Dispute Resolution Services

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 of $1,338.75 for damages; for a monetary order of $315.00 for damage or compensation for damage under the Act, 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 it. One witness for the Tenant, D.S. ("Witness"), 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.

The Landlord said that he served the Tenant with the Notice of Hearing package and his evidence by registered mail. He provided the Canada Post tracking number as proof of service. I looked up this number and discovered that it was delivered to the Tenant on June 2, 2021.

The Tenant said that he sent his evidence to the Landlord via registered mail on November 4, 2021, and he emailed the evidence to the Landlord on November 4, 2021, as well. I looked up the tracking number that the Tenant provided and discovered that it was delivered to the Landlord on November 12, 2021, which was three days prior to the hearing. The Landlord denied having received the Tenant's email.

Rule 3.15 states:

. . .

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I find that the Tenant had sufficient time to respond to the Landlord's claims in a reasonable time; however, based on the evidence before me in this matter, I find that the Landlord was not served with the Tenant's evidence until three days prior to the hearing. I find that the Tenant has breached Rule 3.15 in not having served the Landlord his evidence within the time deadline set out in the Rules. As a result, I will not consider the Tenant's evidence in making my Decision, because the Landlord did not have sufficient time to review the evidence, pursuant to the Rules of Procedure. I note the Tenant did not provide an explanation for why it took him so long to respond to the Landlord's Application. He testified that he took his photographs of the rental unit "…two days prior to move out."

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. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

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 Parties agreed that the fixed-term tenancy began on November 21, 2019, and ran

to May 21, 2020, and then operated on a month-to-month basis. The Parties agreed that the Tenant paid the Landlord a monthly rent of $2,500.00, due on the first day of each month. They agreed that the Tenant paid the Landlord a security deposit of $1,250.00, and no pet damage deposit.

The Parties agreed that they did a move-in inspection of the rental unit at the start of the tenancy; however, they did not do a joint inspection of the rental unit at the end of the tenancy, because the Landlord feared he had Covid; he said he did not want to spread it. Both Parties submitted pictures of the rental unit that they took at end of the tenancy, although, as noted above, I can consider only the Landlord's evidence. The Landlord said that the rental unit was built in 2008 and that it was in "perfect condition" at the start of the tenancy.

#1 Compensation for Monetary Loss or Other Money Owed → $1,338.75

In the Application, the Landlord said the following about his first claim:

> My apartment was not cleaned, including carpets, balcony, furniture by tenant. And also, a few damages have been occurred including Fridge door and Laundry door. One wall next to laundry room needed paint. Bathroom door needed paint. Garage disposal had issue and also leaked. Please see pictures and videos...

The Landlord submitted an invoice for cleaning and repairs for the amount claimed. I asked the Landlord how he found this company to do this work, and he said the following:

> Basically, I called a few places. In May the situation was different – most didn't want to do the job because of not enough staff from Covid - and they charged more. This company I found – they said they would have to come look at it. I couldn't meet anyone, because I didn't want to spread [Covid]. So, my friend opened up the door for these people and they gave an estimate. But their estimate was way more than it is now. They reduced the amount and for cleaning – wanted $600.00 – but I said it's not fair. Neither me nor the tenant. $460.00 is the lowest estimate.

The Landlord submitted an invoice from a restoration services company for the amount claimed. It said that two cleaners were sent and that they cleaned the full apartment for $450.00, they cleaned the carpets, including removing stains in the bedroom and living room for $200.00. They also cleaned the balcony floor, rails, windows and frames for $125.00, and painted the refrigerator door for $200.00. They repaired and cleared the

garburator for $100.00, repaired the laundry room door and tracks for $100.00, and painted the wall next to the laundry room door for $50.00. Finally, the invoice said the workers painted the bathroom door for $50.00, for a total bill with tax of $1,338.75.

The Tenant said:

> We didn't do a final inspection together, so it's null and void, because my photos were taken two days prior to move out, and the day I moved out. Anything different from these photos are null and void. This is the reason we have to do the inspection together.

The Landlord listed deficiencies he noted in the rental unit at the end of the tenancy, as follows:

- Dryer lint not clean,
- Side of washer not clean,
- Carpet not clean.

> I am supposed to give to the next tenant a clean carpet. I have made several reviews, and 250 pictures that show it needed to be clean - to be able to re-rent this unit.
>
> I have pictures from balcony, from kitchen – greasy areas, the cabinets were greasy, too. There are pictures on video. You will see the difference from the pictures I have received from the Tenant.

