



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

On December 9, 2020, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards these debts pursuant to Section 38 of the Act, and seeking to recover the filing fee pursuant to Section 72 of the Act.

At the outset of the hearing, the Landlord was advised that recording of the hearing was prohibited and she was reminded to refrain from doing so. The Landlord confirmed that she was not recording the proceeding.

The Landlord attended the hearing; however, the Tenant did not attend at any point during the 45-minute teleconference. All parties in attendance provided a solemn affirmation.

She advised that the Notice of Hearing and evidence package was served to the Tenant by hand on December 17, 2020. Based on this undisputed, solemnly affirmed testimony, I am satisfied that the Tenant was sufficiently served the Landlord’s Notice of Hearing and evidence package. As service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Landlord’s evidence and will consider it 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 a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?
- 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.

The Landlord advised that the tenancy started on August 1, 2020 and ended when the Tenant gave up vacant possession of the rental unit on November 30, 2020. Rent was established at \$1,800.00 per month and was due on the first day of each month. A security deposit of \$900.00 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 August 2, 2020 and that a move-out inspection report was conducted on November 30, 2020. A copy of these reports was submitted as documentary evidence. She indicated that the Tenant provided a forwarding address in writing on the move-out inspection report.

She advised that she is seeking compensation in the amount of **\$3,600.00** because the Tenant provided notice to end her tenancy on November 26, 2020 by text message, effective for November 30, 2020, and she gave up vacant possession of the rental unit on that date. Due to the condition that the Tenant left the rental unit, she stated that she has been unable to afford to fix the rental unit and as a consequence, she has not been able to re-rent the unit. As such, she is seeking to recover the rental loss that she has suffered for December 2020 and January 2021.

She advised that she is also seeking compensation in the amount of **\$25.00** for the cost of re-keying the rental unit as the Tenant did not return the keys. She stated that she has not re-keyed the rental unit yet and that she was told by the Tenant that this would be the amount it would cost. She did not provide any documentary evidence to support this cost.

She advised that the rental unit was furnished, and she is seeking compensation in the amount of **\$200.00** for the cost of replacing bar stools that were provided at the start of the tenancy. She stated that the stools cost her \$150.00 each, that they were brand new at the start of the tenancy, and that the Tenant stained and scratched them. She referenced the pictures submitted as documentary evidence to support her position on this damage. She did not provide any evidence to corroborate her claim for the cost to replace the stools; however, she stated that her research indicated that it would cost her \$100.00 per stool to replace these with used ones.

She advised that she is seeking compensation in the amount of **\$750.00** for the cost of replacing the fridge that the Tenant damaged. She stated that it appeared as if the Tenant placed a hot pot on the shelf of the fridge and melted the plastic portion of the shelf, affecting the manner with which the glass in the fridge sits. As well, the Tenant caused some dents on the inside base of the fridge. She referenced pictures as documentary evidence to illustrate this damage. She stated that she has not looked into the cost of replacement parts, and other than this damage, the fridge is still functional. She submitted that the fridge was three years old at the start of the tenancy and while she has not provided any evidence to support this claim, her market research has indicated that a used, replacement fridge would cost the amount that she is seeking.

She advised that she is seeking compensation in the amount of **\$600.00** for the cost of replacing a used couch that was provided as part of the tenancy. She stated that the couch was approximately a year old prior to her purchase, that it cost her \$850.00, and that it was in excellent condition at the start of the tenancy. While she did not have any evidence of the condition of the couch when the tenancy started, she stated that the Tenant caused many rips, cracks, and paint marks or stains on the couch prior to vacating. She cited pictures submitted as documentary evidence to illustrate the damage. She testified that the couch is still functional; however, the cost she is claiming for represents the cost to purchase a replacement, used couch.

She advised that she is seeking compensation in the amount of **\$600.00** for the cost of cleaning the rental unit as the Tenant left the rental unit extremely dirty at the end of the tenancy. She stated that the walls needed to be scrubbed as the Tenant wrote on the them, and it appeared as if the Tenant left a map and glow in the dark stickers on the walls. She stated that the stove was dirty, that the toilet was disgusting, that the bathroom was filthy and there was rust or blood left behind, that the vents of the microwave and stove were greasy, that the Tenant did not clean behind the fridge or appliances, and that the Tenant smoked in the rental unit, leaving behind a black tar like substance and the odour of smoke. She testified that she cleaned the rental unit with

her friend and her mother, and it took them 24 hours to return the rental unit to a rentable state. She referenced the pictures submitted as documentary evidence to support the cost of this claim.

