Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of $4,086.02 for damage to the unit, site or property, to retain the tenant's security deposit and pet damage deposit towards any amount owing, and to recover the cost of the filing fee.

The landlord and the tenant attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The hearing commenced on July 6, 2020 and after 60 minutes, the hearing was adjourned to allow additional time to consider testimony and documentary evidence from the parties. An Interim Decision dated July 6, 2020 was issued, which should be read in conjunction with this decision. On September 1, 2020, the parties reconvened and as the landlord was currently deployed and by consent of the parties, the matter was adjourned again. A second Interim Decision dated September 1, 2020 was issued, which should be read in conjunction with this decision. On October 13, 2020, the parties reconvened and after 44 minutes, the hearing concluded.

Both parties confirmed that they were served with and had the opportunity to review the documentary evidence from the other party. Given the above, I find there are no service issues and that the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses during the hearing. The parties confirmed their understanding that the decision would be emailed to the parties. Any applicable orders will be emailed to the appropriate party for service on the other party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The first fixed-term tenancy agreement began in May 2015 and the most recent tenancy agreement was a month to month tenancy, which began on December 1, 2019. Monthly rent was $1,127.50 per month and was due on the fifth day of each month. The tenant paid a security deposit of $600.00 and a pet damage deposit of $300.00 at the start of the tenancy, which the landlord continues to hold. The total combined deposits are $900.00 (combined deposits).

The landlord's monetary claim for $4,086.02 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Flooring repair	$658.51
2. Flooring repair	$39.99
3. Shower repair and light bulbs	$61.58
4. Shower repair	$25.33
5. Faucet replacement	$262.08
6. Fireplace glass	$63.53
7. Labour	$2,875.00
8. Filing fee	$100.00
TOTAL	**$4,086.02**

Firstly, the tenant did not agree to any of the items being claimed by the landlord.

Regarding item 1, the landlord has claimed $658.51 for materials for a repair to the flooring of the rental unit. The landlord testified that the floors were 1 or 2 years old at the start of the tenancy in May 2015. The landlord submitted a copy of the incoming Condition Inspection Report (CIR) dated May 15, 2015 (incoming CIR). The landlord admitted that no outgoing CIR was completed as the landlord stated it was “not necessary” during the hearing and that they were deployed at the time and could not complete the outgoing CIR as the landlord was onboard a ship. Although the landlord wrote “See Annex A” on the incoming CIR, I note that document “Annex A” was not created until February 24, 2020, which was the date the landlord filed their application. In addition to the above, I note the CIR has no date for the outgoing CIR portion, and no signatures by either party for the outgoing portion of the CIR. As a result, I will address the landlord’s failure to complete the outgoing CIR later in this decision.

The incoming CIR portion was also not filled out completely as required, which will also be address later in this decision. Instead, the landlord made the decision to only make 10 entries as follows on the incoming CIR:

1. Section titled Kitchen/Cabinets and Doors the landlord writes “Knob on furnace room door M” (missing)
2. Section titled Kitchen/Oven the landlord writes “melted button”
3. Section titled Kitchen/Closet(s) the landlord writes “hole under shelf D” (damaged)
4. Section titled Kitchen/Lighting Fixtures/Bulbs the landlord writes “1 Bulb needs replacing M” (missing)
5. Section titled Living Room/Floor Carpet the landlord writes “scratches on floor S” (scratched)
6. Section titled Living Room/Lighting Fixtures/Bulbs the landlord writes “one bulb needs replacing M” (missing)
7. Section titled Main Bathroom/Windows/Coverings/Screens the landlord writes “hole in screen B” (broken)
8. Section titled Bedroom (2)/Floor/Carpet the landlord writes “dent in floor D” (damaged)
9. Section titled 3rd bedroom the landlord writes “dent in floor D” (damaged)
10. Section titled Repairs to be completed at start of tenancy the landlord writes “light bulbs to be replaced.”

