



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL, MNRL, FFL

Introduction

On October 5, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord’s Application was originally set down for a hearing on January 25, 2021 at 1:30 PM but was subsequently adjourned for reasons set forth in the Interim Decisions dated January 25, 2021 and April 23, 2021. This Application was then set down for a final, reconvened hearing on August 19, 2021 at 11:00 AM.

The Landlord attended the final, reconvened hearing with M.M. attending as an agent for the Landlord. The Tenant attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance, with the exception of M.M., provided a solemn affirmation.

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 monetary compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- 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.

All parties agreed that the tenancy started on October 1, 2019 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on October 31, 2020 based on an Order of Possession. Rent was established at an amount of \$1,550.00 per month and was due on the first day of each month. A security deposit of \$775.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord advised that a move-in inspection report was conducted with the Tenant on October 1, 2019. A copy of this report, signed by both the Landlord and the Tenant, was submitted as documentary evidence for consideration.

The Tenant advised that he met with the property manager and the Landlord on this date but neither of them had the form with them. Thus, nothing was marked on the report and he did not sign it.

The Landlord advised that a move-out inspection report was conducted with the Tenant on October 31, 2020. A copy of this report was submitted as documentary evidence for consideration. While it was not signed by the Tenant regarding the condition of the rental unit, the Tenant did sign this report agreeing to allow the Landlord to keep the security deposit. As well, an email from a witness, dated November 1, 2020, was submitted as documentary evidence to confirm that the Tenant attended a move-out inspection on this date.

The Tenant advised that he met the Landlord on October 30, 2020 and the Landlord did not have the move-out inspection report with her. While he stated that the Landlord did not ask him to meet on October 31, 2020, he went to the rental unit on this date to return the keys and conduct a move-out inspection. He confirmed that he signed the move-out inspection report allowing the Landlord to keep his security deposit.

All parties agreed that a forwarding address in writing was provided on the move-out inspection report.

M.M. advised that the Landlord is seeking compensation in the amount of **\$551.25** because the strata discovered that the toilet bowl was cracked in March 2020 and it required being replaced. As per the move-in inspection report, the toilet was fine at the start of the tenancy. She referred to a note, submitted as documentary evidence, from the strata informing the Tenant that this was discovered and must be repaired. As well, she cited the invoice submitted as proof of the cost of this repair. The Landlord advised that the toilet was brand new in 2014.

The Tenant advised that the building is 14 years old, and that no maintenance was done while he lived there. He stated that he never noticed this crack before and only saw it when he was cleaning the toilet.

M.M. advised that the Landlord is seeking compensation in the amount of **\$100.00** due to a strata fine that was levied against the Landlord because the Tenant was smoking in the rental unit, contrary to the strata bylaws. She referred to documentary evidence to support that the Tenant smoked in the rental unit, contrary to the bylaws and in violation of the previous settlement agreement (the relevant file number is noted on the first page of this Decision).

The Tenant advised that this was fabricated, and the Landlord could not prove that he was smoking in the rental unit. He stated that the tenant prior to him was a smoker and he found cigarette burns and a glass full of cigarette butts in the rental unit.

M.M. advised that the Landlord is seeking compensation in the amount of **\$147.00** because the Tenant installed a lock on his bedroom door without the Landlord's consent. She submitted that the Tenant sent the Landlord unusual text messages and an email in March 2020, prompting the Landlord to conduct a welfare check. This is when the lock was discovered. She referenced documentary evidence to support this position, as well as the invoice to support the cost of replacing the lock.

The Tenant advised that he consulted with the property manager to install the lock and he had a verbal agreement that this would not be an issue. Moreover, he indicated that in the agreed upon settlement agreement of August 25, 2020, he was permitted to change the locks.

M.M. advised that the Landlord is seeking compensation in the amount of **\$1,550.00** for each month of July and August 2020 of unpaid rent.

The Tenant advised that the Landlord owes him money because she restricted his ability to have a roommate. However, he confirmed that he did not have any authority or a valid reason under the *Act* to withhold these rent payments.