She advised that she is seeking compensation in the amount of **\$750.00** for the cost of repainting the rental unit as the Tenant left maps and strip lighting in the rental unit, and that the walls were chipped. She stated that the rental unit was painted approximately four years ago and was touched up just prior to the beginning of the tenancy. She referenced pictures submitted to demonstrate the condition of the walls at the end of the tenancy.

She advised that she was originally seeking compensation in the amount of **\$200.00** for the cost of carpet cleaning; however, the actual cost of this cleaning was **\$114.45**. She stated that as the Tenant smoked in the rental unit, there was a black resin that remained, as well as the smell of smoke. She stated that the carpet was cleaned at the start of the tenancy and she referenced pictures submitted to illustrate this damage.

She advised that she is seeking compensation in the amount of **\$225.00** for the cost of replacing a desk that was provided with the tenancy, as the Tenant ripped a door off the drawer and left the desk wobbly. She was not sure why the desk was wobbly, and it was not possible to repair the drawer. She provided a picture of the damaged desk and she stated that it was a year old. She did not submit any evidence to support the cost of the desk originally or to support the cost of a replacement desk.

She advised that she is seeking compensation in the amount of **\$150.00** for the cost of repairing, repainting, and staining a five to six-year-old coffee table that was provided at the start of the tenancy. She stated that the Tenant heavily scratched this table; however, she did not provide any evidence to corroborate this allegation. She testified that the coffee table is still functional.

Finally, on the monetary order worksheet provided, she indicated that she was seeking compensation in the amount of **\$425.00** for the cost of dishes; however, during the hearing she stated that this amount was broken down as \$225.00 for replacement of a microwave that was provided at the start of the tenancy, and \$200.00 for kitchenware items that were provided at the start of the tenancy.

She stated that the Tenant appeared to use a wire brush to clean the inside of the microwave door, permanently scratching it. She stated that it was four to five-years old and that it still functions. She submitted a picture to support the damage to the door;

however, she did not submit any evidence to corroborate the original cost of the microwave or the replacement cost of a new one.

With respect to the dishes, she stated that the rental unit was fully furnished at the start of the tenancy, and the items provided ranged from four months to four years old. She testified that pots were burned badly, and that about 20% of the pots, pans, dishes, and cutlery were missing. She did not provide a list of what was provided at the start of the tenancy nor was there much evidence to support her claims of loss. She advised that she has receipts for the replacement cost of these items; however, she did not submit them as documentary evidence. She did state that she had one receipt that she found for \$37.10.

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 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 day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection report.

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 have 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 for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

As the undisputed evidence is that both a move-in and move-out inspection report was completed with the Tenant, I am satisfied that the Landlord did not extinguish her right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenant's security deposit, 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 receives 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*.

Based on the consistent and undisputed evidence before me, the Landlord received the Tenant's forwarding address on November 30, 2020. Furthermore, the Landlord made an Application, using this same address, to attempt to claim against the deposit on December 9, 2020. As the Landlord made this Application within 15 days of receiving the Tenant's forwarding address in writing, and as the Landlord did not extinguish her right to claim against the deposit, I am satisfied that the Landlord has complied with the *Act*. Therefore, I find that the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlord's 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."

Regarding the Landlord's claim for lost rent of \$3600.00 for December 2020 and January 2021 rent, this will be addressed at the end of this Decision.

With respect to the Landlord's claim for compensation in the amount of \$25.00 for the cost to re-key the rental unit, despite the Landlord providing scant evidence to support this claim, I am satisfied from the undisputed, solemnly affirmed testimony that the Tenant did not return the keys at the end of the tenancy. Furthermore, I find that this

amount is a reasonable cost to re-key the rental unit. As such, I grant the Landlord a monetary award in the amount of **\$25.00** to satisfy this debt.

