



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNDL-S, MNDCL-S, MNRL-S**

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$17,700 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:31 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord's property manager ("**SF**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that SF and I were the only ones who had called into this teleconference.

SF testified she served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on March 13, 2020 and June 24, 2020 respectively. She provided Canada Post tracking numbers confirming these mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with these packages on March 18, 2020 and June 29, 2020, five days after SF mailed them, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$17,700;
- 2) recover the filing fee; and
- 3) retain the security deposit in satisfaction/partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The landlord is a property management company and operates as an agent for the owner of the rental unit. The landlord and the tenant entered into a written, fixed term tenancy agreement starting October 7, 2019 and ending April 30, 2020. The owner of the rental unit was to move into the rental unit at the end of the fixed term. Monthly rent was \$1,800, payable on the first day of each month it is due. The rental unit came furnished. The rental unit is a strata unit and is part of a larger strata property. The tenant paid the landlord a security deposit of \$900, which the landlord continues to hold in trust for the tenant. SF testified that the tenant signed a Form K – Notice of Tenant's Responsibilities at the start of the tenancy. The landlord did not provide this form at the hearing, but its existence was referenced in other documents entered into evidence.

SF testified that the parties conducted a move-in condition inspection on October 7, 2019, and that she provided the tenant with a copy of the report made thereafter. However, the landlord did not submit this report into evidence.

1. Strata Issues

SF testified that at some point during the tenancy, the tenant lost the fob for the strata property, and that the owner was charged \$100 to replace it. She testified that in December 2019, the tenant emailed her stating that she had found the lost fob and asked for the charge to be reversed. SF replied that the strata would not reverse the charge, as it would not let the owner return the recovered fob. The landlord submitted an email exchange between SF and the tenant corroborating this testimony.

The tenant did not remain in the rental unit until the end of the tenancy. On November 8, 2019, the tenant was involved in an altercation which gave rise to the strata counsel levying a \$200 fine for a "disturbance violation" on December 4, 2019. The strata counsel's letter advising the landlord of the fine stated:

It was reported on November 8, 2019 there was a disturbance in your unit. Loud bangs, crashes and yelling inside the unit and on the balcony caused a disturbance to your neighbours. One of the occupants of the unit was covered in blood and knocking on all of the doors on the 11th floor, asking for help. One of the residents on the 11th floor called 911 and the police and ambulance were dispatched to the building. One occupant of the unit was taken away by ambulance and two others were taken away by police.

The building manager was called to clean up blood from the doors of two units and the wall of the hallway.

I am unsure if the tenant was involved in this incident, or, if she was, which of the individuals involved she was.

2. Loss of Rent

SF testified that, in December 2020, the landlord and the tenant discussed the possibility of the tenant moving out of the rental unit prior to the end of the tenancy. She testified that the tenant was struggling paying rent on time.

SF testified that the parties agreed that, if the tenant moved out by January 1, 2020, SF would try to rent the rental unit out for February 1, 2020. SF testified that the parties agreed that if the rental unit could not be rented out, the tenant would continue to pay monthly rent.

SF testified that the tenant did not vacate the rental unit on January 1, 2020. She testified that the tenant vacated on January 17, 2020. The tenant gave the landlord her forwarding address on January 13, 2020. She did not pay any rent for January 2020.

The tenant failed to return a key fob to the landlord when she moved out. The replacement cost of this fob was \$100.

SF testified that she listed the rental unit for re-rent before the end of January 2020. She advertised it on Kijiji, Castanet, and Facebook. She testified that she did between twelve and twenty walkthroughs but was unable to rent out the rental unit. She testified that she could not have rented it out for the start of February due to condition of the rental unit at the end of the tenancy (discussed in more detail below). She testified that due to the fact the owner was returning to Canada in May 2020 and that he intended to live in the rental unit, it was difficult to rent out the rental unit for March 1, 2020. Despite this, SF testified that she was able to come close to renting the rental unit out on two occasions, but that the COVID-19 pandemic starting in late March caused these arrangements to fall through.

The owner moved back into the rental unit on May 1, 2020.

