



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, MNDL-S, FFL

Introduction

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

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

The landlord, the landlord's agent, the tenant and the tenant's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenant was served with the landlord's application for dispute resolution on January 21, 2020 via registered mail. The Canada Post receipt evidencing the above mailing was entered into evidence. The Canada Post website confirms the above testimony and states that the package was delivered on January 23, 2020. The tenant's agent testified that the tenant received the landlord's application for dispute resolution on or around January 21, 2020 but could not recall the specific date. I find that the tenant was served in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?

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

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on November 1, 2018 and ended by way of Mutual Agreement to End Tenancy on December 31, 2019. Monthly rent in the amount of \$1,600.00 was payable on the first day of each month. A security deposit of \$800.00 and a pet damage deposit of \$800.00 were paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The Mutual Agreement to End Tenancy was also entered into evidence. The subject rental property was partially furnished.

Both parties agreed that a joint move in condition inspection and condition inspection report was completed on November 4, 2018. Both parties agree that the landlord and the tenant agreed to complete the move out condition inspection and inspection report together on December 31, 2019; however, the tenant did not attend. The tenant's agent testified that the tenant, who has a brain injury and suffers from anxiety, felt the landlord was acting aggressively and that is why she did not attend. The landlord and the landlord's agent testified that the landlord was not acting aggressively. The landlord's agent testified that the move out condition inspection report was completed in the absence of the tenant. The move in and out condition inspection reports were entered into evidence.

The landlord's agent testified that they attempted to get in contact with the tenant when she did not attend for the move out condition inspection report but the tenant would not return the landlord's texts or telephone calls. The tenant's agent did not dispute this testimony.

Both parties agree that the tenant's agent texted the landlord the tenant's forwarding address on January 2, 2020. The tenant's agent testified that the tenant left her forwarding address in writing on the table in the subject rental property with her keys on December 31, 2019. The tenant did not submit any documents into evidence for this hearing. The landlord's agent testified that the tenant did not leave keys or her forwarding address at the end of the tenancy.

The landlord applied for dispute resolution on January 15, 2020, 15 days after the end of the tenancy.

The landlord's agent testified that the following damage arose from this tenancy:

Item	Amount
Replace fridge drawer	\$113.05
Replace living room floor	\$1,600.00
Replace basement door	\$516.00
Rekey locks	\$6.70
Transfer station fees	\$94.00
Truck usage fees	\$337.50
Cleaning supplies	\$47.09
Cleaning	\$1,137.50
Carpet cleaner rental	\$54.86
Replace curtain rod and curtain	\$16.63
Replace two remote controls	\$22.35
Replace burnt out lightbulbs	\$55.40
Replace three smoke detectors	\$107.06
Replace wireless receiver	\$69.88
Replace wood stove gasket	\$50.00
Replace used couch	\$50.00
Total	\$4,278.02

Replace fridge drawer

Both parties agree that the tenant damaged the fridge drawer. The landlord's agent testified that she was only able to find a replacement part on one website for \$113.50. An order summary for the drawer in the amount of \$113.50 was entered into evidence. The landlord's agent testified that the fridge was approximately 10 years old when the tenant moved in.

The tenant's agent testified that the fridge was old when the tenant moved in and that it should not cost \$113.50 to replace a fridge drawer.

Replace living room floor

The landlord's agent testified that the living room flooring was three years old when the tenant moved in and was in good condition. The move in condition inspection report states that the move in condition of the living room floor was "new". The move out condition inspection report states that the floors are dirty and have water damage. The landlord entered into evidence photographs of flooring which appears to have water damage.

The tenant's agent testified that the tenant did not damage the living room floor, and that it was the landlord's fish tank, which was left at the subject rental property which damaged the flooring. The landlord's agent testified that at the beginning of the tenancy the tenant asked the landlords to pick up the fish tank as she did not want it. The landlord's agent testified that the landlord immediately picked up the fish tank which was not leaking and moved it into the landlord's property. The landlord testified that the fish tank is currently in his home and does not nor has ever leaked. The landlord's agent testified that when the fish tank was picked up, the floors were not damaged.

