

Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u> MNDL-S MNRL-S FFL

<u>Introduction</u>

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for a monetary order in the amount of \$5,439.01 for damages to the unit, site or property, for unpaid rent or utilities, and to recover the cost of the filing fee.

Tenant JL ("tenant") and an agent for the landlord SS ("agent") attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed being served with the landlord's documentary evidence and that they had the opportunity to review that evidence prior to the hearing. As a result, I find the landlord's documentary evidence was served in accordance with the *Act.* The tenant confirmed that they did not submit any documentary evidence to the Residential Tenancy Branch ("RTB") in response to the application.

Preliminary and Procedural Matters

At the outset of the hearing the parties confirmed their email addresses. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party for service on the other party.

Issues to be Decided

• Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

- What should happen to the tenant's security deposit under the Act?
- 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 September 1, 2018 and was scheduled to revert to a month to month tenancy after August 31, 2019. The tenant vacated the rental unit early on March 8, 2019. Monthly rent during the tenancy was \$1,950.00 per month and included utilities and was due on the first day of each month. The tenant paid a security deposit of \$850.00 at the start of the tenancy, which has accrued no interest under the *Act*. The landlord continues to hold the tenant's security deposit.

The landlord's monetary claim of \$5,439.01 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
Carpet cleaning - Nationwide	\$0.00
Carpet cleaning – Citrus O	\$247.80
House cleaning	\$157.50
Fumigation for fleas	\$367.50
Kilz Max – odour eliminator product	\$49.25
6. Flooring & underlay	\$654.99
7. Tape, sheathing ply	\$11.97
Outstanding rent and utilities	\$3,950.00
TOTAL	\$5,439.01

Firstly, as item 1 was what the agent described was a reference to carpet cleaning completed by the tenant. As a result, I will not consider item 1 for the remainder of this claim as it simply is a reference that the tenant cleaned the carpets once; however, the landlord made the determination that additional carpet cleaning was necessary, which will be described in item 2 below.

Regarding item 2, the landlord has claimed \$247.80 for the cost of what the agent describes as additional carpet cleaning due to the smell of cat urine in the rental unit.

The agent testified that although both an incoming and outgoing Condition Inspection Report ("CIR") were completed by the landlord, when the parties met to complete the outgoing CIR, the agent could not smell cat urine as all the windows were open and once the windows were later closed and the landlord moved back into the rental unit, the landlord turned on the baseboard heating, the landlord was overwhelmed by the smell of cat urine in the rental unit.

The agent stated that they hired Citrus O to attend the rental unit and that Citrus O used a black light and found a large amount of cat urine lit up in the downstairs den/bedroom. The agent also testified that the tenant's receipt for carpet cleaning by Nationwide, which was submitted in evidence, indicated that they could not guarantee against cat odour after the carpet cleaning. The tenant denied that the home smelled like cat urine and that their cat used a litter box. There is no mention of cat urine or cat odour on the outgoing CIR.

Regarding item 3, the parties reached a mutually settled agreement for the cost of house cleaning in the amount of \$157.50, pursuant to section 63 of the *Act*. As a result, I do not find it necessary to describe item 3 further; however, will address this item in my analysis below.

Regarding item 4, the landlord has claimed \$367.50 for the cost to fumigate the rental unit for fleas after the tenant vacated the rental unit. The landlord submitted a receipt from Pest Scene Investigation ("PSI") in the amount of \$367.50. The agent testified that the landlord complained to the agent on March 22, 2019 of "being bit to death by fleas", which was just 14 days after the tenant vacated the rental unit. The agent testified that the landlord did not own pets and still does not own pets, and as a result, the fleas must have been introduced to the rental unit by the tenant, who had a cat. The agent stated that the fumigation included the entire house, which including the tenants living in the basement. The tenant denied that her cat had fleas, and stated that a big dog living in the basement suite could have been the cause. The agent disputed that the dog was the cause by stating that fleas could not travel from the basement suite to the top floor of the rental unit where the landlord was being bit by the fleas.

The tenant stated that their cat had flea treatment; however, did not submit any documentary evidence such as a vet receipt for flea medication for my consideration. The tenant testified that their children have not been bit by fleas and that the laundry was shared between the upper and lower rental units, so the fleas could have entered the rental unit via the laundry room. The agent stated that the landlord requires proof of flea treatment, which the lower tenants provided for their dog, and for which the tenant

has not provided the landlord for their cat. The tenant responded by stating that fleas can live for a year in the baseboards.

Regarding items 5, 6 and 7 the agent wanted to deal with all three of these items together. Item 5 refers to \$49.25 for Kilz Max odour control paint. Item 6 refers to flooring and underlay cost of \$654.99. Item 7 refers to tape and sheathing ply of \$11.97. Although the agent referred to photos during the hearing, the tenant stated that they were not served with photographic evidence. The agent was asked how the photographic evidence was served and stated "I assumed my assistant sent them" but could not be certain. As a result, I am not satisfied that the photographic evidence was sufficient served on the tenant as the photographic evidence was served on the RTB at a different date than the original package of documentary evidence served on the RTB by the landlord.

