



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Graceway Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-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 order for unpaid rent in the amount of \$793.00; and for a monetary order for damages in the amount of \$1,490.02, retaining the security deposit to apply to these claims; and to recover the \$100.00 cost of their Application filing fee.

An agent for the Landlord, A.W. ("Agent"), 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 40 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, 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 Agent.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about the hearing process. During the hearing, the Agent 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 April 20, 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 Agent in the absence of the Tenant.

Preliminary and Procedural Matters

The Agent provided the Parties' email addresses in the Application, and confirmed them in the hearing. The Agent also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider the Landlord's written or documentary evidence to which the Agent 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 tenancy agreement states, and the Agent confirmed in the hearing that the fixed term tenancy began on March 15, 2015 and ran until March 31, 2016, and then it operated on a month-to-month basis. The Agent confirmed that the Tenant pays the Landlord a monthly rent of \$2,200.00, due on the first day of each month. The Agent said that the rent was \$2,430.00 at the end of the tenancy. He confirmed that the Tenant paid the Landlord a security deposit of \$1,100.00, and a pet damage deposit of \$1,100.00, which he said the Landlord still holds pursuant to this Application.

The Agent said that the Tenant vacated the rental unit on March 31, 2020, after having given his 20-day notice to vacate on February 29, 2020. The Agent said that the Tenant provided his forwarding address in writing on February 29, 2020. He said that a condition inspection of the rental unit was conducted on March 14, 2015, and that he gave the Tenant a copy of the condition inspection report ("CIR") that was produced. The Agent said that he did not do a move-out condition inspection of the rental unit with the Tenant at the end of the tenancy. The Agent said he proposed dates by text, but that he received no response from the Tenant.

The following is a monetary order worksheet setting out the Landlord's claims:

	Receipt/Estimate From	For	Amount
1	Handyman invoice/email	Installation of sink	\$298.22
2	Glass company invoice	Repair of glass door	\$403.90
3	Painter's invoice	Repair of walls	\$157.50
4	Email w. TT. Agreed on other costs	Cleaning	\$400.00
5	Email w. TT. Agreed on other costs	Garbage removal	\$100.00
6	Email w. TT. Agreed on other costs	Molding repair	\$50.00
7	Email w. TT. Agreed on other costs	Cost of a new sink	\$50.40
8	Email w. TT. Agreed on other costs	6 light bulbs	\$30.00
9	Text from roommate re rent owing	Unpaid rent	\$793.00
		Total monetary order claim	\$2,283.02

#1 Installation of Sink → \$298.22

The Agent said that there was a “big crack” in the sink, and that he had a handyman arrange to buy a new one and reconnect all the piping and hoses. The Agent submitted an email from the handyman’s company providing an invoice number and the total cost, including GST, which came to \$298.22.

The Agent said the rental unit was renovated about 8 or 9 years prior to the hearing date and that the sink was new with this renovation.

In the move-in CIR, the bathroom sink is checked as in good condition at the start of the tenancy. However, there is no information in the move-out section of the CIR about the condition of the rental unit at the end of the tenancy.

The Agent submitted copies of email communication he had with the Tenant in April 2020, about the items and costs that the Landlord has claimed in this Application. This included reference to the sink. In his reply email, the Tenant said:

Hey [Agent], everything looks good. Except the crack in the sink was there when we moved in. If you could please add that to the damage deposit, please. Thank you.

The Agent's answer to the Tenant was:

Hi [Tenant], With regard to the cracked sink, since I was not the one who moved you in, I can only rely on the condition inspection report that you have signed. Please see the attached report that you have signed in 2015 and there is nothing on the report about a cracked sink. If the sink was cracked when you started the lease, [the Landlord] should have replaced it for you.

#2 Repair of Glass Door → \$403.90

The Agent said that both bedrooms had mirrored closet doors, both of which were damaged during the tenancy. In one bedroom, the "...top railing was bent and couldn't be repaired." The Agent said he had the mirror replaced in one bedroom and the rail fixed in the other.

The Agent submitted an invoice from a glass company, which indicated having done the following work:

- Replaced the mirror in the closet door in one bedroom;
- Adjusted four sliding closet doors; and
- Installed a new top guide for one door in another bedroom.

The invoice charged the Landlord \$370.00 plus \$33.90 in taxes for a total of \$403.90.

The CIR from the start of the tenancy indicates that doors and mirrors in the bedrooms were in good condition at that time.

