



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-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 for the Landlord of \$353.76; and for a monetary order for damage or compensation for damage under the Act of \$3,100.00, retaining the security deposit for these claims; and to recover the \$100.00 cost of his Application filing fee.

The Tenant and the Landlord 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. One witnesses for the Tenant, J.K., was also present and provided affirmed testimony.

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 they confirmed these addresses 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.

At the outset of the hearing, 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.

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 \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on July 1, 2020, and was scheduled to run to March 31, 2021, with a monthly rent of \$1,550.00, due on the last day of the preceding month by noon. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,550.00, and no pet damage deposit.

The Tenant submitted a hand-written document dated January 15, 2021 in which she said:

I gave [the Landlord] 1½ month notice to move out on Oct 18 20. He immediately put it up for rent. He kept coming over as soon as I came home from work. He said there were showing when there was not, so I had to be not home.

The Parties agreed that the tenancy ended when the Tenant moved out on November 29, 2020, and that the Tenant provided the Landlord with her forwarding address in writing on November 30, 2020.

The Parties agreed that they conducted an inspection of the condition of the rental unit at the start of the tenancy and that they prepared a condition inspection report ("CIR"), as a result. The Parties agreed that they also did a condition inspection at the end of the tenancy. They each submitted a copy of the CIR to the RTB for my consideration.

The Landlord had four claims that we reviewed in the hearing. These claims are set out in this monetary order worksheet:

	Receipt/Estimate From	For	Amount
1	Local carpet cleaner invoice	Carpet cleaning	\$183.75
2	Int'l hardware store receipt	Repair materials	\$120.01

3	Labour and materials	Cleaning stovetop labour	\$50.00
4	Dec/20 and January/21	Rent losses for breaking Fx T.A.	\$3,100.00
		Total monetary order claim	\$3,453.76

#1 CARPET CLEANING → \$183.75

In the hearing, the Landlord said that the carpets were new in 2015, and therefore, they were about five years old during the tenancy.

The Tenant said:

When I first moved in, I sent him an email that the carpet wasn't cleaned, there were nail holes, wall chips, stained carpet, - this was sent that on the 22nd of September. I had the carpet cleaned by his carpet cleaner, Daniel, on the 28th of November (I moved out on the 29th). It's a private guy, it's his own business. [The Landlord] gave me him to use.

The Landlord said:

She didn't. The carpet was still dirty when she moved out, so I had to hire someone else, or she stained the carpet so badly it had to be cleaned. I said this is someone I had used in the past, so it's not somebody off the street. This guy is retired, I think. He does have a website somewhere.

As soon as she left, I could see all the stains there. During the inspection it was very stressful, because she didn't want to talk to me about anything. I'm going to minimize my losses. She made so many false statements.

See the receipt for the carpet cleaner for \$175.00. I went with them because they are more reputable; Daniel was someone who did it on the side. Daniel didn't do a really good job, he would have to come back multiple times to clean the carpet, but the reason I gave her the number is because she asked. I normally want to do it with a receipt – so that I know it was done.

The Tenant said:

Like I said when I moved in, I mentioned about the holes in the walls and the

carpet, and the carpet being stained and everything. The previous tenants left all this damage and he said everything is fine and it is okay. And he tried to blame me for the holes, etc.

When I asked the Parties about the CIR, the Tenant said:

We were going to move in at the beginning of October, so he asked us to move in by the 22nd. We used his carpet cleaner, Daniel, for our place. When we moved in, I told him that day - I told him that there are nail holes, walls chipped, stained carpet. But we were already in there and his son was visiting from Ontario on the other side.

The Landlord said:

I didn't receive that email – it's all made up. We inspected the suite before they moved in. It's only after that she said 'I'm going to move out early', then she started making things up by intimidation or no hot water, keys don't work properly. She's making up all these stories.

#2 REPAIR MATERIALS → \$120.01

The Landlord explained this claim, as follows:

What happened, I had to go to [an international hardware retailer] and buy all the supplies to repair the damage, so I bought paint, puddy, etc. See the receipt.

