



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), a monetary order for damage or compensation for damage under the Act of \$700.00, and a monetary order for unpaid rent in the amount of \$1,400.00, and a monetary order for damages for the Landlord of \$2,500.00, retaining the security deposit to apply to these claims; and to recover the \$100.00 cost of their Application filing fee.

The Landlord, M.S., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. 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.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served the Tenant with the Notice of Hearing documents in person on July 22, 2021. She said she brought a witness, J.D., for proof of evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and

evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application, and she confirmed these addresses in the hearing. She also confirmed her 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 Landlord that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised the Landlord that she is not allowed to record the hearing and the Landlord confirmed that she was not recording 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 Application filing fee?

Background and Evidence

The Landlord submitted a copy of the Parties' tenancy agreement for this rental unit, which is a single-family dwelling. During the hearing, she confirmed the details of the tenancy. She confirmed that the fixed-term tenancy began on December 1, 2014, ran to November 30, 2015, and then operated on a month-to-month basis. The Tenant was required to pay the Landlord a monthly rent of \$1,400.00, due on the first day of each month. The Landlord confirmed that the Tenant paid the Landlord a security deposit of \$700.00, and no pet damage deposit. The Landlord said she still has the security deposit.

#1 COMPENSATION FROM PET DAMAGE → \$700.00

The Landlords' first claim against the Tenant is for \$700.00 of damage done by the Tenant's pets. The Landlord directed me to her picture number 11, which is a ledge between the kitchen and another room, and which is covered in scratches. The Tenant

said:

The damage to this ledge was done by their cats. In the last hearing that we had, they were to repair this, and they didn't. We had to hire a drywaller to come in and fix this. The receipt from the drywaller is document number 8 – the invoice is for \$564.13.

The Landlord also directed my attention to picture number 19, which shows scratches to the door frame moulding in a bedroom. She said the Landlords repaired this themselves, and she referred to a receipt from an international hardware retailer for: "The moulding in the corner was \$53.96 and the corner bead was \$4.58, because it was in a corner."

#2 UNPAID RENT → \$1,400.00

The Landlord's undisputed evidence is that the Tenant did not pay any rent for January 2021.

#3 DAMAGE TO LANDLORD'S PROPERTY → \$2,500.00

The Landlord described the additional damage to the residential property, as follows:

We had to rip out every single carpet in the house, because it was not cleanable. It was disgusting. Picture number 1 shows a little bit of the carpet - the state of it. Picture number 4 shows so many stains on it, and there was such a bad odour from cats urinating on it. They had three cats and three or four dogs.

Picture number 5 - see the cardboard laying in the carpet. That's where his bed was. When we removed the cardboard, there were cigarette holes in the carpet from him having put out his cigarettes in the carpet.

The Landlord referred me to submission number eight for an invoice for the bedroom carpet. This receipt shows the Landlord paid the flooring retailer \$1,686.98 for carpets for the bedroom.

The Landlord continued:

We paid cash to get them installed, so I don't have a receipt for that. But it cost \$300.00. On social media, you can find people who have retired from trades, but want cash jobs. Plus, we couldn't wait as long as it would take for [the carpet

retailer] to do it. We chose this option. I didn't include that because I didn't have a receipt for that and I'm fine with that.

We had to paint the entire house upstairs because, as you will see in picture number six, there's the discolouration on the wall of the master bedroom. I'm thinking they smoked in the house. I can't prove that, but that's what it looks like. Picture number seven shows discolouration where pictures were taken off the wall. See the paint receipts – three for paint and another for some supplies - the first four receipts in [submission] number eight.

The Landlord's pictures show stains on the carpets and discolouration of walls throughout the residential property. The Landlord's receipts from an international hardware retailer were as follows:

DATE	DESCRIPTION	AMOUNT
March 4/21	Paint	\$393.30
March 13/21	Paint	\$761.30
March 14/21	Supplies	\$48.66
March 14/21	Paint	\$360.90
April 13/21	Carpeting	\$1,686.98
	TOTAL	\$3,251.14

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 Landlord testified, I advised her of 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. RTB Policy Guideline 16 ("PG #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 a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to "leave the rental unit reasonably clean and undamaged." However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in PG #16: "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. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

#1 COMPENSATION FROM PET DAMAGE → \$700.00

Based on the evidence before me overall, I find that the Tenant's pets caused damage to the rental unit that was more than mere wear and tear. As such, I find that the Tenant

was responsible to repair the damage caused by their pets; however, I find that the Tenant did not do as he was required to do under the Act.

I find that the Landlords incurred the following costs from fixing scratches on the kitchen ledge and bedroom moulding:

\$564.13
53.96
<u>4.58</u>
<u>\$622.67</u>

I find that the Landlord is eligible to recover these costs from the Tenant, and I therefore, award the Landlord with **\$622.67** from the Tenant, pursuant to sections 32 and 67 of the Act.

#2 UNPAID RENT → \$1,400.00

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord. Pursuant to sections 26 and 67 of the Act, I award the Landlord with **\$1,400.00** from the Tenant for unpaid rent in January 2021.

#3 DAMAGE TO LANDLORD’S PROPERTY → \$2,500.00

Based on the undisputed evidence before me overall, I find that the Landlord proved that the Tenant damaged the carpeting and walls of the residential property such that the Landlord needed to replace the carpet and paint the entire rental unit. I find that the Tenant is responsible for this damage and that he, therefore, must reimburse the Landlords with the cost to repair this damage.

The Landlord’s receipts for services paid add up to more than the amount claimed. I find it would be administratively unfair to award more than the Landlord claimed in her Application. I, therefore, award, the Landlord with **\$2,500.00** for this claim, pursuant to sections 32, 37, and 67 of the Act.

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 **\$700.00** in partial satisfaction of the Landlord's monetary award. Further, I award the Landlord with recovery of the **\$100.00** Application filing fee, pursuant to section 67 of the Act.

I authorize the Landlord to retain \$700.00 of the Tenant's security deposit. I award the Landlord with **\$3,922.67** for the remainder owing to the Landlord from the Tenant, pursuant to section 67 of the Act.

	Description	Amount
1	Repairing damage done by pets	\$622.67
2	Unpaid rent in January 2021	\$1,400.00
3	Repairing carpet and paint damage	\$2,500.00
4	Sub-total	\$4,522.67
5	Less security deposit	(\$700.00)
6	Recovery of Application Filing Fee	\$100.00
	Total Monetary Order	\$3,922.67

The Landlord is awarded a monetary order from the Tenant for \$3,922.67, pursuant to section 67 of the Act.

Conclusion

The Tenant is successful in her Application, as she provided sufficient evidence to meet her burden of proof on a balance of probabilities, and establish a claim of **\$4,522.67** from the Tenant, in addition to recovery of the **\$100.00** Application filing fee.

This claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security deposit of **\$700.00** in partial satisfaction of the Landlord's monetary claim. I grant the Landlord a Monetary Order pursuant to section 67 of the Act for the balance owing by the Tenant to the Landlord in the amount of **\$3,922.67**.

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: September 02, 2021

Residential Tenancy Branch