Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNDLS MNDCLS FFL
For the tenants: MNDCT MNSD 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 monetary order in the amount of $4,132.90 for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for authorization to retain all or part of the tenant's security deposit, and to recover the cost of the filing fee. The tenants applied for a monetary order in the amount of $9,900.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of double their security deposit, and to recover the cost of the filing fee.

On January 14, 2020, the hearing commenced, and the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. After 66 minutes the hearing was adjourned to allow more time to hear the evidence from the parties. An Interim Decision was issued dated January 15, 2020 which should be read in conjunction with this decision. On March 31, 2020, the hearing reconvened and after an additional 70 minutes the hearing concluded. During the hearing 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.

Neither party raised any concerns regarding the service of documentary evidence. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

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 under the Act?
- Is either party 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 March 1, 2018 and reverted to a month to month tenancy after March 1, 2019. Monthly rent was $1,650.00 and was due on the first day of each month. The tenants paid a security deposit of $825.00 at the start of the tenancy, which the landlord continues to hold.

The landlord has claimed $4,132.90 comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Repair of drywall in basement suite	$504.00
2. Repaint repaired drywall	$308.20
3. Quote to remove and repair oil stains from driveway	$711.20
4. New fridge to replace original	$795.70
5. Diagnose and repair dishwasher	$163.80
6. Loss of 1 month rental loss for August 2019	$1,650.00
TOTAL	**$4,132.90**

Evidence for Landlord's Claim

Firstly, the parties confirmed that there was no incoming Condition Inspection Report (CIR) completed at the start of the tenancy, which I will address later in this decision. The parties also confirmed that there was no outgoing CIR at the end of the tenancy, which I will also address later in this decision.

Regarding item 1, the landlord has claimed $504.00 for the cost to repair drywall in the basement suite. As neither an incoming or outgoing CIR were completed by the landlord, the landlord relied on photographic evidence in support of their claim. The landlord presented several colour photos and stated that there were many holes in the drywall and a couple holes in the window casing and scuffs on the doors. The landlord testified that some of the holes were created when the tenants tried to hang items that were too heavy. The landlord also stated that silicone was put into the holes and that they could not just paint over silicone. The photos of the silicone show that the silicone was put in the walls in a messy fashion. The landlord stated that the drywall company attended twice, the first time to repair and fill the holes in the drywall and the second time to sand the repaired holes.

The landlord confirmed that there were no before photos submitted for my consideration. In support of this item, the landlord referred to a receipt in the amount of $504.00 for drywall repairs.

The tenants' response to this item was that the receipt did not provide a business number and that there was no evidence of the work done.

Regarding item 2, the landlord has claimed $308.20 to repaint the damaged drywall. The landlord testified that the age of the paint at the start of the tenancy was between five and six months old when the tenancy began. The landlord confirmed that there were no before photos submitted in support of this portion of the landlord's claim. The landlord testified that they had to hire a painter to paint 2 doors, the walls where drywall was repaired, and an exterior door where the tenants without permission glued or taped a gasket to the door and was not removed properly leaving chunks. The landlord testified that the painter had to use solvent and sandpaper to remove the sticky substance left behind by the tenants before repainting could be done. The landlord also referred to several colour photos in support of their testimony. The landlord also presented an invoice from a painting company in the amount claimed.

The tenant's response to this item was that there was no sales tax number on the invoice, no business number and no proof that the work was completed.

Regarding item 3, the landlord has claimed $711.20 to remove oil stains from the driveway caused by the tenants' vehicle. The landlord presented two colour photos; however, did not provide before photos of the driveway. The landlord testified that the tenants parked their car where the oil stains were and attempted to use kitty litter to clean up the oil stains, which did not do anything other than bleach the area, but did not clean the oil stains from the driveway. The landlord stated that they have not had the work completed yet and it is not guaranteed to work but that they would like to at least attempt to have the work completed and feel the tenants are responsible for the quoted cost.

The tenant responded to this item by stating that there was no business number on the quote and is dated October 17, 2019 even though the tenants vacated the rental unit in August 2019. The tenant also stated that they had permission to park their car there and that the pictures do not look the same as when they vacated the rental unit. The tenant did confirm that they used kitty litter to absorb the oil.

Regarding item 4, the landlord has claimed $795.70 for the cost to replace a damaged fridge. The landlord testified that at the start of the tenancy, the appliances were new as the tenants were the first tenants to rent the rental unit. The landlord stated that the tenants did not indicate that they had their own fridge that they intended to use in the rental unit when the rental unit was rented to them. The landlord testified that a few months into the tenancy, the tenants stated that the fridge was not working so a technician attended and replaced a gasket to ensure the fridge was working correctly. It was at this time that the landlord stated the tenants removed the fridge from the rental unit and placed it outside without the landlord's permission. The landlord stated that the fridge remained outside for the remainder of the tenancy and that when the tenants vacated the rental unit, they refused to put the original fridge back into the rental unit, so the landlord had to do it.

