Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNDL-S MNRL-S MNDCL-S FFL
For the tenants: MNDCT LRE FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of $7,401.65 for unpaid rent or utilities, for damage to the unit, site or property, for compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to retain the tenants' security deposit, and to recover the filing fee. The tenants applied for a monetary order in the amount of $4,800.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order to suspend or set conditions on the landlord's right to enter the rental unit, site or property, and to recover the cost of the filing fee.

On December 5, 2019, this hearing commenced and after 59 minutes, the hearing was adjourned to allow additional time to consider evidence from the parties. An Interim Decision was issued dated December 6, 2019, which addressed some preliminary matters and should be read in conjunction with this decision.

On February 7, 2020, the parties reconvened and after an additional 98 minutes, the hearing concluded. Attending both dates of the hearing was the landlord and tenant BD (tenant), and tenant support person CM (tenant support). The hearing process was explained to the parties and an opportunity was given to ask questions about the

hearing process and at the conclusion of the hearing. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that they received the evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. As a result, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

In addition to the preliminary matters described in the Interim Decision, the parties confirmed their email addresses and that the decision would be emailed to the parties. Any resulting monetary orders, if any, will be emailed to the appropriate party for service on the other party.

Issues to be Decided

- Is either party entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit and furniture deposit under the Act?
- Is either party entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A fixed-term tenancy began on December 1, 2018 and reverted to a month to month tenancy after May 31, 2019. Monthly rent in the amount of $2,245.00 was due on the first day of each month, which did not reflect a $100.00 rental incentive, which will be

described further below. The tenants paid a security deposit of $1,200.00 and a furniture deposit of $1,200.00 at the start of the tenancy, which the landlord continues to hold.

Landlord's claim

The landlord's claim for $7,401.65 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning	$606.38
2. Drywall repairs and paint	$204.95
3. Blind damage repair	$141.75
4. Disposal fee	$200.00
5. Cooktop damage ($558.88) and re&re cooktop ($126.00)	$684.88
6. Damage to coffee table	$200.00
7. Loss of rent (September 2019)	$2,245.00
8. Admin charges to prepare for hearing	$604.80
9. Postage charges	$29.09
10. Filing fee	$100.00
11. Utility and rent shortage	$2,384.80
12. Document prep cost (photocopy/printing)	$24.86
TOTAL	**$7,401.65**

Regarding item 1, the landlord has claimed $606.38 for cleaning costs. In support of this item the landlord referred to the Condition Inspection Report (CIR). The incoming CIR is dated December 1, 2018 and the outgoing CIR is dated September 29, 2019. The landlord referred to many colour photos submitted in evidence, which the landlord stated was not left reasonably clean by the tenants and required 16.5 hours of cleaning at $35.00 per hour and that the total cost included two cleaners. The tenant agreed that the photos portrayed an accurate depiction of the rental unit at the end of the tenancy. The landlord referred to an invoice from NS (cleaning company) in the amount of $606.38 and reflects the number of hours cleaned and the cost per hour. GST was included on the invoice. The landlord also supplied many before photos showing the rental unit was newly renovated at the start of the tenancy.

The tenant's response to this item is that there was no GST number on the cleaning company invoice and that they did a search for the business on a local city business license webpage and provided the search results in evidence, which supports that the business name for the address provided is AC and not NS. The tenant also provided a copy of a Facebook post to support that the cleaner is a friend of the landlord's spouse, KB (landlord's spouse). The landlord responded by stating that multiple companies have an operating name that is different than their actual registered business name and does not mean that the company is not legitimate. The landlord stated that their company does not have a GST number as anything less than $30,000.00 in income does not require a GST number. The tenant stated that they did not sign either CIR. The landlord stated the first CIR was signed for the upper unit and eventually when the tenants began to occupy the lower rental unit, it was an oversight by the landlord to have the lower rental unit CIR signed by the tenants.

Regarding item 2, the landlord has claimed $204.95 for drywall repairs, which also includes re-painting the one wall, as a paint patch would have shown, so the entire wall had to be repainted after the drywall was repaired. The landlord referred to several photos submitted in evidence in support of this item and the CIR which indicates there was damage to the wall. The landlord also referred to holes caused by a TV mount in the master bedroom and were 5/8" wide, which the landlord stated were excessively large, unpatched and not repainted or repaired by the tenants. The landlord also referred to an invoice from CS (landlord's company) for drywall hole repair, prime and paint in the amount of $204.95, which is comprised of $134.40 for labour and $70.55 for supplies.