Regarding the Landlord's claim for compensation in the amount of \$200.00 for replacing the bar stools, I find it important to note that the Landlord did not provide a list of everything that was included as part of this furnished rental unit at the start of tenancy, nor was there anything documenting the condition of these supplied items. Furthermore, while a move-in inspection report was signed by both parties, there are no notes documenting the actual condition of the rental unit upon move in. Moreover, there is insufficient evidence provided verifying the age of the bar stools, the cost of them when purchased, or the cost to replace them. Finally, while I acknowledge that the barstools may appear soiled and slightly scratched, there is insufficient evidence that these were damaged beyond repair and required being replaced completely. As such, based on the evidence presented, I grant the Landlord a monetary award in the amount of **\$75.00** for the cost equivalent to the loss of value of these stools.

With respect to the Landlord's claim for compensation in the amount of \$750.00 for the cost to replace the fridge, I accept the undisputed evidence that the Tenant melted and dented part of the fridge; however, I note that these appear to be cosmetic and the functionality of the fridge has not been affected by this. While I also agree that the Tenant damaged a shelf in the fridge, it again is not clear to me why this would require the fridge to be replaced entirely. In addition, I note that the Landlord did not make any efforts to determine the costs of repairing any of the damaged parts. Given that the fridge is still fully functional, with the exception of the shelf, I do not find that the Landlord should be entitled to claim for replacement of the fridge. However, as the Tenant has caused damage to the fridge, I grant the Landlord a monetary award in the amount of **\$150.00** for the amount that I determine to be reasonable in fixing the shelf and for the subsequent loss of value due to the damage.

Regarding the Landlord's claim for compensation in the amount of \$600.00 for the cost of replacing a used couch provided at the start of the tenancy, I find it important to note that the Landlord did not document the condition of the couch at the start of the tenancy. Moreover, she provided insufficient evidence verifying the age of the couch, the cost when it was purchased, or the cost to replace it. While it is unclear how much damage on the couch existed prior to the tenancy starting, based on the undisputed evidence before me, I find it more likely than not that the Tenant was responsible for some damage to the couch. However, as there is limited evidence to compare the before and after condition, I grant the Landlord a monetary award in the amount of **\$100.00** for the cost equivalent to the loss of value of the couch.

With respect to the Landlord's claims for compensation in the amount of \$600.00 for the cost of cleaning the rental unit, while the move-in inspection report contains no notes regarding the condition of the rental unit at the start of the tenancy, and as the move-out inspection report is minimally completed, I question how much effort the Landlord actually put into conducting these reports with the Tenant. This causes me to be skeptical of the legitimacy of these reports. However, based on the other undisputed documentary evidence provided, I am satisfied on a balance of probabilities that the Tenant did not clean the rental unit at the end of the tenancy. As such, I grant the Landlord a monetary award in the amount of **\$600.00** to satisfy this claim.

Regarding the Landlord's request for compensation in the amount of \$750.00 for the cost of repainting the rental unit, I find it important to note that the move-in inspection report contains no notes regarding the condition of the rental unit, and the comments on the move-out inspection report is very minimal. However, based on the undisputed documentary evidence provided, I am satisfied that the Tenant more likely than not did damage the walls, requiring them to be repainted. Policy Guideline # 40 estimates a useful life of interior paint as approximately four years. Given that the rental unit was last painted approximately four years ago, I find it likely that the rental unit was due for new paint within the next few years at any rate. As such, I grant the Landlord a monetary award in the amount of **\$350.00** to satisfy this debt.

With respect to the Landlord's claims for compensation in the amount of \$114.45 for the cost of carpet cleaning, I accept the Landlord's undisputed evidence that the Tenant smoked in the rental unit and that she did not clean the carpet at the end of the tenancy. Consequently, I grant the Landlord a monetary award in the amount of **\$114.45** to rectify this issue.

Regarding the Landlord's request for compensation in the amount of \$225.00 for replacing a broken desk, the Landlord did not document the condition of the desk at the start of the tenancy and she provided insufficient evidence verifying the age of the desk, the cost when it was purchased, or the cost to replace it. Furthermore, she stated that it was wobbly, but she did not know why. While the undisputed evidence is that the Tenant damaged the drawer, there is little evidence to support that the desk is completely unusable and must be replaced in its entirety. As such, I grant the Landlord a monetary award in the amount of **\$75.00** for the cost equivalent to the loss of value I have determined for the desk.

