



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:41 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing.

The landlord testified that he served the tenant with his application for dispute resolution via registered mail on May 3, 2019. The landlord entered into evidence the Canada Post Tracking number to prove this registered mailing. I find that the tenant was deemed served with the landlord's application for dispute resolution on May 8, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Amendment

The landlord testified that at the time he filed for dispute resolution he had not received the full bill from the bailiff he hired to evict the tenant. At the hearing the landlord sought to amend his application and increase his claim for the cost of the bailiff from \$3,250.00 to \$5,187.65.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure states that in circumstances that can reasonably be anticipated, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the fact that the tenant is seeking compensation for the entire cost he incurred from hiring a bailiff, and not only the initial fee, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim in the amount of \$5,187.65 for the entire cost of hiring a bailiff.

I allowed the landlord 24 hours to enter into evidence his final invoice from the bailiff. The landlord entered his final bailiff invoice in the amount of \$5,187.65 in the allotted time.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenant's security and pet damage deposits, pursuant to section 38 of the *Act*?
5. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on September 1, 2018 and ended on April 2, 2019. Monthly rent in the amount of \$3,000.00 was payable on the first day of each month. A security deposit of \$1,500.00 and a pet damage deposit of \$100.00 was paid by the tenant to the landlord. The tenant was supposed to pay the landlord a pet damage deposit of \$750.00 but failed to do so. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that the tenant texted him her forwarding address on April 9, 2019. The landlord applied for dispute resolution on April 23, 2019.

Bailiff fees

The landlord testified that in a Decision dated March 13, 2019, he was awarded an Order of Possession for unpaid rent against the tenant. The landlord testified that the tenant refused to move out of the subject rental property, so he was forced to hire a bailiff which cost him \$5,187.65. An invoice stating same was entered into evidence. The landlord is seeking this amount from the tenant.

Garbage and Cleaning

The landlord testified that the tenant left behind heaps of garbage inside the subject rental property and in the front and back yard of the subject rental property. The landlord testified that he hired a garbage disposal company to haul all of the garbage to the dump. The landlord entered into evidence a receipt for same in the amount of \$1,000.00. The landlord is seeking this amount from the tenant.

The landlord testified that the subject rental property was left very dirty and he had to hire a cleaner to clean it. A receipt in the amount of \$451.50 was entered into evidence. The landlord is seeking this amount from the tenant.

Garage Door Opener

The landlord testified that the tenant removed the automatic garage door opener from the subject rental property and that he had it replaced. The landlord entered into evidence a receipt for same in the amount of \$525.00. The landlord is seeking this amount from the tenant. The landlord testified that the garage door opener system was approximately six years old.

Locks

The landlord testified that the tenant did not return any of the keys to the subject rental property. The landlord testified that he had the locks at the subject rental property changed which cost him \$135.00. A receipt for same was entered into evidence. The landlord is seeking this amount from the tenant.

Unpaid Rent

The landlord testified that the tenant did not pay any rent from February to April 2019. The landlord testified that he received a monetary award for February 2019's rent in the March 13, 2019 Decision. The landlord testified that he is seeking a monetary award of \$6,000.00 in unpaid rent for the months of March and April 2019.

Interior Repairs

The landlord testified that a number of repairs to the inside of the subject rental property were required after the tenant moved out. The landlord entered into evidence an invoice for repairs which broke down the repairs as follows:

Item	Amount
Repair the patio doors and replace patio lock	\$350.00
Repair the back in vents	\$150.00
Security bars for the garage door	\$50.00
Replace the drain pipe of sink in first bathroom	\$150.00
Repair window screens	\$120.00
Repair master bathroom toilet	\$80.00
Paint the cabinets inside	\$800.00
Replace the switch	\$60.00
Subtotal	\$1,810.00
5% GST	\$90.50
Total	\$1,900.50

Patio Doors

The landlord testified that the tenant broke the patio door lock and it needed to be repaired. The landlord testified that the screen to the patio door was broken and thrown in the backyard with other garbage. The landlord testified that the screen door required repair. The landlord testified that the screen was brand new when the tenant moved in.

Vents

The landlord testified that the tenant removed all of the floor vents at the subject rental property and that they all had to be replaced. The landlord testified that half of the floor vents were brand new when the tenant moved in and the other half were in good condition, but he did not know how old they were.

Security Panel

The landlord testified that the tenant removed the security system panel at the subject rental property and this required replacement. The landlord testified that the security panel was approximately six years old at the time the tenant moved out.

