



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damages of \$875.56; and a monetary order for unpaid rent in the amount of \$2,100.00; and a monetary order for damage or compensation for damage under the Act of \$1,050.00, retaining the security deposit for these claims; and to recover the \$100.00 cost of his Application filing fee.

The Tenant, S.S.T., the Tenant's daughter and advocate, N.T. ("Advocate"), and the Landlord, S.S.A., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application, and the Parties confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

At the outset of the hearing, I asked for the Landlord's name in this matter, as the Landlord identified on the Application was different than that in the tenancy agreement. The person identified as an Agent in the Application is the same person identified in the tenancy agreement as the Landlord. The Agent/Landlord in the hearing confirmed his identity as the Landlord of this residential property. As such, I amended the Applicant's name in the Application to reflect the Landlord in the tenancy agreement, pursuant to section 64(3)(c) and Rule 4.2.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on October 5, 2018, ran to June 30, 2019, and then operated on a month-to-month basis. They agreed that the Tenants paid the Landlord a monthly rent of \$2,100.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,050.00, and no pet damage deposit. They agreed that the rental unit was an upstairs suite of a house with three bedrooms and one and a half bathrooms.

The Parties agreed that they conducted an inspection of the condition of the rental unit at the beginning of the tenancy and that the Landlord gave the Tenants a copy of the condition inspection report ("CIR") within two weeks of the inspection. They agreed that they did a move-out inspection at the end of the tenancy.

#1 MONETARY ORDER FOR DAMAGES → \$875.56

The Landlord said:

When the Tenants left the suite, they caused some damage and didn't do a proper cleaning per the guidelines. We had to bring someone in to fulfill this obligation. See pictures of window sills – before and after. The inspection report was signed off, and the Tenants acknowledged the damage, and we invoiced them again for payment of damages. We're not charging them for wear and tear and for what they have not done, but only that which they have failed to do.

The Landlord submitted an invoice from a company they said they hired to do the work set out in this section. The invoice included the following:

Description	Amount
Carpet cleaning – 3 bedrms, 1 living rm, 1 family rm < 15 stairs	\$349.00
General cleaning (window sills, appliances) \$35/hr – 2 people	\$280.00
Counter damage (kitchen, toilet seat)	\$149.00
Replacing 7 bulbs 35/hr including cost of bulbs	\$55.87
Sub-total	\$833.87
Sales tax [GST # provided]	\$41.69
Total monetary order claim	\$875.56

The Advocate said:

I'd like to point out that the pictures are black and white; you can't tell with the window sill. We turned the lights on and off in each room in a video – see videos. Also there's a difference in the invoice we were given and the one he submitted. See the original we received and the one submitted – these invoices are different – also look at the addresses. Why this change?

The Landlord said:

The second invoice was almost a year later. When the original invoice was created, we had to give documents to the Tenants within two weeks, but work wasn't complete. We had to add the toilet seat. It's the same address, as they were initially living with the Landlords, but they moved. We were trying to be more detailed for giving evidence to the Tenant. The second invoice had to be updated due to the changes....

The invoice got revised – the unit price - but the total price is the same, we just updated the information, that's all. That's what happened. It matches the CIR, which the Tenant has signed off on.

The Advocate said she searched the internet for the company on the invoice and she said that nothing showed up. She also noted that the address on the Landlord's cheque

is the same address on the repair invoice. However, the address on the cheque is the same as the billed address on the invoice, but not the company address, as suggested.

The Landlord said:

I'm trying to figure out what the questions is. Foul play? The counter is damaged, the toilet seat was damaged. What is she saying, and what can we correct? As for the company – the GST number is there. From an accounting perspective, it is a real company.

The Tenant said:

Yes, I'm saying the Landlord falsely created an invoice. What about there being damage to the counter or the toilet seat -- see videos – there's no crack.

