



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDL-S

Introduction

This hearing was reconvened from an adjourned hearing originally scheduled for October 16, 2020. The hearing was adjourned to allow for service of evidentiary materials for the hearing.

This reconvened hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

LL and SA appeared as agents for the landlord. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing and amendment. In accordance with section 89 of the *Act*, I find that the tenant duly served with the landlord's application and amendment. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began as a fixed-term tenancy on September 1, 2018, and continued on a month-to-month basis until it ended on May 31, 2020. Monthly rent was set at \$3,000.00, payable on the first of the month. The landlord collected a security deposit and pet damage deposit in the amounts of \$1,500.00 each deposit. The tenant's pet damage deposit was returned on June 30, 2020.

The landlord is requesting monetary compensation as follows for the tenant's failure to leave the home in reasonably clean and undamaged condition:

1) Chimney Cleaning	\$141.75
2) Damaged Hardwood Flooring	1,000.00
3) Damaged Interior Door	550.00
4) Attempted Stain Removal and Carpet Clean	175.88
5) Kitchen & bathroom cleaning	341.25
6) Fill 103 holes in walls & paint	1,000.00
7) Replacement door for refrigerator, cannot be repaired	300.65
8) Missing knob, chip on bathroom counter	60.00
9) TV Mount Removed	100.00
10) 3 broken blinds (landlord clarified was one blind, not 3)	50.00
11) Screens need to be put back	30.00
12) Bush has been cut	120.00
13) 2 closet doors need to be repaired	80.00
14) Stain in bedroom carpet	200.00
15) Filing Fee	100.00
Total Monetary Award Requested	\$4,249.53

Both parties confirmed that although a move-in inspection was completed, a move-out inspection was not completed with both parties present. The tenant testified that she had attended the first scheduled move-out inspection on May 31, 2020, but only SA had attended. After waiting for LL to attend, the tenant had to leave to deal with her infant and attend to her final exam. Both parties attempted to reschedule a new inspection date. It was undisputed that the agent LL served the tenant with a Notice of Final Opportunity to Schedule a Condition Inspection by email on June 1, 2020. The landlord submitted in evidence a copy of the email and Notice. The email is time stamped June 1, 2020 at 12:27 PM, and included an attachment of the Notice for an inspection at 6:00

p.m. on June 1, 2020. The tenant testified that she was unable to attend at that date and time as the tenant had an exam at 5:00 pm. The landlord performed the inspection without the tenant present as the owner needed immediate possession.

The landlord provided a detailed summary of their claim, and the compensation they are seeking. The tenant provided a detailed written response to the landlord's claims. The tenant disputes the majority of the claims as wear and tear, with some exceptions. As noted above, while I have turned my mind to all the documentary evidence properly before me I will not be reproducing all the evidence here. The following is a brief summary of the claims and submissions by both parties.

The tenant disputes that she had used the fireplace, and is therefore not responsible for the cleaning. The landlord testified that the fireplace was clearly used during the tenancy, as shown in the photos.

The tenant disputes causing damage to the hardwood floors, and states that she had used runners and area rugs to protect the flooring. The landlord referenced the photos submitted, and states that the damage was in the center of the floor in front of the feature fireplace. The landlord submits that the damage was not there at the beginning of the tenancy, as shown in the photos submitted.

The tenant testified that the plastic frame for the cat door had broken off, causing damage to the interior door. The tenant attached a document showing the replacement value for the door without the cat door, and states that she should not be responsible for the condition of the old pet door that broke. The landlord argued that the exact door is no longer manufactured, and that the replacement would need to be finished and painted to match the other doors in the home. The landlord argued that the door was not damaged prior to this tenancy.

In response, the tenant admitted that the refrigerator was "damaged by using rough paper to remove grime from the door". The tenant argued that the landlord could have repaired the door with stainless steel paint instead of replacing the door. The tenant also noted that she was "uncertain that I caused the damage". The landlord responded that they had attempted to mitigate the losses by exploring the option of a stainless steel repair kit, but due to the finish and coating, this was not possible.

The tenant argued that although she had hung photos, shelves, some art, and two guitars on the wall, the contract did not specify that she was prohibited from doing so, or that she was responsible for removing and repainting the walls. The tenant testified that

SA had viewed the home on four occasions and never took issue with the items on the wall. The tenant argued that the holes were simply wear and tear.

