Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of $4,431.38 for damages to the unit, site or property, for money owing for compensation under the Act or regulation, to retain the tenants' security deposit and pet damage deposit towards any amount owing, and to recover the cost of the filing fee.

The landlord, tenant TJ (tenant) and an advocate for the tenant GR (advocate) attended the teleconference hearing and gave affirmed testimony/submissions. 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 and my findings. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The hearing began on December 6, 2019, and after 30 minutes, the hearing was adjourned to allow additional time for the parties to present evidence and testimony and to be better organized with the documentary evidence. On February 20, 2020, the hearing was adjourned again to allow the tenant time to arrange to have counsel or an advocate with them at the hearing. On April 28, 2020, the hearing reconvened and after 55 minutes, it was clear that additional time would be necessary to consider all of the evidence of the parties. As a result, three Interim Decisions dated December 6, 2019, February 20, 2020 and April 28, 2020 were issued, which should be read in conjunction with this decision. On June 12, 2020, the hearing reconvened and after an additional 76 minutes, the hearing concluded.

Neither party raised concerns regarding the service of documentary evidence or their ability to review those documents before the hearing. As a result, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

At the outset of the hearing, the parties confirmed their email addresses. The parties also confirmed their understanding that the decision would be emailed to both parties. Any applicable orders will 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 tenants' security deposit, pet damage deposit and fob 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 two tenancy agreements were submitted in evidence. The first tenancy agreement began on October 1, 2016 and ended on October 1, 2017 when a new tenancy agreement was signed by the parties. The October 1, 2017 tenancy agreement was a fixed-term tenancy, which reverted to a month to month tenancy after September 30, 2018. The tenancy ended on August 31, 2019. At the start of the tenancy, monthly rent was $1,675.00 per month and by the end of the tenancy, monthly rent had increased to $1,716.88 per month. The tenants paid a security deposit of $800.00 and a pet damage deposit of $800.00, plus a $200.00 fob deposit at the start of the tenancy for a total of $1,800.00 in combined deposits (combined deposits).

The landlord's monetary claim for $4,431.38 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Baseboard heater	$360.00
2. Stove trays	$120.00
3. Fob & keys	$145.00
4. Carpet cleaning	$280.00

5. Fridge light bulb	$20.00
6. Wall repairs	$325.00
7. Loss of rent	$1,716.88
8. Ozonate smell	$1,115.00
9. Cleaning	$125.00
10. Taxes (5% GST)	$124.50
TOTAL	**$4,431.38**

Regarding item 1, the landlord has claimed $360.00 to replace a damaged baseboard heater. The agent testified that rental unit was brand new at the start of the tenancy and that by the end of the tenancy, the baseboard heater was dented and marked and that the damage exceeded normal wear and tear. There was no dispute mentioned during the hearing that the rental unit had previous renters prior to the tenants before me. A copy of the Condition Inspection Report (CIR) was submitted in evidence for my consideration. The incoming CIR was dated October 6, 2016 and the outgoing CIR was dated July 31, 2019. In the outgoing CIR, it states “ELECTRIC HEATER COVER DINGED TWICE”. The tenants refused to sign the outgoing CIR.

The landlord referred to an estimate dated August 6, 2019, from a renovation company that states 360 with no rate or hours listed and “+ tax” at the bottom portion. The landlord stated that the rental unit was re-rented but could not recall when. The agent stated that the estimate ended up being the actual invoice and then later changed his testimony to state that the actual invoice was not submitted.

The tenant’s response to item 1 was that the photo was not good quality and that they could not see the two dents. Furthermore, there was no actual invoice, just an estimate submitted, and the tenant claims they were not given a copy of the CIR to review or in general. The tenant elaborated by stating they were not given a copy of the incoming CIR either.

The agent responded by stating that the tenant was hostile during the outgoing inspection and that the tenant was given the outgoing CIR to read contrary to the tenant’s testimony.

Regarding item 2, the landlord has claimed $120.00 for 4 stove trays that the agent stated were new at the start of the tenancy and required replacement at the end of the tenancy due to damage. The agent referred to the estimate which states “Replace stove drip trays – Reliable parts quoted $30 a tray…. 120”.