The landlord claims rental arrears for January 2020, and lost income for February, March, and April 2020 due to the tenant breaching the fixed-term tenancy agreement.

3. Condition of Rental Unit

SF testified that the tenant caused significant damage to the rental unit and its contents prior to vacating. She testified that the rental unit was not cleaned prior to the end of the tenancy. She also testified that the tenant removed items from the rental unit that belonged to the owner of the unit.

The tenant did not attend the move out condition inspection on January 24, 2020. SF testified that she sent the tenant a final condition inspection notice on January 23, 2020, after having offered four different times to conduct the move-out inspection. The landlord submitted a copy of the move-out condition inspection report (the “**Move Out Report**”) into evidence.

a. Cleaning

The Move Out Report indicates that the rental unit was significantly unclean at the end of the tenancy. It indicates the following rooms were dirty and required cleaning: Entry; Kitchen; Living Room; Dining Room; Master Bedroom; and Second Bedroom. The landlord submitted photographs which corroborate this.

SF testified that the landlord hired a cleaning company to clean the rental unit. In total, this cleaning took 16.5 hours and cost \$693 (including GST). The landlord submitted an invoice dated January 24, 2020 confirming this amount.

SF testified that the tenant did not clean the curtains after she left. The landlord submitted a photo of the curtains’ condition at the end of the tenancy, which show small stains on it. The landlord did not provide any documentary evidence as to the curtains’ condition at the start of the tenancy. The landlord did not provide any documentary evidence as to the cost of cleaning the curtains, but SF estimated it would cost \$300 to have them dry-cleaned.

SF testified that the tenant stained the rug, mattress, and couch during the tenancy. The landlord submitted photographs of the condition of these items at the end of the tenancy which corroborate SF’s testimony. The landlord did not provide any documentary evidence as to these items condition at the start of the tenancy. SF testified that the landlord paid \$436.80 to have these items cleaned. The landlord submitted an invoice dated March 20, 2020 supporting this amount.

b. Damage

The Move Out Report also recorded significant damage (including holes) to the walls of the Entry; Living Room; Dining Room; Main Bathroom; and Master Bedroom. It also recorded damage necessitating a replacement to the Main Bathroom door and frame. The landlord submitted a photo of the door which shows a significant crack in the face of the door, as well as photos taken of the rental unit before the tenancy started which do not show any holes in the walls of the rental unit.

SF testified that the landlord hired a handyman to fix the walls (patching, sanding, and repainting) and to replace the bathroom door and frame. She testified the landlord paid the handyman \$2,254.56 (including GST) to complete this work (\$1,650 plus tax for labour and \$497.20 for materials). The landlord submitted an invoice dated January 29, 2020 from the handyman for this amount.

SF testified that the tenant had chipped the granite countertop in two places during the tenancy. The landlord provided photos from the start of the tenancy showing the counters not chipped, and photos taken after the tenant vacated showing chips. SF testified that the largest of the chips cost the landlord \$367.50 (including GST) to repair (she provided a receipt dated March 16, 2020 showing this amount). SF testified that during this visit, the contractor gave a verbal quote of \$200 to repair the smaller chips. SF testified that the owner was having cash flow issues, and only paid to have the larger chip repaired at that time.

SF testified that the tenant damaged a 55-inch television located in the living room. She testified that the screen was cracked and that it could not be repaired. She submitted a text message chain between herself and the tenant into evidence wherein the tenant admits to damaging it. SF testified that the landlord purchased a replacement television of the exact make and model for \$1,257.76. She submitted a receipt in support of this amount.

SF testified that the headboard of the bed was damaged by the tenant. She submitted a photo of an undamaged headboard at the start of the tenancy, and a photograph of it at the end of the tenancy which shows that the tenant appears to have screwed into the edge of the headboard, which were then ripped out leaving large holes. The landlord did not provide any documentary evidence for the cost of repairing the headboard, but SF estimated that it would cost \$250.

SF testified that the door of the refrigerator was dented at the end of the tenancy. The landlord provided photos taken at the start of the tenancy showing this door to be undented. The landlord did not provide any documentary evidence for the cost of repairing the door, but SF estimated that it would cost \$250.