The tenant argued that the knob went missing at some point during the tenancy, and the tenant was unable to locate it. The tenant argued that the threading was stripped from the knob, and did not remain in place. The tenant states that she was unaware of any damage in the bathroom.

The tenant states that she had knocked one blind off the bracket while moving, and that due her disability was able to lift and reset it herself. The tenant disputes that the blinds were broken by her.

The tenant states that she had removed two screens to install her air conditioning unit, and that the black plastic grip tab broke off. The tenant testified the damage was due to brittleness and age, and should be considered wear and tear.

The tenant testified that she had hired a cleaner, who had attended on two days to clean the home. The tenant included a statement from the cleaner. The landlord responded that despite the hiring of a cleaner, the home was not in reasonably clean condition, as shown in the photos. The landlord submitted photos that show the interior of several cupboards and closets that were left uncleaned. The landlord states that the tenant did not clean liquid that had dripped out, or the inside of the freezer or refrigerator properly. The landlord also submitted that the oven and oven drawer was not properly cleaned, and had food left in it. The landlord noted that the microwave was also not properly cleaned.

The tenant denies cutting the bush referenced in this dispute. The landlord submitted photos of a bush that appeared to be cut back, which the landlord stated was not cut by any contractors hired by the landlord.

The tenant testified that one of the closet doors had fallen off the hinges, and she was physically unable to put it back in place. The tenant testified that she had leaned it against the wall, and disputes causing any damages to the doors.

The tenant testified that the stain in the bedroom is an old one, and was noted in the receipt for the carpet cleaning in the tenant's previous application and initial inspection. The tenant disputes the other stains in the home. The landlord argued that the stain referenced was a different stain caused by the tenant, and in middle of the floor.

The landlord argued that the carpets “were near new and stain free prior to the tenancy”, and that the carpets now require replacement as the stains could not be removed despite attempted cleaning. The landlord submitted a receipt from August 2018, prior to beginning of the tenancy to show that the carpet was cleaned and scotchguarded.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Residential Tenancy Regulation further clarifies the requirements for how two opportunities for an inspection must be offered to the tenants:

Two opportunities for inspection

17 (1) *A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*

(2) *If the tenant is not available at a time offered under subsection (1),*

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) *When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any*

reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

As stated above, both parties must consider any reasonable time limitations of the other party that are known and that affect that party's availability. In this case I find that the tenant had attended the first scheduled inspection, but the agent LL did not. I find it also undisputed that although LL did serve the tenant with a Notice of Opportunity for a Final Inspection in the required form, Form *RTB-22 Notice of Final Opportunity to Schedule a Condition Inspection*, the time and date of inspection proposed was for less than six hours later on the same date. I do not find the landlord's proposal and final opportunity to be reasonable at all, even if the tenant did not have an exam that same day. Based on the evidence and testimony before me, I find that the landlord did not provide a fair or reasonable opportunity for the tenant to attend the move-out inspection.

As noted in Residential Policy Guideline #17:

The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required¹⁰ (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
- *having made an inspection does not complete the condition inspection report.*

I must note, however, that the above does not exclude the landlord from being able to file a monetary claim for damages as noted in the policy guideline:

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- *to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- *to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- *to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

Accordingly, I will consider the landlord's monetary claims, and my findings are as follows:

- 1) Chimney Cleaning:

Residential Tenancy Policy Guideline #1 states the following: *“The tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it.”*

It was disputed by the tenant that she had used the fireplace during the tenancy. I have considered the evidence before me, and I find that the photos submitted show that the fireplace was used. Furthermore, I find that the tenant was presented with instructions on appropriate use of the fireplace. In the tenant's own statement, the tenant stated “the items left behind in the fireplace are not mine. There is nothing noted on the walk-in inspection form regarding the fireplace or condition of it”. I find that this statement supports the fact that the fireplace was used by some party, despite the tenant's denial that she was that party.

I do not find the tenant's submissions to be convincing or persuasive. The tenant's own statement was that there were items left behind in the fireplace, and that the inspection report did not note anything about the fireplace. In accordance with Residential Tenancy Regulation 21, a condition inspection report is evidence of the state of repair and condition of the rental unit at the time of reporting, unless there is a preponderance of evidence to the contrary. I find the absence of any notations or discrepancies about the fireplace supports the fact that the fireplace was in clean condition at the beginning of the tenancy.