The tenant responded to item 2 by stating that there was only standard wear and tear for the TV mount and that the city business search results provided in evidence indicates "your search returned no results", and that the photo listed for the business address on the invoice is the rental unit address, and that the phone number on the invoice is the number for the son of the landlord.

The landlord responded by stating that reasonable wear and tear would be a ding or a minor touch-up, not a large hole, which the tenant is required to repair, patch, sand and repaint. The landlord also stated that the tenant's allegation that the invoice is from a fake company is not valid, and that a city business website search proves nothing as the tenant failed to use the exact business address including the unit number and if you

fail to include it, the search comes back with no results. The landlord also stated that there are thousands of businesses operating as sole proprietorships, which are perfectly legal and legitimate. The landlord also stated that the tenant would have no idea if the person who provide the service lives at a specific address, and that the tenant's evidence is insufficient. The landlord also stated that the co-tenant SD has their own company DS, which is not registered but does not mean the company is not legitimate.

Regarding item 3, the landlord has claimed $141.75 for the cost to repair a damaged blind. The landlord referred to a piece of paper with some writing on it and a business card and stated that the work has not yet been completed. The landlord referred to a blurry photo submitted in evidence, which the landlord stated showed a damaged cord, which I could not clearly see. The landlord referred to the CIR, which shows a broken blind. The landlord confirmed the rental unit has been re-rented without the blind being repaired. The tenant responded by stating that they pulled the blind and it snapped right away. The tenant provided no documentary evidence to support that this specific blind was mentioned to the landlord as being broken during the tenancy. The landlord estimated that the blinds were installed in 2008, which would make them 10 years old at the start of the tenancy. The landlord stated that the cord is made of nylon and is not fragile and that it was torn, not just worn out. The tenant stated that the landlord does not know the specific age of the blinds. The piece of paper is not signed or dated and has a business card of TBD (blind company) placed on top of the piece of paper.

Regarding item 4, the landlord has claimed $200.00 for a disposal fee, which is listed on the tenancy agreement addendum as clause #26. The parties initialed clause #26, which states:

> IF ANY ITEMS INCLUDING BUT NOT LIMITED TO: GARBAGE (except weekly trash that is fully contained within the city provided garbage bin), FURNITURE, APPLIANCES OR ANY OTHER BELONGINGS, ARE LEFT ON THE PROPERTY AFTER VACATING, I FULLY AGREE TO PAY A $200 DISPOSAL FEE OVER AND ABOVE ANY OTHER DAMAGE DEPOSITS THAT MAY HAVE BEEN PAID.

The photos presented by the landlord show garbage bags, a sleeping bag, containers of oil, which the tenant did not dispute leaving at the rental unit. The tenant responded by

stating that the garbage was already full due to the landlord having done renovations upstairs in the rental building. The tenant also stated that the clause should be void due to no new agreement being signed upon change of tenants. The tenant did not clarify this statement further. The tenant stated that there should be two garbage cans, one specific to tenants. The landlord replied by stating that oil jugs can't be thrown in the garbage and the sleeping bags were the personal property of the tenants and that the renovation to the building was completed 4 weeks prior to the tenants vacating, so the tenant is not correct. The landlord also stated that the tenants' agent CM, who did the outgoing CIR on behalf of the tenants, advised the landlord that they were unsure why the tenants left garbage behind. The tenant claims that there was renovation garbage; however, admitted that no photo evidence was submitted to support their allegation.

Regarding item 5, the landlord has claimed $684.88 related to a new cooktop and to remove and reinstall a new cooktop due to the tenants damaging what was a new cooktop at the start of the tenancy. The landlord submitted a receipt from a popular store dated 05/10/18 to show the cost of the original cooktop. The landlord also stated that the photo evidence supports that the cooktop was scratched and damaged by the tenants and that their use was negligent and beyond regular wear and tear, which the tenant denied. The landlord stated that the work has not been completed and the unit was re-rented with the existing cooktop.