Regarding the age of the carpets that the agent stated had to be removed, the agent was unsure of the age of the carpets. The agent testified that the rental unit was built in 2013, which would make the carpet five years old at the start of the tenancy, and six years old by the end of the tenancy.

Regarding item 5, the agent testified that odour control paint was needed after the carpets and underlay were removed as the cat urine had penetrated the subfloor and the odour control paint was necessary to ensure that the cat urine smell would not penetrate new underlay and flooring. The tenant claims that they were not aware that there was an issue with the carpets until receiving the application.

Regarding item 8, the landlord has claimed \$1,950.00 for unpaid February 2019 rent, plus loss of March 2019 rent of \$1,950.00. The tenant confirmed that they did not pay rent for February 2019 and did not dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 14, 2019 ("10 Day Notice"). A copy of the 10 Day Notice was submitted in evidence and indicates an effective vacancy date of February 26, 2019 and that \$1,950.00 was owed as of February 1, 2019. The tenant did not vacate the rental unit until March 8, 2019. The landlord filed their application on June 20, 2019. The tenant confirmed that they did not serve the landlord with their written forwarding address. I note the landlord's monetary order worksheet stated \$3,950.00 for item 8, which I find contains an addition error. \$1,950.00 times two should be \$3,900.00 and not \$3,950.00.

<u>Analysis</u>

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application 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*. Accordingly, an applicant must prove the following:

- 1. That the other party violated the *Act*, regulations, or tenancy agreement;
- 2. That the violation caused the party making the application to incur damages or loss as a result of the violation:
- 3. The value of the loss; and,
- 4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Item 1 – As there was no monetary claim for item 1, which was a reference by the landlord that the tenant paid for carpet cleaning by Nationwide, I find this item does not require any further consideration.

Item 2 – The landlord has claimed \$247.80 for additional carpet cleaning due to the smell of cat urine in the rental unit. On the balance of probabilities, based on the fact that the tenant did not dispute that all of the windows were open when the outgoing CIR was completed, I accept that there was the smell of cat urine in the rental unit once the windows were closed and the baseboard heating was turned back on. I have reached this finding as I find the tenant's carpet cleaning invoice supports that cat odour was an issue as Nationwide wrote that they could not guarantee against cat odour after the cleaning. Therefore, I find the tenant breached section 37(2) of the *Act* which states:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

(a) <u>leave the rental unit reasonably clean, and undamaged</u> <u>except for reasonable wear and tear, and</u>

(b) 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.

[Emphasis added]

I prefer the testimony of the agent over that of the tenant the tenant denied that their cat used anything but the litter box and I find it highly unlikely that the landlord would pay to have carpet cleaning redone, carpet and underlay removed, Kilz Max paint used on the subfloor, and new flooring installed, if there was not a smell of cat urine once the windows were closed and the heating turned on. I also find it highly unlikely that Nationwide would specifically mention cat odour unless there was an issue of cat odour during the tenant's attempt at carpet cleaning. Therefore, having considered the receipt submitted for \$247.80, I grant the landlord **\$247.80** as I find the landlord has met the burden of proof. I find it more likely than not that the tenant's cat did urinate in areas other than the litter box and that it was not properly cleaned before the tenant vacated the rental unit.

Item 3 – As mentioned above, the parties reached a mutually settled agreement for the cost of house cleaning in the amount of \$157.50, pursuant to section 63 of the *Act*. As a result, I order the parties to comply with their mutually settled agreement regarding this item pursuant to section 63 of the *Act*, that the tenant owes the landlord **\$157.70** for house cleaning.

Item 4 - The landlord has claimed \$367.50 for the cost to fumigate the rental unit for fleas after the tenant vacated the rental unit. I have reviewed the landlord's receipt from PSI in the amount of \$367.50. I also have considered that the agent testified that the lower tenants provided proof that their dog had flea treatment medication and the tenant provided no documentary evidence to support that their cat had flea treatment medication. Furthermore, I do not find it likely that fleas would travel from the laundry room to the upstairs bedroom, when there was no proof before me that the landlords had pets previously, or currently have pets.

I find the most logical explanation for the fleas is consistent with my finding about the cat urine, and that the source is more likely than not the tenant's cat. Therefore, I find the landlord has met the burden of proof as I find it highly unlikely that the landlord would pay \$367.50 to fumigate their entire home for fleas, if it was not necessary after

the tenant vacated the rental unit. Based on the above, I grant the landlord **\$367.50** for this item as claimed.