M.M. advised that the Landlord is seeking compensation in the amount of **\$717.00** due to the restoration cost because the Tenant smoked in the rental unit. She referred to the documentary evidence submitted to support the cost of the restoration due to the smoke damage.

The Tenant advised that he does not believe that he should be responsible for regular maintenance of the rental unit for issues like the walls needing to be re-painted at regular intervals. He stated that as the rental unit was not completely new, there were several deficiencies in the rental unit when he moved in. He had the rental unit cleaned professionally at the end of the tenancy and he referred to pictures and an invoice that corroborate this position.

M.M. advised that the Landlord is seeking compensation in the amount of **\$256.63** because the Tenant broke a window in the rental unit and the Tenant acknowledged being responsible for this in his own evidence. She referenced the invoice of the cost to repair this window.

The Tenant did not make any submissions on this issue other than it was broken during the cleaning process.

M.M. advised that the Landlord is seeking compensation in the amount of **\$50.00** due to the screen door to the balcony being mis-aligned, stretched, and off its track. This screen was brand new in 2019 and she referenced the invoice submitted to support the cost to replace this.

The Tenant advised that he could not get this screen to work so he never used it and always left it closed. Contrarily, he also stated that this damage would be considered normal wear and tear.

M.M. advised that the Landlord is seeking compensation in the amount of **\$883.16** because the Tenant damaged the enamel on the stove top, which required the stove being replaced. She referenced the pictures submitted of the condition of the stove top at the end of the tenancy and the invoice of the cost to replace the stove.

The Landlord advised that the stove was greasy at move-out and when it was wiped down, spots appeared and it was apparent that the enamel was burned. She stated that this stove was brand new in 2014.

The Tenant advised that the stove was old and valued at \$80.00. He stated that any scratches on the stove are normal wear and tear and he submitted that he could not view the damage that the Landlord is claiming as the pictures served to him were in black and white.

M.M. advised that the Landlord is seeking compensation in the amount of **\$200.00** to clean the carpet. She referenced invoices submitted to demonstrate that the carpet was cleaned prior to the tenancy starting and to support the cost of cleaning the carpet at the end of the tenancy. She also referenced pictures of the carpet cleaning process.

The Tenant advised that he paid to have the carpet cleaned prior to giving up vacant possession of the rental unit and he referenced the invoice that he submitted to corroborate this expense. As such, there was no need to clean the carpet again.

M.M. advised that the Landlord is seeking compensation in the amount of **\$29.33** because the Tenant damaged the upholstery on a barstool. The Landlord advised that the barstool was five years old and she re-upholstered the damaged barstool herself. M.M. referenced pictures of the condition of the barstool before and after the tenancy. As well, she cited invoices submitted to support the cost of the material to complete the repair.

The Tenant advised that he could not see the alleged damage in the documentary evidence provided as the pictures were in black and white. However, he stated that the damage on the barstool is more reflective of its age. He then contradictorily stated that the area of concern was in that condition prior to the start of the tenancy.

Finally, M.M. advised that the Landlord is seeking compensation in the amount of **\$12.82** because the Tenant broke a strainer for the sink. She referenced the invoice for the cost to replace this part and the Tenant's own evidence where he acknowledged that he was responsible for breaking it.

The Tenant advised that this strainer disintegrated during the tenancy and the bolt from it fell into the sink. He stated that this was typical for the age of the building.

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

Section 21 of the *Residential Tenancy Regulations* (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 has 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*.