I would never rent out a suite with damages. The prospective tenant would sign off on that. None of that happened. I swear there was no damages to the suite before they moved in.

The Tenant said:

He told us to use sticky stuff that you put on the back of pictures... and that's what I used, I had to find out where to buy it.... I never put holes in the walls.

The Landlord said:

I sent her an email that she can use a jimmy hook – what you do is you unwrap the adhesive at the back and stick it to the wall; when you remove it you use a

dryer to heat it up.

The Tenant said:

There was holes in the wall and [my co-tenant] actually sent a text to Sonny about that when we moved in. I actually got the hook thing from [the hardware store] and used them for my pictures. The sticky stuff is only good for certain weights. The holes were there, and he said it was fine.

The Landlord said:

How those damage holes came about was that when she moved from suite A to suite B, she took the wall mounted coat rack from suite A and installed it in suite B and put big holes in there. Her partner and her showed me it's in my new suite. You left two big holes in the other side. So [your co-tenant] gave it back to me and I put it back. So, there are two big holes from doing this.

And when they tried to patch up the holes, they stuck bubble gum in there, so I wouldn't see it. To see it, look at pictures 3 and 4 – see the patch work they did. It's the big white mark on the painted wall. That's what they left behind. We had to sand and paint it.

The Tenant said: "I don't know what he's talking about."

From the pictures the Landlord submitted, I note that there is a large white circle in the middle of a slightly flesh-coloured wall. The Landlord also submitted a close-up photograph of two large holes in the wall. Another photograph shows a poor job of having tried to fill large nail or anchor holes in the wall. The Landlord also submitted a photograph of a large hole in the bathroom wall that is labeled "damaged towel ring and wall".

The Landlord submitted a receipt from the international hardware retailer that lists a paint brush, masking tape, putty knife, sand paper, a drywall repair kit and a towel ring. The total paid on this receipt is \$120.01.

#3 CLEANING STOVETOP – LABOUR → \$50.00

The Landlord explained this claim as follows:

Well, it took me more than a couple hours to clean it. They left a lot of grease under the element. I had to clean that out. I think that \$50.00 is reasonable amount of my labour and cleaning materials.

I put the foil burner savers in, and they didn't replace them, and it must have boiled over, and they didn't clean it. Same thing with suite A, too, I had to clean it, as well.

The Tenant said:

We lived in that side for two months and we provided our own metal things for the stove top and I don't know about a boiling over. It looks like a hoarder's kitchen; it wasn't that dirty. We were only there for two months and we mostly barbecued outside, even in the winter.

The Landlord said:

In the winter they hardly ever barbecued outside. On a few occasions the smoke detector went off. They were cooking greasy hamburgers. It was very smoky a few times. I can smell if I'm upstairs, because they use charcoal.

In the new suite, they never barbecued... only inside.

The Tenant said:

The reason we wanted to rent the other side was because it was covered, and so we could barbecue. The alarm went off once when we were cooking inside, not several times.

The move-in portion of the CIR indicates that the stove/stove top were in good condition at the start of the tenancy. The move-out CIR states that the stove/stove top were "very dirty/damaged" at the end.

The Landlord submitted a photograph of a stovetop with the element removed and it shows a dark brown stain on what looks to be a large rust spot, but the "rust" colour could be part of the stain.

#4 RENT LOSSES FROM BREAKING FIXED TERM LEASE → \$3,100.00

In his Application, the Landlord said the following about this claim: “Tenant broke the lease agreement and as a result I am claiming 2 months (December and January) rental losses (as of now, the suite is not rented) for \$3,100 and repair/cleaning cost of \$353.76.”

In the hearing, the Landlord explained, as follows:

I’ve been placing an advertisement every day – I have copies of it - ever since she told me she was going to move out, breaking the lease. I advertised, but as you know that was during the pandemic and during the Christmas season. It’s hard to find new tenants then. I advertised and had a few showings, but they weren’t too interested after looking inside the suite - it was kind of messy. I only had a few ... November 28 – I had a showing. I tried to get the place rented as soon as possible; I lowered the rent to \$1,450.00 – prospective tenants were few and far between. I eventually found someone for February 2021. They looked in January and said they could move in. But I had to lower the rent to entice someone, given the holiday season and the pandemic.