I find that the landlord has met their evidentiary burden on a balance of probabilities that the fireplace was used during the tenancy. Accordingly, I find that the tenant was responsible for cleaning the fireplace, but did not. On this basis, I allow the landlord's monetary claim of \$141.75 for chimney cleaning.

2) Damaged Hardwood Flooring:

The landlord submitted photos to support that the hardwood flooring was damaged. The tenant disputes having caused this damage, and notes that the inspection report does not make any note of the referenced damage. In light of the disputed testimony, the burden of proof falls on the applicant to support their claim. In this case, I am not satisfied that the landlord had provided sufficient evidence to support that the damage was caused the tenant during this tenancy. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

3) Damaged Interior Door:

The tenant did not dispute that the frame for the cat door had broken off, causing damage to the door. As noted above, the burden of proof is on the applicant to support their claim. In this case I find that the photos submitted by the landlord do show damage to the door. It was undisputed by both parties that a cat door was installed in the door, and from the photos it appears that the frame of this cat door had broken off, causing damage to the surrounding area. Although there is obvious damage to the door, I am not satisfied that the damage was caused by the tenant. I find that much of the damage depicted appears to be associated with the breaking of the cat door, which could be attributed to wear and tear. I am not satisfied that the landlord had provided sufficient evidence to support that the damage to the door was caused by the tenant rather than wear and tear from the attached cat door. Accordingly, I dismiss this portion of the landlord's claim without leave to reapply.

4) Attempted Stain Removal and Carpet Clean:

Although I note the tenant's testimony and evidence that she had paid for carpet cleaning during this tenancy, as shown by the receipt she had submitted in the tenant's previous claim, the landlord had also submitted a receipt dated August 30, 2018, which was the day before the tenant had moved in, which shows that the landlord had paid \$305.20 for cleaning and scotchguarding of the carpet. I find that the referenced carpet cleaning in the tenant's previous claim only pertained to the bedrooms, and I find that the evidence submitted by the landlord shows staining to other areas of the home such as the great room. I am satisfied that this damage was caused during this tenancy. On this basis, I allow the landlord's monetary claim in the amount of \$175.88 for the cleaning and attempted stain removal.

5) Kitchen & Bathroom Cleaning:

Although the tenant provided evidence to support that she had hired someone to clean the rental unit, I find that the landlord did provide sufficient evidence to support that the home was not reasonably clean at the end of the tenancy. Although I acknowledge the fact that the tenant was successful in a previous claim for cleaning, I find that this finding and award does not relieve the tenant of their obligations to leave the rental unit in reasonably clean condition at the end of the tenancy. For these reasons, I allow the landlord's monetary claim for cleaning in the amount of \$341.25.

6) Fill 103 holes in wall & paint:

I find that the tenant did acknowledge to hanging items on the walls, which I find had caused holes to the walls. The tenant also disputes that the tenant caused over 100 holes in the walls. The tenant attributed the damage to wear and tear. The tenant also stated that some of the damage was caused by a curtain rod that would fall due to its age, causing damage to the walls. The tenant stated that the landlord failed to raise any issues with the tenant's decision to hang items on the walls during the tenancy, or note in the tenancy agreement that the tenant is responsible to repair and repaint due to wall hangings, and accordingly the landlord's right to claim against the damage is extinguished.

Residential Tenancy Policy Guideline #1 states that:

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. The tenant is responsible for all deliberate or negligent damage to the walls.

In assessing the evidence and testimony before me, I find that the landlord had provided sufficient evidence to support that the tenant had hung items on the wall which caused damage. Although the tenant referenced other causes such as a falling curtain rod, I find the majority of the damage was caused by the tenant, and exceeds regular wear and tear. The fact that the landlord did not give specific directions to the tenant, or raise any issues during the tenancy, does not relieve the tenant of their obligations under the *Act* to leave the home in undamaged condition. I find that the tenant caused a significant amount of damaged, and did not repair it before vacating the home. On this basis, I allow the landlord's monetary claim of \$1,000.00 associated with the damage and associated repairs.

