



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent, damage to the rental unit, cleaning costs; and, authorization to retain the tenant's security deposit.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the tenant received the landlord's proceeding package and evidence. Although the tenant had not provided a forwarding address to the landlord, the landlord determined the tenant's place of employment address by way of her own research and sent her hearing package to the tenant using the tenant's place of employment address via registered mail. Section 89 provides for the ways an Application for Dispute Resolution must be served upon the other party. Section 89(1) provides that an Application for Dispute Resolution concerning a monetary claim must be served either in person or by registered mail sent to the tenant's forwarding address or place of residence, or as ordered by the Director. Sending an Application for Dispute Resolution to the tenant's place of employment address, if that address was not provided by the tenant as her forwarding address, does not comply with section 89(1). However, since the tenant received the landlord's materials and confirmed she was prepared to respond to them, I deemed her sufficiently served pursuant to the authority afforded me under section 71 of the Act.

The tenant confirmed that she had not provided any rebuttal evidence prior to the hearing and that she intended to provide her position orally during the hearing.

The hearing process was explained to the parties and the parties were permitted the opportunity to ask questions.

I heard from the parties that the tenant vacated the rental unit on June 1, 2018 although her notice to end tenancy indicated she would be ending the tenancy effective June 15, 2018. The landlord filed this Application for Dispute Resolution on May 6, 2020; thus, it was filed within the statutory two year time limit for making a claim and I continued to hear this matter.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover the amounts claimed against the tenant?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The parties entered into a tenancy agreement that commenced on June 1, 2015. The tenant paid a security deposit of \$462.50. The tenant was initially required to pay rent of \$925.00 on the first day of every month. The rent was set to increase to \$950.00 starting June 1, 2018.

The parties participated in a move-in inspection together and a move-in inspection report was prepared and signed.

On May 15, 2018 the tenant gave the landlord a notice to end tenancy effective June 15, 2018. In the tenant's notice, the tenant stated she would be moving her possessions out on June 1, 2018 and then would return to clean the unit in the following two weeks. The landlord informed the tenant that the tenant's notice would have to be effective June 30, 2018; however, the landlord tried to set up showings in an effort to re-rent the unit sooner. The tenant requested the landlord not do any showings until after they vacated on June 1, 2018. The tenant left the keys in the rental unit on June 1, 2018 and did not return to the rental unit.

The landlord testified that she attempted to set up a move-out inspection, via email, on June 11, 2018 and then June 13, 2018 because the tenant did not provide a forwarding address but the tenant did not respond to her emails. The landlord did not attempt to schedule a move-out inspection prior to June 1, 2018. The tenant did not deny that she did not provide the landlord with her forwarding address and the tenant testified that she

chose not to return to the rental unit or participate in the move-out inspection after June 1, 2018 as she found the landlord aggressive but in making that decision she was prepared to accept extinguishment of her right to return of the security deposit.

The landlord inspected the rental unit without the tenant present on June 15, 2018 and prepared a move-out inspection report.

Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

Unpaid rent for June 2018 -- \$950.00

The landlord suffered a vacancy and loss of rent for the month of June 2018 due to the tenant's short notice to end tenancy and the tenant's refusal to permit showings to prospective tenants before June 1, 2018 and the landlord seeks to recover this loss from the tenant.

The tenant accepted responsibility to compensate the landlord for the unpaid rent for June 2018.

Carpet cleaning -- \$157.50

The landlord submitted the carpets were not cleaned and there was evidence the tenant had a cat in the rental unit given the cat fur found in the rental unit. The landlord seeks to recover the carpet cleaning cost from the tenant.

The tenant took responsibility to compensate the landlord for the carpet cleaning.

Cleaning -- \$245.00

The landlord submitted the tenant did not leave the rental unit reasonably clean and the landlord seeks to recover the cost to have the unit cleaned.

The tenant took responsibility for this expense.

Wall repair -- \$78.75 + \$88.89

The landlord submitted the tenant damaged the wall and the landlord seeks the cost to purchase paint and supplies and labour to patch and paint the wall.