The Landlord said:

The toilet seat was loose. They pushed and wore out the washer and connector screws – that means the toilet seat had to be replaced. It was loose because where the clip comes into the toilet bowl – they were only using one. You can't replace that; you have to replace the whole seat.

The Tenant said: "Other than it's really easy to tighten up a toilet seat."

I note on the CIR that the toilet seat was in good condition at the start of the tenancy, but it was noted in the move-out inspection as being "loose" at the end of the tenancy.

The Landlord's pictures show that one part of the kitchen counter has dirt or damage on it. The photographs also show dirty and/or mouldy window sills and window tracks.

The Tenants' did a video tour of the rental unit once it was empty of their possessions. The Tenants' video shows clean walls, clean carpets, no debris left behind anywhere, a clean kitchen sink, stove top, freezer, and refrigerator. However, there were marks on the counter in one spot in the video. The laundry room was clean, the appliances, walls, and floors were clean. The ceiling fan looked like it might be dirty. The main bathroom was clean, although there might have been a bit of mould on the window frame. The bathtub looked clean. The bedrooms were consistently clean, aside from a couple of marks on one bedroom wall and in one closet. These marks looked like they could be cleaned off.

Further, the CIR indicates that the kitchen counters were in good condition at the start of the tenancy, but in poor condition at the end.

The Advocate said that the Tenants were only in the rental unit for eleven months, and therefore, they are not responsible for having the carpets steam cleaned. The Addendum to the tenancy agreement, which the Tenants signed states:

21) At the end of the vacancy the tenant has acknowledged to shampoo the carpet, clean the suite and premises outside the suite and surrender the same in the condition exclusive of ordinary wear and tear as prior to the original renting status.

The Landlord also claimed \$55.87 for seven light bulbs. In the Tenant's video of the rental unit at the end of the tenancy, the Advocate turned on lights in the rooms, as she went around the apartment. The Landlord did not indicate which bulbs were burned out or missing.

At this point in the hearing, the Advocate said: "Everything was cleaned; I hope you view the videos without any bias." I asked the Advocate if she feels that I am biased, given how things had proceeded in the hearing, and she said:

Biased? Honestly, it's hard to say. The invoice thing is a big thing – there's something wrong with those invoices. I can't prove it, but I feel biased toward that. This July 29 agreement: we're trying to explain our side of the facts. I also just want to point out that the carpets weren't shampooed. We're responsible if the tenancy lasts longer than a year, but it was 11 months to be exact.

The Advocate also said that the Landlord "...is jumping all over our evidence," therefore, I advised her that that is typically what happens in hearings – that each Party presents their version of events, and the other side tries to prove that your evidence is wrong, and they are right. The Advocate said that she understood what I was saying.

#2 MONETARY ORDER FOR UNPAID RENT → \$2,100.00

This claim is for one month of unpaid rent for October 2019. The Landlord said:

Basically, I feel I am entitled to October rent, because the Tenants failed to give 30 days notice before moving out.

The Parties explained that the Tenants rented the unit, because their house had been damaged by a fire. They were uncertain when their house would be ready to move back into, and therefore, they did not know when they would vacate the rental unit. The Landlord said:

I asked them over and over again, because their house was on fire, and they didn't want to sign a one-year lease. They controlled everything. I had no rights with these people. See all texts – I didn't ask for a while, but they didn't answer and deferred the question.

The Landlord referred to the tenancy agreement, which states that the tenancy becomes month-to-month or periodic after June 30, 2019. Further, the Landlord referred to a text message dated September 23, 2019 from the Landlord to the Tenant in which the Landlord asks the Tenant "...do you know when you will move out?" The Landlord said that the Tenant did not respond to this question, but on September 30, 2019, he sent the Landlord a text saying: "Bhaji come get house key by 3pm today, otherwise when I come back from work maybe Wednesday. Please let me know." In the hearing, the Advocate advised me that "Bhaji" means brother.