The landlord entered into evidence an estimate to repair the floor in the amount of \$1,600.00.

Replace basement door

The landlord's agent testified that the basement door is original to the house which was built in the 1960s. The landlord's agent testified that the door was in good working order when the tenant moved in with a few dings and was heavily scratched and split in two when the tenant moved out. The landlord entered into evidence a photograph of the damaged door. The move in condition inspection report does not have any notation on the condition of the basement door. The move out condition inspection report states that the basement door is broken.

The landlords testified that the door is not a standard height or width making its replacement difficult, and that they were only able to find one business able to replace

the door. A quote in the amount of \$516.10 for the door replacement was entered into evidence.

The tenant's agent testified that the tenant's dog did do some damage to the door but the door was already very old. The tenant's agent testified that the replacement cost being sought by the landlord is unreasonably high.

Rekey locks

The landlord's agent testified that the tenant did not return the keys to the subject rental property and so the landlord had to get the locks re-keyed. The landlord entered into evidence a receipt in the amount of \$6.70.

The tenant's agent testified that the tenant returned the landlord's keys on December 31, 2019 by leaving them on the table at the subject rental property.

Transfer station fees and truck usage fees

Both parties agree that the tenant abandoned approximately four truck loads of items at the subject rental property. The landlords testified that they made four truck loads to a transfer station. Four transfer station receipts totalling \$94.00 were entered into evidence. The tenant's agent agreed that the tenant is responsible for the transfer station fees.

The landlord's agent testified that the landlord took one load to the transfer station on January 2, 2020 and that it took 1.5 hours to load the truck, drive to the transfer station, unload the truck at the transfer station and drive back. The landlord's agent testified that on January 10, 2020 the landlord took three loads to the transfer station and that it took three hours. The landlord's agent testified that the landlord is seeking \$75.00 per hour for his labour and the use of his truck for a total of \$337.50.

The tenant's agent testified that the hourly rate sought by the landlord is unreasonable.

Cleaning supplies, cleaning and carpet cleaner rental

The landlord's agent testified that the subject rental property was filthy when the tenant moved out and that the tenant did not clean the subject rental property at all. The landlord's agent testified that the tenant left rotting food in the fridge, cupboards and cooler. The landlord's agent testified that she had to clean the oven four times to get it clean. The landlord's agent testified that there was mouse poo throughout the house, the house smelt like dog urine, and the kitchen, bathrooms, walls, and floors were not cleaned. The landlord entered into evidence photographs showing that the subject rental property was dirty. The move in/out condition inspection reports state that the subject rental property was clean on move in and dirty on move out.

Both parties agree that the tenant did not shampoo all of the carpets at the subject rental property when the tenant moved out.

The landlord entered into evidence cleaning supply receipts totalling \$47.09. The landlord entered into evidence a receipt for renting a carpet cleaning machine in the amount of \$54.86.

The landlord's agent testified that the landlord is claiming for cleaning as follows:

- Dec. 31, 2019: 3 people cleaned for 4.5 hours at \$35.00 per hour = \$472.50;
- Jan. 1, 2020: 3 people cleaned for 3 hours at \$35.00 per hour = \$315.00;
- Jan. 2, 2020: 2 people cleaned for 4 hours at \$35.00 per hour = \$280.00; and
- Jan. 3, 2020: 1 person cleaned for 1.5 hours at \$35.00 per hour = \$70.00

The total sought for cleaning is \$1,137.50.

The landlord's agent entered into evidence cleaning rates from different cleaners in the area ranging from \$25.00 per hour to \$40.00 per hour. The landlord's agent testified that they are seeking \$35.00 per hour as that was the middle range.

The tenant's agent testified that the tenant's mover did not show up the day she was supposed to move out and so the tenant was not able to clean the subject rental property by the agreed move out time. The tenant's agent agreed that the subject rental property required cleaning and agreed that the tenant owes the landlord for the cost of the cleaning products/materials and the cost of the carpet cleaner rental but that the sum requested for cleaning is unreasonable.

