



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The words tenant and landlord in this decision have the same meaning as in the Act, and the singular of these words includes the plural.

The landlord was represented at the hearing by his property manager, SD ("landlord"). The tenant attended the hearing and was represented by an agent, her husband, YY ("tenant"). As both parties were present, service of documents was confirmed. The tenant acknowledged being served with the landlord's Application for Dispute Resolution and stated he had no concerns with timely service of documents.

The landlord did not acknowledge being served with the tenant's evidence, a 5-page document. The tenant testified it was sent to the landlord's address for service as noted on the Application for Dispute Resolution by registered mail on August 4, 2020. The tenant provided the tracking number for the mailing, recorded on the cover page of this decision. In accordance with sections 88 and 90 of the Act, the evidence is deemed served upon the landlord on August 9, 2020, five days after mailing. At the commencement of the hearing, the tenant emailed a copy of the document to the landlord on my instructions to do so and the landlord acknowledged receiving it during the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?

Can the filing fee be recovered?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The tenancy agreement was signed on May 25, 2017 for a fixed one-year tenancy commencing July 1, 2017. The tenancy became month to month after the first year. A security deposit of \$1,497.50 was collected from the tenant which the landlord continues to hold. Rent was originally set at \$2,945.00 per month and was \$3,177.00 at the end of the tenancy. A condition inspection report was done at the beginning and end of the tenancy and the tenant took part in both inspections.

The landlord gave the following testimony. When the tenants moved out of the rental unit, the carpets were dirty and stained. The rental unit was originally built in 2011 and the carpets are original to the rental unit. The landlord points to photos provided on the move-out condition inspection report as evidence to support each of his claims for damages. Several photos of the carpet were referred to showing the damage to the carpets. The landlord provided an invoice from a carpet cleaning service as evidence.

The tenant responded to the carpet claim saying that the rental unit was left in good condition at the end of the tenancy as suggested by the condition inspection report upon move out. The tenant took pride in the condition of the rental unit as he did with every unit he's ever rented. The carpet condition at the end of the tenancy represents normal wear and tear.

The landlord claims that the two doors are noted on the condition inspection report as being damaged with missing deadbolts turn handles. He points to the photos showing the deadbolts as evidence. Also, the landlord claims the lower transition strip on the floor was damaged. During testimony, the landlord was unable to testify where the 'divider' was, either by identifying it in the photos or verbal description. The landlord provided an invoice showing he paid \$898.00 plus GST to repair the doors, deadbolts and dividers. For the doors, the landlord testified there was damage done to the doors but didn't specify which doors were damaged by the tenants.

The tenant testified that the previous property manager, R was made aware the deadbolts were defective. They are all identical and each fell off very soon after the family moved in. The tenant told property manager R right away but was advised the property owner wouldn't do anything about it. He asked for it to be fixed because he was concerned for the safety of his family which includes two young children. The tenant disputes the door damage testifying that the landlord noted the doors throughout the rental unit were either in 'good' or 'fair' condition on move out.

Next, the landlord seeks compensation for a broken garage door. An invoice for \$559.00 plus GST was provided, stating that the garage door was badly damaged. The landlord testified the damage was noted on the condition inspection report in writing as well as photographed. The garage door was off its hinges and hanging. The tenant testified that there were problems with the door since he moved in. He asked the previous property manager, R to have it fixed and R sent a specialist to come take a look early in the tenancy. The company couldn't fix the door while the tenant's goods were in the garage, however the reason the tenant had to store his items there was because the landlord was improperly using one of their rooms as his personal storage. The tenants decided to just live with the broken garage door and use the space as storage.

The landlord claims the tenant broke a window during the tenancy and it wasn't noted on the condition inspection report because the tenants pulled the blind. A photo of the broken window, taken the day following the condition inspection report was provided as evidence. An invoice for \$189.42 was provided to show the landlord paid to have the window fixed. The tenant testified that they were unaware there was a broken window. He wasn't hiding anything and had no idea when it got broken. He denies any responsibility for the broken window.

The landlord seeks \$90.00 for light bulb replacement. He testified there were burnt out or broken light bulbs at the end of the tenancy and points to the condition inspection

report indicating where each issue with bulbs was located. The landlord did not provide any invoice or receipt to show how the \$90.00 total was arrived at. The tenant testified there were burnt out bulbs at the commencement of the tenancy and points to the condition inspection report at move-in as proof. He shouldn't be responsible for replacing bulbs that were either already burnt out or he had to replace for the landlord from the beginning of the tenancy.