SF testified that the tenant damaged two dining room chairs. She testified that fabric on the seat of one of them was torn, and that the other was wobbly. She provided photos of the chairs at the start of the tenancy which were free of tears. They do not show if the chairs are wobbly or not. A photo taken at the end of the tenancy shows a rip in the upholstery of one of the chairs. The landlord did not provide any documentary evidence for the cost of repairing the chairs, but SF estimated that it would cost \$100 each.

c. Missing Property

SF testified that the tenant removed a number of items from the rental unit belonging to the owner when she vacated it.

SF testified that, along with the television in the living room (mentioned above) the rental unit came furnished with a television in the bedroom. The landlord provided a photograph of this television in the bedroom taken at the start of the tenancy. SF testified that the television had been removed when she attended the rental unit to

conduct the move out inspection. SF obtained a quote for two models of replacement television, the first costing \$498 plus tax and an environmental handling fee and the second costing \$648 plus tax plus tax and an environmental handling fee. This quote was submitted into evidence. The landlord claims \$800 for the replacement cost, as an estimate of what the replacement television would cost including tax.

SF testified that the rental unit was furnished with a Dyson vacuum cleaner at the start of the tenancy. She testified it was missing at the end of the tenancy. The landlord provided a photograph taken at the start of the tenancy of the vacuum cleaner in the rental unit. The landlord did not provide any documentary evidence showing the replacement cost of this item. However, SF testified that she googled the cost and it was \$631.35. She did not provide a screenshot of this search, however, and could not say if the model of vacuum she provided a price for was the same model as the one in the rental unit. She testified that the type of Dyson vacuum of the type claimed for has a variety of models, which range in price.

SF testified that the rental unit came stocked with bedding linens, toasters, scissors, cutting boards, bathmats and towels (the “**Household Items**”). The photos taken before the start of the tenancy show these items. She testified that these items were not in the rental unit at the end of the tenancy. She testified that the landlord replaced the Household Items, costing the following:

Bathmat, towels	\$54.38
Toaster, Scissors, Cutting Board	\$43.72
Bedding	\$160.07
Total	\$258.17

4. Summary of Monetary Claim

In total, the landlord claims \$15,449.14, representing the following:

Rent	
Arrears	\$1,800.00
Loss of Income as a result of tenant's breach	\$5,400.00
Strata	
Fine	\$200.00
Loss of Fob	\$100.00
Condition of Rental Unit	
Cleaning - General	\$693.00
Cleaning - Couch, Rug, Mattress	\$436.80
Cleaning - Curtains	\$300.00
Damage - Door and walls	\$2,254.56
Damage - Counter	\$567.50

Damage – Living Room Television	\$1,257.76
Damage - Refrigerator	\$300.00
Damage - Headboard	\$250.00
Damage - Dining Room Chairs	\$200.00
Replacement - Household Items	\$258.17
Replacement - Bedroom Television	\$800.00
Replacement - Vacuum	\$631.35
Total	\$15,449.14

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

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

(the “**Four-Part Test**”)

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application.

So, the landlord must prove it is more likely than not that the tenant breached the Act, that it suffered a specific monetary loss as a result, and that it acted reasonably to minimize its damages.

I will address each of the three heads of damage claimed by the landlord in turn.

1. Loss of Rent

Section 26 of the Act states:

Rules about payment and non-payment of rent

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

The tenant did not pay any rent for the month of January 2020, despite occupying the rental unit during the month. Per the tenancy agreement, the tenant was obligated to pay rent for the month of January 2020 on January 1, 2020. As such, I order that the tenant pay the landlord \$1,800, as compensation for the unpaid January 2020 rent.

Based on SF's testimony I find that the parties entered into an agreement whereby the landlord would permit the tenant to "break" her lease, on the condition that the tenant vacate prior to January 1, 2020. The tenant did not do this. Accordingly, when the tenant vacated the rental unit on January 17, 2020, the tenant ended the tenancy (per section 44(1)(d) of the Act). Ending a fixed-term tenancy in such a manner is a breach of the Act. Fixed-term tenancies may only be ended by mutual agreement of the parties or pursuant to section 45 of the Act.

