



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$13,255.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the \$100.00 cost of his Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over an hour and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide his evidence orally and to respond to my questions. I 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.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on February 6, 2020. The Landlord provided a Canada Post tracking number as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses at the outset of the hearing and confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

While describing the hearing process, I advised the Landlord that pursuant to Rule 7.4, I would only consider his written or documentary evidence to which he pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Landlord confirmed the following details about the tenancy contained in the tenancy agreement he submitted: the fixed term tenancy began on November 15, 2018, and was to continue until November 15, 2020. The Tenant paid the Landlord a monthly rent of \$2,850.00, due on the first day of each month. The Tenant paid the Landlord a security deposit of \$1,425.00, and no pet damage deposit.

In addition, the Landlord said that the Parties conducted a condition inspection of the rental unit at the start of the tenancy, and that the Landlord emailed the Tenant a copy of the condition inspection report ("CIR"). The Landlord said the Tenant's elevator booking for February 2020 shows that he moved out on February 28, 2020. The Landlord said he conducted the end of tenancy condition inspection by himself, since the Tenant was gone and did not provide a forwarding address.

The Landlord submitted a monetary order worksheet setting out his claims, as follows:

	Receipt/Estimate From	For	Amount
1	2 months loss rent – ET b/c T.T. using as AirBnb	Early lease termination	\$5,700.00
2	T.T. allowed 6 people \$300 x 2 x 12	Extra occupants	\$7,200.00

3	Sam (bldg. concierge)	New FOBs	\$200.00
4	One Stop Flooring	Wall damage beyond W&T	\$850.00
5	One Stop Flooring	Floor damage beyond W&T	\$630.00
6	RTB	Filing fee	\$100
7		Less security deposit	(\$1,425.00)
		Total monetary order claim	\$13,255.00

#1 Early Termination of Lease – Two Months' Lost Rent → \$5,700.00

The Landlord said that this was a two-year lease that ended abruptly, when the Landlord discovered that the Tenant rented the unit out on AirBnB. The Landlord said that one of the Tenant's guests was discovered dumping garbage in the lobby on January 31, 2020. The Landlord said that he received substantial fines from the Strata Corporation, as well as an empty unit tax from the City, based on what the Tenant was doing with the rental unit. However, the Landlord said that he was able to have both fines reversed after he evicted the Tenant.

The Landlord said he gave the Tenant a notice to end tenancy, because of this unauthorized use of the rental unit, and that the Tenant did not dispute this notice.

The Landlord said the Tenant moved out at the end of February 2020, and the Landlord was not able to rent it until July 1, 2020. He said he ran an advertisement on an international online advertising site starting in early March 2020, a few days after the Tenant left. He said he lost four months of rental income, but he is only claiming two months in this proceeding.

#2 Extra Occupants Allowed for 12 months → \$300 x 2 people → \$7,200.00

The Landlord said that the Addendum of the tenancy agreement limits the number of people in the rental unit to two. This clause is on page seven of the tenancy agreement. The Tenant's signature is on the bottom of this page of the Addendum. The particular clause in the Addendum states:

- 2) Number of permanent occupants in the unit is limited to a maximum of 2.
Extra \$300 rent increase per additional person up to 4.

The Landlord said the Tenant advertised the rental unit as an AirBnB allowing up to six

guests to stay. He said: "They put three large queen size beds in there, allowing six people to stay in the unit."

The Landlord submitted a copy of the AirBnB advertisement he found for his residential property. This included offering the entire condominium to guests, and saying it can fit six people in three beds and two bathrooms, and that it costs \$160.00 per night.

#3 New FOBs → \$200.00

The Landlord said that he provided the Tenant with two new fobs for the rental unit at \$100.00 each and that the Tenant did not return them. The Landlord said: "I replaced the deadbolt and I'm not claiming that."

#4 Wall Damage Beyond Wear & Tear → \$850.00

The Landlord said the Tenant left holes in the wall where a television stand was installed, which left holes an inch in diameter in the wall. He submitted a photograph showing this damage in the wall. The Landlord said that in the Addendum to the tenancy agreement it states in clause three:

Total number of 8 nail holes are allowed. Tenants shall be responsible to fix any nail holes they put in the walls by patching and painting them properly at the end of the tenancy. [provides type of paint to be used]. . . . Maximum nail length: ONE Inch; Maximum nail diameter: 0.08 Inch or 2 mm.. . . Objects are not allowed to be hanging off the walls (except light pictures within limits indicated above).

[reproduced as written]

The Landlord submitted a copy of a notice he said he posted on the rental unit door on February 11, 2020, noting the damage to the walls and other areas of the rental unit and stating that the Tenant must fix this damage by February 18, 2020. The Landlord quoted the above noted clause from the Addendum, which sets out limits to the size of holes allowed in the rental unit.

The Landlord said: I can fix small holes, but I am not a painter. I somehow managed to make it look okay. But they are not okay. Every tenant that came by to look noticed that these walls have to be done properly.