The landlord presented one photo titled “Floor Damage” which is a close up of laminate flooring which the landlord stated showed some swelling and a chip. The room is not listed on the photo. The landlord stated that the laminate flooring was 11mm or 12mm

and was located in the kitchen and dining room only. The landlord testified that they changed the laminate flooring to tile after the tenancy ended. The landlord referred to a receipt which indicates 11 tiles in the amount of $339.68 and mortar in the amount of $83.88. The landlord also stated that the $5.98 amount for concrete does not apply and that the item should be reduced by $5.98 as a result. The landlord also testified that they attempted to obtain the same laminate flooring but were unable to find it.

The tenant's response to item 1 was that there were many gaps in the flooring during the tenancy and that the laminate was not professionally installed due to the number of gaps between the laminate floor boards and that with any spillage, the spills would enter the laminate flooring immediately. The tenant also did not agree that the photo showed anything more than reasonable wear and tear of the flooring and that the swelling would only be due to incorrect installation of the laminate flooring and that with normal use, had the flooring been installed professionally, swelling would not have occurred. The tenant stated that they did not abuse the laminate flooring.

Regarding item 2, the landlord has claimed $39.99 for the cost of grout for the tile flooring installed, that was referred to in item 1 above. Three items are listed on the receipt submitted in evidence for this item; which are:

1. Bucket
2. Grout saw
3. Grout

The landlord testified that the dog had urinated on the flooring; however there were not additional photos to show the extent of the damaged flooring as claimed by the landlord. The landlord stated that they would not have pulled up the flooring unless they had to.

The tenant's response to item 2 was that they had an older dog but they were with him a lot and did not leave their dog alone for hours and hours at a time. The tenant also stated that they find it unreasonable that the landlord would not have any tools as a landlord. The landlord responded by stating that they purchased the special tools required for the tile installed and that tile was installed as the laminate flooring was no longer available by the end of the tenancy.

Regarding item 3, the landlord has claimed $61.58 for a shower repair and light bulbs. The landlord presented a receipt which indicates grout remover and light bulbs; however, confirmed that the "Energizer" amount of $9.78 plus eco fee of 14 cents

should be removed from the receipt, which totals $72.53. In addition, the landlord was unsure what the “Ultra 16x2” portion of the receipt related to during the hearing.

The landlord presented a photo, which the landlord testified showed that the tenant painted over the bathroom tile grout lines. The landlord stated that the paint had to be removed from the grout line and the grout was not cleaned before the tenant decided to paint over the grout lines without permission. The landlord stated that the tenant painted over the mould and mildew on the grout versus cleaning it.

The tenant’s response to this item was that they used a grout pen and admits it was a “disaster” and stated that there was no discussion at the start of the tenancy regarding upkeep of the rental unit. The tenant stated that replacing grout 5 years after it is installed should be considered wear and tear.

Regarding item 4, the landlord has claimed $25.33 for grout sealer related to the shower repair. The landlord testified that the grout was sealed at the start of the tenancy and once again after the tenant’s painting of the grout was removed, cleaned and then sealed again. The landlord stated that removing grout from tiles every 5 years is ridiculous to suggest and that the tenant just decided not to clean the grout at all.

The tenant’s response to this item was to quote from a flooring blog that grout should be sealed, which the landlord testified they did do at the start of the tenancy.

Regarding item 5, the landlord reduced this portion of their claim from $262.08 to $156.79 as the landlord was able to find a kitchen faucet with pullout sprayer on sale. The landlord referred to a photo showing a missing button on the pullout sprayer and the landlord stated that the last faucet was purchased in 2018 so the faucet was only 2 years old. The landlord also stated that the pullout sprayer was inoperable and while there was no receipt provided in evidence, the landlord testified that it was purchased on June 29, 2020 at Lowes and was a similar quality to the original faucet.

The landlord stated that the renovations to the rental unit made before the start of the tenancy in 2015 included flooring, bathroom, most plumbing, hot water heater, laundry replaced, and a wall was moved.

The tenant’s response to this item was that the landlord removed the back off the pullout sprayer and the that the tenant never used it so doesn’t feel it is their responsibility.

Regarding item 6, the landlord has claimed $63.53 for broken fireplace glass. The landlord testified that one side of the fireplace tempered glass doors was shattered, and a photo was provided, which supports that the glass had broke. The landlord stated that the house was purchased in 2011 and the age of the home was unknown, but later said the home was built in 1974. The landlord described the fireplace as a regular wood burning fireplace. The landlord stated that there was no receipt of the glass replacement.