The term of the tenancy was to end on April 30, 2020. By breaching the Act by ending the tenancy prior to this date, the tenant deprived the landlord of the ability to earn rent for the months of February, March, and April 2020 (in the amount of \$5,400). As such, the first three parts of the Four-Part Test have been satisfied.

However, the landlord must show that it acted reasonably to minimize its loss. In circumstances such as this, acting reasonably means that the landlord must have made reasonable efforts to re-rent the rental unit.

Based on the dates of the cleaning (January 24, 2020) and wall repair (January 29, 2020) invoices, I find that the landlord acted immediately to bring the condition of the rental back to a state where it could be rented out. Despite the lack of documentary evidence supporting her testimony, I found SF to be credible in her evidence of the steps she took on the landlord's behalf to re-rent the rental unit.

I find that the landlord starting advertising the rental unit for rent before the end of January 2020. I accept SF's testimony that she showed the rental unit to at least 12 prospective renters. I also find SF's reasons for the landlord's inability to rent the rental unit out to be reasonable (the brief duration of the new tenancy due to the owner's return, and the COVID-19 pandemic).

I find that the landlord acted reasonably to minimize its losses as a result of the tenant's breach of the Act. I find the landlord suffered losses of \$5,400 representing the loss of earning three month's rent from the rental unit due to the tenant ending the tenancy agreement before the end of its term. I order the tenant to pay the landlord this amount.

2. Strata Issues

Based on the evidence before me, I find that the tenant signed a Form K Notice of Tenant's Responsibilities at the start of the tenancy. I find that this Form K forms part of the tenancy agreement. The Form K, in part, states:

If a tenant or occupant of the strata lot, or a person visiting the tenant or admitted by the tenant for any reason, contravenes a bylaw or rule, the tenant is responsible and may be subject to penalties, including fines, denial of access to recreational facilities, and if the strata corporation incurs costs for remedying a contravention, payment of those costs.

Based on the letter from the strata council dated December 4, 2020, I find that the owner was fined \$200 due to a breach of the strata bylaws by the tenant.

Based on the emails between SF and the tenant, I find that the tenant lost the fob to the strata property, and that the owner was charged \$100 by the strata council to replace it.

Accordingly, I find that the tenant's actions caused the landlord to suffer money loss at the hands of the strata corporation in the combined amount of \$300. Pursuant to section 67 of the Act, I order the tenant to pay the landlord \$300, per the Form K.

3. Condition of Rental Unit

Section 37(2) of the Act 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

a. Cleaning

Based on the Move Out Report, and the photographs of the rental unit taken after the tenant vacated the rental unit, I find the rental unit was not reasonably clean and that it required significant cleaning at the end of the tenancy. I find that the landlord incurred \$693 in cleaning costs associated with cleaning the rental unit. I find this amount to be reasonable, given the condition of the rental unit. Accordingly, I order that the tenant pay the landlord this amount.

The landlord alleges that the tenant stained the curtains, couch, mattress, and rug during the tenancy and failed to have these items cleaned prior to vacating the rental unit. However, the landlord submitted no proof as to the condition of these items at the start of the tenancy. As such, the landlord has failed to discharge its onus to show that the tenant breached section 37(2) of the Act. Accordingly, I decline to order that the tenant pay the landlord any compensation in connection with cleaning these items.

b. Damage

Based on the Move Out Report, and the photographs submitted into evidence of the condition of the rental unit both before and after the rental unit, I find that the tenant damaged the following during the course of the tenancy:

- Bathroom door
- Walls throughout the rental unit
- Kitchen countertop
- Refrigerator door
- Headboard
- Dining room chairs

Additionally, based on the text messages between SF and the tenant, I find that the tenant damaged the living room television.

Based on the photographs I find that the forgoing items have all been damaged beyond the level of reasonable wear and tear.

The landlord submitted an invoice of \$2,254.56 for the repair of the rental unit walls and the bathroom door. In light of the extent of the damage, I find that this is a reasonable amount to have paid. I order that the tenant pay the landlord this amount.