The tenant was agreeable to compensating the landlord for these expenditures.

Toilet seat -- \$41.42

The landlord submitted the toilet seat was removed and replaced with a padded seat by the tenant during the tenancy. The landlord testified the toilet seat provided to the tenant was approximately one year old when the tenancy started. The landlord described the padded seat as "gross". The landlord purchased a new toilet seat similar to the one that had been provided to the tenant.

The tenant was not agreeable to compensating the landlord with a new toilet seat. The tenant testified the toilet seat provided with the rental unit by the landlord broke where it clamps to the toilet bowl and she replaced it with a new one at her own expense during the tenancy.

Showerhead replacement -- \$40.31

The landlord submitted that the shower head provided with the rental unit was a nice handheld variety that was fairly new at the start of the tenancy and at the end of the tenancy the landlord found the tenant had replaced it with a cheap plastic shower head. The landlord seeks to recover the cost to purchase a new similar showerhead to the one she provided to the tenant.

The tenant was not agreeable to compensate the landlord for a new showerhead. The tenant testified that the shower head provided to her was an old rusty showerhead most likely original to the construction of the building and not a nice handheld kind as described by the landlord. The tenant replaced it with a new one at her own expense.

Sink/shower plugs – the landlord withdrew this claim during the hearing.

Light bulb replacement -- \$5.67

The landlord submitted that there was a burned out light bulb in the living room at the end of the tenancy and the landlord seeks to recover the cost to purchase a new light bulb from the tenant.

The tenant acknowledged there was a burned out light bulb at the end of the tenancy but the tenant did not take responsibility to compensate the landlord for it because using the lights and having bulbs burn out amounts to normal wear and tear.

Outdoor rug – the landlord withdrew this claim during the hearing.

Shadow boxes – \$20.00

The landlord submitted there were three shadow boxes on the wall at the start of the tenancy and they were gone at the end of the tenancy and all that remained were the holes from the screws. The landlord found similar shadow boxes at a garage sale that she purchased for \$20.00 and she seeks to recover the cost from the tenant.

The tenant acknowledged the shadow boxes were removed and given away in error and she agreed to compensate the landlord to purchase replacement shadow boxes.

Patio door handle – The landlord withdrew this claim during the hearing.

Sliding basket in bathroom vanity -- \$42.55

The landlord submitted that there had been a metal sliding basket in the bathroom vanity for several years prior to the tenancy and that at the end of the tenancy it was gone. The only thing left in its place were the screw holes where it was attached. The landlord seeks to recover the cost to purchase a new similar basket.

The tenant denied removing a metal basket from the bathroom vanity. The tenant stated there was not one there when the tenancy started and she purchased her own plastic baskets.

The landlord responded by stating that if the basket was not there at the start of the tenancy the landlord would have recorded the screw holes on the move-in inspection report.

Table and chairs -- \$200.00

The landlord submitted that there was a table and chair set left in the storage locker for the rental unit and the table and chairs were missing at the end of the tenancy. The landlord stated the tenant had told her somebody must have stolen them. The landlord acknowledged the tenancy agreement does not indicate any furniture was provided to

the tenant and the table and chairs is not indicated on the move-in inspection report. Nor, is there any indication in the tenancy agreement that the landlord was storing the landlord's property in the rental unit or the storage locker.

I informed the landlord that my jurisdiction is limited to resolving disputes concerning the tenancy agreement, the Act or its Regulations. As such, an applicant must be able to demonstrate violation of the tenancy agreement, the Act or the Regulations by the other party in order to succeed in a monetary claim made under the Act. Since the tenancy agreement did not indicate the tenant was provided a table and chair set as part of the tenancy or that the landlord was entitled to storage of table and chairs in the rental unit or the storage locker associated with the rental unit, I informed the landlord that there did not appear to be any violation of the tenancy agreement, the Act or the Regulations that I could see and I declined to accept jurisdiction to resolve this matter.