First Bathroom

The landlord testified that the tenant poured wax down the drain in the first bathroom and that the pipes all required cleaning.

Repair Window Screens

The landlord testified that all of the window screens for the subject rental property were broken and thrown in the backyard. The landlord testified that the screens were brand new when the tenant moved in. The landlord testified they all required repair.

Master Bathroom Toilet

The landlord testified that the tenant poured wax down the toilet in the master bathroom and the toilet and pipes required cleaning.

Cabinets

The landlord testified that the tenant damaged the inside of the bathroom and kitchen cabinets at the subject rental property. The landlord testified that the cabinets were in good condition when the tenant moved in and were scratched and dented when the tenant moved out. The landlord testified that the cabinets were last painted one year before the tenant moved in.

Switches

The landlord testified that most of the light switches at the subject rental property were damaged by the tenant and required replacement. The landlord testified that the light switches were approximately six years old when the tenant moved out.

Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Bailiff Fees

Section 37(1) of the *Act* states that unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

Based on the landlord's testimony, I find that the tenant did not move out of the subject rental property in accordance with the Order of Possession granted by the Residential Tenancy Branch in the March 13, 2019 Decision, contrary to section 37(1) of the *Act*.

I find that the landlord suffered a loss from the above breach as he had to hire a bailiff to remove the tenant. I find that the landlord acted reasonably in doing so and has proved the value of his loss. I find that the tenant is responsible for the bailiff fees in the amount of \$5,287.67.

Garbage and Cleaning

Section 37(2)(a) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord's testimony I find that the tenant left a large amount of garbage at the subject rental property and that the subject rental property required significant

cleaning. The landlord submitted into evidence a garbage removal receipt in the amount of \$1,000.00 and a cleaning receipt in the amount of \$451.50. I find that the tenant is responsible for these fees.

Garage Door Opener

Section 37(2)(a) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord's testimony I find that the tenant removed the garage door opener from the subject rental property.

Residential Tenancy Policy Guideline #40 (Policy Guideline #40) states that the useful life for a garage door operator is 10 years (120 months). Therefore, at the time the tenant moved out, there was approximately 48 months of useful life that should have been left for the garage door operator. I find that since the unit required replacing after only 72 months, the tenant is required to pay according to the following calculations:

$\$525.00 \text{ (cost of garage operator)} / 120 \text{ months (useful life of garage door operator)} = \$4.38 \text{ (monthly cost)}$

$\$4.38 \text{ (monthly cost)} * 48 \text{ months (expected useful life garage door operator after tenant moved out)} = \210.24

Locks

Section 37(2)(b) of the *Act* states that when a tenant vacates a rental unit, the tenant must 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.

Based on the landlord's testimony I find that the tenant did not return the keys to the subject rental property thereby breaching section 37(2)(b) of the *Act*. I find that the failure of the tenant to return the keys necessitated the landlord to change the locks. I therefore find that the landlord is entitled to recover the cost changing the locks in the amount of \$135.00 as this expense resulted from the tenants' breach of section 37(2)(b) of the *Act*.

Unpaid Rent

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$3,000.00 on the first day of each month from March to April 2019 which she failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$6,000.00 in unpaid rent.

Patio Doors

Section 37(2)(a) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord's undisputed testimony I find that the tenant damaged the patio door lock and the patio door screen contrary to section 37(2)(a) of the *Act*. I find that the tenant is responsible for the cost of repairing the patio door and patio screen in the amount of \$367.50 which includes 5% GST.

Vents

Section 37(2)(a) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord's undisputed testimony I find that the tenant damaged the subject rental property by removing vent covers throughout the subject rental property, contrary to section 37(2)(a) of the *Act*.

The landlord testified that ½ of the vents were new and the other ½ were old but he did not know how old. I find I am not able to calculate the useful life remaining on the vents without knowing how old all the vents were. I therefore find that the landlord has failed to establish the quantification of his loss.

Residential Tenancy Policy Guideline #16 states that 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.

I find that the landlord has proved that a loss was suffered but has not proven its quantification. I therefore find that the tenant is entitled to nominal damages in the amount of \$75.00.

Security Panel

Section 37(2)(a) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord's undisputed testimony I find that the tenant damaged the subject rental property by removing the security system panel, contrary to section 37(2)(a) of the *Act*.

