



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL (Landlord)
 MNSDS-DR, FFT (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Landlord filed their application June 16, 2021 (the “Landlord’s Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit
- To recover unpaid rent
- To keep the security deposit
- For reimbursement for the filing fee

The Tenant filed their application August 17, 2021 (the “Tenant’s Application”). The Tenant applied as follows:

- For return of the security deposit
- For reimbursement for the filing fee

The Landlord appeared at the hearing with their son, A.Z., to assist. The Tenant appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

At the hearing, the Tenant advised that they are seeking double the security deposit back.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence pointed to during the hearing and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?
5. Is the Tenant entitled to return of double the security deposit?
6. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

Tenant's Application

A written tenancy agreement was submitted as evidence. The agreement includes two "page 2 of 6" pages. The first "page 2" states that the tenancy started February 06, 2020 and was for a fixed term ending March 05, 2020. The first "page 2" states rent was \$3,200.00 per month due on the 6th day of each month. The second "page 2" states that the tenancy started March 06, 2020 and was for a fixed term ending February 05, 2021. The second "page 2" states rent was \$1,600.00 per month due on the 6th day. The agreement shows the Tenant paid a \$800.00 security deposit. The agreement is signed by both parties.

A.Z. testified that the Tenant could not provide evidence of their income at the start of the tenancy so the Landlord required the Tenant to pay \$3,200.00 for the first month

and \$1,600.00 for the remainder of the tenancy other than the last month which would be free.

The Tenant testified that they paid first and last month's rent up front as well as the \$800.00 security deposit. The Tenant testified that there was only one "page 2 of 6" as part of the tenancy agreement and that rent was \$1,600.00 per month.

The parties agreed the tenancy ended June 05, 2021.

The Tenant testified that they provided their forwarding address to the Landlord May 19, 2021 by email. A.Z. did not agree with this and testified that the Landlord only received the Tenant's forwarding address on the hearing package for the Tenant's Application.

The parties agreed the Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy.

The parties agreed the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

A.Z. testified that the parties did a move-in inspection at the start of the tenancy, a Condition Inspection Report ("CIR") was completed and a copy of the CIR was provided to the Tenant.

The Tenant testified that there was no move-in inspection done, no CIR completed and that they were not provided two opportunities to do a move-in inspection.

A.Z. testified that a move-out inspection was not done and the Tenant was not provided two opportunities, one on the RTB form, to do a move-out inspection.

The Tenant testified that there was no move-out inspection done and they were not provided any opportunity to do a move-out inspection.

Landlord's Application

The Landlord sought the following compensation:

Item	Description	Amount
1	Fridge door	\$1,125.03
2	Dishwasher door	\$776.71
3	Unpaid rent	\$900.00
4	Filing fee	\$100.00
	TOTAL	\$2,901.74

#1 Fridge door

The Landlord sought compensation for the fridge due to the fridge no longer working at the end of the tenancy and there being visible dents on the fridge door. The Landlord submitted that they had to replace the fridge.

The Tenant testified that the fridge was working fine at the end of the tenancy and they did not cause the marks on the outside of the fridge. The Tenant also submitted that the fridge was 12 years old.

A.Z. said there was no documentary evidence submitted showing the fridge was not working at the end of the tenancy. A.Z. testified that the fridge was from 2010 at least.

#2 Dishwasher door

The Landlord sought the replacement cost for the dishwasher due to a dent on the door of the dishwasher caused by the Tenant. A.Z. testified that the dent could not be fixed. A.Z. testified that the dishwasher was installed during the tenancy in 2020. A.Z. confirmed the dishwasher still works. A.Z. pointed out that the receipt in evidence is for the cost of the dishwasher that now has a dent and not a replacement dishwasher.

The Tenant agreed the dishwasher was new during the tenancy. The Tenant testified that the person who installed the dishwasher dented it and that the Landlord was present when this occurred. The Tenant said the photo in evidence makes it look like the dishwasher was hit again at some point. The Tenant could not point to documentary evidence to support their position.

The Landlord denied they were present when the dishwasher was installed.

#3 Unpaid rent

The Landlord submitted a timeline of rental payments and amounts owing showing the Tenant owes \$900.00 in outstanding rent. The timeline shows rent was reduced due to outstanding repairs and that rent should have been \$1,600.00 as of August 2020; however, the Tenant only paid \$1,500.00 from August 2020 to April 2021. A.Z. said the Landlord did not agree to the Tenant withholding rent from August 2020 to April 2021.

The Tenant's testimony about unpaid rent was unclear. The Tenant testified that they had no kitchen until July of 2020. The Tenant testified that the Landlord consented to the Tenant withholding rent from August 2020 to April 2021 due to needed repairs. The Tenant then testified that the Landlord did not consent to a rent reduction from August 2020 to April 2021. The Tenant then testified that the Landlord agreed to the Tenant withholding rent. The Tenant could not point to documentary evidence to support their position. The Tenant testified that there were no repairs done to the rental unit that they paid for in relation to withholding rent from August 2020 to April 2021.

The Landlord submitted the following relevant documentary evidence:

- Photos
- The CIR
- Receipts
- E-transfers
- Text messages
- Emails
- The timeline of rent payments and rent owing
- The tenancy agreement
- Invoices

The Tenant submitted the following relevant documentary evidence:

- Written submissions
- Text messages
- Print out of e-transfers with notes
- Emails
- Photos

- Notice of forwarding address

Analysis

Pursuant to rule 6.6 of the Rules, it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenant's Application

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of both parties, I do not find this to be a situation where the Tenant was offered two opportunities, one on the RTB form, to do move-in and move-out inspections but did not participate and therefore I find the Tenant did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for unpaid rent.

