



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On August 28, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. As the Landlord has been permitted to retain the security deposit in a previous hearing, this matter has already been dealt with (the relevant file numbers have been noted on the first page of this Decision).

The Landlord attended the hearing, with A.S. attending as counsel for the Landlord. The Tenant did not make an appearance at any time during the 54-minute hearing. All parties in attendance, except A.S., provided a solemn affirmation.

A.S. advised that the Notice of Hearing package was served to the Tenant by registered mail on September 1, 2020 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was delivered on September 2, 2020. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant received the Landlord’s Notice of Hearing package.

She also advised that the Landlord’s evidence was served to the Tenant by registered mail on November 19, 2020 (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that a notice card was delivered on November 20, 2020 and that this package was returned to sender on December 8, 2020. A.S. submitted that the Tenant was additionally served this package by email on November 24, 2020, and a copy of this package was left in the mailbox by a courier on November 25, 2020. Based on this undisputed evidence, and in accordance with

Sections 88 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Landlord's evidence package five days after it was mailed on November 19, 2020. As this evidence was served to the Tenant in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, this evidence will be accepted and considered when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

- Is the Landlord entitled to monetary compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

A.S. advised that the tenancy started on June 1, 2017 and ended when the Tenant gave up vacant possession of the rental unit on February 28, 2020. Rent was established at \$1,714 per month, including utilities, and was due on the first day of each month. A security deposit of \$750.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She stated that a move-in inspection report was conducted on June 1, 2017, and that a move out inspection report was conducted on February 28, 2020. A copy of these reports was submitted as documentary evidence.

A.S. advised that the Landlord is seeking compensation in the amount of **\$167.39** because the Tenant did not replace burnt out light bulbs prior to giving up vacant possession of the rental unit. She stated that the Landlord replaced these bulbs himself and she submitted a receipt for the cost of the lightbulbs of \$17.39 to support this claim. She stated that the remaining balance of \$150.00 of this claim is for one hour of the

Landlord's time to change the lightbulbs. This amount was calculated based on what the Landlord would charge for his hourly wage as an engineer. In comparison, she submitted that the cost of a basic contractor to do this work would be approximately \$85.00 per hour.

A.S. advised that the Landlord is seeking compensation in the amount of **\$1,379.67** to replace a broken light fixture in the rental unit. She referenced a picture that was submitted as documentary evidence to illustrate that the glass portion of this light fixture was missing. As it was not possible to replace just the glass, the entire fixture needed to be replaced. She stated that the Landlord replaced this fixture himself and she submitted a receipt for the cost of the required parts of \$29.67 to support this claim. In an effort to reduce costs, the Landlord attempted this repair himself. She stated that the remaining balance of \$1,350.00 of this claim is for nine hours of the Landlord's time to install this light fixture, and this amount was calculated based on what the Landlord would charge for his hourly wage as an engineer. As this repair was done at the height of COVID, he had to wait "from one to several hours" in line at the hardware store. In addition, as he purchased an incompatible fixture, it was necessary for him to return to the store to purchase the appropriate parts.

A.S. advised that the Landlord is seeking compensation in the amount of **\$1,218.43** as the replacement cost of the damaged carpet. The carpet was brand new at the start of the tenancy and A.S. referenced pictures that were submitted as documentary evidence to illustrate stains that the Tenant left on the carpet. She stated that these pictures were taken after the carpets were cleaned, and the Landlord was advised that these stains could not be removed. As such, the carpet needed to be replaced. She referenced the estimate submitted of the carpet replacement to support the Landlord's claim for compensation. While the Landlord ultimately replaced this carpet with flooring, the Landlord should still be entitled to this compensation. She also advised that a portion of this claim was for a half an hour of the Landlord's time required to arrange this estimate.

A.S. advised that the Landlord is seeking compensation in the amount of **\$1,669.14** as the replacement cost of the damaged kitchen flooring. This flooring was replaced "very shortly before the tenancy started." She referenced pictures that were submitted as documentary evidence to illustrate damage to the flooring that the Tenant was responsible for. She drew my attention to the pictures of this damage after the Landlord cleaned the rental unit. These pictures depict dots, holes, lines, tape, and stains on the flooring. The flooring could not be repaired so the Landlord replaced it, but with higher quality flooring. She referenced the quote submitted of the upgraded flooring replacement to support the Landlord's claim for compensation, and she noted that the

Landlord was seeking less compensation as the quote was for a higher grade of material. In addition, she also advised that a portion of this claim was for an hour of the Landlord's time required to arrange this quote.

