Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of $2,590.93.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of their $100.00 filing fee.

The Tenant, D.M., and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on May 21, 2018, and was to run until November 30, 2018 and then be month-to-month. The Parties agreed that the monthly rent was $1,000.00, due on the first day of each month and that the Tenants paid a security deposit of $500.00, and no pet damage deposit. The Parties agreed that the rental unit was a lower suite in a house on an acreage that was built in the 1980s. The Parties agreed that the tenancy ended when the Tenants moved out, because they had purchased a home of their own at the end of May 2019.

The Parties agreed that they did not do a move-in inspection of the condition of the rental unit at the start of the tenancy, although the Landlord said they walked through the unit two weeks prior and that it was clean then. The Landlord said that he texted the Tenant about doing a move-out walk through, but that he never received a reply.

The Landlord submitted a Monetary Order Worksheet ("MOW") listing costs he said he incurred as a result of damage and lost rental income from the Tenants. The MOW contains the following claims:

	Receipt/Estimate From	For	Amount
1	[office supply store]	Photocopying	$140.93
2	[Tenants' deposit]	Security Deposit	$500.00
3		Cleaning	$200.00
4		Carpet cleaning	$90.00
5		Driveway repairs	$625.00
6		Lost rental income	$1,000.00
		Total monetary order claim	**$2,555.93**

The Landlord said in the hearing that the difference between the amounts he set out on the MOW and his Application reflected the fact that he had not made all the repairs when he first applied for dispute resolution.

1. **PHOTOCOPYING**

The Landlord submitted a receipt for photocopying expenses he said he incurred in preparing for this dispute resolution hearing.

2. **SECURITY DEPOSIT**

The Landlord said that the Tenants did not give him proper notice of the end of the tenancy; he also said that damages were done to the rental unit, and that because of these factors, he is entitled to retain the Tenants' security deposit.

The Tenant said that there was some damage done to the wall, as stated in the claim; however, he said he had covered and sanded the damage in preparation for painting. He said he was going to talk to the Landlord about whether he needed paint, but the Tenant said he did not think this cost was worth the whole security deposit. He said: "I've done painting and know the cost. Other than that, I don't believe the damages have come close to the entire deposit."

3. **CLEANING**

The Landlord said that he attended the rental unit on the last day of the month and that the Tenants were "gone in two hours – rushed out. They didn't say bye, left the keys, and the Landlord did a walk- through two weeks after the tenancy ended. The cupboards were not wiped down; the shower was not cleaned – they left shampoo bottles; the windows were filthy. I had no paint left over, so I had to buy supplies."

The Landlord said that he texted the Tenant, D.M., pictures of the rental unit before the tenancy began, which showed the condition of the unit. The Landlord said that the date of the pictures was a month or two before the Tenant moved in – April 18, 2018, and that it had been vacant for a year at that point. The Landlord submitted photographs that he had texted to the Tenant, as well as some photographs that he said were taken after the tenancy ended.

The Tenant said that, as mentioned in their letter to the Landlord giving notice of the end of the tenancy, they had bought a house with a possession date of May 11, 2019. The Tenant commented on the Landlord's claim that they were only there cleaning for the last two hours of the tenancy; he said actually, they had been going back and forth to clean and pack. The Tenant said they did a final clean on the last day, finishing the floors, cleaning the carpets, and so on. He said they "…did miss the inside of the stove, the screen in the dishwasher, and windows, but the rest of suite was cleaned a good as

I've left every other suite and never had one complaint." The Tenant went on to say:

> It was as clean as it could have been, aside from the stove and windows. It was an old musty basement. The carpets were cleaned as good as they can be. The shower was cleaned. I'm confused how he got a picture with shampoo inside; I know [Tenant J.R.] bought hers with her. We were kind of guessing about the shampoo picture; there were a couple times when we would arrive back and the doors were wide open and [the Landlord] was in the suite. I'm guessing he took pictures before our tenancy was ended. The laundry room, both bedrooms, kitchen: all cleaned.

The Tenant agreed that the Landlord had texted him pictures of the rental unit in April 2018, but he said: "It's hard to see everything. Those were taken just before and not stored on his phone."