The tenant responded by stating that the cooktop has not been repaired yet and that the photos showed standard wear and tear. The tenant also stated that the address on invoice for the removal and reinstallation quote for $126.00 was a UPS address and that GST was being charge on labour, which you cannot do, according to the tenant. The landlord responded by stating that the UPS address is a post office box location and that the tenant neglected to include the suite number as the landlord uses that address as a mailing address and that many companies use a box number at a UPS location, which is a common business practice. The landlord stated that the damage went beyond wear and tear and was excessive and neglectful for a glass cooktop. The tenant stated that the landlord can't charge for a new cooktop and a repair. The landlord clarified that they were not doing so, only for the cost of the cooktop and to remove and reinstall a new one, and that the work has not been completed.

Regarding item 6, the landlord has claimed $200.00 to repair a damaged coffee table. The landlord stated that they did not submit a receipt in support of this item. The tenant

stated that the landlord did not provide before photos and that there is no reference to the coffee table in the incoming CIR.

Regarding item 7, the landlord has claimed $2,245.00 for the loss of September 2019 rent due to the tenants provided a late one month notice to end the tenancy dated August 1, 2019, and received by the landlord on August 6, 2019, which indicates that the tenants will be vacating the rental unit on September 1, 2019. The tenant responded by stating that rent was paid August 2, 2019 and the parties were advised that the tenants provided late notice under the Act, which I would deal with my decision. The landlord then clarified that for September 2019, the landlord re-rented the upper rental portion of $2,400.00 and the lower portion was rented for $1,500.00 and that new tenants moved into the lower portion for the last half of September 2019, and the new tenants paid the landlord $750.00. As a result, the parties were advised that the actual loss may be only $750.00, which I would determine in this decision.

Regarding item 8, the landlord has claimed $604.80 for the time to prepare for the hearing, which was dismissed during the hearing as the Act does not provide for such a remedy for costs relating to preparing for the hearing.

Regarding item 9, the landlord has claimed $29.09 for the cost of postage, which was also dismissed during the hearing as the Act does not provide for such a remedy as I find that costs related to postage are a standard part of making an application for dispute resolution.

Regarding item 10, the landlord has claimed the $100.00 filing fee, which I will deal with later in this decision below.

Regarding item 11, the landlord has claimed $2,384.80 for the net amount owing after applying the rent reduction for months where the tenants paid rent on time and not applying the $100.00 rent reduction for months where the tenants were late paying rent. The landlord submitted a detailed and colour-coded spreadsheet, which the landlord explained during the hearing and was organized. The landlord testified that the spreadsheet also includes any unpaid utilities owed by the tenants. The tenant stated that yes rent was late multiple times but when we were relocated to the basement we demanded lower rent, which never occurred. The tenant referred to a text that was

difficult to read and which did not specifically state that rent was being negotiated as claimed by the tenant. The tenant also stated that the “math was wrong” on the spreadsheet but was unable to state which area of the spreadsheet was not correct.

Regarding item 12, the landlord has claimed $24.86 for the cost to prepare documents including photocopying and printing, which was also dismissed during the hearing as the Act does not provide for such a remedy as I find that costs related to photocopying and printing are a standard part of making an application for dispute resolution.

Tenants’ claim

The tenant attempted to increase their monetary claim through the submitted of a Monetary Order Worksheet in the amount of $20,490.05 and lists a total of 8 items. The tenant was advised that I was dismissing items 2 through 8 inclusive, without leave to reapply, as the RTB Rules do not permit amending an application through the service of evidence, and instead requires a formal application to amend an application, which must be served on the respondent, which the tenants failed to do. Therefore, the parties were advised that I would only be considering item 1 from the tenants, which was their claim for $4,800.00, for double the return of the combined deposits, which total $2,400.00 (combined deposits). The combined deposits are comprised of $1,200.00 for the security deposit, and $1,200.00 for the furniture deposit. The landlord continues to hold the combined deposits of $2,400.00.

The tenant claims that they provided their written forwarding address on the outgoing CIR, which the parties were advised showed no forwarding address from the tenants in the evidence submitted for my consideration. The tenant then stated that it must have been an oversight by not supplying their version, which they stated showed a written forwarding address. The landlord stated that not only did the tenants fail to provide a written forwarding address, but that in their application dated August 14, 2019, with a Notice of Hearing dated August 23, 2019, the tenants provided the rental unit address as their address and that no written forwarding address was provided by the tenants until they received the tenants’ registered mail package on October 3, 2019 with their new address and that the landlord filed their application 15 days later on October 18, 2019, claiming against the tenants’ deposits.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, 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 this instance, the burden of proof is on the applicant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement by the respondent. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the applicant did what is reasonable to minimize the damage or losses that were incurred.