Items 5, 6 and 7 - The agent wanted to deal with all three of these items together, which I have no objection to as I find they are all related to addressing the cat urine smell in the rental unit. Item 5 refers to \$49.25 for Kilz Max odour control paint. Item 6 refers to flooring and underlay cost of \$654.99. Item 7 refers to tape and sheathing ply of \$11.97. As noted above, I have not considered any photographic evidence as I am not satisfied that they were served in accordance with the RTB Rules.

RTB Policy Guideline 40 – Useful Life of Building Elements ("policy guideline 40"), states that the useful life of carpets is ten years. I accept the agent's testimony that the carpets were five years old at the start of the tenancy in 2018 and therefore find that the carpets would have more likely than not been six years old by the end of the tenancy in 2019. Therefore, I will apply a 60% depreciated value to the cost of the carpets and underlay, the landlord has indicated was \$654.99. I find that 60% of \$654.99 is \$392.99, and that \$654.99 less \$392.99 is \$262.00. Therefore, consistent with my finding above regarding item 2, I find the landlord has met the burden of proof regarding the cost of item 5, which I have not applied any depreciated value to as I find that cat urine is something that required the Kilz Max odour control paint as claimed. I grant the landlord **\$49.25** as a result for item 5.

Furthermore, I find the landlord has met the burden of proof in the amount of \$262.00 for the cost of carpet and underlay after depreciation of 60%, which represents that the carpets were six years old by the end of the tenancy, and considering that carpets have a useful life of ten years pursuant to policy guideline 40. Therefore, I grant the landlord **\$262.00** for item 6.

Finally, I find the landlord has met the burden of proof regarding item 7 in the full amount of \$11.49 as I find that item 7 would be required and that depreciation does not apply to these products, which I find reasonable to be required when installing new underlay and carpet. Therefore, I grant the landlord **\$11.49** as claimed for item 7.

Item 8 - The landlord has claimed \$1,950.00 for unpaid February 2019 rent, plus loss of March 2019 rent of \$1,950.00. The tenant confirmed that they did not pay rent for February 2019 and did not dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 14, 2019 ("10 Day Notice"). In addition, a copy of the 10 Day Notice was submitted in evidence and indicates an effective vacancy date of February 26, 2019 and that \$1,950.00 was owed as of February 1, 2019. As the tenant did not

vacate the rental unit until March 8, 2019, I find that the tenant breached section 26 of the *Act*. Section 26 of the *Act* applies and states:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Emphasis added]

I find the tenant has provided insufficient evidence that they had a right under the *Act* to deduct any amount of rent and therefore, I find the tenant owes full February 2019 rent of \$1,950.00 and full March 2019 rent, as the effective date on the 10 Day Notice was February 26, 2019, and instead of vacating by that date, the tenant remained in the rental unit until March 8, 2019 and rent was due for March on March 1, 2019. In addition, I find the tenant breached section 45(2) of the *Act*, as the tenancy agreement was a fixed-term tenancy, which did not revert to a month to month tenancy until August 31, 2019 and the tenant vacated the rental unit March 8, 2019. Section 45(2) of the *Act* states:

- **45**(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
 - (a) is not earlier than one month after the date the landlord receives the notice,
 - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
 - (c) 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.

[Emphasis added]

Based on the above, I find the landlord has met the burden of proof based on the above, and I grant the landlord **\$3,900.00** as \$1,950.00 times two is \$3,900.00. I dismiss the extra \$50.00 being claimed for item 8, due to insufficient evidence, without leave to reapply.

I caution the tenant not to breach a fixed-term tenancy in the future, which I find the tenant breached under section 45(2) of the *Act*.

As the landlord's application is mostly successful, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee, pursuant to section 72 of the *Act*.

Based on the above, I find the landlord has established a total monetary claim as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
Carpet cleaning - Nationwide	\$0.00
Carpet cleaning – Citrus O	\$247.80
House cleaning	\$157.50
Fumigation for fleas	\$367.50
Kilz Max – odour eliminator product	\$49.25
Flooring & underlay	\$262.00
7. Tape, sheathing ply	\$11.97
Outstanding rent and utilities	\$3,900.00
Filing fee	\$100.00
TOTAL	\$5,096.02

Monetary Order – I find that the landlord has established a total monetary claim of **5,096.02** as described above. I authorize the landlord to retain the tenant's full security deposit including \$0.00 in interest of \$850.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of **\$4,246.02**.

Conclusion

The landlord's claim is mostly successful.

The landlord has established a total monetary claim of \$5,096.02. The landlord has been authorized to retain the tenant's full security deposit including \$0.00 in interest of \$850.00 in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the *Act*.

The landlord is granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlord in the amount of \$4,246.02. This order must be served on the tenant and 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.

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: October 25, 2019

Residential Tenancy Branch