Section 32 of the *Act* requires that the Landlord provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenant must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

While the parties provided contradictory testimony with respect to the inspection reports, I have before me a move-in inspection report with the Tenant's signature on it. As such, I am satisfied that the parties, more likely than not, met on October 1, 2019 to conduct a move-in inspection. Regarding the move-out inspection report, I note that the Tenant advised that he went to the rental unit on October 31, 2020 and that he signed the move-out inspection report allowing the Landlord to keep his security deposit. As such, I am satisfied that the Tenant was present for a move-out inspection, despite him not signing the report indicating that he did not agree with the condition noted. Regardless, as it appears as if both parties were in attendance for the move-in and move-out inspections, I find that the Landlord has not extinguished the right to claim against the deposit. Therefore, I find that the Landlord is still entitled 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 Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, while the Landlord was provided with the Tenant's forwarding address in writing on October 31, 2020, I note that this Application was made prior to the tenancy officially ending. As such, and as the Landlord did not extinguish the right to claim against the deposit, 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."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenant fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlord prove the amount of or value of the damage or loss?
- Did the Landlord act reasonably to minimize that damage or loss?

In addition, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlord's claim for compensation in the amount of \$551.25 for the broken toilet, I find it important to note that the Landlord's evidence is that this crack was discovered during an inspection in May 2020 and it was determined that a new toilet was required. As the Tenant does not dispute that the toilet needed replacing, I find it reasonable to conclude then that the crack discovered was of a considerable enough degree that it would have caused further damage had it not been replaced. While the Tenant advised that he first noticed this damage while he was cleaning the toilet, given that the tenancy started in October 2019 and that the crack was more likely than not fairly obvious, it is not clear to me why he did not bring this to the Landlord's attention earlier if this were the case. When weighing the evidence and the testimony before me, I find it more likely than not that the Tenant broke the toilet after the tenancy started, rather than a fairly obvious crack being missed during a move-in inspection.

Policy Guideline # 40 estimates the average useful life of a toilet of 20 years. As I am satisfied that the Tenant was likely responsible for breaking the toilet, but given that this toilet was approximately six years old, I grant the Landlord a reduced monetary award in the amount of **\$350.00** for the loss equivalent to the remaining useful life of the toilet.

Regarding the Landlord's claim for compensation in the amount of \$100.00 due to a strata fine because the Tenant was smoking in the rental unit, while the Tenant claimed

that the Landlord could not prove that he smoked in the rental unit, I find it important to note that the parties engaged in a settlement in a different matter before the Residential Tenancy Branch. A copy of this settlement Decision was submitted as documentary evidence and one of the settlement conditions that the parties agreed to was "The tenant will not smoke in the rental unit or the balcony until the end of the tenancy."

In my view, the parties would not have discussed smoking as a point of contention in a settlement agreement had there not been an issue with smoking in the rental unit in the past. As such, I find it more likely than not that the Tenant had been smoking in the rental unit. Consequently, I grant the Landlord a monetary award in the amount of **\$100.00** to satisfy this claim. I also note that the Tenant's denial of smoking in the rental unit, despite the clear evidence that he had been smoking in the rental unit, causes me to doubt the credibility of his submissions on the whole.

With respect to the Landlord's claim for compensation in the amount of \$147.00 because the Tenant installed a lock on his bedroom door without the Landlord's consent, Section 31 of the *Act* prohibits the Tenant from changing the locks in the rental unit. While the Tenant claimed that he had authorization to do so, he has not provided any documentary evidence to corroborate this. Furthermore, despite the Tenant's assertion that the settlement agreement of August 25, 2020 permitted him to change the locks, I do not see any such condition in this agreement. As such, I am satisfied that the Landlord should be granted a monetary award in the amount of **\$147.00** to rectify this issue.

Regarding the Landlord's claims for compensation in the amount of \$1,550.00 for each month of July and August 2020 of unpaid rent, despite the Tenant's belief that the Landlord owed him money because she restricted his ability to have a roommate, as the Tenant confirmed that he had no authority or a valid reason under the *Act* to withhold this rent, I grant the Landlord a monetary award in the amount of **\$3,100.00**.

With respect to the Landlord's claim for compensation in the amount of \$717.00 for the restoration cost due to the Tenant smoking in the rental unit, as noted above, I am satisfied that the Tenant smoked in the rental unit. It does not make sense to me that the parties would have agreed that, as a part of their previous settlement, the Tenant would not continue to smoke in the rental unit if he had not been smoking in it in the first place. As such, I am satisfied that the Tenant is responsible for the cost to have the smoke damage remediated. Consequently, I grant the Landlord a monetary award in the amount of **\$717.00** to rectify this issue.