The agent referred to a colour photo showing two dirty stove element drip trays. The advocate responded by stating that on the outgoing CIR there were only 2 trays listed and that there is no receipt for the amount claimed. The advocate asked when the trays were replaced and the agent stated on or about September 20, 2019. The agent was asked by the final invoice was not submitted and the agent stated that they didn't know.

Regarding item 3, the parties reached a mutual agreement for $145.00 to replace the key fob and rental unit keys. I will address the mutual agreement later in this decision.

Regarding item 4, the landlord has claimed $280.00 for carpet cleaning. The agent stated that although the tenant provided a carpet cleaning invoice, the doors and windows of the rental unit were all open during the outgoing inspection and that once closed, a heavy smell of pet urine was in the rental unit and required additional carpet cleaning. The agent stated that the tenant cleaned the carpet twice and the landlord had to do an additional 3 cleanings, although the landlord was only charged for two additional attempts at carpet cleaning according to the invoice submitted by the landlord, and were still unable to remove the urine smell from the rental unit carpets. The invoice reads in part:

> …we cannot get the smell and odour out of the carpets. We actually shampooed the carpets three times to try to get the smell out. We only charged you for two cleanings. We recommend pulling the carpet and replacing the underlay. Depending on how back the underlay is, we may need to paint the concrete. Please advise.

The tenant disputed that additional carpet cleaning was necessary.

Regarding item 5, the landlord has claimed $20.00 for the cost to replace a burned-out fridge lightbulb. The agent referred to the outgoing CIR which lists a fridge bulb at $20.00 and is also listed on the estimate provided in evidence.

The advocate stated that for item 5 that $20.00 seems like a large amount for a bulb and that there is no breakdown of labour versus materials on the estimate.

Regarding item 6, the landlord has claimed $325.00 to repaint the rental unit, which the agent stated was new at the start of the tenancy in October 2016. The agent referred to many colour photos submitted in evidence which show some scuffing on a kick plate, some scrapes on the walls and scuffing, numerous marks on the ceiling, some minor wall marks, some areas with many small marks.

The advocate stated that the tenancy was nearly three years in lengthy, which would depreciate the painting by 75% and the tenant stated that the original painting outside of the patio was never completed at the start of the tenancy and that the white marks showing outside were not made by the tenant, but were there at the start of the tenancy from an incomplete original painting job, which I will address later in this decision.

Regarding item 7, the landlord has claimed $1,716.88 for loss of rent for September 2019. The agent stated that the landlord was able to re-rent the rental unit for October 2019; however, the landlord suffered a loss of rent due to the condition and smell of the rental unit after the tenants vacated the rental unit.

The advocate questioned if the rental unit was in unrentable condition at the end of the tenancy and present several tenant photos, which the advocate submits shows a reasonably clean rental unit. The pictures presented show a bathroom and bedroom closet. The advocate also stated that a dent in a baseboard heater should not require replacement and that the tenancy was nearly three years in length.

The agent responded to the tenant and advocate by stating that other photos such as the toilet photos show a stained toilet seat and other others that while the tenant claims they left a clean rental unit, the landlord presented photos of areas that the tenant did not take photos of to show it was cleaned completely before vacating and that some areas were missed.

Regarding item 8, the landlord has claimed $1,115.00 for the cost to rent and use an ozone machine to assist in reducing the strong urine smell in the rental unit once the doors and windows were closed. The agent reiterated that the tenant had left the windows and doors open so that the strong urine smell would not be noticeable; however, once the doors and windows were closed, the smell was very strong. The tenant replied to this item by stating that there was only an estimate provided and that the amount claimed does not have tax applied.

Regarding item 9, the landlord has claimed $125.00 for the cost to complete the cleaning of the areas missed by the tenant. While the agent stated that some areas were clean, other areas were not cleaned.

Regarding item 10, the landlord has claimed $124.50 for taxes, which was dismissed during the hearing as the agent was unable to state how the amount of $124.50 in taxes was calculated and for which items. I will address this item further below.

The advocate concluded the hearing with submissions that included referencing an email exchange between the parties dated August 1, 2019 in which the tenant provided their written forwarding address. The landlord filed their application on August 13, 2019, which is within 15 days of receiving the tenant's written forwarding address.