The landlord testified that when the fridge was plugged back into the rental unit, and after 24 hours of waiting, the fridge did not work and so a repair person was called in and advised the landlord that the "compressor was shot" and that the fridge was low on refrigerant. In support of this item the landlord submitted a repair invoice that included an inspection of the dishwasher and fridge and that the landlord decided that based on the quote provided, that it was more cost effective to purchase a new rental unit fridge versus paying to have it repaired.

The tenant's response to this item was that they asked permission to remove the fridge, which the landlord denied. The tenant stated that the fridge remained upright and was

covered in plastic outside. The tenant stated that they had problems with the fridge since the start of the tenancy. The tenant stated that the landlord was present when they moved the fridge. The tenant stated that they had to deal with three months of warranty people and that the landlord asked them to cope with it. The tenant testified that warranty people kept coming and were not helping. The tenant stated that there are no signs of negligence, and that the fridge was simply defective. The tenant stated that they advised the landlord to plug it in and see if it was working before moving it and that with the stress of moving, the tenant confirmed it was not brought back into the rental unit before they vacated the rental unit. The tenant stated that the invoice provided has no delivery address and no proof that the new fridge was installed.

Regarding item 5, the landlord has claimed $163.80 to diagnose and repair the dishwasher. The landlord testified that after the tenants vacated the rental unit, the landlord noticed a pool of water at the bottom of the dishwasher. The landlord attempted to drain the dishwasher with no success and as a result, contacted an appliance repair person who determined that the drain was clogged with seeds. The landlord referred to the invoice, which supports that the dishwasher was cleaned of the seeds and worked again by draining properly. The landlord clarified that the same receipt was also to diagnose the fridge, which was found not to be cooling and a diagnosis was provided by the appliance repair person that the compressor had to be replaced or a new fridge purchased.

The tenant’s response to this item was that less than a month after signing the rental lease the dishwasher was leaking so the tenants sent a text to the landlord. The parties confirmed that the landlord came to inspect the dishwasher on the same date, March 22, 2018. The parties also confirmed that a warranty person attended and replaced the pump of the dishwasher on warranty. The tenant questioned why the same warranty person was not called to repair the drain of the dishwasher. The landlord responded by stating that by the end of the tenancy, the dishwasher was no longer on warranty and that the landlord had the choice to hire their own repair person versus using a more expensive repair person provided through the original supplier. The landlord responded to the tenant by stating the repair person advised that it was negligence and not a faulty pump the second time as the tenants failed to rinse off hard seeds, which ended up clogging the drain pump and was not normal wear and tear of a dishwasher.

The tenant stated that they vacated the rental unit between 2:00 a.m. and 3:00 a.m. and that they were not advised of the dishwasher issue until the tenants requested their security deposit in August. The landlord stated that a text was provided to the tenants

that the landlord would be accessing the unit on August 1, 2019 and the tenant responded by stating that there was no outgoing inspection scheduled.

Regarding item 6, the landlord has claimed for the loss of August 2019 rent in the amount of $1,650.00. The landlord testified that they suffered a loss of rental income due to the condition of the rental unit left behind by the tenants. There is no dispute that the tenants provided notice to the landlord that they would be vacating. The tenants vacated the rental unit on August 1, 2019. The landlord stated that due to the drywall repairs and other repairs to the appliances and for the painting, the landlord completed the work by August 26, 2019 to the best of the landlord's recollection. The landlord also testified that even though they were not able to secure new tenants until November 2019, the landlord is only claiming for loss of August 2019 rent and not September or October.

The tenant's response to this item was that the rental unit was advertised on Craigslist for viewing as of July 25; however, the tenant was advised that the document submitted in evidence in support of the Craigslist ad was too blurry to be afforded any weight. The tenant also testified that they do not feel loss of rent for August 2019 is their responsibility.

The landlord's $30.00 amount for registered mail costs was dismissed during the hearing for two reasons. Firstly, the $30.00 amount exceeds the amount of the claim served on the tenants. Secondly, I find that registered mail costs are not recoverable under the Act and are a cost related to applying for dispute resolution and that the only cost recoverable for dispute resolution related costs is the filing fee, which I will deal with later in this decision.

The tenants have claimed $9,900.00 comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Return of 5 months of $1,650.00 rent for unauthorized basement suite	$8,250.00
2. Double $825.00 security deposit	$1,650.00
TOTAL	**$9,900.00**

Evidence for Tenants' Claim

Regarding item 1, the tenants testified that they are claiming $8,250.00 comprised of 100% of the return of the monthly rent for a period of five months due to what the tenants allege was an unauthorized rental unit. This portion of the tenants' claim was dismissed as frivolous, which I will address further below.