#3 Repair of Walls → \$157.50

The Agent said that the walls in the rental unit were damaged from pin and nail holes. He said he hired the Tenant's roommate to do the painting, and the Tenant prepared it. The Landlord referred me to the aforementioned email, in which the Tenant agreed to reimburse the Landlord for the cost incurred in the items claimed in this Application.

The Landlord submitted a copy of the invoice that the roommate issued for the repair of the walls. In this invoice, the work was referenced as follows:

Extensive patching and repairing of holes" at a rate of \$150.00 plus tax for a total of \$157.50.

#4 Cleaning → \$400.00

The Agent said that there is no invoice for this claim; however, the Tenant agreed that the Landlord would do the cleaning for them. They were given the option to clean the rental unit themselves, but they declined.

The Agent said that the Tenants were there for years and that they had two dogs, which added to the dirtiness of the rental unit. The Agent again pointed to the email chain in which the Tenant agreed to pay this cost.

#5 Garbage Removal → \$100.00

The Agent said that there were furniture, bags of garbage, and plants left behind by the Tenant. He said that the Tenant agreed to pay the \$100.00 charge to have these items removed from the rental unit.

#6 Molding Repair → \$50.00

The Agent said that there were a couple sections of molding that were damaged by the Tenant's dogs, as well as a part having rotted. He said he had to have a section of about 20 feet replaced. The Agent said that the handyman bought the new molding for \$27.00, gave it a coat of paint, and put it back in the wall. His hourly rate was \$30.00. The Agent noted that the Tenant agreed to the \$50.00 charge for this claim.

#7 New Sink → \$50.40

The Agent said that the Caretaker bought a new sink for the rental unit at a hardware store. He noted that the Tenant agreed to pay this cost for a new sink.

#8 Six Light Bulbs → \$30.00

The Agent said that six lightbulbs were burned out in the rental unit at the end of the tenancy. He said the Landlord charges \$5.00 per lightbulb for a total of \$30.00. The Agent noted that in the email chain, the Tenant agreed to pay for the new lightbulbs.

#9 Unpaid Rent → \$793.00

The Agent said that the Tenant did not pay the full rent on March 1, 2020. He said the Tenant paid all but \$793.00 in rent for that month. The Agent said that the Tenant

wished to have this amount owing deducted from the security deposit.

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 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. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

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 ("PG #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, "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 Installation of Sink → \$298.22

I infer from the Parties' email communication about the sink that the Tenant agreed that there was a crack in the sink at the end of the tenancy, despite there not being a move-out CIR before me. I agree with the Agent's statement that if the crack was there at the beginning of the tenancy, that the Tenant had the opportunity to note it at that time; however, he did not do so. I also note that the Tenant did not dispute the need to replace the sink, given the crack, although, he did not agree he was responsible for the crack. Further, the Tenant was apparently able to use the sink for the duration of the tenancy, during which time the sink was cracked.

I find that a crack in a sink is more than normal wear and tear of a rental unit, and therefore, I find that the Tenant is responsible for repairing this damage, pursuant to section 32 of the Act. As noted above, 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. Based on the evidence before me overall, I find on a balance of probabilities that the sink was cracked during the tenancy, and therefore, that the Tenant is responsible for compensating the Landlord for the requisite repair.

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

In PG #40, the useful life of a sink is 20 years. The evidence before me is that the sink was new in 2011, when the rental unit was last renovated, so it was approximately nine

years old at the end of the tenancy. The sink had 11 years or 55% of its useful life left. The CIR indicates that the sink was in good condition at the start of the tenancy, but I have found that it was damaged during the tenancy.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear.

As a result, I find that the Landlord is eligible to claim 55% of the cost of the sink repair from the Tenant, given how much the fixture had depreciated, since it was new. Accordingly, I find the Tenant is responsible for compensating the Landlord for 55% of this cost, or \$164.02. I award the Landlord **\$164.02** from the Tenant for this claim.

#2 Repair of Glass Door → \$403.90

Based on the undisputed evidence before me in this claim, I find on a balance of probabilities that the Agent has provided sufficient evidence to support his burden of proof.

In PG #40, the useful life of glass is 15 years. The evidence before me is that the glass or mirrors in question were new in 2011, so they were approximately nine years old at the end of the tenancy and had six years or 40% of their useful life left. The CIR indicates that the mirrored doors were in good condition at the start of the tenancy, but the Landlord said in the hearing that they needed repair at the end of the tenancy. The Tenant said in the above-noted email to the Agent that everything other than the sink was acceptable to him, including this claim.