With respect to the Landlord's claims for compensation in the amount of \$150.00 for the cost of restoring damage done to coffee table, there was insufficient evidence provided

to support the Landlord's testimony regarding the condition of the table prior to the tenancy. As well, there was little evidence submitted to corroborate the condition of the coffee table at the end of the tenancy, Furthermore, there was insufficient evidence provided to support the cost of this repair. However, given the undisputed evidence that the Tenant caused some damage to the coffee table, I grant the Landlord a monetary award in the amount of **\$25.00** to satisfy this issue.

Regarding the Landlord's request for compensation in the amount of \$225.00 for replacement of a microwave that was scratched, the Landlord did not document the condition of the microwave at the start of the tenancy. While the undisputed evidence is that the Tenant damaged the door, there is insufficient evidence before me demonstrating that the microwave is no longer functioning and that it required being replaced in its entirety. As such, I grant the Landlord a monetary award in the amount of **\$50.00** for the cost equivalent to the loss of value I have determined for the microwave.

With respect to the Landlord's claims for compensation in the amount of \$200.00 for kitchenware items that were missing at the end of the tenancy, I find it important to note that the Landlord did not outline what items were provided at the start of the tenancy. While I accept that the Tenant may have lost or not returned some items, I do not find that the Landlord has provided sufficient evidence to demonstrate what was provided, what was missing, or the value of those items. As such, I grant the Landlord a nominal monetary award in the amount of **\$25.00**.

Finally, regarding the Landlord's claim for lost rent of \$3600.00 for December 2020 and January 2021, when reviewing the totality of the evidence before me, there is no dispute that the tenancy was a month-to-month tenancy, and the tenancy effectively ended when the Tenant gave up vacant possession of the rental unit on November 30, 2020. Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenant must give written notice to end a tenancy. As well, this notice cannot be effective earlier than one month after the date the Landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement. Section 52 of the *Act* outlines what is required regarding the form and content of a written notice to end tenancy. As well, Section 53 of the *Act* states that any incorrect effective date on a notice to end a tenancy will automatically self-correct to the appropriate date.

What this means is that if the Tenant wanted to end the tenancy on November 30, 2020, as rent was due on the first day of each month, written notice must have been received by the Landlord on or before October 31, 2020. In addition, a text message would not be considered under the *Act* as proper written notice. Therefore, I find that the Tenant

vacated the rental unit contrary to Sections 45 and 53 of the *Act*. Given that the Tenant gave up vacant possession of the rental unit without the proper written notice on November 30, 2020, I am satisfied that she would be responsible for December 2020 rent in the amount of **\$1,800.00**.

With respect to the Landlord's claim for January 2021 rent, I accept the Landlord's undisputed evidence that the Tenant did not clean, that the Tenant damaged the rental unit, and that the Tenant did not return the rental unit to the same condition as it was rented to her. However, I do not find it reasonable that the cleaning, the painting, and the carpet cleaning could not have been completed in December 2020. Furthermore, many of the items that the Landlord was claiming for were for complete replacement, but I am not satisfied that these items were required to be replaced entirely prior to a new tenancy starting. Moreover, there is no obligation for the Landlord to rent the unit with the specific furnishings that were in the rental unit. As such, given that the rental unit was cleaned and ready for re-rental in December 2020, I am not satisfied from the evidence provided that the rental unit was left in such a state of disrepair that prevented the Landlord from re-renting the unit in January 2021. Consequently, I dismiss this portion of the Landlord's claim in its entirety.

As the Landlord was partially successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 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

Cost to re-key rental unit	\$25.00
Barstool damage	\$75.00
Fridge damage	\$150.00
Couch damage	\$100.00
Cleaning	\$600.00
Painting	\$350.00
Carpet cleaning	\$114.45
Desk damage	\$75.00
Coffee table damage	\$25.00
Microwave damage	\$50.00

Missing items	\$25.00
December 2020 rent owed	\$1,800.00
Filing fee	\$100.00
Security deposit	-\$900.00
TOTAL MONETARY AWARD	\$2,589.45

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$2,589.45** 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: April 14, 2021

Residential Tenancy Branch