Replace curtain rod, curtain, remote controls and wireless receiver

The landlord's agent testified that the subject rental property came partially furnished and that at the end of the tenancy, the following items were missing:

- One curtain rod;
- One curtain;
- Two television remote controls; and
- One wireless receiver.

The move out condition inspection report states that the above items are missing. The landlord's agent testified that the curtain rod, curtain and remote controls were two years old when the tenant moved in. The landlord's agent testified that the wireless receiver was one year old when the tenant moved in.

The tenant's agent testified that the tenant did not remove a curtain rod, a curtain, the wireless receiver or the remote controls. The tenant's agent acknowledged that the subject rental property came with televisions. The tenant's agent testified that the subject rental property did not come equipped with a wireless receiver. The landlord's agent testified that the television would not have worked without it.

The landlord entered into evidence a receipt for the following:

- One curtain rod bracket in the amount of \$2.97 plus 12% tax (\$3.33);
- One curtain in the amount of \$11.88 plus 12% tax (\$13.31); and
- Two remote controls in the amount of \$19.96 plus 12% tax (\$22.35);

The landlord entered into evidence an online advertisement for a new wireless receiver in the amount of \$69.88.

Replace light bulbs

The landlord's agent testified that light bulbs throughout the subject rental property were burnt out and required replacement. The landlord entered into evidence a receipt for 13 light bulbs totalling \$49.47 plus 12% tax (\$55.40). The move in condition inspection report does states that all light bulbs are working properly. The move out condition inspection report states that three light bulbs in the kitchen are burnt out, but the remaining light bulbs are functional.

The tenant's agent testified that that a few light bulbs may have been burnt out, but that they were not burnt out throughout the subject rental property.

Replace three smoke detectors

The landlord's agent testified that the subject rental property had three smoke detectors which were all taken down and left at the subject rental property at the end of the tenancy. The landlord testified that the smoke detectors did not work but that he did not check to see if the smoke detectors were not working because their batteries were dead. The landlord testified that it cost the same amount to purchase new smoke detectors with batteries, then to just buy new batteries. The landlord entered into evidence a receipt for new smoke detectors in the amount of \$107.06. The landlord's agent testified that the smoke detectors were one year old when the tenant moved in.

The tenant's agent testified that the smoke detectors at the subject rental property just needed new batteries, and that they did not need to be replaced.

Replace wood stove gasket

The landlord's agent testified that the tenants burnt plastic in the wood stove which damaged the gasket which required replacement after the tenant moved out. The landlord testified that he received a verbal quote for a new gasket in the amount of \$50.00. The move in condition inspection report does not mention the wood burning stove. The move out condition inspection report states that the gasket requires replacement.

The tenant's agent testified that the tenant did not burn plastic in the wood stove and that if the gasket required replacement, it was from regular wear and tear.

Replace used couch

Both parties agree that the tenant's dog damaged the landlord's couch. The tenant's agent agreed with the landlord that the tenant owes the landlord \$50.00 for the couch.

Analysis

Monetary Damages

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

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

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

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

Condition Inspection Reports

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

I find that the parties agreed on a time and date for the move out condition inspection report to take place. I find that the tenant failed to attend. I find that the tenant has not proved, on a balance of probabilities, that the landlord's conduct was in any way inappropriate. While the experience of fear is subjective, and the tenant's experience of emotions is personal to her, it does not remove her obligation to attend the move out condition inspection, have someone attend on her behalf or request to re-schedule the move out inspection to a date and time the tenant could have someone attend with her. I find that the landlord completed the move in and out condition inspection report in accordance with the *Act*.

Section 21 of the *Residential Tenancy Branch Regulation* states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Replace fridge drawer

Based on the testimony of both parties, I find that the tenant damaged the fridge drawer at the subject rental property contrary to section 37(2)(a) of the *Act*. I find that the landlord suffered a loss as a result and that the landlord has proved the value of that loss. I find that no mitigation issues arise regarding the fridge drawer.