The Tenant said: "On May 29 [2019] we came in to finish cleaning and every door was open and [the Landlord] was washing his semi-truck outside in the driveway. The screen door and main front door were wide open on that day in late afternoon."

4. **CARPET CLEANING**

The Landlord said that the rental unit carpets are ten years old now, that they were new in 2009. He said that they were last cleaned prior to the previous tenant moving in. He submitted a receipt for a local carpet cleaning company that charged $30.00 per room for three rooms for a total of $90.00. The invoices said the carpets were "heavily soiled".

The Tenant said that they rented a carpet cleaner from a local grocery store. He said: "There were previous stains and dirt on the carpet prior to the tenancy. I cleaned when I moved in, but unfortunately we didn't do a walk-through to show the condition prior [to the tenancy]. I cleaned them when I moved in and when we left."

5. **DRIVEWAY REPAIRS**

The Landlord submitted receipts for a dump truck rental, gravel, and driveway work in the amount of $1,352.29, and he said he charged the Tenants half, "…because he damaged half the driveway."

The Landlord said the Tenant:

> …had a loose engine in the back of his truck and he drove in and out of the

> driveway multiple times tracking oil from his parking spot to the end of the driveway. He'd done some clean up by shovel, but when it rained the oil will move to the surface. I had to get a bobcat in there and scrape it down.

The Tenant said that the Landlord had mentioned there being oil on the driveway:

> We talked about it; he gave an estimate of $300 to fix the driveway. I got home and looked at it myself, and noticed it can be cleaned up with a shovel, rake and gardening equipment. I dug down to the oil and scraped out – there were no oil stains left on the driveway. Then he mentioned it still has oil streaks after it rained; he mentioned it after our tenancy ended when he wanted money for it. Pictures 13 and 14 of my submissions are from when we showed up and saw [the Landlord] washing and scrubbing one of his semi-trucks in the spot for my truck. There was oil and grease dripping on the driveway where I'd finished cleaning up. My mess was completely cleaned up with a wide berth, so if anything's seeping it's [the Landlord's] problems.

The Landlord said:

> I wasn't washing oil off the truck, I was washing pine needles; it was in a contaminated area already. [The Tenant] had shoveled off the oil, but didn't replace the gravel and didn't go deep enough. I went out during the day time and it was terrible. I phoned a contractor locally. It was about $300.00 machine time – not total cost. He was booked up, so I went with [another company] because they were available.

The Tenant said that you can clearly note – can see it in the pictures – that there was definitely oil and debris from the Landlord's truck. The Tenant said he sent the photograph to the other Tenant as a joke, and said: "I thought he was worried about oil on the driveway."

6. **LOST RENTAL INCOME**

The Landlord said that the Tenants moved out on the last day of the month. He said: "It was 6:00 p.m. when they rolled out. The place was not rentable in the condition they left it in. I lost two months, but I'm trying to be fair, trying to have receipts for work completed."

The Tenant said:

The place was left clean. It was definitely rentable. It was left a heck of a lot better than when I first viewed the suite. If [the Landlord] says it wasn't rented, it's because he had no tenants ready. I'd like to say that he just wants the money just because. It was left 100% rentable - above and beyond rentable.

I gave him notice [of the end of the tenancy] via text in April. It was not a formal letter, as the entire tenancy has been by text messages; everything was laid back. I got an immediate response saying 'congratulations'. The next time I saw him was in May. We talked about the new property. There's no way he can deny we didn't give him notice. He knew well in advance - more than a month.

A lot of the tenancy was unprofessional, but he knew that May [2019] would be our last month from text messages, and it was verbalized over and over again. It wasn't until after we left that [the Landlord] said he'd take us for money because we didn't give proper notice.

The Landlord said:

I spent in excess of $4,000.00 cleaning up this suite. The pictures state for themselves that the condition it was left in was atrocious. The second week in June we did a walk through. He asked for the security deposit – look at the damage you've done. He didn't have a response. Take your pictures; I'm just trying to be fair.