The landlord submitted an invoice for \$367.50 for the repair of one part of the damaged kitchen countertop. SF testified that when the contractor was fixing this portion of the countertop, he quoted \$200 to fix another chip in the counter caused by the tenant. I accept SF's testimony. I find that the \$567.50 is a reasonable amount to pay to repair the damage to the kitchen counters. I order that the tenant pay the landlord this amount.

The landlord did not provide any documentary evidence in support of its estimates for repairing the refrigerator door, headboard, or dining room chairs. Rather, SF testified that the amounts claimed (\$300, \$250, and 200, respectively) were estimates of her own. As such, I find that the landlord has failed to satisfy the third part of the Four-Part Test, and not proven the amount of loss suffered.

However, as the landlord has established that it suffered damage caused by the tenant's breach of the Act, I find that nominal damages are appropriate. Policy Guideline 16 states:

“Nominal damages” are a minimal award. 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 order the tenant to pay the landlord \$150 (that is, \$50 per item) as nominal damages as compensation to the damage she caused to the refrigerator door, headboard, or dining room chairs.

The landlord submitted an invoice of \$1,257.76 for the replacement of the living room television. As the replacement television was the exact make and model for of the damaged one, I find that this is a reasonable amount to have paid. I order that the tenant pay the landlord this amount.

c. Missing Property

Based on the testimony of SF and on the photographs taken at the start of the tenancy, I find that tenant removed or disposed of the following items belonging to the owner during the course of the tenancy:

- Household Items;
- Bedroom television; and
- Dyson vacuum.

I find that the removal or disposing of these items constitutes “damaging” the rental unit for the purposes of section 37(2). Therefore, the tenant has breached the Act.

I accept SF’s testimony that the landlord spent \$258.17 replacing the Household Items. I find that this amount was reasonable. I order the tenant to pay the landlord this amount.

The landlord claims \$800 to replace the bedroom television. However, the landlord submitted a quote which listed two different televisions, the first costing \$498 plus tax and an environmental handling fee and the second costing \$648 plus tax plus tax and an environmental handling fee. As the landlord has provided two options for the replacement of the bedroom television, I find that in order to properly mitigate its loss, the landlord is entitled to compensation equal to the cost of the cheaper of these options. Per the quote entered into evidence, the environmental handling fee is \$28 per television. The cost of the replacement television is \$585.76 (\$498 plus 12% sales tax plus environmental handling fee). I order the tenant to pay the landlord this amount.

The landlord has not submitted any documentary evidence in support of its claim of \$631.35 for the replacement of the Dyson vacuum, nor did it submit any evidence as to what model the missing vacuum was. As stated by SF, there is a range of model and prices of the style of Dyson vacuum. As I have no evidence as to actual value of the missing vacuum cleaner, I find it appropriate to fix the value of the missing vacuum at

the low end of the range. I find that such a value is \$300. Accordingly, I order the tenant to pay the landlord this amount.

4. Security Deposit and Filing Fee

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover their filing fee from the tenant.

Pursuant to section 72(2) of the Act, and as the tenant's right to recovery of the security deposit is extinguished by section 36(1) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

In total, the tenant must pay the landlord \$12,766.75, representing the following:

Rent	
Arrears	\$1,800.00
Loss of Income as a result of tenant's breach	\$5,400.00
Strata	
Fine	\$200.00
Loss of Fob	\$100.00
Condition of Rental Unit	
Cleaning - General	\$693.00
Cleaning - Couch, Rug, Mattress	\$0.00
Cleaning - Curtains	\$0.00
Damage - Door and walls	\$2,254.56
Damage - Counter	\$567.50
Damage - Television	\$1,257.76
Damage - Refrigerator	\$50.00
Damage - Headboard	\$50.00
Damage - Dining Room Chairs	\$50.00
Replacement - Household Items	\$258.17
Replacement - Bedroom Television	\$585.76
Replacement - Vacuum	\$300.00
Miscellaneous	
Filing Fee	\$100.00
Security Deposit Credit	-\$900.00
Total	\$12,766.75

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$12,766.75.

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: July 15, 2020

Residential Tenancy Branch