



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

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

### Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The parties attended and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

The issue of the security deposit was dealt with in a previous hearing referenced on the first page. Accordingly, this issue is resolved and the request by the landlord to apply the security deposit to a monetary award is dismissed.

### Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

### Background and Evidence

The tenancy began on July 15, 2018 with monthly rent of \$1,275.00. A security deposit of \$650.00, which included a pet deposit of \$200.00, was collected at the beginning of

the tenancy by the landlord. A copy of the tenancy agreement was provided by the landlord. The tenants vacated the unit at the end of October 2020.

In a previous Decision dated April 16, 2020, referenced on the first page, the landlord was ordered to return double the security deposit to the tenant in the amount of \$1,375.00.

A condition inspection was conducted on moving in and a copy of the report signed by both parties was submitted. The report indicated that the unit was in good condition in all aspects and had been newly painted.

The parties disagreed on the circumstances surrounding the completion of the condition inspection report on moving out. The landlord testified the parties attended for the inspection at an agreed time. The landlord stated that wall/paint damage and a broken window were observed but the tenant refused to sign the report with the damage noted. The tenant testified the landlord failed to bring the report.

The landlord claimed compensation for the following:

ITEM	AMOUNT
Wall repair and painting	\$1,155.00
Replacement window	\$476.00
Loss of rent for one month	\$1,275.00
Reimbursement filing fee	\$100.00
<b>TOTAL CLAIM BY LANDLORD</b>	<b>\$3,006.00</b>

The landlord testified the unit was in “brand new” condition when the tenant moved in and had been repainted immediately as stated in the condition inspection report on moving in. The landlord submitted several photographs which he claimed were taken before the tenant moved in and accurately reflect the condition of the unit.

#### *Wall damage and painting*

The landlord stated that when the tenant vacated the unit, there was damage to the walls requiring patching and repainting for which he incurred an expense of \$1,155.00, a receipt for which was submitted. The landlord submitted many photographs showing the marks, dents and holes in the walls.

The tenant stated he did not know if the unit had been freshly painted when he moved in. He claimed that the move-in photos were not dated and were unreliable. He asserted that he fixed the walls and touched up all damage/paint before he left. The tenant did

not submit any photographs illustrating the purported work that he did. The tenant denied that the landlord was entitled to any compensation under this heading.

#### *Replacement window*

The parties agreed that the landlord had replaced the windows during the tenancy and that one of the windows was cracked a week after it was installed. The landlord submitted photographs of the window which he stated showed that the window had been hit from the inside, causing the crack.

The tenant denied that the window was hit from the inside and claimed that the break was caused by a manufacturer's defect or some other cause. The landlord testified that he was verbally assured by the installer of the window that there was no defect in the window and the tenant was responsible for striking or otherwise breaking it.

#### *One month rent*

The landlord claimed that when the tenants moved out at the end of October 2020, he had new occupants lined up to move in on November 15, 2020. However, the landlord testified that the work took longer than expected or the new tenants could not wait, and they cancelled the agreement. As a result, the unit was vacant for a month; the landlord testified that he lost this revenue because of the repairs caused by the tenant's damage. He claimed compensation of \$1,275.00.

The tenant denied he was responsible for the unit requiring any repairs. He asserted that he is not responsible for loss of rent of one month.

The landlord requested a monetary award in the amount set out above.

The tenant requested that the landlord's claims be dismissed without leave to reapply.

#### Analysis

I have considered all the submissions and refer only to key, admissible facts. Substantial evidence and conflicting testimony were submitted in a 65-minute hearing. Only relevant findings are referenced.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act,

regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

The landlord must meet the burden of proof with respect to each claim. Each of the landlord's claims are considered in turn as follows:

1. **Wall repair and painting \$1,155.00**
2. **Replacement window \$476.00**
3. **Loss of rent for one month \$1,275.00**

1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?

The first two claims are considered together.

1. **Wall repair and painting \$1,155.00**
2. **Replacement window \$476.00**

The Act sets out the obligation of the tenant at the end of the tenancy:

**Leaving the rental unit at the end of a tenancy**

**37** (1)...

(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, and*

*(b) ...*

The tenant did not acknowledge there was any damage to the walls when he moved out. He asserted that he had fixed any damage before he vacated. The landlord submitted pictures of the unit showing it was in good condition and freshly painted when

the tenant moved in, and scuffed and damaged when the tenant moved out. The tenant said the landlord's moving out photos were taken before the tenant did the repairs.