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.

Landlord's claim

Item 1 - The landlord has claimed $606.38 for cleaning costs. I have reviewed the CIR and after considering that the tenant confirmed that the photo evidence supports the condition at the end of the tenancy, and having considered the before photos, which I find supports a newly renovated rental unit, I find the tenants failed to comply with section 37(2)(a) 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) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

In reaching this finding I have considered photos which support the cooktop was dirty, the inside of the oven was dirty, the toilet was dirty, there stains on the carpet, areas were still dusty including the hood fan and window ledges, and there was obvious grime on shower handles, on chairs, inside the sink, microwave, and on the ceiling fan. Furthermore, I afford very little weight to the tenant's allegation that the receipts were fraudulent as I find the search results to be inconclusive and that the tenant had no response for the landlord's rebuttal, in which the landlord stated that there are sole proprietorships, which are legitimate and do not require a GST number if the company makes less than $30,000.00 per year.

I find that the invoice fails to include a GST number; however, and as a result, I am not satisfied that GST should have been charged in the amount of $28.88, and as a result, I only grant **$577.50** for item 1. The remainder of item 1, the GST portion, I dismiss without leave to reapply, due to insufficient evidence.

Item 2 - The landlord has claimed $204.95 for drywall repairs, which also includes re-painting the one wall, which I accept needed to be repainted based on what I find to be excessive damage to the wall with the TV mount. I disagree with the tenant that the TV mount is standard wear and tear and as a result, I find the tenants have breached section 37(2)(a) of the Act for item 2. Therefore, I find the amount of $204.95 to be reasonable and note that GST was not added to the amount claimed. Therefore, I find the landlord has met the burden of proof and that the tenants owe the landlord **$204.95** for item 2.

Item 3 - The landlord has claimed $141.75 for the cost to repair a damaged blind. I find the blurry photo does not support that the cord was torn as claimed by the landlord. In addition, I find the landlord has failed to meet part three of the test of damages and loss as I find the piece of paper not being signed or dated is insufficient to support that amount claimed. In addition, RTB Policy Guideline 40 – Useful Life of Building Elements states that blinds have a useful life of 10 years and based on the landlord's own testimony citing 2008, I find the blinds would have passed their useful life by the end of the tenancy, which ended in August of 2019. Therefore, I find the landlord has failed to meet the burden of proof for item 3, which is dismissed without leave to reapply, due to insufficient evidence.

Item 4 - The landlord has claimed $200.00 for a disposal fee, which I find was initialed by the parties. I find the photo evidence to be compelling and do not agree with the tenant that the clause should be void as the parties knowingly changed from the upper unit to the lower unit, which I find does not void clause #26. Therefore, I find the tenants breached clause 26 by leaving garbage at the rental unit and therefore owe **$200.00** as claimed. I find the landlord has me the burden of proof for item 4 as a result.

Item 5 - The landlord has claimed $684.88 related to a new cooktop and to remove and reinstall a new cooktop due to the tenants damaging what was a new cooktop at the start of the tenancy. Although the landlord submitted a receipt from a popular store dated 05/10/18 to show the cost of the original cooktop, and that I disagree with the tenant that the damage was standard wear and tear, I find the landlord has not established the amount of the loss as the tenant has re-rented the rental unit with the cooktop in the same condition without being replaced, and provided no evidence that they suffered a loss of rent as a result of a damaged cooktop. Therefore, to reflect that I have found the tenants breached section 37(2)(a) of the Act by damaging the cooktop, I grant the landlord a nominal amount of **$100.00** to reflect the tenants' breach of the Act. I dismiss any amount over $100.00 due to insufficient evidence related to part three of the test for damages or loss.

Item 6 - The landlord has claimed $200.00 to repair a damaged coffee table. This item is dismissed without leave to reapply due to insufficient evidence such as a receipt, a before photo or mention of the table in an incoming CIR. In other words, I find the landlord has not met the burden of proof for item 6.