Based on the testimony of both parties, I accept that the tenancy ended June 05, 2021.

The parties disagreed about when the Landlord received the Tenant's forwarding address in writing. The Landlord took the position that they only received the Tenant's forwarding address on the Tenant's Application. The Landlord put the Tenant's forwarding address on their application filed June 16, 2021. The Tenant did not file their application until August 17, 2021 and the hearing package was not provided to the Tenant to serve on the Landlord until September 07, 2021. In the circumstances, I do

not accept the Landlord's position because I find the Landlord had the Tenant's forwarding address prior to receiving the hearing package for the Tenant's Application. I prefer the testimony of the Tenant and accept that they provided their forwarding address to the Landlord May 19, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing to repay the security deposit or file a claim against it. Here, the Landlord had 15 days from June 05, 2021. The Landlord's Application was filed June 16, 2021, within time. I find the Landlord complied with section 38(1) of the *Act* and therefore the Tenant is not entitled to return of double the security deposit pursuant to section 38(6) of the *Act*.

Landlord's Application

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

#1 Fridge door

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

The parties disagreed about whether the fridge worked at the end of the tenancy. The Landlord could not point to documentary evidence to support their position that the fridge did not work. In the absence of further evidence, I am not satisfied the fridge was not working at the end of the tenancy or that the Tenant breached section 37 of the *Act* in this regard.

In relation to dents on the fridge, I accept that the Tenant signed the move-in CIR because it is in evidence and is signed for the Tenant. I accept based on the CIR that the fridge was good at move-in. I accept that there were dents in the fridge door at the end of the tenancy because the Tenant's own photos show there were. I accept that the Tenant caused the dents and accept that these are beyond reasonable wear and tear and therefore the Tenant breached section 37 of the *Act*.

In relation to loss suffered by the Landlord in relation to the dents on the fridge door, I find the loss is minimal. The dents shown in the photos are small. The Landlord did not point to evidence showing that the dents impacted the use of the fridge and I cannot see how the dents could do so. At best, the loss experienced by the Landlord was minimal loss in the value of the fridge given a cosmetic issue. Further, I note that the fridge was at least 12 years old at the end of the tenancy. Given the minimal nature of the damage, the age of the fridge and the lack of compelling evidence showing the amount of actual loss suffered due to the dents, I am not satisfied the Landlord is entitled to any compensation in relation to the fridge.

This claim is dismissed without leave to re-apply.

#2 Dishwasher door

Section 37 of the *Act* applies to this claim.

Policy Guideline 16 states:

“Nominal damages” are a minimal award. Nominal damages may be awarded **where there has been no significant loss or no significant loss has been proven**, but it has been proven that there has been an infraction of a legal right. (emphasis added)

I accept that the dishwasher was new during the tenancy because the Tenant acknowledged this. I accept that the dishwasher was dented at the end of the tenancy based on the photos and because the Tenant acknowledged it was dented. The Tenant took the position that the person who installed the dishwasher dented it. I do not accept the Tenant’s position because I find it unlikely that someone installing the dishwasher dented it and that there is no documentary evidence of this. The Tenant could not point to documentary evidence to support their position. In the circumstances, I accept that the Tenant dented the dishwasher and therefore breached section 37 of the *Act* in this regard.

The Landlord sought the replacement cost for the dishwasher. I find this unreasonable. The dent on the door of the dishwasher is not large. The dent on the door of the dishwasher has not affected the use of the dishwasher. At best, the loss suffered is minimal and strictly related to loss in the value of the dishwasher due to a cosmetic issue. I find the Landlord has failed to prove any significant loss and award the Landlord nominal damages of \$25.00.

#3 Unpaid rent

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.** (emphasis added)

There are only six reasons a tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenant a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenant to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenant withholding rent.

There is no issue that rent was \$1,600.00 per month pursuant to the tenancy agreement because the parties agreed on this.

I accept that the Tenant only paid \$1,500.00 in rent per month for August 2020 to April 2021. I did not understand the Tenant to dispute this. Further, the e-transfer records in evidence tend to support this.

I am not satisfied based on the evidence provided that the Tenant had authority under the *Act* to withhold rent. The testimony of the Tenant in relation to this claim was unclear. The Tenant changed their testimony about this claim. The Tenant could not point to documentary evidence showing they had a right under the *Act* to withhold rent. In the circumstances, I am not satisfied the Tenant did have authority under the *Act* to withhold rent.

I accept that the Tenant owes the Landlord \$900.00 in unpaid rent from August 2020 to April 2021 and award the Landlord this amount.

Filing fees

Both parties sought reimbursement for the filing fee.

The Landlord has been partially successful in their application and therefore is entitled to reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

The Tenant has not been successful in their application and therefore is not entitled to reimbursement for the filing fee.

Summary

The Landlord is entitled to the following compensation:

Item	Description	Amount
1	Fridge door	-
2	Dishwasher door	\$25.00
3	Unpaid rent	\$900.00
4	Filing fee	\$100.00
	TOTAL	\$1,025.00

The Landlord can keep the \$800.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$225.00 pursuant to section 67 of the *Act*.

Conclusion

The Tenant's Application is dismissed without leave to re-apply.

The Landlord can keep the \$800.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$225.00. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: February 09, 2022

Residential Tenancy Branch