The Landlord said that he advertised in a nationally known web advertising site. He said he uploaded some of the advertisements with all the pictures, although, I could not find these in his submitted evidence.

The Tenant said:

As soon as I told him that I was moving, he started having viewings - at least three times a week; we weren’t supposed to be present. He sent a message that I had to be out on the Sunday, because someone was moving in on the Monday. I saw vehicles parked there in January, so I know that people were living there in January when we dropped off the evidence. Somebody was in there in January; I don’t know about December.

He said someone was moving in on November 30. He sent me a message – I think it’s in there with handwritten notes – might be in the 28-page submission. Or the 8-page.

There were no such notes in the 8-page file, but in the 28-page file at page 15, there is an email to the Tenant, although it does identify the sender. It is dated December 22,

2020, although it has a handwritten note saying “Nov 24/20”. The line in this note is: “No, someone is moving in on Monday. And you have to move out by Sunday as stated.”

The Landlord said:

She sent me a text, saying that you know we have the legal right to stay there until November 30 at midnight. She agreed that she would move out the last day of the month. She sent an email saying we could move out on the 29th, because they had to work that day.

I said you cannot stay there until midnight and I sent her a link that she can't stay there until midnight - she had to move out at 1:00 p.m. on the 30th. Anyway, she moved out on the 29th as we agreed.

[The Tenant] suggested that there were cars in front of my house – those belong to the tenants in the other suite – suite A in January; no one was in Suite B until February.

Analysis

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

Before the Parties testified, I advised them on how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

(“Test”)

Section 32 of the Act requires that a landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards

required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by the tenant. Section 37 states that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Policy Guideline #1 “Landlord & Tenant – Responsibility for Residential Premises” clarifies parties’ responsibilities. It states the following:

1. This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities.

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. 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]

Rule 6.6 sets out that the person making the claim bears the onus of proving their case on a balance of probabilities. In order to do so, a claimant must present sufficient evidence at the hearing to support their claim, meeting this standard of proof.

#1 CARPET CLEANING → \$183.75

The Parties have presented opposing viewpoints on the state of cleanliness of the carpet at the end of the tenancy. The Tenant insists that she had the carpet cleaned by a professional on November 28, 2020, the day before she moved out, and the day before the CIR was completed. The Landlord states that the carpets were stained and that he had to have them professionally cleaned himself after the tenancy ended.

I note that the CIR indicates that the carpets were in good shape at the start of the tenancy and that they were identified as “lots of stains on carpets” at the end of the tenancy. I find this document, which the Tenant signed on move-out inspection, is inconsistent with the Tenant’s claims that the condition of the rental unit was much the same at the beginning as it was at the end. This raises questions in my mind about the reliability of the Tenant’s evidence in this regard. The Tenant signed the CIR on move-out on November 29, 2020, including agreeing to a deduction of her full security deposit due to damage left behind.

Based on the evidence before me overall in this matter, I find that there is more evidence that supports the Landlord’s position than it does the Tenant’s. As such, I find that the Landlord provided sufficient evidence to meet his burden of proof in this matter, and I award him with **\$183.75** for carpet cleaning, pursuant to sections 37 and 67 of the Act.

#2 REPAIR MATERIALS → \$120.01

Based on the evidence before me overall, I find that the Landlord has provided sufficient evidence to meet his burden of proof for this claim. I find there was damage to walls throughout the rental unit that was more than reasonable wear and tear by the Tenant. I find that the supplies the Landlord purchased to do these repairs are all reasonable given the evidence of damage presented. As a result, I award the Landlord with recovery of the **\$120.01** he spent on materials for the repairs, and pursuant to sections 37 and 67 of the Act.