If the table and chairs were lent to the tenant for her use outside of the tenancy agreement, or a storage agreement outside of the tenancy agreement, there would be a matter to enforce in the appropriate forum.

Analysis

Based on everything before me, I provide the following findings and reasons.

The tenant acknowledged liability or was agreeable to compensating the landlord for some of the losses claimed by the landlord. Nothing came to my attention that would lead me to find the landlord was not otherwise entitled to recovery of those amounts. Therefore, I award the landlord the amounts claimed and agreed to by the tenant, namely the: unpaid rent for June 2018; carpet cleaning; cleaning; wall repair; and, replacement of the shadow boxes.

The landlord withdrew recovery of other amounts claimed for sink/tub stoppers, an outdoor rug, and a patio door handle, and I dismiss those claims without leave.

As for the claim related to the missing table and chairs, I decline jurisdiction to resolve that issue for reasons provided in the "Background and Evidence" section of this decision.

As for the claims that the tenant opposed, being the claim for a replacement toilet seat, replacement shower head, and replacement basket in the bathroom vanity, I set out the landlord's burden of proof below and follow that with my analysis.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

It is important to note that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged, or is missing, and replacement is warranted, an award will generally take into account depreciation of the original item. To award the landlord full replacement value of certain building elements that were years old would result in a betterment for the landlord and would be unjust. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation where necessary.

Toilet seat

It was undisputed that the tenant had replaced the toilet seat during the tenancy and the tenant replaced the hard plastic seat provided by the landlord with a padded seat. Usually, a toilet seat is replaced out of necessity (i.e.: broken) or preference. Replacement of a toilet seat that has broken due to malfunction or wear and tear would be at the landlord's expense under the landlord's obligation to repair and maintain the property.

The reason for replacing the toilet seat, as provided by the tenant during the hearing, was that the clamps broke. Age and wear and tear may result in broken clamps but misuse may have the same result. The move-in inspection report only reflects that the toilet seat was in "good" condition at the start of the tenancy and I am unable to determine whether it was older or newer.

The tenant decided to pay for a new toilet seat at her own expense and if the clamps on an old seat broke due to no fault of her own it does not make sense to me that she would absorb this expenditure. Rather, I would expect that a tenant in that situation

would notify the landlord and request the landlord install a new toilet seat. Also of consideration, is the tenant replaced the hard plastic seat with a padded seat which, I find, points to the tenant having a preference for a different type of seat. All these things considered, I find, on a balance of probabilities, that the tenant took it upon herself to change the toilet seat to suit her preference or she is responsible for the broken clamps. Therefore, I find the tenant is responsible for restoring the rental unit with a hard plastic type of toilet seat.

In awarding the landlord compensation for purchasing a new plastic toilet seat, I find it appropriate to take into account the depreciation of the former toilet seat. The landlord stated the toilet seat was approximately one year old when the tenancy started, meaning the toilet seat was likely installed in 2014 and the landlord had to purchase a new seat four years later in 2018. Policy guideline 40 does not provide an average useful life for toilet seats in particular. As such, I estimate that a 2014 toilet seat would have been depreciated approximately 50% by 2018, therefore, I award the landlord 50% of the amount expended on a new toilet seat, or \$20.71.

Shower head

It was undisputed that the tenant replaced the shower head during the tenancy; however, the parties were in dispute about the age, condition and type of shower head that was in the rental unit when the tenancy started. The move-in inspection report describes the shower head as being in "good" condition but I am unable to determine whether it was old or newer or the type of showerhead (ie: handheld or stationary).

The tenant stated the shower head was rusty; however, that was not described on the move-in inspection report. Also, if the shower head was old and rusty, and replacement was in order, I would expect the tenant would seek the landlord to replace it rather than the tenant expending her own money to purchase a new one. As such, I find on a balance of probabilities, that the landlord's submissions are more consistent with the move-in inspection report and I accept that the shower head was a newer handheld one at the start of the tenancy.

