that it was not left reasonable clean. Therefore, I dismiss this portion of the landlord's claim.

Dump fees

The tenant did not dispute the cost of garbage or dump fees. Therefore, I find the landlord is entitled to recover the cost in the amount of **\$143.68**.

Loss of rent

No evidence was given on this portion of the claim. Therefore, I dismiss this portion of the landlord's claim with leave to reapply.

I find that the landlord has established a total monetary claim of **\$621.62** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$285.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$336.62**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

The landlord's claim for loss of rent is dismissed with leave to reapply.

The tenant's application for the return of the security deposit is dismissed.

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: July 4, 2019

Residential Tenancy Branch