#3 CLEANING STOVETOP – LABOUR → \$50.00

Based on the evidence before me in this matter, I find that the Landlord has provided sufficient evidence to meet his burden of proof. I find that it would have taken a lot of work and perseverance to remove the stain/damage that I saw in the photograph of the stovetop element. I find that this was much more than reasonable wear and tear. I find

that the Landlord could have spent hours overall working to clean this and that \$50.00 - or \$25.00 per hour - for cleaning is reasonable, given the evidence before me. I, therefore, award the Landlord with **\$50.00** for this claim, pursuant to sections 37 and 67 of the Act.

#4 RENT LOSSES FROM BREAKING FIXED TERM LEASE → \$3,100.00

As noted above, the Tenant signed a fixed-term lease running from July 1, 2020 to March 31, 2021.

Section 45(2) of the Act states that a tenant may end a fixed term tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Further, pursuant to section 7 of the Act, a party who does not comply with the Act, regulation or tenancy agreement must compensate the other party for the resulting damage or loss. In addition, Policy Guideline #16 states that damage or loss is not limited to physical property only, but also includes less tangible impacts, such as loss of rental income that was to be received under a tenancy agreement.

However, Policy Guideline #5 “Duty to Minimize Loss” (“PG #5”) requires a party who has suffered damage or loss in this regard, to make reasonable efforts to minimize the damage or loss. PG #5 states:

Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

Later in PG #5 it directly addresses the type of situation before me:

Loss of Rental Income

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

In her written evidence, the Tenant said that the Landlord “immediately put it up for rent” after she gave him almost 1½ months’ notice of the end of the tenancy on October 18, 2021. This is consistent with the Landlord’s evidence that he tried to re-rent it from the start.

I agree with the Landlord that December and January are not typically good times to find new tenants, although some school terms start in January, so there could be that market to attract. However, given common sense and ordinary human experience, as well as my experience as an arbitrator, I find that it is more difficult to find tenants at this time of year than at other times.

I also note that the Landlord followed the practice set out in PG #5 to re-rent the unit at a monthly rent amount that is reasonable, and to strive to rent it out as soon as possible. I note that the Landlord dropped the rent from what he would have received from the Tenant, although he did not claim for this loss in income for February or March 2021. I find this contributes to the finding that the Landlord did what was reasonable in the circumstances to minimize his losses.

Based on the evidence before me overall, I find that the Landlord took appropriate measures to find a new tenant and mitigate his rental income losses, although, he was unable to find a suitable candidate until February 2021. As a result, and pursuant to sections 7, 45(2) and 67, I award the Landlord with two months’ rent from the Tenant for December 2020 and January 2021 in the amount of **\$3,100.00**.

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 Tenant's security deposit of \$1,550.00 in partial satisfaction of the Landlord's monetary claim.

Given his success in this Application, I also award the Landlord with recovery of his **\$100.00** Application filing fee from the Tenant.

	Receipt/Estimate From	For	Amount
1	Local carpet cleaner invoice	Carpet cleaning	\$183.75
2	Int'l hardware store receipt	Repair materials	\$120.01
3	Labour and materials	Cleaning stovetop labour	\$50.00
4	Dec/20 and January/21	Rent losses for breaking Fx T.A.	\$3,100.00
		Sub-total	\$3,453.76
	RTB	Application Filing Fee	\$100.00
		Less Tenant's security deposit	(\$1,550.00)
		Total Monetary Order	\$2,003.76

The Landlord is awarded a total of \$3,553.76, and is authorized to retain the Tenant's \$1,550.00 security deposit in partial satisfaction of this award. I grant the Landlord a Monetary Order from the Tenant in the amount of **\$2,003.76** for the remainder of the awards outstanding.

Conclusion

The Landlord is successful in his Application for compensation from the Tenant for damages and lost rental income in the amount of \$3,453.76. The Landlord is also awarded the \$100.00 Application filing fee for a total award of \$3,553.76.

The Landlord is authorized to retain the Tenant's \$1,550.00 security deposit in partial satisfaction of this award. The Landlord is granted a Monetary Order of **\$2,003.76** for the remainder of the award owing by the Tenant to the Landlord.

This Order must be served on the Tenant by the Landlord 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: April 28, 2021

Residential Tenancy Branch