A.S. advised that the Landlord is seeking compensation in the amount of **\$1,417.21** as the replacement cost of the damaged kitchen countertop. She stated that the countertop was "newly installed" in or around April 2017 and she referenced an invoice provided to support this cost. She submitted that an unknown substance on the countertop left a permanent rust stain or mark. This mark could not be cleaned or fixed, so the entire countertop needs to be replaced. She referenced pictures submitted to support this damage. She stated that because of this damage, the Landlord is unsure if he can re-rent the unit in this condition, that the Landlord is not sure when he will fix the countertop, and that as of the date of the hearing, the rental unit was still not rented. She stated that the compensation that the Landlord is seeking is for half of the original cost of the countertop installation.

When the Landlord was questioned whether the damage affected the functionality of the countertop or if it was simply aesthetic damage, he stated that he "did not know how to answer the question."

A.S. advised that the Landlord is seeking compensation in the amount of **\$180.00** for the cost of the Landlord's time in dealing with a rifle that the Tenant left behind in the rental unit. She submitted that the Tenant refused to take this rifle away at the end of the tenancy and there are specific federal rules with respect to the disposal of firearms. She stated that the Landlord called the police about this item and three police officers were dispatched. They ultimately determined that this was an Airsoft replica rifle, and they removed it themselves.

Finally, A.S. advised that the Landlord is seeking compensation in the amount of **\$502.25** for the cost of repairing a damaged solid wood door. She referenced pictures submitted of this damage and provided two quotes to support the replacement cost of this door. The compensation being sought is for the less expensive quote.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection.

Section 21 of the *Regulations* outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit or pet damage deposit for damage is extinguished if the Landlord does not complete the condition inspection reports.

Section 32 of the *Act* requires that the Tenant repair any damage to the rental unit that is caused by her negligence.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receive the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to Section 38(6) of the *Act*. However, the matter concerning the security deposit is a moot point as it has been dealt with in a previous file.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

In addition, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

With respect to the Landlord's first claim for compensation in the amount of \$167.39 for his cost in replacing burnt out lightbulbs, I accept the undisputed evidence that there were lightbulbs that needed to be replaced. However, I do not accept that the Landlord's request for compensation for his time to be reasonable. While he claims to be an engineer and that \$150.00 per hour is what he bills out for his services, I do not find it appropriate that he is attempting to claim one hour of his time as an engineer as the true cost of the simple replacement of lightbulbs. I find that this mundane task of replacing lightbulbs to be one that is associated with that of being a Landlord, and for him to attempt to claim this amount for such a routine duty speaks to the credibility of the Landlord's claims. I find this to be excessively punitive, vexatious, and wholly unreasonable, and it causes me to question the legitimacy and reasonableness of much of what the Landlord is claiming for in this Application. However, as I accept that some lightbulbs were left burnt out by the Tenant, I do grant the Landlord a monetary award in the amount of **\$17.39** for the cost of those replacement bulbs. I decline to award the Landlord compensation for his time to replace lightbulbs.

Regarding the Landlord's claim for compensation in the amount of \$1,379.67 to replace a broken light fixture in the rental unit, I accept that the Tenant broke a light fixture and that it needed to be replaced. However, I find it important to note that in an effort to reduce costs, the Landlord elected to complete this work himself as opposed to hiring a professional tradesperson. Furthermore, while he is claiming \$1,350.00 for nine hours of his time to complete this repair, I also find it important to note that he was required to return to the store to purchase the correct parts. Even if the Landlord needed to wait in line to enter the store due to COVID, I am doubtful that this would have accounted for a

substantial portion of the four and a half hours he is claiming for the purchase of the required materials. Moreover, I find that as the Landlord was required to return to the store because of an error he made in purchasing the correct parts, this demonstrates in my view that despite his professional qualifications as an engineer, this does not necessarily translate in his abilities to complete a routine home repair. In addition, I do not find it reasonable to accept that this repair, when conducted by a qualified tradesperson, would have realistically totalled nine hours to complete.

