



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**
 FFT, MNSD, MNDCT

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the *Residential Tenancy Act* ("the Act").

The landlord applied for:

- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- Authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- A monetary order for damages or compensation pursuant to section 67.

The tenant AH and the landlord, SC both attended the hearing. As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's Application for Dispute Resolution and the landlord acknowledged service of the tenant's Application for Dispute Resolution.

The tenant acknowledged receiving the landlord's first set of evidence sent on September 29, 2020 and no other evidence. The landlord supplied 94 files of evidence into the tenant's dispute file and 152 files into her own dispute resolution file to the Residential Tenancy Branch in preparation for this hearing. The landlord testified that she sent two identical sets of evidence to the tenant. The first set was sent on September 29th and the second identical set was sent on January 8th. When I asked

her why she sent the same evidence twice, the landlord stated she thought she had to do so. The landlord also didn't elaborate on the contents of the two sets of evidence sent.

As the exchange of the landlord's evidence was called into question, I advised the parties that the hearing would proceed using the testimony of the parties. If either party was going to refer to specific documentary evidence, I would ensure both parties had a copy of it.

Preliminary issues

In her application submitted on September 24, 2020, the landlord sought a total of \$292.57 for damages to the rental unit she alleges were caused by the tenant during the tenancy. On January 1, 2021, the landlord filed a monetary order worksheet seeking an additional claim of \$800.00 for "no one month notice to end a tenancy – rental lost to keep deposit". At the end of the hearing, the landlord sought to include this item as part of her claim. The landlord did not file a form RTB-42L (*landlord: amend an Application for Dispute Resolution*) seeking to amend her original application.

I advised the landlord that Rule 6.2 of the Residential Tenancy Branch Rules of procedure states the hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. As the tenant was not served with any formal amendment seeking this relief or provided with any opportunity to prepare a defence to this application, I denied the landlord's oral application to include an additional \$800.00 claim. I advised the landlord that she retains the right to file a subsequent Application for Dispute Resolution seeking this relief, should she choose to do so.

Issue(s) to be Decided

Is the landlord entitled to compensation for damages to the rental unit, as alleged?

Is the tenant entitled to be compensated for moving costs?

Should any part of the security deposit be retained by the landlord?

Is either party entitled to recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. She moved into the rental unit in September of 2018 under a fixed one year tenancy. A second fixed one year tenancy was signed on September 15, 2019 with an expiry date of September 14, 2020. Rent was set at \$1,600.00 per month payable on the last day of each month.

The parties agree that the original security deposit of \$850.00 given to the landlord at the commencement of the tenancy was reduced to \$800.00 and the landlord had already returned the additional \$50.00. A condition inspection report was done with the tenant at the beginning and end of the tenancy, supplied as evidence by the landlord. The condition inspection report, signed on September 13, 2020 provides the tenant's forwarding address.

The tenant testified that she was unhappy with the tenancy while she lived in the rental unit. In her application, the tenant states she endured a lack of care from the landlord and felt pressured to move her family to a less stressful environment. She seeks to recover \$800.00 of the \$831.17 she paid to a moving company to move. The tenant also seeks to have the remaining \$800.00 of her security deposit returned to her.

The landlord's claim for damages is broken down into 4 items. Both the landlord's and the tenant's submissions on each item is recorded here. My analysis regarding each item is provided under the heading of Analysis in this decision.

1. \$89.97 plus tax – missing smoke detector

The landlord submits that there was a brand-new smoke detector in the rental unit at the beginning of the tenancy. A licensed installer put the smoke detector in, and it was missing at the end of the tenancy. The condition inspection report from the move out inspection notes "another fire alarm is missing on ceiling in Hallway".

The tenant submits that there was a smoke detector in the unit when she moved in, however it started beeping and chirping and speaking in French. She was told to change the battery by the landlord which she did to no avail. She ended up taking down the original fire alarm and got a replacement one using the warranty provided on the original. The replacement fire alarm was accidentally packed up by a friend who helped

her move. She testified that she left the replacement on the front porch the day after the condition inspection and this was witnessed by a tenant one of the other upstairs units in the house.

The landlord denies receiving the warranty replacement smoke detector. She submits that the other tenant didn't advise her that it had been dropped off, either.

2. \$13.00 smoke detector battery

The landlord submits back in 2018, the landlord gave the tenant a second battery for the smoke detector, just in case the first battery dies. The landlord told the tenant that the battery is replaceable.

The tenant denies the landlord supplied a replacement battery for the defective smoke alarm. She was present for the installation of the smoke detector and no extra battery was given to her.

3. \$90.00 cost for repairing two blinds

The landlord testified that one of the blinds in the children's bedrooms was damaged. Another blind was broken in another bedroom. On January 29th, the landlord received a text from the tenant admitting to damaging it. The landlord referred to an invoice from a blind company for \$89.60 to repair the blinds.

