



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNDCL-S, MNDL-S, FFL
For the tenant: MNSD, MNDCT

Introduction

The landlord filed their Application for Dispute Resolution (the “landlord’s Application”) on April 14, 2020 for compensation for damage caused by the tenant, holding the pet and/security deposits. They also seek compensation for monetary loss or other money owed. Additionally, they applied for the return of the application filing fee. They provided their evidence to the tenant via registered mail, and the tenant confirmed the same in the hearing.

The tenant filed an Application for Dispute Resolution (the “tenant’s Application”) on May 27, 2020 for an order to return the security deposit, as well as compensation for monetary loss. They provided the landlord notice of this hearing via registered mail on July 27, 2020. The landlord confirmed receipt of the hearing information and evidence provided by the tenant.

The matter proceeded to a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on August 10, 2020. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties presented oral testimony and evidence during the hearing

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage or compensation, applying the security and/or pet deposit, pursuant to section 37 and 67 of the *Act*?

Is the landlord entitled to retain the security deposit held, pursuant to section 38 of the *Act*?

Is the landlord entitled to recover the filing fee for the landlord's Application pursuant to section 72 of the *Act*?

Is the tenant entitled to an order granting a refund of the security deposit pursuant to section 38 of the *Act*?

Is the tenant entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, I only describe those relevant to the issues and findings in this matter.

Both the landlord and the tenant provided a copy of the tenancy agreement. Both parties signed the agreement on December 11, 2019. The tenant's submitted copy bears both signatures. The tenancy started on January 1, 2020 and ran for the fixed term ending on March 1, 2020. The rent amount agreed to was \$1,800.00, payable on the first of each month. The tenant paid a security deposit of \$875.00 and a pet damage deposit of \$875.00 on December 11, 2019.

In the hearing, both parties agreed that the terms set out in the agreement are accurate. The landlord provided that the tenant requested a two-week extension prior to the end of the fixed term. The tenant provided the record to show that this dialogue occurred via email on February 15, 2020. Again, on March 13, 2020, the landlord and tenant agreed to extend the rental agreement to April 1, 2020. The tenant then left the unit on April 1, 2020.

The landlord applied for monetary compensation for damage to the rental unit. On the landlord's Application, they stated: "[The tenant's] dog badly scratched a wooden chair that now needs to be refinished." The pet also left a substantial amount of hair, and they claim for a professional cleaning job amount. They also listed other damage to the unit, and "structural damage" to other pieces of furniture due to heavy weight placed on top.

The landlord initially made their Application for \$700 offset against the security deposit. They provided this was "done hastily to be done within two weeks" as per the

application guidelines. They did a thorough assessment after this, and then provided their monetary claim in detail and referenced with receipts or estimates, on their 'Monetary Order Worksheet' dated July 17, 2020. This sheet sets out the following:

item	for	\$ amount
1	furniture repair	892.50
2	shower curtain	75.03
3	cleaning	180.00
4	comforter dry-clean	50.40
5	affidavit	84.98
6	application filing fee	100.00
	TOTAL	1,382.91

In the hearing, they presented photos showing damage that spanned over the 2.5-month total timeframe. They added that they did not include costs for the kitchen, and they made no claim for walls being painted.

They also provided copies of dialogue they had with the tenant. These are images of text messages. Portions they highlighted in the copies represent what they submit are lies told by the tenant, primarily concerning damage to the items in the unit. Earlier emails in March present dialogue concerning damage to the unit. This identified clutter and "junk on literally every surface and barely space to move". Also: "If you cannot get the apartment into decent shape in the next few days, I will have to ask you to vacate the premises." This dialogue continued through March.

On March 3, 2020, the landlord raised the topic of eviction. The tenant made the promise to call the police if the landlord attempted to break the tenancy agreement. The landlord presents that by the end of March, money was withheld by the tenant. This was the landlord's own full rent amount the tenant was holding until the landlord returned the security deposit. The messaging that continued from this, according to the landlord, was harassment.

The landlord also included an affidavit they swore on July 21, 2020. This attests to the character of the landlord, with supporting statements from others. The exhibits attached also give statements on the character of the tenant.