Lastly, the landlord testified that there was a verbal agreement with the tenants that the landlord could retain the basement bedroom room in the rental home to store his personal items. When the tenants demanded the landlord remove those items and use the bedroom for themselves, the landlord had to purchase a shed and move his possessions into that shed. The tenant testified there was no such agreement with the landlord allowing him to use a bedroom in the house they had rented out in its entirety. He would never have agreed to such a term, either in the tenancy agreement or verbally. After weeks of asking R, the property manager to tell the landlord to move his possessions, he finally did by moving them into the shed he built on the property.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
 2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
 3. The value of the damage or loss; and
 4. Steps taken, if any, to mitigate the damage or loss.
- Carpet cleaning

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

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. 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).

This same guideline states:

*The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. **Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.** Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy. (emphasis added).*

The addendum to the tenancy agreement states at paragraph 8: should you be vacating at the end of your tenancy, you will be responsible for complete and thorough cleaning throughout the suite: carpet cleaning costs and any other damages caused by neglect, etc. only if applicable. I am satisfied the tenant did not clean the carpets as agreed to in the addendum to the tenancy agreement, breaching the agreement. PG-1 indicates the tenant is responsible for steam cleaning the carpets after a tenancy of one year. I am satisfied the cost of cleaning the carpets, \$326.70 has been verified and I award the landlord **\$326.70** in accordance with section 67.

- Repairing Doors & Deadbolts & Dividers

The onus to prove their case falls upon the applicant. I find it more likely than not that the tenant's version of events is true – that the deadbolts were defective from the

beginning and that the landlord wouldn't fix them during the tenancy. I do not find that the damage to the deadbolts was caused by misuse by the tenants. The condition inspection report presented as evidence by the landlord indicates the doors throughout the rental unit were either good or fair. The landlord did not specifically point out any doors that required repair and the invoice provided by the contractor was ambiguous as to which doors were damaged. Lastly, during the hearing, the landlord was unable to define where the floor partitions were damaged, missing or required repair. Based on the lack of supporting evidence, I find the landlord has failed to establish this portion of his claim. The claim for compensation to repair doors, deadbolts and dividers is dismissed.

- Repairing Garage Door

In the move-out condition inspection report, the landlord provided a photograph depicting a garage door that appears to be off its track and fully unable to close. The report clearly indicates the door was broken at move out while there is no mention of damage, except for what appears to be a notation of paint on the exterior on the move-in condition inspection report. While the tenant testified that he chose to live with the broken door after deciding it was easier to store their possessions in the garage with the broken door, I am satisfied by the evidence that the damage happened while the property was in the possession of the tenants. As PG-1 state: 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 landlord has provided sufficient evidence to satisfy me the value of the damage is **\$586.95** by the invoice provided and I award the landlord this amount pursuant to section 67.

- Repairing Window

Section 21 of the Regulations state that 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. The landlord contends that the window was broken by the tenants during the tenancy however this damage is not noted on the condition inspection report done at the end of the tenancy. I find the landlord has not provided a preponderance of evidence to contradict the condition inspection report that reflects no damage to any of the windows. This portion of the landlord's claim is dismissed without leave to reapply.

- Light Bulbs

During the hearing, the landlord acknowledged that he did not have any invoices to show new bulbs were purchased to replace the ones burnt out during the tenancy.

There is no evidence as to whether incandescent, LED, halogen or fluorescent bulbs were replaced or how much each one costs. Likewise, the tenant points out that upon move in, there were at least 6 bulbs that required replacement. I find that the landlord has not provided sufficient evidence to establish the value of this portion of his claim (Point 3 of the 4-point test) and I dismiss it.

- Storage Shed and moving stuff to storage shed

The landlord relies upon a verbal agreement made between the previous property manager and the tenant as the basis for this claim. The previous property manager was not called to testify regarding this claim, nor did she provide a written statement confirming the landlord's argument.

While he states the tenant agreed to allow the landlord to store his possessions in the basement bedroom, the tenant vehemently denies this, arguing that a tenant rents out an entire rental property and therefore has exclusive possession of it. I would agree, as section 28 of the Act grants the tenant exclusive possession of the rental unit which, by definition, includes all the living accommodations rented or intended to be rented to a tenant. I find that the landlord has failed to prove, on a balance of probabilities that the tenant breached any term of the tenancy agreement, regulations or the Act by insisting the landlord remove his possessions from the rental property. The landlord has failed to prove the existence of the damage (Point 1 of the 4-point test) and this portion of the landlord's claim is dismissed.

The landlord continues to hold the tenant's security deposit of \$1,497.50. In accordance with the offsetting provision of section 72 of the Act, the landlord may retain a portion of the tenant's security deposit in full satisfaction of his monetary order.

The recovery of the filing fee is at the sole discretion of the arbitrator. I find that the landlord was successful in less than half of his claim and I decline to award the landlord recovery of the filing fee.

Item	Amount
Carpet Cleaning	\$326.70
Broken Garage Door	\$586.95
Less security deposit	(\$1,497.50)
Total return of security deposit to tenants	\$583.95

Conclusion

I issue a monetary order in the tenants' favour in the amount of **\$583.95**.

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: August 21, 2020

Residential Tenancy Branch