The Landlord said that he took these pictures on April 30, 2021, at approximately 10:00 p.m. He said: "I was not feeling well, so some the next day."

The Tenant said:

> That's the same day you did a joint inspection. See the condition of the unit from the unit statements. I cleaned the balcony for over an hour – it was unclean when I moved in.
>
> I signed the lease for a one-bedroom contract. [The Landlord] changed the lease and rented out one of the storage spaces attached to my condo – and my parking out. He entered the condo unannounced; he wouldn't replace stove top for six weeks. So, I can't believe we're sitting here doing this. It quite clearly says you have to do a joint inspection.

The Landlord said: “No one was available – it was something out of the blue - out of my control.” I asked the Landlord if he was diagnosed with Covid, and he said no. He said:

> I had a cough, and fever and no, no one diagnosed me. I asked a couple friends [to do the inspection] and they said no.

The Tenant said:

> I’d been in contact with [the Landlord], and five minutes before the meeting time is when he said he couldn’t make it. He refused to answer his phone, a mutual acquaintance got straight through to him. It’s not the first time [the Landlord] has done this to a foreigner. I don’t care about the money, but if this is how foreigners are treated. I was advised to hold the keys and then told to drop the keys off. In the meantime, he has changed the locks on the condo. He was not able to do an inspection with me, but he managed to change the locks and do an inspection without me.
>
> The Act says to have a joint inspection… He couldn’t appear, but he could change the locks. If he actually had Covid, he should have quarantined himself….

The Landlord said:

> The lock was changed by one of my friends, not me. It was at 10:00 p.m., and the Tenant was not supposed to come back at 10:00 p.m. The addendum said 1:00 p.m. I allowed him to stay one or two hours, but the way the Tenant claimed – I was supposed to … I decided not to meet someone. At least to avoid the Tenant and their friends to get sick.
>
> To me, I’m happy, because I didn’t spread that, if that was the Covid. The result is the same. They took their own pictures, and I took my pictures – it doesn’t have to be perfect, but it has to be able to rent it out. I don’t understand why the Tenant is insisting that I refused to do the inspection.

The Tenant called his Witness to testify at this point. I asked the Witness how he knows the Parties, and he said:

> [The Tenant] was a neighbour of mine; [the Landlord], who I’ve dealt with in the past - I rented the storage locker from him directly. Direct contact on multiple

different levels. On the strata – he's a common discussion around meetings.

Did you see the rental unit at the end of the tenancy?

I basically viewed the place.

Cleanliness?

I'm in real estate, and I know what a move-in/move-out clean should be. And was it to our standards? It was up to the standards of our industry.

The Tenant said: "He was one of five people who did the inspection, but he is independent and known to both of us and in real estate."

The Landlord did not have any questions for this Witness.

The Tenant further stated:

If the condo wasn't up to standard to rent up, I had a friend ring and do an inspection on the condo the next day. It was advertised and listed, so it was in a condition to rent.

The Landlord replied: "We advertised, but we did not show it until was cleaned properly."

The Landlord submitted videos of various things throughout the rental unit at the end of the tenancy. His submissions included:

- Multiple small spots on the carpet;
- Garbage not emptied in the laundry room;
- Dirt on either side of the washer and dryer;
- Laundry door would not close;
- Marks on the walls near the laundry;
- Dirty glass railings on the balcony;
- Kitchen sink not clean;
- Garburator clogged;
- Stovetop not cleaned properly and scratched;
- Bedroom windows dirty;

- Bedroom floor beneath bedframe not cleaned;
- Bedroom side tables dirty;
- Fireplace windows not cleaned;
- Stain in carpet beside living room side table; and
- Slight stain in bedroom carpet.

#2 Monetary Order for Damage or Compensation under the Act → $315.00

In the hearing, the Landlord explained his second claim, as follows:

> Tenant informed me that kitchen sink blocked. I tried to fix it, I could not, because the drain was completely blocked. The Tenant had to call the plumber and I had to take a half a day off to let plumber in, and then he did the job and he charged me $315.00. During this process, I noticed a lot of garbage in pipes and dishwasher – he put garbage in the sink and dishwasher - I usually rinse dishes first. And the Tenant signed an addendum to be responsible for – page 6, #28 – Landlord responsible not to repair blockage of drain caused by the Tenant. The Tenant left food in the kitchen drain. The drain was caused by the Tenant.