*Residential Tenancy Policy Guideline #1* explains that the damage must be more than reasonable wear and tear:

*"The tenant is...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...reasonable wear and tear refers 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 neglect by the tenant."*

I accept the landlord's testimony supported by the photographs and the condition inspection report that the unit had been painted before the tenant moved in.

I do not accept the tenant's version of events that he left the unit in the condition in which he found it. This is not supported by any documentary evidence. I find his testimony to be unlikely and I give greater weight to the landlord's testimony and supporting documentary evidence.

The parties agreed the window, installed during the tenancy, was cracked when the tenant vacated. The tenant denied responsibility. I accept the landlord's testimony that it is more likely than not that the tenant was the cause of the break and highly unlikely that there were unknown factors at play. I find the tenant's denial to be improbable and lacking credibility. I find that common sense leads to the conclusion that the tenant is responsible for the damage.

In consideration of the testimony, the Act and Guideline, I find the landlord has met the burden of proof under the first factor with respect to the wall damage and the broken window.

### **3. Loss of rent for one month \$1,275.00**

The landlord testified the unit was vacant for the month following the end of the tenancy. I accept the landlord's testimony that he could not rent the unit while the repairs were taking place.

I therefore find the landlord has met the first test on a balance of probabilities that the tenant failed to comply with the Act and tenancy agreement under this heading.

2. Did the loss or damage result from non-compliance?

Having found that the tenant failed to comply with the Act and the tenancy agreement, I must next determine whether the landlord's loss resulted from that breach.

This is known as cause-in-fact, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach?

If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage.

If the answer is "yes," indicating that the loss or damage would have occurred whether the respondent was negligent, their negligence is not a cause-in-fact.

I accept the landlord's evidence that time and expenses for wall repair/painting and window replacement were necessary to repair the unit as damaged by the tenant. I accept that the need for repairs led to a loss of rent following the tenancy.

I find that the landlord would not have incurred the losses and damage claimed without the breach by the tenant of their obligations.

I therefore find the landlord has met the burden of proof with respect to all claims under this step.

3. Has applicant proven amount or value of damage or loss?

Having found the landlord has met the burden of proof with respect to the first and second headings, I now turn to whether the landlord has proven the amount or value of the damage or loss.

The landlord provided receipts of the painting and window replacement. I accept the landlord's testimony supported by the receipts that he incurred these expenses.

The RTB Guideline #40, states that “landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement item”. The landlord testified the unit had been painted before the tenant moved in, one year previously although he did not provide supporting documentary evidence. I accept his testimony supported by the photographs on moving in.

The Guideline with respect to the useful life of building elements states that paint has a useful life of 4 years. Applying the Guideline, I therefore find that the paint had a remaining life of 3 years; 75% of the amount claimed is \$866.25.

I therefore find the landlord has met the burden of proof with respect to the third step regarding all claims with the reduction for the painting claim.

*4. Has applicant done whatever is reasonable to minimize damage or loss?*

In considering the landlord’s testimony, I determine the landlord took reasonable steps to minimize the damage or loss with respect to the painting and window replacement.

The landlord provided credible, matter-of-fact testimony about the work supported by documentary evidence, receipts and photographs. I give considerable weight to his testimony and find it believable.

With respect to the loss of rent for one month, I found the landlord’s testimony confusing. The landlord testified he had tenants ready to move in mid-November, but then stated they withdrew from the agreement because the work was not finished. In other testimony, the landlord said the tenants wanted to move in early, and because the work was still ongoing, they withdrew from the proposed agreement.

Taking into consideration the testimony and evidence, and applying the law to the facts, I find on a balance of probabilities that the landlord incurred some loss of rent which I set at two weeks rent which I find is \$687.50.

*Summary*

Considering the testimony and documentary evidence, I find the landlord is entitled to an award as follows:

ITEM	AMOUNT
Wall repair and painting	\$866.25
Replacement window	\$476.00

Loss of rent for 1/2 month	\$687.50
Reimbursement filing fee	\$100.00
<b>TOTAL AWARD</b>	<b>\$2,129.75</b>

### Conclusion

The landlord is entitled to a monetary order in the amount of **\$2,129.75**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to be 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 *Residential Tenancy Act*. 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: November 26, 2020

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Residential Tenancy Branch