The Tenant said:

Yes, our house caught on fire in October 2018, and we couldn't live in our house. We had a three-way call with the Landlord, my Dad, and the insurance adjuster and me on July 26, 2019. We said our house was close to finishing, and could we stay another month? He said he wanted rent until January 2020, he said he had the option of rent until December, even though ... His worry was that he wouldn't find any tenants in the winter months. We came to an agreement that we would show the suite to potential tenants, and if someone wants to rent that property we would move out. But no one asked to rent it, but we can take this as a 30-day notice.

The evidence the Tenant referred to is a letter addressed to the Tenant from the Landlord, and dated July 29, 2019. The subject line is: "The moving out arrangements discussed on July 26, 2019 between [the Landlord], Insurance adjuster [S.] for [the Tenant], and [the Tenant]". This document sets out the details of the discussion the Parties had on July 26, 2019 ("July 29th Letter").

The July 29th Letter starts by setting out the topics the Parties discussed, as well as the arrangement that was "agreed upon by both landlord and tenant". The latter includes

the following:

The tenant has agreed to move out of the property [residential property address] by end of August as long as the landlord has found new tenants.

...

This is [Tenant's] one month notice to vacate the property

However, if the landlord has failed to rent out the house [residential property address] in the month of August 2019 for September 2019 [then] if the tenants choose to, they may stay additional month in September 2019. **But this condition only occurs if the landlord does not rent out this property for September 2019, if he does rent out the property [then] the tenant has agreed to move out in end of August 31, 2019 by 1pm.**

...

[emphasis in original]

The Tenant said that they agreed to use the July 29th Letter as a 30-Day Notice to End the Tenancy. He said it was drafted by the Landlord, himself.

#3 COMPENSATION FOR DAMAGE → \$1,050.00

The Landlord said that this claim was to retain the security deposit, as part of accounting of his claims. The Landlord confirmed that this is not an additional \$1,050.00 being added to the total but rather, it represents their retaining the security deposit in partial satisfaction for the amounts claimed.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

#1 MONETARY ORDER FOR DAMAGES → \$875.56

Section 32 of the Act states that tenants "...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." Section 37 states that tenants must leave the rental unit "reasonably clean and undamaged". Policy Guideline #1 helps interpret sections 32 and 37 of the Act:

The tenant is also 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 (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer 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 due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

[emphasis added]

The Landlord did not point out any evidence of the carpets being in bad condition at the end of the tenancy. There were no stains pointed out. However, the Tenants signed the Addendum to the tenancy agreement, acknowledging that they are responsible for shampooing the carpets at the end of the tenancy. The Advocate did not indicate the source or authority for the claim that the Tenants did not have to clean the carpets, because they only stayed for eleven months. I find that this is not the case in this set of circumstances. The Tenants acknowledged that they did not shampoo the carpets.

I find that the amount set out by the Landlord in the invoice for carpet cleaning is not unreasonable, given the size of the rental unit. I, therefore, award the Landlord with **\$349.00** for carpet cleaning throughout the rental unit.

Based on the photographic and video evidence before me, I find that the rental unit was reasonably clean and not in need of so much cleaning. The Landlord quoted general cleaning at \$35.00 per hour for a total of \$280.00, which equals eight hours of cleaning. The invoice indicated that there were two professional cleaners doing the work; therefore, they would have each worked for four hours each. Based on the Tenants' video of the condition of the rental unit at the end of the tenancy, I find that this much cleaning is unreasonable. I find that some cleaning was necessary, therefore, I award the Landlord with **\$140.00**, representing half the amount claimed – four hours of cleaning by one person.

The counter damage was evident in both Parties' photographs/videos, and the CIR

indicated that the damage was not there at the start of the tenancy. Further, I find the Landlord's explanation of the damage to the toilet seat to be consistent with the need to replace it. I find that the damage to the toilet seat was more than just being loose. I find it more likely than not from the Landlord's explanation that the toilet seat connection mechanism was broken and therefore, the seat needed to be replaced.