The tenant's response to this item was that the glass was original to the house as it was brass with glass and that glass could shatter with age. The tenant testified that the chimney and flue were dirty and not working so the tenants rarely had a fire because of that. The tenant testified that on the day the glass broke, they decided to have a fire and it was not a very big wood fire and when they were just sitting there, the glass exploded into a million pieces. The tenant denies that they did anything wrong to the fireplace glass.

Regarding item 7, the landlord has claimed $2,875.00 for labour that the landlord states was calculated at $25.00 per hour. The landlord submitted a document entitled "Time Sheet" as a spreadsheet. While the landlord has a total of 115 hours on the document by person, there is no breakdown of what items were cleaned and by whom, only dates and the number of hours by person. The landlord stated that the actual number of hours was over 200; however, the landlord is only seeking the 115 listed in the spreadsheet as the landlord did not submit an updated timesheet prior to the hearing. The landlord summarized the timesheet by stating that there was lots of cleaning and repairing of walls and that there was an exchange/barter for services with the other three people, so the amount of $2,875.00 was not paid in cash or by credit card and the landlord submitted no receipts to support this item.

The landlord referred to 11 photos during the hearing. One photo showed fingerprints and some holes in the wall. Regarding the size of those holes, compared to the lighting switch, the holes appear small and are near the corner of the wall where nails or tacks may have been. Other photos appear to show minor marks, and what the landlord claims was large screw holes, which does not appear to be supported by the photo evidence, as the nails appear to be small finishing nails compared to the size of the ledge above the holes, which I will address later in this decision.

The photo of the broken blind show older blinds based on the colour of the pull string in the photo and was missing parts. The landlord stated that the blinds were already there in 2011 when the landlord purchased the home. Some other photos show rust and

some mould under a sink inside the cupboard/cabinet, and in the kitchen and master bedroom the landlord claims there were deep gouges out of the wall, which I will address later in this decision. Finally, there were some oven photos, which show a dirty oven and oven racks.

The tenant's response to this item was that the photos support general wear and tear. The tenant denies damaging the walls beyond wear and tear and stated that the timesheet did not include any breakdown of hours spent on what items. The tenant also raised the issue of interior paint being beyond the useful life of 4 years. The tenant also claims that they cleaned; however, moisture in the rental unit was an issue given the single pane windows. The parties also agreed that there was no oven hood fan in the rental unit to exhaust steam while cooking. The landlord later stated that there was a window inside the kitchen that could be opened for fresh air. The tenant also stated that the photos do not show gouges as claimed by the landlord. The tenant stated that it was their understanding that some nail holes are acceptable and can be expected during a tenancy. In addition, regarding the oven, the tenant claims the grease shown in the photos was between the oven glass and could not be cleaned.

The tenant stated that the landlord does not want to be responsible for any maintenance as a landlord for a tenancy that lasted 5 years. The tenant stated that they were respectful and did not damage the rental unit. The landlord stated that they were not expecting to do fairly extensive renovations after the tenant vacated and that the damage was excessive and there were large holes in the walls and that the tenant's statements are not true.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

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 sections 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 what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Firstly, I will address the lack of an outgoing CIR. Section 35 of the Act applies and states:

> **Condition inspection: end of tenancy**
>
> **35**(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.**
>
> [Emphasis added]

I find the landlord breached section 35 of the Act by failing to complete the outgoing portion of the CIR, and I find that being at sea is not an acceptable excuse, as the landlord could have and should have had an agent complete the outgoing CIR on behalf of the landlord. As a result, I afford no weight to the CIR spreadsheet completed after the tenancy ended as it was not completed in accordance with section 35 of the Act. Given the above, **I caution** the landlord to comply with section 35 of the Act in the future.