The tenant prepared a set of submissions and their agent had the opportunity to present this during the hearing. The key points are as follows:

- the landlord applied for \$700.00 in their Application;

- the landlord did not comply with requirements for condition inspection meetings, nor did they abide by the *Act* provisions that there must be documentation;
- the landlord only asked that the tenant “do a quick survey and let [them] know if there is any damage or issues”;
- the landlord retained the additional \$1,050.00 of the security and pet damage deposits;
- the landlord attempted to evict the tenant with very short notice, this due to perceived damages to the unit;
- the tenant “thoroughly cleaned the unit” prior to vacating on April 1, 2020 – they verified this with the building manager;
- the tenant provided their forwarding address to the landlord on April 1, 2020, in writing – they also took the added measure of asking the building manager to do the same.

In the hearing, the tenant submitted that the landlord amending their claim amount to \$1,382.91, from the original claim amount of \$700.00, amounts to an “informal excess”. This is essentially unfair and, and the any amount held by the landlord over the \$700.00 claimed is “illegally held under section 38 [of the *Act*]”.

Secondly, they submit “the Landlord has not provided sufficient evidence to establish [their] entitlement to compensation for damage or loss.” The point to specifics provided by the landlord in evidence:

- “before” and “after” combined photos cannot be verified because there is no report;
- receipts and estimates do not establish a loss amount “beyond reasonable wear and tear or the Landlord’s personal preferences”;
- alleged behaviours, as shown in the parties’ messaging, is irrelevant to the issues in this hearing.

The tenant points to Exhibit “G” in their prepared evidence as showing the building manager stating the unit is “very clean” and nothing is broken.

Exhibit “K” in their evidence shows the landlord notifying the tenant about damages on April 14, 2020. They also informed them that they are filing for dispute resolution to make a claim “to keep part of both your [security] deposit and your pet [damage] deposit.” They offered to clear the matter for \$300.00 yet stated they would go for their full estimated amount of “about \$470” through dispute resolution. This email attached the photos the landlord provided as evidence for this hearing.

The tenant pointed to relevant pieces of legislation in making their submissions:

- sections 24 and 36 of the *Act* prescribe the landlord's offer of at least 2 opportunities for the parties to inspect the unit, both at the start and end of the tenancy;
- sections 23 and 35 provide that the landlord and tenant must sign a condition inspection report, and the landlord must provide a copy to the tenant;
- section 38 sets the landlord's obligation to return the security deposit within 15 days of the later of the end of tenancy, or the tenant providing a forwarding address – failure to return or make a claim against the deposit doubles the deposit.

The tenant's monetary claim totals \$2,900.00. This is for the portion of the deposits claimed by the landlord (\$700.00); double the amount of the remainder (\$2,100.00); as well as recovery of the filing fee (\$100.00).

Analysis

The tenant raised the issue of the landlord making an adjustment to their initial claim amount, from \$700.00 on their Application, increased to \$1,382.91 by the time of the hearing. By Rule 4.2 of the Residential Tenancy Branch Rules of Procedure I allow this amendment. The hearing proceeded based on this claimed amount.

The tenant's submission concludes with their monetary amount claimed, including \$100.00 for the Application filing fee. The tenant did not apply for reimbursement of this amount initially, and they did not speak to this as an amendment in the hearing. I do not allow for this where it was not identified specifically by the tenant in the hearing.

To be successful in a claim for compensation for damage or loss 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.

To determine any outstanding amount of compensation owing, I shall first determine accountability for any damage that stemmed from the tenancy, then I may determine of the amount of compensation that is due. I establish this value by a review of the evidence presented.

The party seeking compensation should present compelling evidence of the value of damage or loss in question. Specifics on the landlord's claims, and my assessment of the finer points, are as follows:

- Furniture repair
claimed amount: \$892.50 total

Residential Tenancy Policy Guideline 40 covers the useful life of building elements. This is a guideline intended to provide a statement of the policy intent of the *Act*. I find this is a relevant consideration with respect to the desk and table that the landlord stated were antique. The guideline provides that a useful life in years of furniture is 10 years.

The landlord provided evidence in the form of photos showing cracks on the dresser and desk. These are primarily across the surface of the item.

I find the damage or loss is not solely attributable to the actions of the tenant. The evidence shows some dialogue from the landlord on storage items, those which at one time belonged to the tenant's parent. I am not satisfied the storage items put such pressure on the furniture surfaces that they would completely crack across the surface.