While he may be an engineer and qualified to work in that chosen field, I do not find it reasonable to hold the Tenant accountable for the Landlord's time in learning how to conduct this home improvement, and then attempting to charge for this practice time as an engineer. Had the Landlord simply hired a capable tradesperson that was qualified to complete this repair in the first place, I would more likely than not find the cost to reimburse the Landlord for this tradesperson's time to be acceptable. I find that this unreasonable claim also causes me to question the Landlord's credibility in this Application. However, I grant the Landlord a total monetary award in the amount of **\$129.67** for the cost of the light fixture and for what I determine to be a reasonable cost for repairing this damage.

With respect to the Landlord's claim for compensation in the amount of \$1,218.43 as the replacement cost of the damaged carpet, I accept from the move-in inspection report that the carpet was brand new at the start of the tenancy. While it is unclear from the move-out inspection report that there was any carpet damage, I also accept from the photographs provided that there were stains on the carpet that could not be removed and the carpet required replacement. Policy Guideline # 40 sets out the approximate useful life of carpet at 10 years. As the Landlord has already benefitted from three years of the carpet, I grant the Landlord a monetary award in the amount of **\$762.29** to satisfy this claim. I decline to award the Landlord compensation for his claim for his time to coordinate this repair.

Regarding the Landlord's claim for compensation in the amount of \$1,669.14 for the cost of repairing the damaged kitchen flooring, I accept that there was damage to the flooring and that it was not clean at the end of the tenancy. However, I find it important to note that the pictures the Landlord relied on highlight holes in the flooring that appear to be larger after the Landlord cleaned the flooring. In addition, while the Landlord claimed that the flooring was replaced shortly before the tenancy started, there has been insufficient evidence provided to support this. Furthermore, when reviewing these pictures, based on the appearance of the linoleum flooring, the pattern of the wallpaper, and the brown, plastic moulding, I am skeptical that this flooring is as current as the

Landlord claims. Given the above doubts that have been created from the Landlord's submissions so far, I find it more likely than not that the flooring is substantially older than the Landlord purports. While the Landlord claims to be replacing this flooring with an upgraded material and is only seeking reimbursement for a portion of this cost, I find it important to note the following excerpts from Policy Guideline # 5:

Betterment

The purpose of compensation is to restore the landlord or tenant to a position as if the damage or loss had not occurred. Sometimes repairing damage or replacing damaged items puts the landlord or tenant suffering damage or loss in a better position than they were before the damage or loss occurred.

This may happen as a matter of course – for example if arborite countertops from the 1960s must be replaced because of damage, this almost always requires installing brand new countertops. Similarly, if a circuit that was wired in the 1940s needs to be replaced, it should be brought up to code. The result is that the property is made better than it was before the damage or loss occurred.

See Policy Guideline 40: Useful Life of Building Elements for guidance on how this type of situation may be dealt with.

Sometimes damaged items are replaced with more extravagant, expensive or luxurious ones by choice. Some examples are:

- Replacing a damaged laminate floor with hardwood floors
- Replacing a damaged linoleum floor with marble
- Replacing damaged arborite countertops with granite
- Replacing a \$300 futon with a \$3,000 bed

A person can replace damaged items with more expensive ones if they choose, but not at the expense of the party responsible for the damage. The person responsible for the damage is only responsible for compensating their landlord or tenant in an amount that covers the loss. The extra cost of the more extravagant, expensive or luxurious item is not the responsibility of the person who caused the damage.

When taking this into consideration, and given the limited evidence that the Landlord has presented, I find on a balance of probabilities that the age of the kitchen flooring was more likely than not closer to the end of its useful life. While it does appear that the Tenant may have damaged this flooring, I find that this was an opportune time for the Landlord to conduct overdue upgrades to the rental unit in an effort to update it to make it more modern. While the Landlord is entitled to upgrade materials, I find that this claim is the Landlord's attempt to seek compensation for renovating his property when such renovations were likely required in any event. As such, I decline to award the amount

that the Landlord is seeking as this is an attempt to better his property. As the Landlord has already seen the benefit of this flooring for a considerable number of years, I grant the Landlord a monetary award in the amount of **\$50.00** that I find would be commensurate with the Landlord's true loss. I decline to award the Landlord compensation for his claim for his time to coordinate this repair.