The advocate stated that the tenant was originally offered to pay an amount without a copy of the outgoing CIR, which the tenant refused to do as the advocate stated the tenant could not assess the damages being claimed. The advocate stated that the original offer was for the tenant to pay $800.00 in August 2019 and when the claim was filed, increased to over $4,400.00. The advocate also stated that the landlord has poor accounting if they were willing to settle for $800.00 and then weeks later, file an application for so much more.

Analysis

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.

Firstly, I will address the estimate provided by the landlord. While I afford greater weight to a final invoice, I do apply weight to an estimate as the Act does not require the work to be completed prior to the hearing and I consider the estimate to meet the civil standard, which is the balance of probabilities.

I will now address each item in order below.

Item 1 - The landlord has claimed $360.00 to replace a damaged baseboard heater. As there is no dispute that the baseboard heater was new at the start of the tenancy I will first address what I see in the photo evidence. Although the tenant stated that they could not see the dents claimed by the landlord, I can clearly see the dents. Therefore, I prefer the evidence of the agent over the tenant as the dents are clearly visible in the photographic evidence presented. Furthermore, I find an estimate is sufficient as a final invoice is not required under the Act and that an estimate does provide a value of the item being claimed. I also find that the two dents on the baseboard heater are not reasonable wear and tear and that the landlord had the right to replace a damaged baseboard heater that I find was damaged to the tenants' negligence. As a result, I find the landlord has met the burden of proof and I award the landlord **$360.00** for the cost of the baseboard heater. I do not apply depreciation to this item due to negligence.

Item 2 - The landlord has claimed $120.00 for 4 stove trays; however, I find the photo evidence and the outgoing CIR only stated 2 stove trays. I have also closely examined the photo evidence and I find the finish has been removed from the drip trays resulting in damage that could not be repaired and that exceeds reasonable wear and tear and as a result, I grant 50% of the total cost claimed as I am not satisfied that all 4 trays were damaged as I find the tenant had the right to rely on the outgoing CIR, which lists 2 trays. Therefore, I find the landlord has met the burden of proof for **$60.00** which I grant for stove trays and I dismiss the other $60.00 portion, due to insufficient evidence, without leave to reapply.

Item 3 - The parties reached a mutual agreement for $145.00 to replace the key fob and rental unit keys. Pursuant to section 62 of the Act, I order the parties to comply with their mutually settled agreement which I have recorded as that the tenants agreed to compensate the landlord **$145.00** to replace the key fob and rental unit keys.

Item 4 - The landlord has claimed $280.00 for carpet cleaning. Although the tenant did not agree that additional carpet cleaning was necessary the tenant did not deny that the windows and doors were left open during the outgoing inspection and therefore, I accept that once closed, the urine smell was as strong as the agent testified it was. I also afford significant weight to the carpet cleaning invoice from the landlord, which I find supports that the landlord cleaned the carpets an additional three times and that there continued to be a urine smell due to what the carpet cleaner wrote was related to the need to change the underlay and to seal the flooring below the underlay to avoid

further smell. I also find that it would be unreasonable to pay for an additional two carpet cleanings, as the third attempt the landlord was not charged for, unless it was required.

Therefore, I find that it is more likely than not that the carpets did smell like urine after the tenancy ended and that the tenant breached section 37 of the Act as a result. I award the landlord **$280.00** as claimed given the above, as I find the landlord has met the burden of proof.

Item 5 - The landlord has claimed $20.00 for the cost to replace a burned-out fridge lightbulb. I have reviewed the outgoing CIR which lists a fridge bulb at $20.00 and is also listed on the estimate provided in evidence. Although the advocate questioned the cost of the bulb, I note that the tenant did not deny that the fridge bulb was burned out at the end of the tenancy. RTB Policy Guideline 1 – Landlord & Tenant – Responsibility for Residential Premises (policy guideline 1), states as follows:

> **LIGHT BULBS AND FUSES**
>
> 2. **The tenant is responsible for**:
> - **Replacing light bulbs in** his or her **premises during the tenancy**
>
> [Emphasis added]

Based on the above, and also noting that a fridge uses a special bulb designed for cold temperatures and for the vibration created inside the fridge, I find that $20.00 for a fridge bulb is reasonable. Therefore, I award the landlord **$20.00** for this item as I find the landlord has met the burden of proof.