I note the invoice for these repairs changed in content (toilet seat added), but the total price charged for repairs remained the same. I find this change raises questions in my mind about the authenticity of the invoice – why would the maintenance company issue a revised invoice for the same amount, for instance? However, I find that there was damage to the counter in the kitchen and more likely than not to the toilet seat; therefore, I find the amount charged by the Landlord to the Tenant for these repairs to be reasonable in the circumstances. I award the Landlord with \$149.00 for the repair of the kitchen counter and the toilet seat.

According to RTB Policy Guideline #1, tenants are responsible for “replacing light bulbs in his or her premises during the tenancy”. Therefore, I find that the Tenants were responsible for replacing lightbulbs as they burned out and making sure they were all working at the end of the tenancy. However, the Landlord has charged \$35.00 per hour for replacing seven light bulbs. The cost amounts to \$7.98 per bulb. When I consider the Tenants' evidence of the lights going on when the videographer entered each room and the Landlord not having identified which were burned out or missing, I find that the Landlord has not provided sufficient evidence to prove this claim on a balance of probabilities. Therefore, I dismiss this claim without leave to reapply.

Description	Award
Carpet cleaning – 3 bedrms, 1 living rm, 1 family rm < 15 stairs	\$349.00
General cleaning (window sills, appliances) \$35/hr – 2 people	\$140.00
Counter damage (kitchen, toilet seat)	\$149.00
Replacing 7 bulbs 35/hr including cost of bulbs	\$0.00
Sub-total	\$638.00
Sales tax [GST # provided]	\$31.90
Total monetary order claim	\$669.90

#2 MONETARY ORDER FOR UNPAID RENT OF → \$2,100.00

I find that the terms of the July 29th Letter, as agreed upon by the Parties, indicates that the Landlord aimed to find new tenants for the rental unit for September 2019, at which time the Tenants agreed to be moved out, if the Landlord was successful; however, if the Landlord could not find anyone in August for September 1, 2019, then the Tenants would stay until the end of September 2019. I find that there should not have been any surprise about the Tenants moving at the end of September, given the terms of the July 29th Letter. I also find that the Parties agreed that this Letter would serve as the Tenant's 30 day notice to the Landlord to end the tenancy. Accordingly, I find that the Landlord was not eligible to receive any rent from the Tenants for October 2019; therefore, I **dismiss this claim without leave to reapply**.

#3 COMPENSATION FOR DAMAGE → \$1,050.00

The allocation of the Tenant's security deposit will be addressed in the set off below.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit of \$1,050.00 in partial satisfaction of the Landlord's monetary claim.

The Landlord is awarded \$669.90 from the Tenant for this Application, pursuant to section 67 of the Act. The Landlord is also awarded recovery of the \$100.00 Application filing fee, given his partial success in this Application for a total award of **\$769.90**.

The Landlord is authorized to retain \$769.90 of the Tenant's \$1,050.00 security deposit in complete satisfaction of this award. The Landlord is Ordered to return the remaining security deposit to the Tenants, as soon as possible.

I grant the Tenants a Monetary Order of **\$280.10** from the Landlord for the remaining amount of the Tenant's security deposit, pursuant to section 67 of the Act.

Conclusion

The Landlord is partially successful in his Application in the amount of \$669.90. The

Landlord provided sufficient evidence to meet his burden of proof in this matter on the claims awarded. The Landlord is also awarded recovery of the \$100.00 Application filing fee from the Tenant for a total award of **\$769.90**.

The Landlord is authorized to deduct this award from the Tenants' \$1,050.00 security deposit in total satisfaction of the award. The Landlord is Ordered to return the remaining amount of the security deposit of \$280.10 to the Tenants, as soon as possible.

I grant the Tenants a monetary order of **\$280.10** from the Landlord in this regard. This Order must be served on the Landlord by the Tenants, and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: February 10, 2021

Residential Tenancy Branch