Policy Guideline #40 states that the useful life for a refrigerator is 15 years (180 months). Therefore, at the time the tenant moved out, there was approximately 48 months of useful life that should have been left for the refrigerator drawer. I find that since the refrigerator drawer unit required replacing after 132 months, the tenant is required to pay according to the following calculations:

$\$113.50 \text{ (cost of new drawer)} / 180 \text{ months (useful life of refrigerator)} = \0.63
(monthly cost)

$\$0.63 \text{ (monthly cost)} * 48 \text{ months (expected useful life of refrigerator drawer after tenant moved out)} = \30.24

Replace living room floor

Based on the landlord's testimony and the move in and out condition inspection reports, I find that the tenant damaged the floor in the living room. I find that the tenant has not provided a preponderance of evidence to contradict the move in/out condition inspection reports or proved on a balance of probabilities that the landlord's fish tank damaged the flooring.

I find that the tenant breached section 37(2)(a) of the *Act* and that the landlord suffered a proven loss as a result. I find that no mitigation issues arise regarding the floor.

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

$\$1,600.00 \text{ (cost of new flooring)} / 120 \text{ months (useful life of flooring)} = \13.33
(monthly cost)

$\$13.33 \text{ (monthly cost)} * 72 \text{ months (expected useful life of flooring after tenant moved out)} = \$959.76.$

Replace basement door

Based on the testimony of both parties, I find that the tenant damaged the basement door. Policy Guideline #40 states that the useful life of a door is 20 years. I find that the useful life of the basement door was over as the door was approximately 60 years old. I therefore dismiss the landlord's claim for replacement of the basement door.

Rekey locks

I accept the landlord's agent's testimony that the tenant did not return the keys to the

subject rental property, which is consistent with the tenant not attending the move out condition inspection.

Section 37(2)(b) of the *Act* states that when a tenant vacates a rental unit, the tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that the tenant breached section 37(2)(b) of the *Act* by failing to return the keys to the landlord at the end of the tenancy and that the landlord suffered a loss as a result. I find that the landlord has proved the value of his loss in the amount of \$6.70. I find that no mitigation issues arise regarding the re-keying of the locks. I find that the tenant is responsible for the above loss.

Transfer station fees and truck usage fees

Based on the testimony of both parties, I find that the tenant left a large amount of personal possessions at the subject rental property, contrary to section 37(2)(a) of the *Act*, which the landlord had to haul to a transfer station. The tenant's agent did not dispute the landlord's claim for \$94.00 in transfer station fees. I find that the tenant is responsible for the above loss.

The landlord did not provide any alternative estimates for the cost of hauling the tenant's possessions to the transfer station. The tenant's agent testified that the rental rate requested by the landlord is too high. I find that in not obtaining quotes for the removal of the tenant's personal property, the landlord has failed to prove that the landlord mitigated his damages. I find that \$75.00 per hour for the landlord's labour and truck usage is unreasonable. I accept the landlord's testimony that he spent 4.5 hours hauling the tenant's abandoned items to the transfer station. I find that a rate of \$50.00 per hour is reasonable. I find that the landlord is entitled to \$225.00 for hauling the tenant's items to the transfer station.

Cleaning supplies, cleaning and carpet cleaner rental

Based on the testimony of both parties and the move in and out condition inspection reports, I find that the subject rental property was left very dirty and full of abandoned items. I find that in failing to clean the subject rental property at the end of the tenancy, the tenant breached section 37(2)(a) of the *Act*.

Both parties agreed that the tenant is responsible for the cost of cleaning materials in the amount of \$47.09 and the cost of the carpet cleaning machine in the amount of \$54.86. I find that the tenant is responsible for the above losses suffered by the landlord.

I accept the landlord's agent's testimony regarding the hours spent cleaning the subject rental property as the photographs entered into evidence show that the subject rental property was left in a very dirty condition.