The Tenant said:

> [The Landlord] came unannounced to the condo and tried to fix it; then I went again a couple days without using water. He said he couldn't find a plumber. I found one – the blockage was between the condo and the condo under it – nothing to do with food. After the plumber finished the work, [the Landlord] refused to pay him. The plumber said clearly that it was not caused by me.

The Landlord submitted an invoice from the plumber for $315.00, including taxes. In the invoice, the plumber said:

> Found drain plugged solid.
> Water was not going down at all
>
> Power snaked drain in 2 stages because the building is multi family
> Stage 1 Lite probe to check train stability
> Stage 2 heavy cleaning probe to break up hard debris
>
> Check drain after cleaning to make sure it is flowing properly
> Close drain cleanout and leave plumbing in normal operating order

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 let them know how I analyze the evidence presented to me. I said 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 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. 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 Policy Guideline #16 ("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."

Pursuant to sections 23, and 35 of the Act, a landlord must complete a CIR at both the start and the end of a tenancy, in order to establish that the damage occurred as a result of the tenancy. If the landlord fails to complete a move-in or move-out inspection and CIR, they extinguish their right to claim against either the security or pet damage deposit for damage to the rental unit, in accordance with sections 24 and 36 of the Act. Further, a landlord is required by section 24 (2) (c) to complete a CIR and give the tenant a copy in accordance with the regulations.

Section 21 of the Regulation states:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

#1 Compensation for Monetary Loss or Other Money Owed → $1,338.75

Based on the evidence before me overall, I find that the Landlord submitted a preponderance of evidence that supplemented his evidence in the move-out CIR that he did on his own. I find that the Landlord did not comply with section 35 of the Act in offering the Tenant two opportunities to participate in the move-out inspection; however, I do not have the Tenant's evidence before me to contradict anything that the Landlord said about the condition of the rental unit at the end of the tenancy, because the Tenant did not submit any evidence until the last minute before the hearing.

I find that the restoration company that the Landlord hired was rather expensive; however, given the difficulty people have had in finding trades and cleaners to do work

during the pandemic, I find this is reasonable in the circumstances. I find that the work they did corresponded to the Landlord's video evidence of the condition of the rental unit at the end of the tenancy. I, therefore, award the Landlord with **$1,338.75** from the Tenant, pursuant to sections 37 and 67 of the Act.

#2 Monetary Order for Damage or Compensation under the Act → $315.00

Based on the evidence before me, I find that there is no evidence, besides the Landlord's suggestions, that the plugged drain was the Tenant's fault. The plumber noted the drain being associated with multiple tenants in the residential property. Based on the evidence, I find it more likely than not that others in the residential property contributed to the blockage in the drain, in addition to anything the Tenant did.

Further, it is a landlord's responsibility to provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, pursuant to section 32 of the Act. Accordingly, I find that this repair was the Landlord's responsibility, and therefore, I dismiss this claim pursuant to section 62 of the Act, without leave to reapply.

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 $1,250.00 security deposit in partial satisfaction of the Landlord's monetary award.

#1	Compensation for money owed	$1,338.75
#2	Damage under the Act	0.00
	Less security deposit	$1,250.00
	Sub-total	$ 88.75
	Application filing fee	100.00
	TOTAL	**$ 188.75**

Given the Landlord's success in this Application, I award the Landlord with recovery of the $100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act.

I authorize the Landlord to retain the Tenant's $1,250.00 security deposit in partial satisfaction of the monetary awards. I grant the Landlord a monetary order of **$188.75** from the Tenant pursuant to section 67 of the Act.

Conclusion

The Landlord is partially successful in his Application, as he provided sufficient evidence to meet his burden of proof on a balance of probabilities for his claim for cleaning and repairs. The Landlord is awarded **$1,338.75** in this regard. However, the Landlord did not provide sufficient evidence that the Tenant was responsible for the plugged drain in the rental unit; therefore, this claim is dismissed without leave to reapply. The Landlord is also awarded recovery of his **$100.00** Application filing fee for a total award of $1,438.75.

I authorize the Landlord to retain the Tenant's $1,250.00 security deposit in partial satisfaction of the monetary awards. I grant the Landlord a **Monetary Order** for the remaining amount of the awards owed by the Tenant to the Landlord of **$188.75**.

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: December 01, 2021

Residential Tenancy Branch