Regarding item 2, the tenants have claimed $1,650.00 for return of double the amount of their security deposit due to the landlord failing to return their security deposit. Although the tenant claims they provided their written forwarding address by email to the landlord, the landlord testified that they did not receive an email from the tenants with their written forwarding address. Furthermore, the parties were advised that the documentary evidence submitted I found to be insufficient to support that the landlord had ever responded to an email with a forwarding address and that the Act requires the written forwarding address to be in writing. As a result, I will deal with the security deposit further below.

Analysis

Based on the documentary evidence and 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 this instance, the burden of proof is on both parties to provide sufficient evidence to prove their respective claims and to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the other party. Once that has been established, the parties must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that

the applicant party did what was 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.

I will first deal with the incoming and outgoing CIR. Sections 23 and 35 of the Act apply and state:

> **Condition inspection: start of tenancy or new pet**
> **23**(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
> (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
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> (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
> (b) a previous inspection was not completed under subsection (1).
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> (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
> (4) The landlord must complete a condition inspection report in accordance with the regulations.
> (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
> (6) The landlord must make the inspection and complete and sign the report without the tenant if
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> (a) the landlord has complied with subsection (3), and
> (b) the tenant does not participate on either occasion.

> **Condition inspection: end of tenancy**
> **35**(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
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> (a) on or after the day the tenant ceases to occupy the rental unit, or
> (b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
(3) The landlord must complete a condition inspection report in accordance with the regulations.
(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
(b) the tenant has abandoned the rental unit.

Based on the above, I find the landlord failed to comply with sections 23 and 35 of the Act by failing to complete an incoming and outgoing CIR. Therefore, **I caution** the landlord to ensure that they comply with sections 23 and 35 of the Act in the future.

Landlord's claim

Item 1 – I have considered the evidence before me and note that the landlord provided an invoice for the amount claimed of $504.00. I also note that while the tenant disputed the invoice, the tenant did not deny damaging the drywall, doing what I find to be a sloppy silicone job, which is not the correct product to fill drywall damage, and therefore, I agree with the landlord that the evidence presented meets the burden of proof and that the amount claim is reasonable given the photographic evidence before me. Therefore, I find the tenants owe the landlord **$504.00** as claimed for this item and that the tenants breached 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**

[Emphasis added]

I find the tenants failed to leave the rental unit reasonably clean and undamaged and that the damage to the walls, doors and window casing exceeded reasonable wear and tear.

Item 2 – The landlord has claimed $308.20 to repaint damaged drywall. In keeping with my decision for item 1 above, I find the tenant did not deny damaging the drywall and for the same reason as stated above, I find the landlord has met the burden of proof and is entitled to **$308.20** as claimed for this item.

Item 3 – Although the landlord has claimed $711.20 to remove oil stains from the driveway caused by the tenants' vehicle, I note that even if the landlord was to have the work completed it is not guaranteed. In addition, I note that the landlord has re-rented and has not repaired the oil stains on the driveway and therefore, I find the amount claimed has not been proven as I am not satisfied that it has devalued the rental property based on the evidence before in the amount of $711.20.

I am satisfied that there has been some loss; however, and based on the tenant confirming that their vehicle was leaking oil, I find the oil stains to be unreasonable damage, which could have been avoided if the tenants had simply placed a piece of wood or thick cardboard under their car, which they presented no evidence of during the hearing. Therefore, to acknowledge the tenants' violation of section 37 of the Act for leaving oil stains on the driveway, I grant the landlord a nominal amount of **$200.00** to reflect that the tenants damaged the driveway with oil stains and with bleaching by attempting to use kitty litter to absorb the oil stains.

Item 4 - The landlord has claimed $795.70 for the cost to replace a damaged fridge. According to RTB Policy Guideline 40 – Useful Life of Building Elements (policy guideline 40), the useful life of a fridge is 15 years, which is 180 months. I find the tenants provided insufficient evidence that the landlord agreed in writing for their fridge to be removed from the rental unit and I find it unreasonable for the tenants not to reinstall the fridge at the end of the tenancy. Therefore, I find the actions of the tenants more likely than not damaged the compressor of the fridge by moving it outside and leaving it outside during the 17-month tenancy as the fridge is an indoor appliance. Therefore, as the tenancy length was 17 months, I find the fridge depreciated by 9% after considering Policy Guideline 40. Therefore, 9% of $795.70 is $71.62. In other words, after offsetting the depreciated value of the fridge, I find the landlord is entitled to **$724.08.** I find the tenants more likely than not damaged the fridge by moving it outside without prior written permission of the landlord.