I consider the age of the pieces as more likely to contribute to these cracks. I find the photos give some indication on the items' age; however, more prevalent is their condition. I find the items are more disposed to breakage.

There is nothing to establish the value of the item; moreover, I am not satisfied they can be categorized as "antique". I perceive that the cost to refinish or repair the items is more than the actual item. To refinish and repair would not be an effort at minimizing the damage which is an important element for the landlord to establish in this claim for compensation.

For the materials and effort needed by the landlord to make the dresser and desk still usable – even beyond their useful life – I award the nominal amount of \$100.00. The utility of the items is in question, where it appears they cannot sustain an ample amount of weight.

The landlord provided evidence that shows scratches across the seat surface of a kitchen chair. They claim the damage is from the pet of the tenant; however, I find the scratches are not those left by paw marks. As such, I cannot attribute these scratches to any action or inaction of the tenant.

- shower curtain
claimed amount = \$75.03

I accept the photo evidence that there were stains on the shower curtain; however, I am not satisfied this warranted replacement of the curtain. There is no evidence to show this is tied to the brief tenancy in question here. I dismiss this portion of the claim with no evidence to show the damage results from the tenant's breach of the tenancy agreement.

- cleaning
claimed amount = \$180.00

I find the landlord here has not presented compelling evidence of a loss. The value of \$180.00 for what the landlord presented for "deep cleaning" is not established in the evidence. Based on my review of the photos and video, I find it implausible that a severe amount of cleaning was needed in the unit.

I find deep cleaning is necessitated by an extreme amount of residue or other materials left behind that constitute a danger. There is no evidence of that here.

For the landlord's efforts, I find \$90.00 is an appropriate amount. This is a nominal amount for the landlord's claim.

- comforter dry-clean
claimed amount = \$50.40

I find the landlord established the need for this specialized cleaning. Its value is established in the evidence; the need for the cleaning is established in the photo provided by the landlord. This is a cost that shall rightfully be borne by the tenant.

- affidavit
claimed amount = \$84.98

The *Act* does not provide for recovery of other costs associated with preparation for the hearing. Therefore, this cost is not recoverable and shall not be borne by the tenant here.

In sum, the landlord has presented enough evidence to show that some of the damage or loss in question is due to the actions or inactions of the tenant during the tenancy. By my findings, the landlord receives the amount of \$240.40 compensation on their claims.

As the landlord was partially successful in their application, I grant the landlord's claim for recovery of the \$100.00 filing fee.

The *Act* section 35 sets out the provisions for the parties on completing a condition inspection of the rental unit at the end of a tenancy:

- (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
 - (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

There is evidence of a walkthrough with the building manager – the tenant presented this as Exhibit “G” in their evidence. However, I find the landlord did not provide two opportunities for a formal condition inspection. More importantly, the landlord did not complete a condition inspection report.

There is also a requirement in place for the beginning of the tenancy, governed by section 23. I find the landlord did not provide a condition inspection report at the beginning of the tenancy.

The *Act* section 36(2) sets out the consequences for the landlord for the inspection requirements not being met:

- (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
 - (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
 - . . .
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

With the landlord not meeting inspection requirements, they forfeited their right to claim against the security deposit and/or pet deposit. They must return both deposits to the tenant. This total is \$1,750.00.

The tenant applied for double of a portion of the amount of the combined deposits.

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an application for dispute resolution for a claim against any security deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

The tenancy ended on April 1, 2020, and the landlord made their application for an amount against the security deposit on April 14, 2020. This is within the timeframe established in the *Act*; therefore, the tenant is not entitled to double of any portion of the deposit. The base amount of \$1,750.00 return to the tenant does not double by section 38.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. I award the landlord compensation in the amount

of \$340.40 as set out above. The tenant has established their right to the return of the deposits, for \$1,750.00. After setting off the security deposit, the balance is \$1,409.60 – this is the monetary amount I grant to the tenant.

I grant the tenant a monetary order for \$1,409.60. This is the difference between the claims of each party.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of \$ 1,409.60 as outlined above. The tenant is provided with this Order in the above terms and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 2, 2020

Residential Tenancy Branch