The landlord entered into evidence quotes for hourly rates ranging from \$25.00-\$40.00 per hour and elected to seek \$35.00 per hour for time spent cleaning. I find that the landlord failed to mitigate his damages by seeking an hourly rate above \$25.00 per hour. I therefore find that the landlord is only entitled to be reimbursed for time spent cleaning at an hourly rate of \$25.00 per hour.

I find that in breaching section 37(2)(a) of the *Act*, the landlord suffered the following loss:

- Dec. 31, 2019: 3 people cleaned for 4.5 hours at \$25.00 per hour = \$337.50
- Jan. 1, 2020: 3 people cleaned for 3 hours at \$25.00 per hour = \$225.00;
- Jan. 2, 2020: 2 people cleaned for 4 hours at \$25.00 per hour = \$200.00; and
- Jan. 3, 2020: 1 person cleaned for 1.5 hours at \$25.00 per hour = \$50.00.

The total loss suffered by the landlord is \$812.50. I find that the tenant is required to pay the landlord for time spent cleaning.

Replace curtain rod, curtain, remote controls and wireless receiver

Based on the landlord's testimony and the move in and out condition inspection reports, I find that the following items were in the subject rental property on move in but not on move out, contrary to section 37(2)(a) of the *Act*:

- One curtain rod;
- One curtain;
- Two television remote controls; and
- One wireless receiver.

I find that the landlord proved that a loss was suffered. The above items are not listed in Policy Guideline #40 and so I do not know the useful life for the above items. Neither party provided evidence on the useful life of the above items. I find that without knowing the useful life of the above items, I am unable to determine the value of the loss

suffered by the landlord. Nonetheless, I am satisfied that a loss was suffered. Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the landlord is entitled to an award for nominal damages for the above items in the amount of \$50.00.

Replace light bulbs

Residential Tenancy Policy Guideline #1 states that the tenant is responsible for replacing light bulbs in his or her premises during the tenancy. Based on the move in/out inspections reports, I find that the tenant failed to replace three light bulbs at the end of the tenancy. The landlord entered into evidence a receipt for 13 light bulbs in the amount of \$55.40. As the move out condition inspection report states that only three light bulbs required replacement, I find that the tenant is required to pay according to the following calculation:

$$\$55.40 \text{ (cost of 13 light bulbs)} / 13 \text{ (\# of light bulbs)} = \$4.26 \text{ (cost per bulb)}$$

$$\$4.26 \text{ (cost per bulb)} * 3 \text{ (burnt out bulbs)} = \$12.78$$

Replace three smoke detectors

I dismiss the landlord's claim for the cost of three new smoke detectors. I find that the landlord has not proved, on a balance of probabilities, that the smoke detectors were damaged. I find that the landlord failed to mitigate its damages by failing to put new batteries in the smoke detectors. I find the landlord's testimony that new batteries for three smoke detectors would cost over \$100.00 to be unconvincing.

Replace wood stove gasket

The landlord did not enter into evidence a receipt or quote for a new gasket. I find that the landlord has not proved the value of the loss claimed, the landlord's claim is therefore dismissed.

Replace used couch

I find that the tenant breached section 37(2)(a) of the *Act* by damaging the landlord's couch. The tenant's agent agreed that the tenant owes the landlord \$50.000 for damaging the couch. I find that the tenant is responsible for the above loss.

Deposits

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

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

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(a) and 38(b) of the *Act*.

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

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

Conclusion

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

Item	Amount
Replace fridge drawer	\$30.24
Replace living room floor	\$959.76
Rekey locks	\$6.70
Transfer station fees	\$94.00
Truck usage fees	\$225.00
Cleaning supplies	\$47.09
Cleaning	\$812.50
Carpet cleaner rental	\$54.86
Replace curtain rod, curtain, wireless receiver and remote controls	\$50.00
Replace burnt out lightbulbs	\$12.78
Replace used couch	\$50.00
Filing fee	\$100.00
Less security and pet damage deposits	-\$1,600.00
Total	\$842.93

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

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

Dated: June 10, 2020

Residential Tenancy Branch