Item 6 - The landlord has claimed $325.00 to repaint the rental unit, which the agent stated was new at the start of the tenancy in October 2016. Although the agent referred to many colour photos submitted in evidence, I find the kick plate photos shows normal wear and tear. I find one wall photo shows a larger gouge, a minor mark and a smaller gouge, of which I find both gouges exceed normal wear and tear. I find the ceiling photo shows more than 10 dirty areas/scuffs which exceed normal wear and tear for a ceiling and that ceiling repainting was required as a result. I agree; however, with the advocate that the paint should be depreciated as RTB Policy Guideline 40 – Useful Life of Building Elements (policy guideline 40) states that the useful life of interior paint is 4 years, which is 48 months. As this tenancy began on October 1, 2016 and ended on August 31, 2019, which is 35 months of a total of 48 months, I find that the painting costs should be depreciated by 72.92%. I find that 72.92% of $325.00 is $236.99.

Therefore, I find the tenants breached section 37 of the Act by damaging the walls with gouges, which is beyond reasonable wear and tear and that in excess of 10 ceiling scuffs is also beyond normal wear and tear for a ceiling and I award the landlord **$236.99** for this claim and dismiss the remainder of this item, without leave to reapply due to insufficient evidence.

Item 7 – The landlord has claimed $1,716.88 for loss of rent for September 2019. Given my finding above regarding item 4 and taking into account that the rental unit keys and fob were not returned by the tenant, I find the tenant is liable for the loss of rent for September 2019 in the amount of $1,716.88 as I find the urine smell in the rental unit and the lack of access keys made the rental unit unrentable for the month of September. I also note that while some of the tenants' photos showed a reasonably clean rental unit, other landlord photos showed areas such as the toilet which were not cleaned, and that the smell could not be shown in photos. Therefore, I find the landlord has met the burden of proof and I award the landlord **$1,716.88** as claimed for this item.

Item 8 - The landlord has claimed $1,115.00 for the cost to rent and use an ozone machine to assist in reducing the strong urine smell in the rental unit once the doors and windows were closed. Given my findings regarding items 4 and 7 above, I find the tenant is liable for what I find to be a strong smell of urine in the rental unit once the doors and windows were closed after the outgoing inspection. Therefore, I find the tenant is liable for the ozone machine costs and I award the landlord **$1,115.00** as claimed as I find the burden of proof has been met.

Item 9 - The landlord has claimed $125.00 for the cost to complete the cleaning of the areas missed by the tenant. While I agree the tenant did clean many areas of the rental unit, I find the tenant did not do a thorough cleaning and left areas such as the toilet dirty and unclean. Therefore, I find the additional cleaning expense of **$125.00** is reasonable and I award the landlord that amount as I find the burden of proof has been met.

Item 10 - Although the landlord has claimed $124.50 for taxes, this portion was dismissed during the hearing as I find the landlord did not meet the burden of proof as the agent was unable to describe how the amount of $124.50 was reached by describing the items that were taxed. Therefore, this item is dismissed without leave to reapply due to insufficient evidence.

As the landlord's claim had merit, I grant the landlord the recovery of the cost of the filing fee in the amount of **$100.00** pursuant to section 72 of the Act.

I find the landlord has established a total monetary claim of **$4,158.87** comprised as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Baseboard heater	$360.00
2. Stove trays	$60.00
3. Fob & keys	$145.00
4. Carpet cleaning	$280.00
5. Fridge light bulb	$20.00
6. Wall repairs	$236.99
7. Loss of rent	$1,716.88
8. Ozonate smell	$1,115.00
9. Cleaning	$125.00
10. Taxes (5% GST)	dismissed
11. Filing fee	$100.00
TOTAL	**$4,431.38**

Pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain the tenants' security deposit of $800.00, pet damage deposit of $800.00 and fob deposit of $200.00 for $1,800.00 in combined deposits in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of **$2,358.87**.

Conclusion

The landlord's claim is mostly successful.

The landlord has established a total monetary claim of $4,158.87. The landlord has been authorized to retain the tenants' combined deposits of $1,800.00, which have accrued $0.00 in interest, 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 tenants to the landlord in the amount of $2,358.87. 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 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: June 30, 2020

Residential Tenancy Branch