Item 5 - The landlord has claimed $163.80 to diagnose and repair the dishwasher. The landlord testified that after the tenants vacated the rental unit, the landlord noticed a pool of water at the bottom of the dishwasher. The landlord attempted to drain the dishwasher with no success and as a result, contacted an appliance repair person who

determined that the drain was clogged with seeds. After considering the invoice, which I find supports that the dishwasher repaired by removing seeds from the pump, I find that a repair was necessary and that hard seeds blocking a pump is not consistent with reasonable wear and tear and that reasonable due diligence of the tenants, would be to remove hard seeds prior to starting the dishwasher. I also find that the landlord is free to use their choice of a repair person once the warranty has expired and that the tenant should have reported a pump issue during the tenancy, which there was no evidence of since the first dishwasher repair. As such, I find the tenants breached section 37 of the Act are responsible for the entire cost as claimed for this item in the amount of **$163.80.**

Item 6 - The landlord has claimed for the loss of August 2019 rent in the amount of $1,650.00. Based on my findings above and considering that I have found that the tenants failed to leave the rental unit in reasonably clean and undamaged beyond reasonable wear and tear, I find the tenants owe the landlord for the loss of rent for the entire month of August 2019 in the amount of **$1,650.00.** I afford the tenant's documentary evidence no weight as it was too blurry for this item to afford any weight to.

As the landlord's application had merit, I grant the landlord **$100.00** for the recovery of the cost of the filing fee under section 72 of the Act.

Given the above, I find the landlord has established a total monetary claim in the amount of **$3,650.08** as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Repair of drywall in basement suite	$504.00
2. Repaint repaired drywall	$308.20
3. Quote to remove and repair oil stains from driveway	$200.00
4. New fridge to replace original	$724.08
5. Diagnose and repair dishwasher	$163.80
6. Loss of 1 month rental loss for August 2019	$1,650.00
7. Filing fee	$100.00
TOTAL	**$3,650.08**

Tenants' claim

Item 1- The tenants testified that they are claiming $8,250.00 comprised of 100% of the return of the monthly rent for a period of five months due to what the tenants allege was

an unauthorized rental unit. As the tenants freely entered into a fixed-term tenancy, which lasted 17 months and have provided no documentary evidence to support that during the tenancy the tenants wrote to the landlord regarding health, safety or housing standards regarding the state of the rental unit, I find that section 62(4)(c) of the Act applies, which states:

> **Director's authority respecting dispute resolution proceedings**
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> **62**(4) **The director may dismiss all or part of an application for dispute resolution if**
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> (a) there are no reasonable grounds for the application or part,
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> (b) the application or part does not disclose a dispute that may be determined under this Part, or
>
> (c) **the application or part is frivolous or an abuse of the dispute resolution process.**
>
> [Emphasis added]

I find that item 1 is frivolous and without merit as the tenants agreed in writing to rent the rental unit. Furthermore, I find that the tenants failed to prove reasonable due diligence during their 17-month tenancy by alleging after they vacated that the rental unit may be “unauthorized”, does not result in any form of compensation due to the tenants. I find this portion of the tenants’ claim is more likely than not an attempt by the tenants to offset any monetary claim the landlord has made against them. Given the above, I dismiss this item pursuant to section 62(4)(c) of the Act as I find it is frivolous and without merit.

Item 2- The tenants have claimed $1,650.00 for return of double the amount their security deposit due to the landlord failing to return their security deposit. I find the tenants provided insufficient evidence that they provided their written forwarding address as required by section 38 of the Act. As a result, I dismiss the tenants’ application for double the return of their security deposit as I find that the tenants provided insufficient evidence to support all four parts of the test of damages or loss as described above. Given the above, I will offset the tenants’ $825.00 security deposit from the $3,650.08 owing by the tenants. I do not grant the tenant’s the recovery of the cost of their filing fee as I find the tenant’s application did not have merit.

Pursuant to section 38 of the Act, I offset the tenant’s $825.00 security deposit, which has accrued $0.00 in interest under the Act from the landlord’s monetary claim of $3,650.08 for a total amount owing by the tenants to the landlord in the amount of

$2,825.08. I authorize the landlord to retain the tenants' full $825.00 security deposit under the Act and I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of **$2,825.08.**

Conclusion

The landlord's claim is mostly successful.

The tenants' claim is unsuccessful.

Pursuant to section 38 of the Act, I have offset the tenant's $825.00 security deposit, which has accrued $0.00 in interest under the Act from the landlord's monetary claim of $3,650.08 for a total amount owing by the tenants to the landlord in the amount of $2,825.08. The landlord has been authorized to retain the tenants' full $825.00 security deposit under the Act. The landlord is granted a monetary order pursuant to section 67 of the Act in the balance owing by the tenants to the landlord in the amount of $2,825.08. The monetary order must be served on the tenants by the landlord. The monetary order may then 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: April 8, 2020

Residential Tenancy Branch