As a result, I find that the Landlord is eligible to recovery of 40% of the cost to replace and repair these items for a total of \$161.56. I award the Landlord with recovery of **\$161.56** from the Tenant for this claim.

#3 Repair of Walls → \$157.50

Based on the undisputed evidence before me, I find that the Landlord is eligible for recovery of this claim in the amount of \$157.50. I, therefore, award the Landlord with **\$157.50** from the Tenant in this matter.

#4 Cleaning → \$400.00

Based on the undisputed evidence before me, I find that the Parties agreed to the Tenant paying the Landlord for having cleaned the rental unit at the end of the tenancy. I, therefore, award the Landlord with recovery of **\$400.00** from the Tenant for this claim.

#5 Garbage Removal → \$100.00

Based on the undisputed evidence before me, I find that the Parties agreed to the Tenant paying the Landlord for having removed what the Tenant left behind in the rental unit. I, therefore, award the Landlord with recovery of **\$100.00** from the Tenant for this claim.

#6 Molding Repair → \$50.00

Based on the undisputed evidence before me, I find that the Parties agreed to the Tenant paying the Landlord for having the molding repaired. I, therefore, award the Landlord with recovery of **\$50.00** from the Tenant.

#7 New Sink → \$50.40

As noted above, given the depreciation of the sink over time, the Landlord is eligible for recovery of 55% of the cost of the new sink, since it had already depreciated by 45%. Accordingly, I award the Landlord with recovery of **\$27.72** for this claim.

#8 Six Light Bulbs → \$30.00

According to PG #1, tenants are responsible for “replacing light bulbs in his or her premises during the tenancy”. Therefore, I find that the Tenant was responsible for replacing lightbulbs, as they burned out and making sure they were all working at the end of the tenancy. As a result, I award the Landlord with recovery of **\$30.00** from the Tenant for this claim.

#9 Unpaid Rent → \$793.00

This item was the first thing listed in the Agent’s email to the Tenant about the amount the Tenant owed the Landlord, and for which, the Tenant agreed to pay the Landlord. I, therefore, award the Landlord with recovery of **\$793.00** in unpaid rent from the Tenant.

Summary and Set Off

The Landlord's awards are set out in the following table:

	Receipt/Estimate From	For	Amount
1	Handyman invoice/email	Installation of sink	\$164.02
2	Glass company invoice	Repair of glass door	\$161.56
3	Painter's invoice	Repair of walls	\$157.50
4	Email w. TT. Agreed on other costs	Cleaning	\$400.00
5	Email w. TT. Agreed on other costs	Garbage removal	\$100.00
6	Email w. TT. Agreed on other costs	Molding repair	\$ 50.00
7	Email w. TT. Agreed on other costs	Cost of a new sink	\$ 27.72
8	Email w. TT. Agreed on other costs	6 light bulbs	\$ 30.00
9	Text from roommate re rent owing	Unpaid rent	\$793.00
		Total monetary order claim	\$1,883.80

I award the Landlord with recovery of \$1,883.58, pursuant to section 67 of the Act. The Landlord is also awarded recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act for a total monetary award of **\$1,983.80**.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security and pet damage deposits of \$2,200.00, in full satisfaction of the Landlord's monetary awards.

I authorize the Landlord to retain \$1,983.80 of the Tenant's security and pet damage deposits and I **Order** the Landlord to return the remaining \$216.20 to the Tenant, as soon as possible.

The Tenant is awarded a Monetary Order of **\$216.20** for the remaining amount owing by the Landlord to the Tenant for the outstanding security and pet damage deposits.

Conclusion

The Landlord's claim for compensation for damage or loss against the Tenant is

successful, as the Agent provided sufficient evidence to support the Landlord's claim in the amount of **\$1,983.80**, including recovery of the \$100.00 Application filing fee.

I authorize the Landlord to retain the Tenant's security and pet damage deposits of \$2,200.00 in full satisfaction of the claim. The Landlord is Ordered to return the remaining deposits in the amount of \$216.20 to the Tenant immediately.

The Tenant is granted a Monetary Order under section 67 of the Act for the balance due by the Landlord to the Tenant in the amount of **\$216.20**.

This Order must be served on the Landlord by the Tenant, and it 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: August 18, 2020

Residential Tenancy Branch