Item 7 - The landlord has claimed $2,245.00 for the loss of September 2019 rent due to the tenants provided a late one month notice to end the tenancy dated August 1, 2019, and received by the landlord on August 6, 2019, which indicates that the tenants will be vacating the rental unit on September 1, 2019. Section 45(1) of the Act applies and states:

> **Tenant's notice**
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> **45**(1) A tenant may end a periodic 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, 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.**
>
> [Emphasis added]

Based on the above, I find the tenants would have had to serve their one month notice no later than July 31, 2019, which they failed to do. Therefore, I find the tenancy did not end until the end of the following month, September 30, 2019. Given that the tenants vacated the rental unit on September 15, 2019, I find landlord complied with section 7 of the Act, which requires a party to minimize their damage or loss, which is similar to part four of the test for damages or loss. I have also considered that while the landlord originally applied for $2,245.00, they are not entitled to more than $750.00 as the lower rental unit was $1,500.00 per month and the upper unit had been re-rented for $2,400.00 and the lower unit the landlord received $750.00 from the new tenants. Therefore, I find the landlord must not be unjustly enriched by receiving any amount higher than $750.00 and therefore, I find the landlord has met the burden of proof for **$750.00**, which I grant. I dismiss the remainder of this item due to insufficient evidence, without leave to reapply.

Item 8 – As noted above, although the landlord has claimed $604.80 for the time to prepare for the hearing, this item was dismissed during the hearing as I find the Act does not provide for such a remedy for costs relating to preparing for the hearing. I find the landlord has failed to meet the burden of proof for this portion of their claim.

Item 9 – As noted above, although the landlord has claimed $29.09 for the cost of postage, this item was dismissed during the hearing as I find the Act does not provide for such a remedy as I find that costs related to postage are a standard part of making an application for dispute resolution. I find the landlord has failed to meet the burden of proof for this portion of their claim.

Item 10 – The landlord has claimed the $100.00 filing fee, which I find the landlord is entitled to pursuant to section 72 of the Act as I find the landlord's application has merit. Therefore, I grant the landlord **$100.00** for this portion of their claim.

Item 11 - The landlord has claimed $2,384.80 for the net amount owing for unpaid rent and utilities and I find the spreadsheet to be organized and does not contain mathematical errors as claimed by the tenant. I find the spreadsheet is supported by utility bills and tenancy agreement and addendum. Therefore, I find the tenants breached the tenancy agreement and section 26 of the Act, which requires that rent be paid on the date in which it is due. Given the above, I find the landlord has met the burden of proof and I grant the landlord **$2,384.80** as claimed.

Item 12 - The landlord has claimed $24.86 for the cost to prepare documents including photocopying and printing, which I have dismissed as I find the Act does not provide for such a remedy as I find that costs related to photocopying and printing are a standard part of making an application for dispute resolution. I find the landlord has failed to meet the burden of proof for this portion of their claim.

Tenants' claim

The landlord continues to hold the tenants' combined deposits of $2,400.00, which are comprised of $1,200.00 for the security deposit, and $1,200.00 for the furniture deposit. I find the tenants have provided insufficient evidence that they have provided their written forwarding address requesting that their combined deposits be returned to their forwarding address. As a result, I find the tenants have provided insufficient evidence to support the first two parts of the test for damages or loss under the Act. Given the above, I dismiss the tenants' application in full, without leave to reapply, due to insufficient evidence.

I do not grant the tenants the recovery of their filing fee as their application failed.

I will offset the tenants' combined deposits of $2,400.00 from the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

I find that the landlord has established a total monetary claim of **$4,317.25** as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
1. Cleaning	$577.50
2. Drywall repairs and paint	$204.95
3. Blind damage repair	Dismissed
4. Disposal fee	$200.00
5. Cooktop damage ($558.88) and re&re cooktop ($126.00)	$100.00
6. Damage to coffee table	Dismissed
7. Loss of rent (September 2019)	$750.00
8. Admin charges to prepare for hearing	Dismissed
9. Postage charges	Dismissed
10. Filing fee	$100.00
11. Utility and rent shortage	$2,384.80
12. Document prep cost (photocopy/printing)	Dismissed
TOTAL	**$4,317.25**

I authorize the landlord to retain the tenants' full combined deposits of $2,400.00 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 tenants to the landlord in the amount of **$1,917.25**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I dismiss the tenants' application, without leave to reapply due to insufficient evidence.

The landlord's claim is partially successful. The landlord has proven a total monetary claim in the amount of $4,317.25. I have authorized the landlord to retain the tenants' combined deposits of $2,400.00, leaving a balance owing by the tenants to the landlord in the amount of $1,917.25.

The landlord is granted a monetary order pursuant to section 67 of the Act, in the amount of $1,917.25. This order must be served on the tenants 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 tenants.

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: February 10, 2020

Residential Tenancy Branch