Policy Guideline #40 does not state the useful life of a security system panel. Policy Guideline #40 states that the useful life on an intercom is 15 years. I find that this is the closest item to a security system panel listed in Policy Guideline #40. I therefore find that the useful life of a security system panel is 15 years (180 months). Therefore, at the time the tenant moved out, there was approximately 108 months of useful life that should have been left for the security panel. I find that since the unit required replacing after only 72 months, the tenant is required to pay according to the following calculations:

$\$52.50$ (cost of new security panel including 5% GST) / 180 months (useful life of security panel) = $\$0.29$ (monthly cost)

$\$0.29$ (monthly cost) * 108 months (expected useful life of security panel after tenant moved out) = $\$31.32$

First Bathroom

Section 37(2)(a) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord's undisputed testimony I find that the tenant damaged the subject rental property by pouring wax down the drain in the first bathroom, contrary to section 37(2)(a) of the *Act*.

I find that the tenant is responsible for the cost of cleaning the bathroom plumbing in the amount of $\$157.50$ which includes 5% GST.

Repair Window Screens

Section 37(2)(a) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord's undisputed testimony I find that the tenant damaged the window screens at the subject rental property, contrary to section 37(2)(a) of the *Act*.

I find that the tenant is responsible for the cost of repairing the window screens in the amount of \$126.00 which includes 5% GST.

Master Bathroom Toilet

Section 37(2)(a) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord's undisputed testimony I find that the tenant damaged the subject rental property by pouring wax down the toilet in the master bathroom, contrary to section 37(2)(a) of the *Act*.

I find that the tenant is responsible for the cost of cleaning the toilet plumbing in the amount of \$84.00 which includes 5% GST.

Cabinets

Section 37(2)(a) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord's undisputed testimony I find that the tenant damaged the cabinets of the subject rental property, contrary to section 37(2)(a) of the *Act*.

Policy Guideline #40 states that the useful life for interior painting is four years (48 months). Therefore, at the time the tenant moved out, there was approximately 29 months of useful life that should have been left for the interior paint of the cabinets. I find that since the cabinets required repainting after only 19 months, the tenant is required to pay according to the following calculations:

$\$840.00$ (cost of painting including 5% GST) / 48 months (useful life of paint) =
 $\$17.50$ (monthly cost)

$\$17.50$ (monthly cost) * 29 months (expected useful life of paint after tenant moved out) = $\$507.50$

Switches

Section 37(2)(a) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the landlord's undisputed testimony I find that the tenant damaged the light switch covers at the subject rental property, contrary to section 37(2)(a) of the *Act*.

Policy Guideline #40 does not state the useful life of light switch covers. Policy Guideline #40 states that the useful life of light fixtures is 15 years. I find that this is the closest item to light switch covers listed in Policy Guideline #40. I therefore find that the useful life of a light switch cover is 15 years (180 months). Therefore, at the time the tenant moved out, there was approximately 108 months of useful life that should have been left for the light switch covers. I find that since the light switch covers required replacing after only 72 months, the tenant is required to pay according to the following calculations:

$\$62.00$ (cost of light switch covers including 5% GST) / 180 months (useful life of security panel) = $\$0.34$ (monthly cost)

$\$0.34$ (monthly cost) * 108 months (expected useful life of security panel after tenant moved out) = $\$36.72$.

Security and Pet Damage Deposits

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

While texting is not a method of service recognized under section 88 of the *Act*, I find that the landlord was sufficiently served for the purposes of this *Act*, with the tenant's forwarding address on April 9, 2019, pursuant to section 71 of the *Act*, because the landlord confirmed receipt of the text message on that day.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits within 15 days of receiving the tenant's forwarding address is writing, in accordance with section 38 of the *Act*.

I accept the landlord's undisputed testimony that the tenant paid him a security deposit of \$1,500.00 and a pet damage deposit of \$100.00.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security and pet damage deposits in the amount of \$1,600.00 in part satisfaction of his monetary claim against the tenant.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Bailiff fees	\$5,287.67.
Garbage removal	\$1,000.00
Cleaning fee	\$451.50
Garage door opener	\$210.24
Locks	\$135.00
Unpaid rent	\$6,000.00
Patio doors	\$367.50
Vents- nominal damages	\$75.00.
Security panel	\$31.32
First bathroom	\$157.50
Repair window screens	\$126.00
Master bathroom toilet	\$84.00
Cabinets	\$507.50
Switches	\$36.72
Filing Fee	\$100.00
Less security deposit	-\$1,500.00
Less pet damage deposit	-\$100.00
TOTAL	\$12,969.95

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 30, 2019

Residential Tenancy Branch