I will now address each item of the landlord's claim:

Item 1 - The landlord has claimed $658.51 for materials for a repair to the flooring of the rental unit. The landlord testified that the floors were 1 or 2 years old at the start of the tenancy in May 2015. The landlord submitted a copy of the incoming Condition Inspection Report (CIR) dated May 15, 2015 (incoming CIR). I have considered the incoming CIR and find that there was already a dent in the floor at the start of the tenancy and scratches in a different room flooring of the rental unit. Furthermore, I find the one photo submitted was too close and that the chip could have been the dent referred to the in the incoming CIR and that the landlord's evidence fails to support the need to replace the flooring as a whole. I also agree with the tenant that the photo supports that the laminate flooring appears not to have been installed professionally as there are large gaps showing between the laminate boards in the one photo before me.

Given the above, I find the landlord has not met the burden of proof for this item and as a result, I dismiss this item, without leave to reapply, due to insufficient evidence.

Item 2 - Although the landlord has claimed $39.99 for the cost of grout for the tile flooring installed, consistent with my finding for item 1, I dismiss this item as I find the landlord failed to provide sufficient evidence that the flooring had to be replaced as a whole. I find it more likely than not, that the landlord made the decision to renovate the rental unit versus the tenant damaging the flooring and as a result, I dismiss this item as I dismiss item 1, due to insufficient evidence, without leave to reapply.

Item 3 - The landlord has claimed $61.58 for a shower repair and light bulbs. Although the landlord presented a receipt which indicates grout remover and light bulbs; due to the landlord confirming that the "Energizer" amount of $9.78 plus eco fee of 14 cents should be removed from the receipt, and considering that the landlord was unsure what the "Ultra 16x2" portion of the receipt related to, which I will address further below.

I find the photo supports that the tenant painted over the bathroom tile grout lines and that the tenant was both sloppy and negligent. I also find that the tile grout damage is not reasonable wear and tear and should not have been attempted by the tenant at all as the job was both sloppy and incomplete. I also disagree with the tenant that grout has to be replaced every five years as the useful life of tubs listed in Residential Tenancy Branch (RTB) Policy Guideline (PG) 40 – Useful Life of Building Elements states 20 years. I also not that the age for flooring tile is not relevant as this was not tile on the floor that is continually stepped on. In other words, I agree with the tenant their

job was a “disaster” in terms of the grout pen, and therefore, I find the tenant breached section 37(2)(a) of the Act, which applies and states:

> **Leaving the rental unit at the end of a tenancy**
>
> **37**(2) When a tenant vacates a rental unit, **the tenant must**
>
> **(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,**
>
> [Emphasis added]

Based on the evidence before me, I find the tenant is liable for the grout remover of $16.46 and light bulbs of $14.98 plus 12% taxes, and a 45-cent bulb ego fee, for a total of **$35.66.** I note the tenant did not deny failing to replace the burned-out lightbulbs and that RTB PG 1, Landlord & Tenant – Responsibility for Residential Premises requires that tenants replace all burned out lightbulbs at the end of the tenancy before vacating. I dismiss all other items on the receipt for $72.53 as I find the landlord failed to explain the relevance to this or other items and therefore, that portion I dismiss due to insufficient evidence, without leave to reapply.

Item 4 - The landlord has claimed $25.33 for grout sealer related to the shower repair. Consistent with my finding for item 3 above, I find the tenant breached section 37(2)(a) in relation to the bathroom tile grout damage and therefore, I find the landlord was forced to purchase new sealer after the damage from the tenant was repaired. As a result, I find the landlord has provided sufficient evidence and has met the burden of proof of this item. Accordingly, I grant the landlord **$25.33** as claimed for this item.

Item 5 - The landlord reduced this portion of their claim from $262.08 to $156.79 as the landlord was able to find a kitchen faucet with pullout sprayer on sale. The landlord referred to a photo showing a missing button on the pullout sprayer and the landlord stated that the last faucet was purchased in 2018 so the faucet was only 2 years old. The landlord also stated that the pullout sprayer was inoperable and while there was no receipt provided in evidence, the landlord testified that it was purchased on June 29, 2020 at Lowes and was a similar quality to the original faucet. While both parties provided their own version of whether the faucet was damaged, I find the landlord has failed to meet part three of the four-part test for damages or loss as I have no receipt or supporting photos of the new faucet that the landlord stated was installed.

Given the above and considering that the landlord has the onus of proof and not the tenant, I dismiss this item in full, without leave to reapply, due to insufficient evidence.