The Landlord submitted a copy of the estimate he said he obtained for the repainting

the rental unit. The Landlord said he has not had this done, as yet.

#5 Floor Damage Beyond Wear & Tear → \$630.00

The Landlord said that the Tenant damaged five boards in the floor. He said: "I do not know how to replace boards - I can't even patch them. So, I got an estimate for these jobs for the walls and the floor." The Landlord submitted a photograph of a small area of floorboards showing light coloured marks on the floor.

#6 Filing Fee → \$100.00

The filing fee is generally awarded to a successful applicant at the arbitrator's discretion.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

Before we begin, I should let the Parties know how I will be analyzing the evidence presented to me. The party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In your case, the **Landlord** must prove:

1. That the **Tenant** violated the Act, regulations, or tenancy agreement;
2. That the violation caused the **Landlord** to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the **Landlord** did what was reasonable to minimize the damage or loss.

"Test"

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to "leave the rental unit reasonably clean and undamaged." However, sections 32 and 37 also provide that reasonable wear and tear

is not damage, and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in Policy Guideline #16 ("PG #16"), "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 claiming compensation to provide evidence to establish that compensation is due."

#1 Early Termination of Lease – 2 Months' Loss Rent → \$5,700.00

Given the Landlord's undisputed evidence in this matter, I find for the Landlord and award him recovering of **\$5,700.00** in unpaid rent.

I infer that the Landlord's position is that if not for the Tenant's behaviour letting the rental unit become an AirBnB, then the Landlord would not have received the Strata fines and the City's empty residence tax warnings. I find that if the Landlord had not ended the tenancy with this Tenant, the Landlord would have faced greater costs than he earned in rental income, as well as putting his property at risk from having strangers live there temporarily, due to the AirBnB the Tenant arranged. As such, I find that the Landlord was, therefore, forced to incur the additional cost of no rental income, while he attempted to find new tenants. I, therefore, award the Landlord with recovery of two

months' lost income in the amount of **\$5,700.00**.

#2 Extra Occupants Allowed for 12 months → \$300 x 2 people → \$7,200.00

I find that the clause in the Addendum limiting the number of people in the rental unit states that the number of "permanent occupants" is limited to two; however, I find it more likely than not that AirBnB occupants would be staying there temporarily. As such, I find that this clause does not address what was happening in the rental unit. As a result, I dismiss this claim without leave to reapply.

#3 New FOBs → \$200.00

Based on the Landlord's undisputed evidence before me in this regard, I award the Landlord with recovery of **\$200.00** from the Tenant for the missing fobs.

#4 Wall Damage Beyond Wear & Tear → \$850.00

I find that the Landlord's evidence indicates that the damage to the rental unit walls went beyond what was allowed in the tenancy agreement. I find this damage went beyond normal wear and tear, and that the Landlord has established his entitlement to compensation in this regard.

However, I find that the Landlord has not had the repairs done and, therefore, he has not incurred a cost for the repairs, since he only obtained an estimate. I, therefore, dismiss the Landlord's claims for damage to the walls he has estimated at \$850.00 with leave to reapply when an actual cost can be attributed to the repair work.

#5 Floor Damage Beyond Wear & Tear → \$630.00

I find that the evidence provided by the Landlord is insufficient to prove on a balance of probabilities that the marks on the floor are more than normal wear and tear to the flooring. As such, and pursuant to section 32 of the Act and PG #1, I dismiss this claim without leave to reapply.

#6 Application Filing Fee → \$100.00

Given his partial success, I award the Landlord with recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act.

Summary and Off Set

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$1,425.00 in partial satisfaction of the Landlord's monetary claim.

I have set out the amounts awarded to the Landlord for this Application, as follows:

	Receipt/Estimate From	For	Amount
1	2 months loss rent – ET b/c T.T. using as AirBnb	Early lease termination	\$5,700.00
2	T.T. allowed 6 people \$300 x 2 x 12	Extra occupants	\$0.00
3	Sam (bldg. concierge)	New FOBs	\$200.00
4	One Stop Flooring	Wall damage beyond W&T	\$0.00
5	One Stop Flooring	Floor damage beyond W&T	\$0.00
6	RTB	Filing fee	\$100.00
		Sub-total	\$6,000.00
7		Less security deposit	(\$1,425.00)
		Total monetary order claim	\$4,575.00

I authorize the Landlord to keep the Tenant's security deposit in partial satisfaction of this award. I grant the Landlord a monetary order of **\$4,575.00** for the remaining award outstanding, pursuant to section 67 of the Act.

Conclusion

The Landlord is partially successful in his claim for compensation from the Tenant in this matter, as he provided sufficient evidence to prove \$6,000.00 worth of his claim. The Landlord is awarded recovery of the \$100.0 Application filing fee for a total award of \$6,100.00.

The Landlord is authorized to retain the Tenant's \$1,425.00 security deposit in partial satisfaction of the monetary award. The Landlord is granted a monetary order for the remaining amount of the award of **\$4,575.00**.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: July 10, 2020

Residential Tenancy Branch