With respect to the Landlord's claim for compensation in the amount of \$1,417.21 for the replacement cost of the damaged kitchen countertop, I accept that there appears to be some sort of stain on the kitchen countertop and that this was due to the Tenant's negligence. However, when reviewing these pictures, I find that the stains appear to be localized in a small area and do not appear, in my view, to be that unsightly. I question A.S.'s submission that the Landlord is uncertain whether he could rent out the unit because of these stains. I find this to be more of an exaggeration as it would be entirely unlikely that this minimal staining on the countertop would deter a prospective renter.

Furthermore, when the Landlord was questioned about these stains, it is not clear to me how he could not provide an answer to a simple question of whether these stains were aesthetic damage, and if they were not, how they affected the functionality of the countertop. Moreover, it is unclear to me how these stains rendered the countertop useless and necessitated a complete replacement. In addition, if the Landlord was truly concerned that the appearance of the countertop would affect his ability to re-rent the unit, it is unclear to me why he had not yet replaced the countertop since the end of the tenancy.

When reviewing the Landlord's submissions and evidence on this issue, while I accept that the Tenant has caused damage to the countertop, I find that this damage is minimal, that it is merely aesthetic, that it has no effect on the ability to use the countertop, and that it would not deter him from re-renting the unit. I am highly dubious of the legitimacy of the Landlord's claims, and similar to above, I find this claim to be excessively punitive and not reflective of the true cost of the damage. In addition, I question whether the Landlord truly has any intention of replacing this countertop. I grant the Landlord a monetary award in the amount of **\$50.00** for what I would consider to be commensurate with the Landlord's true loss. I decline to award the Landlord compensation for his claim for his time to coordinate this repair.

Regarding the Landlord's claim for compensation in the amount of \$180.00 for the cost of the Landlord's time in dealing with the rifle that the Tenant left behind, I accept that this is an unusual item that must be dealt with in a particular manner, unlike most property that is generally left behind. However, I find it unreasonable for the Landlord to

attempt to charge his hourly wage as an engineer if he elected to deal with this issue himself. If the Landlord is unwilling to hire a property manager to handle tasks associated with being a Landlord, he is entitled to undertake these responsibilities himself. However, he is not entitled to charge a rate that exceeds an amount that would be paid to a person that could reasonably accomplish the same tasks. As the Landlord has not provided sufficient evidence to support how much a reasonable cost for this would be, I grant the Landlord a monetary award in the amount of **\$50.00** to rectify this claim.

Finally, with respect to the Landlord's claim of compensation in the amount of \$502.25 for the cost of repairing a damaged solid wood door, I accept that the Tenant damaged this door. However, the Landlord has provided insufficient evidence of the age of the door. When reviewing the pictures provided, it appears as if this door is old and likely from when the property was originally constructed. While the damage depicted does not seem to be significant, I accept that replacing this door was probably more cost effective than attempting to repair a door that has likely already exceeded its useful life. However, as the Landlord has already benefitted from having the use of this door up to its useful life, I find that the cost that the Landlord is seeking would amount to betterment of the rental unit. As a result, I grant the Landlord a monetary award in the amount of **\$50.00** for what I would consider to be commensurate with the Landlord's true loss of this damage.

Curiously, the Landlord has not sought compensation for his time to facilitate this repair as he has done on all the other heads of claim in this Application. Had the Landlord's time been so valuable that it necessitated claiming for it at the rate he charges as an engineer, it is not clear to me why he did not attempt to claim the time he spent to coordinate this job as well. This further causes me to question the legitimacy of his claims for his time in this Application.

As the Landlord was partially successful in his claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Cost of replacement lightbulbs	\$17.39

Cost to repair light fixture	\$129.67
Cost to repair damaged carpet	\$762.29
Cost of damaged flooring	\$50.00
Cost of damaged countertop	\$50.00
Cost to dispose of Airsoft rifle	\$50.00
Cost of damaged door	\$50.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$1,209.35

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$1,209.35** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 *Residential Tenancy Act*.

Dated: January 6, 2020

Residential Tenancy Branch