The tenant testified that during the initial walkthrough, the condition of the blind was not as good as stated in the condition inspection report. The tenant didn't actually check the condition of the blinds and the string snapped in her son's room when using the blind. All the blinds in the unit were heavy, hard to open and close. The tenant asked the landlord about warranty repair when the blinds broke, however the landlord would not supply the tenant with a receipt. The landlord refused to repair or replace the blinds which the tenant believes should be covered by a warranty.

4. \$88.80 cost for repairing the closet door, bathroom tile floor and missing kitchen air fan filter

The landlord testified that the closet was broken and could no longer stand up after the tenants vacated the rental unit. The bathroom floor tile was cracking and in need of mortar. The air filter in the kitchen fan was missing. The landlord seeks \$44.67 for the air filter and \$44.13 for the materials purchased to fix the closet door and cracking floor tile.

The tenant testified that the reason the tiles are cracked is because the subfloor in the rental unit is uneven. The faulty construction is causing the mortar to crack. She notified the landlord of the issue because it was a health hazard to her child who was starting to eat the cracked mortar. Realizing the landlord wouldn't fix any issues in the unit, the tenant decided to let it go.

The closet door is an old, folding style door no longer functioning. It is normal wear and tear that caused it to wear out. It worked when she moved in, but not very well. The poor condition of the closet door should have been noted on the condition inspection report on move-in, but wasn't.

The tenant testified there never was an air filter in the kitchen vent hood when she moved in.

Analysis

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

First, regarding the tenant's application to be compensated for moving expenses incurred because she endured a lack of care from the landlord and felt pressured to move her family to a less stressful environment. There is no provision in the Act that provides for a tenant to recover moving expenses at the end of a tenancy when the tenant chooses to end it. The tenant did not provide sufficient evidence to satisfy me

the landlord violated any portion of the Act, regulations or tenancy agreement and for this reason, this portion of the tenant's claim is dismissed.

Next, the landlord's claim will be analyzed in the order of presentation.

1. \$89.97 plus tax – missing smoke detector

The tenant acknowledged she took down the smoke detector when it began to malfunction and the warranty replacement one was packed up and moved in error by a friend. While the tenant argues that she returned the replacement detector on September 14th, the landlord denies it was dropped off. On a balance of probabilities, I find the landlord's version of the events to be the one most likely to be true. When a tenant takes down a fixture in the rental unit, it is the responsibility of that tenant to ensure that the landlord actually receives the replacement one at the end of the tenancy, not for the landlord to prove it was received. The landlord is awarded **\$91.81** pursuant to section 67 of the Act.

2. \$13.00 smoke detector battery

The landlord supplied the tenant with the second battery, "just in case" according to her testimony. The tenant denies one was ever provided. In the condition inspection report, the landlord does not note the absence of an additional battery. Second, since the extra battery was provided for the tenant's use, "just in case", it is reasonable to suspect that the tenant could have used the replacement battery in the smoke detector as intended. The landlord has not provided sufficient evidence to satisfy me there has been any violation of the Act, regulations or tenancy agreement that brought about this portion of her claim. This portion of the claim is dismissed.

3. \$90.00 cost for repairing two blinds

The tenant acknowledged the blinds broke during the tenancy and were not repaired. Section 32(3) of the Act states a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. I find the actions of the tenant's children likely caused the damage to the blinds and the blinds were not repaired by the tenant. I am satisfied the landlord spent **\$89.60** on the repairs and I award the landlord this amount pursuant to section 67 of the Act.

4. \$88.80 cost for repairing the closet door, bathroom tile floor and missing kitchen air fan filter

Section 32(4) of the Act states a tenant is not required to make repairs for reasonable wear and tear. I find that, given the age of the rental unit, the closet door has not been damaged by the tenant, but naturally gave out due to reasonable wear and tear.

I find that the landlord has not provided sufficient evidence to satisfy me that the bathroom floor tile damage was caused by any violation of the Act, regulations or tenancy agreement by the tenant. I have viewed the photos of the tiles submitted by the landlord and I do not see any cracked mortar as the landlord submits. The landlord has provided insufficient evidence to satisfy me the existence of the damage alleged to the floor tiles and I dismiss this portion of her claim.

Section 21 of the regulations states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. The condition inspection report signed by both parties at the commencement of the tenancy shows “good” for everything. Before signing the condition inspection report at the commencement of the tenancy, the tenant is obligated to inspect the rental unit to ensure the condition is as stated on the report. The tenant did not provide me with any evidence to the contrary, so I must assume there was a filter in the vent hood when she moved in. I am satisfied the filter was missing at the end of the tenancy and I award the landlord the **\$44.67** the landlord paid to have it replaced.

Item	amount
Smoke detector	\$91.81
Blind repair	\$89.60
Kitchen air fan filter	\$44.67
Total	\$226.08

The tenant sought to have the landlord return her security deposit. From the tenant's original security deposit of \$800.00, the landlord is to retain \$226.08. The tenant is entitled to a monetary order in the amount of **\$573.92**.

The decision to award a filing fee is at the sole discretion of the Arbitrator. As both parties were successful in portions of their respective claims, neither party will recover their filing fees.

Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$573.92**.

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 19, 2021

Residential Tenancy Branch