For reasons provided under the "toilet seat" section, I find it appropriate to take into account depreciation of the shower head in awarding the landlord compensation. Policy guideline 40 provides that "faucets" have an average useful life of 15 years and I apply that approximation to the shower head. As such, I find the shower head was likely 1/3 depreciated by the end of the tenancy and I award the landlord 2/3 of the cost to purchase a new shower head, or \$26.87.

Light bulb

The parties provided consistent submissions that there was one burned out light bulb in the living room at the end of the tenancy. The tenant was of the view it burned out during the tenancy due to normal wear and tear.

Residential Tenancy Policy Guideline 1: *Landlord & Tenant – Responsibility for Residential Premises* provides the following information and policy statements with respect to light bulbs, as reproduced below:

LIGHT BULBS AND FUSES

1. The landlord is responsible for:

- making sure all light bulbs and fuses are working when the tenant moves in.
- replacing light bulbs in hallways and other common areas like laundry and recreational rooms; and
- repairing light fixtures in hallways and other common areas like laundry and recreational rooms.

2. The tenant is responsible for:

- Replacing light bulbs in his or her premises during the tenancy,
- Replacing standard fuses in their unit (e.g. stove), unless caused by a problem with the stove or electrical system, and
- Making sure all fuses are working when he or she moves out, except when there is a problem with the electrical system.

[My emphasis underlined]

In keeping with policy guideline 1, I find the tenant ought to have replaced the light bulb during her tenancy and I award the landlord the cost of a new light bulb, as claimed.

Sliding basket in bathroom vanity

The parties provided opposing submissions that there was a metal sliding basket in the bathroom vanity when the tenancy started. The move-in inspection report does not include sufficient detail for me to make a determination as to the existence of the basket. The landlord pointed to four screw holes left in the bottom of the vanity as evidence that the basket was attached to the bathroom vanity.

It is possible there was a basket in the vanity and its existence was not recorded on the move-in inspection report; however, its absence from the report also means the condition of the basket is not recorded either. The landlord is seeking to recover the cost to purchase a new similar type of basket from the tenant; however, considering the original basket was already several years old, I find the claim for the cost of a new one is unreasonable especially when the condition of the basket is unknown to me as well.

Overall, I find the lack of evidence makes it very difficult for me to make a reasonable approximation as to the landlord's loss, if any, and I must dismiss this claim since the landlord did not sufficiently prove her entitlement.

Security deposit, filing fee and Monetary Order

Where a tenant does not participate in a move-in or move-out inspection with the landlord despite being given two opportunities the tenant extinguishes their right to return of the security deposit. Also, if a tenant does not give the landlord their forwarding address within one year of the tenancy ending the tenant extinguishes their right to return of the security deposit.

I am of the view the landlord would have been well served to schedule the move-out inspection with the tenant prior to June 1, 2018 since the landlord could have served the tenant at the rental unit address since she was still residing in the rental unit until June 1, 2018. Nevertheless, it is clear the tenant extinguished her right to return of the security deposit by not providing the landlord with a forwarding address, in writing, within one year of the tenancy ending. As such, I find the landlord already has a lawful right to retain the security deposit and the landlord does not require my authorization to retain it. However, in providing a Monetary Order to the landlord, I take into account that the landlord has received \$462.50 from the tenant and I apply that amount as a partial offset of the landlord's awards.

The landlord's application had merit and I award the landlord recovery of the \$100.00 filing fee.

In keeping with all of the above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent – June 2018	\$ 950.00
Carpet cleaning	157.50
Cleaning	245.00
Wall repair	167.64
Toilet seat	20.71
Shower head	26.87
Light bulb	5.67
Shadow boxes	20.00
Filing fee	<u>100.00</u>
Sub-total	\$1693.39
Less: security deposit	<u>(462.50)</u>
Monetary Order	\$1230.89

Conclusion

The landlord is provided a Monetary Order in the amount of \$1230.89, after taking into account the landlord has retained the security deposit, to serve and enforce upon the tenant.

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: September 23, 2020

Residential Tenancy Branch