Item 6 - The landlord has claimed $63.53 for broken fireplace glass. There is no dispute that the fireplace glass was original to the home built in 1974. RTB PG 40 does not list fireplaces so I have considered that windows and heating system are both 15 years, and that the fireplace glass was approximately 46 years old, I find that this item is depreciated 100% and as a result, I find that it must be dismissed as the landlord would be entitled to $0.00 even if successful as I note that there was insufficient evidence presented to the tenant purposely damaged the fireplace glass during the hearing. Therefore, due to 100% depreciation for the 46-year-old fireplace glass, this item is dismissed without leave to reapply, due to insufficient evidence.

Item 7 – The landlord has claimed $2,875.00 for labour that the landlord states was calculated at $25.00 per hour. I agree with the tenant that the landlord failed to include any breakdown as to how many hours were spent in relation to each of the items claimed, which I find is a major flaw as I find it would difficult or impossible to rebut what I find to be an excessive amount of 115 hours based on the photo evidence before me.

In addition, I disagree with landlord’s description of the rental unit having gouges on the walls, where the photo evidence shows minor scuffs and only a couple places where there are marks and of which I see no deep gouges as claimed by the landlord. Furthermore, I find the landlord’s description of the “large screw holes” to be exaggerated and that the holes were small compared to the ledge shown and that I find it was more likely than not finishing nails used to hang pictures and not large screws as claimed by the landlord.

RTB PG 1 applies and states the following regarding nail holes:

> Nail Holes:
> 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

Based on the above, I find the landlord failed to provide sufficient evidence that any instructions were given to the tenant at the start of the tenancy regarding hanging and removing pictures/mirrors/wall hangings/ceiling hooks. Therefore, I find the marks left were reasonable and are not considered damage and that the tenant is not responsible for filling the holes or the cost of filling the holes. In other words, for a tenancy of 5 years, I find the holes to be minor and consistent with wear and tear and not damage.

The only portion of this item where I agree with the landlord and find they have provided sufficient evidence to support any part of this item relates to cleaning the rental unit. I find the oven was not left reasonably clean and that the walls were not sufficiently cleaned by the tenant either. Therefore, I grant the landlord 20 hours for cleaning the rental unit, which included the walls, bathroom, inside and outside of the oven, fireplace and other areas shown in the photos before me. I find that 20 hours at $25.00 per hour, an amount which I find to be reasonable, is $500.00 and better represents the labour involved based on the evidence before me. As a result, I grant the landlord **$500.00** for cleaning costs and I dismiss the remainder of the claim for this item, due to insufficient evidence, without leave to reapply.

As the landlord's claim was partially successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **$100.00** pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of **$XXX**, comprised as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Flooring repair	dismissed
2. Flooring repair	dismissed
3. Shower repair and light bulbs	$35.66
4. Shower repair	$25.33
5. Faucet replacement	dismissed
6. Fireplace glass	dismissed
7. Labour	$500.00
8. Filing fee	$100.00
TOTAL	**$660.99**

Pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain $660.99 of the tenants' combined deposits of $900.00, which has accrued $0.00 in interest in full satisfaction of the landlord's monetary claim.

I ORDER the landlord to return the balance of the tenant's combined deposits, which totals **$239.01,** within 15 days of the receipt of this decision. Should the landlord fail to comply with my order, I grant the tenant a monetary order pursuant to section 67 of the Act, for the balance owing by the landlord to the tenant in the amount of **$239.01**.

Conclusion

The landlord's claim was partially successful.

The landlord has established a total monetary claim of $660.99. The landlord has been authorized to retain $660.99 from the tenants' $900.00 in combined deposits. The landlord has been ordered to return the balance of the tenant's combined deposits, which totals $239.01, within 15 days of the receipt of this decision.

Should the landlord fail to comply with my order, the tenant has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the landlord to the tenant in the amount of $239.01. If the landlord complies with my order above, the monetary order will be of no force or effect.

Should the tenant require enforcement of the monetary order, the monetary order must first be served on the landlord by the tenant and then may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlord may be held liable for the costs associated with enforcing the monetary order. This decision will be emailed to the parties. The monetary order will be emailed to the tenant only for service on the landlord only if necessary.

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: October 28, 2020

Residential Tenancy Branch