Had to redo the driveway, repaint the outside of the house. There were only two rooms that he punched nails to hang pictures. I should have done a monthly walk through. Sounded like a bloody work shop down there - forever building down there. I'm trying to be fair about things. Not given a move out date, no forwarding address until two weeks later.

The Tenant said:

The carpets were very old; I'd be surprised if only 10 years old. We'll see what happens from there. The place was beyond rentable and clean. Just the windows and inside of the stove wasn't done. Otherwise, it was in 100% rentable order. Nails were in there prior [to the tenancy]. I have a normal picture hanging kit that I have used for years. I don't hang with big framing or roofing nails. I built my own bedframe outside. Majority of it was done outside.

Analysis

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

A party who applies for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act.

Pursuant to sections 23, and 35 of the Act, a landlord must complete a condition inspection and condition inspection report ("CIR") at both the start and the end of a tenancy, in order to establish that the damage occurred as a result of the tenancy. A landlord who fails to complete a move-in or move-out inspection and CIR, extinguishes the right to claim against either the security or pet damage deposit for damage to the rental unit, in accordance with sections 24 and 36 of the Act. Further, a landlord is required by section 24(2)(c) to complete a CIR and give the tenant a copy in accordance with the regulations.

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest(s). The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate

> damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in Policy Guideline #16 ("PG #16"), "the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

The Parties did not do a move-in inspection prior to the tenancy, and photographs texted to the Tenant do not equate to an inspection. Rather, they give the potential tenant an idea of the property from a distance to assist in deciding whether to commit to the rental unit or not. In the circumstances before me, I find that the Landlord extinguished his right to claim against the security deposit by not conducting an inspection of the unit at the start and the end of the tenancy and providing a copy of a CIR to the Tenant. However, the Landlord is still allowed to make a claim for recovery of damages; the before and after evidence in a CIR makes it easier to determine who is responsible for what damage.

1. **PHOTOCOPYING**

During the hearing, I advised the Parties in the hearing that the legislation does not allow for recovery of expenses such as photocopying for the purpose of dispute resolution. Therefore, I dismiss the Landlord's first claim for $140.93.

2. **SECURITY DEPOSIT**

As noted above, the Landlord extinguished his right to claim against the Tenant's security deposit, although, it can still be used for set off pursuant to section 72(2)(b) of the Act, for any compensation awarded.

If a tenant does not give the landlord a forwarding address within one year after the end of the tenancy, the tenant's right to the return of the deposit is extinguished pursuant to section 39 of the Act. Here, the Parties agreed that the Tenant gave the Landlord his forwarding address two weeks after the end of the tenancy. Section 38 of the Act then sets out what the Landlord's obligations were in terms of handling the deposit.

The Tenants provided their forwarding address to the Landlord on June 19, 2019, and the tenancy ended on May 31, 2019 when the Tenants vacated the rental unit. Section 38(1) of the Act states the following:

38 (1) Except as provided in subsection (3) or (4) (a), 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.

The Landlords were required to return the $500.00 security deposit within fifteen days after June 19, 2019, namely by July 4, 2019, or make an application for dispute resolution to claim against the security deposit, pursuant to Section 38(1). The Landlord has provided no evidence that they returned any amount, and he did not apply for dispute resolution to claim against the deposit until July 9, 2019. Therefore, I find the Landlord failed to comply with his obligations under Section 38(1).

Since the Landlord has failed to comply with the requirements of Section 38(1), and pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the security deposit or **$1,000.00**. There is no interest payable on the security deposit.

3. **CLEANING**

I find that the Landlord's photographs are all blurry and difficult to see the condition of the rental unit prior to and after the tenancy. I find that they set out the general layout of the rental unit, but not the level of cleanliness before or after. The Landlord said that there were holes left in walls of two of the rooms from pictures that had been hung and that the interior (and exterior) needed repainting; however, he did not set out the cost of painting in the MOS, therefore, the Tenant did not have notice of this claim prior to the hearing. As such, I find it would be administratively unfair to award the Landlord compensation for such a claim. Further, the Tenant's undisputed testimony is that he filled in and sanded the holes in preparation for repainting.