Regarding the Landlord's claim for compensation in the amount of \$256.63 because the Tenant broke a window in the rental unit, given that the Tenant acknowledged that he broke the window and that this happened during the cleaning process, I am satisfied that the Tenant should be held liable for this cost. As such, I grant the Landlord a monetary award in the amount of **\$256.63**.

With respect to the Landlord's claim for compensation in the amount of \$50.00 due to the screen door damage, I find it dubious that the Tenant first stated that the screen door was originally not functioning and that he decided not to use it, but then stated that the damage was simply reasonable wear and tear. Policy Guideline # 1 states that reasonable wear and tear "refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion." If the Tenant never used this screen as he originally stated, then the Tenant's suggestion that the screen damage was caused by his use of this, in a reasonable fashion, is completely contradictory. As I am already doubtful of the Tenant's credibility, I find that this inconsistency further causes me to doubt the reliability of the Tenant's submissions. As such, I find it more likely than not that the Tenant was responsible for this damage. Ultimately, I grant the Landlord a monetary award in the amount of **\$50.00** for this claim.

Regarding the Landlord's claim for compensation in the amount of \$883.16 due to damaged enamel on the stove requiring it to be replaced, when reviewing the totality of the evidence before me, I am not satisfied that the stove was rented to the Tenant in the condition it was in at the time of move-out. Had it been even close to this condition at the start of tenancy, I do not find it reasonable that neither party would have noticed this and brought it up as an issue at the start. Furthermore, I find that the evidence depicts damage to the stove that is beyond reasonable wear and tear. As such, I am satisfied that the Tenant was responsible for damaging the stove.

Policy Guideline # 40 estimates the average useful life of a stove as 15 years. While I am satisfied that the Tenant was responsible for damaging the stove, it appears as if this was more cosmetic, rather than something that would render the stove inoperable. Therefore, as this was more of an aesthetic issue, I do not find that the Landlord should be awarded full compensation for replacement of a new stove. As well, given that this stove was approximately six years old and the Landlord already received the benefit of some years of useful life, I grant the Landlord a reduced monetary award in the amount of **\$250.00**, which is reflective of a reasonable cost to compensate for this exterior damage.

With respect to the Landlord's request for compensation in the amount of \$200.00 for carpet cleaning, while the Tenant has provided evidence that the carpet was cleaned at the end of the tenancy, I find it reasonable that the carpet required additional cleaning given that the rental unit was smoked in. As such, I grant the Landlord a monetary award in the amount of **\$200.00** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of \$29.33 because of damaged upholstery on a barstool, I do not find it reasonable that the condition of the barstool in question at the end of tenancy was in a similar condition at the start, or that if it was in this condition, that neither party would have raised it as an issue. I find it more likely than not that the Tenant caused this damage and that it was beyond what would be reasonably considered wear and tear. As such, I grant the Landlord a monetary award in the amount of **\$29.33** for this issue.

Finally, with respect to the Landlord's claim for compensation in the amount of \$12.82 for the broken strainer, as the Tenant noted in his evidence that he would "allow" this claim, I am satisfied that this strainer did not likely simply break apart through reasonable use. As such, I accept that the Landlord suffered a loss to repair this, and I grant the Landlord a monetary award in the amount of **\$12.82** to make the Landlord whole.

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

Item	Amount
Toilet repair	\$350.00
Strata fine for smoking	\$100.00
Lock re-keying	\$147.00
July 2020 rent	\$1550.00
August 2020 rent	\$1550.00
Smoke restoration	\$717.00
Window repair	\$256.63

Screen door repair	\$50.00
Stove replacement	\$250.00
Carpet cleaning	\$200.00
Barstool upholstery	\$29.33
Broken strainer	\$12.82
Recovery of Filing Fee	\$100.00
Security deposit	-\$775.00
Total Monetary Award	\$4,537.78

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$4,537.78** 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: September 4, 2021

Residential Tenancy Branch