7) Damage to Refrigerator Door:

I find that the door to the refrigerator was damaged, which the tenant had acknowledged in part as noted in her statement "damaged by using rough paper to remove grime from the door". Although the tenant states that the landlord could have mitigated their losses by other means of repair, I find that the landlord provided a reasonable explanation for why they could not do that. I find that the landlord had explored other options to mitigate their losses, but had no choice but to replace the door. Accordingly, I allow the landlord's monetary claim of \$300.65 for replacement of the refrigerator door.

8) Missing knob, chip on bathroom counter:

The tenant states that the knob had fallen off due to wear and tear. I have considered the evidence and testimony provided by both parties. I find the tenant's testimony about the missing knob to be reasonable. I am satisfied that the knob had fallen off due to the fact that the knob had fallen off, which was not the fault of the tenant. For this reason, I dismiss the landlord's monetary claim related to the missing knob.

I have also considered the evidence about the chip, which is shown in the photo submitted by the landlord. In light of the evidence before me, I am not satisfied that the landlord had provided sufficient evidence to support that this damage was deliberately or negligently caused by the tenant. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

9) TV Mount Removal:

I find that the tenant had acknowledged the fact that she had left behind her TV Mount. Accordingly, I allow the landlord's monetary claim of \$100.00.

10) Broken Blind Repair:

I find that the tenant acknowledged to knocking down a blind, but did not replace it due to her physical disability. Although I sympathize with the tenant and her difficulties performing certain functions, I find that the tenant had failed to properly repair or replace the blind that was knocked down. I find that the tenant could have asked for and obtained assistance in performing this action. For this reason, I allow the landlord's monetary claim of \$50.00 for the broken blind.

11) Screens need to be put back:

Similarly, I find that the tenant had acknowledged that she had removed the screens when installing her air conditioning unit, and that resulted in some damage due to wear and tear. I find that the landlord's claim is justified as the tenant failed to properly repair or replace the screens at the end of the tenancy, which was her responsibility. On this basis, I allow the landlord's monetary claim of \$30.00.

12) Bush has been cut:

Although the landlord provided evidence which shows that the bush had been cut, the tenant denied doing this. In light of the fact that the evidentiary burden falls on the landlord to support that the tenant had in fact cut the bush, I am not

satisfied that the landlord had met this burden. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

13) Closet Doors Need to be Repaired:

The tenant testified that the door had fallen off, and she was unable to rehang it. I am not satisfied that the tenant had caused damage to the closet door or doors, and I find that the damage may have been a result of regular wear and tear. Although I acknowledge the landlord's concern that the tenant did not rehang the door, I am not satisfied that the landlord had met the evidentiary burden to support that this claim was due to the tenant's actions rather than the age of the door(s) and regular wear and tear. Accordingly, I dismiss this portion of the landlord's monetary claim without leave to reapply.

14) Stain in bedroom carpet:

The tenant notes that the stain was old, as supported by the fact that she had paid for and was reimbursed the carpet cleaning costs for 3 bedrooms on September 7, 2018. As noted in the tenant's own testimony, she had paid for professional carpet cleaning for the bedrooms, and the carpets were cleaned on September 7, 2018. I find that the landlord provided sufficient evidence to support that the carpet was stained at the end of the tenancy. In light of the fact that the bedroom carpets were professionally cleaned on September 7, 2018, I find that the stain must have been caused after this date. On this basis, I allow the landlord's monetary claim related to the bedroom carpet stain.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was only partially successful in their application, I find that the landlord is entitled to recover half of the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$1,5000. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim

Conclusion

I issue a Monetary Order in the amount of \$889.53 in the landlord's favour as set out in the table below. The remainder of the landlord's claims are dismissed without leave to reapply.

1) Chimney Cleaning	\$141.75
2) Attempted Stain Removal and Carpet Clean	175.88

3) Kitchen & bathroom cleaning	341.25
4) Fill 103 holes in walls & paint	1,000.00
5) Replacement door for refrigerator, cannot be repaired	300.65
6) TV Mount Removed	100.00
7) Broken Blind Repair	50.00
8) Screens need to be put back	30.00
9) Stain in bedroom carpet	200.00
10) Filing Fee (50%)	50.00
Less Security Deposit Held by Landlord	-\$1,500.00
Total Monetary Award	\$889.53

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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: March 4, 2021

Residential Tenancy Branch