Both Parties gave evidence that they each did some cleaning after the tenancy ended,

and the Tenant acknowledged that there were some elements of cleaning that they could have done better.

Section 37(2)(a) of the Act requires tenants to leave rental units "reasonably clean, and undamaged except for reasonable wear and tear".

The evidence before me is that the Tenants caused holes in the walls no larger than those used to hang pictures and artwork. I find that these holes form part of normal wear and tear that the Tenants were not obliged to repair; however, in this set of circumstances, I award the Landlord a nominal amount of **$50.00** for cleaning, pursuant to Policy Guideline #16. I, therefore, dismiss the Landlord's remaining claim for cleaning without leave to reapply.

4. **CARPET CLEANING**

The Landlord acknowledged that the carpets were 10 years old and that they had not been cleaned after the previous tenant vacated the rental unit.

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

In PG #40, the useful life of carpeting is 10 years. The evidence before me is that the carpets were new in 2009, so they were approximately 10 years old at the end of the tenancy and had expended their useful life. Further, without a CIR to set out the condition of the carpets at the beginning of the tenancy, I find that the Landlord has not met his burden of proof in this matter. Therefore, I dismiss the Landlord's claim in this matter without leave to reapply.

5. **DRIVEWAY REPAIRS**

The Parties agreed that the Tenant did some damage to the residential property driveway; however, they also agreed that the Tenant attempted to restore the driveway to its original state. In addition, the Parties agreed that the Landlord washed his semi-truck in the Tenant's parking spot after the Tenant had attempted to repair any damage, but they disagreed on the type of damage the Landlord did to the driveway in this

process. There was no CIR comparing the condition of the driveway at the beginning of the tenancy to that at the end of the tenancy. Further, there is evidence before me that the Landlord contributed to the damage before the tenancy had ended.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

When I consider all the evidence before me overall, I find that the Landlord has not provided sufficient evidence to support his claim in this regard. Therefore, I dismiss this claim without leave to reapply.

6. **LOST RENTAL INCOME**

According to section 45(1) of the Act, a tenant may end a periodic tenancy by giving the landlord notice that the effective date of the end of the tenancy is:

> **45** (1)(a) is not earlier than one month after the date the landlord receives the notice, and
>
> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
>
> **. . .**
>
> (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.
>
> [emphasis added]

Accordingly, by giving notice of the end of the tenancy before the end of April, 2019, the effective date for this notice should have been May 31, 2019, which it was.

Further, according to sections 45(4) and 52 of the Act, in order for a tenant's notice to end tenancy to be effective, the form and content must be in writing and must:

a) be signed and dated by the party giving the notice;
b) give the address of the rental unit; and
c) state the effective date of the Notice.

In this case, I find that the Tenant's text and verbal messages to the Landlord regarding

the end of the tenancy are not compliant means of conveying this information pursuant to the Act. Therefore, I find that the Tenants owe the Landlord the equivalent of a month's notice of the end of the tenancy, or one month's rent in the amount of $1,000.00. I award the Landlord **$1,000.00** for lost rental income.

Set-Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit of $500.00 in satisfaction of the Landlord's monetary claim. Since the Landlord has been partially successful in his Application, I also award him recovery of the Application filing fee of **$100.00**.

	Landlord`s Award For	Amount
1	Nominal award for cleaning	$50.00
2	Lost rental income awarded	$1,000.00
3	Filing fee recovery	$100.00
4	Less double the security deposit	($1,000.00)
	Total monetary order claim	**$150.00**

I grant the Landlord a monetary order pursuant to section 67 of the Act for the balance owing by the Tenants to the Landlord in the amount of **$150.00**.

Conclusion

The Landlord's claim for retaining the Tenants' security deposit is successful in the amount of $150.00. The Landlord's claim for compensation for other damage or loss against the Tenants is partially successful. The Landlord is awarded recovery of the $100.00 filing fee for this Application from the Tenant.

I grant the Landlord a Monetary Order under section 67 of the Act from the Tenants in the amount of **$150.00**.

This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: September 10, 2019

Residential Tenancy Branch