



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for damage to the rental unit or property; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and each were accompanied by interpreters, who were affirmed to well and truly interpret the hearing from the English language to the parties' Native language and from the parties' Native language to the English language to the best of their skill and ability. The landlord and the tenant share the same Native language. The landlord and the tenant each gave affirmed testimony with the assistance of the interpreters, and were given the opportunity to question each other. The tenant's interpreter also acted as agent for the tenant and the landlord was accompanied by an Articled Student.

Due to the nature of the testimony, I permitted the landlord's Articled Student to give submissions during the landlord's testimony, and permitted the tenant's agent to give submissions during the tenant's testimony.

Also during the course of the hearing, the parties agreed that the security deposit has already been dealt with at a previous hearing, and therefore I dismiss the landlord's application for an order permitting the landlord to keep all or part of the security deposit.

At the commencement of the hearing the parties indicated that all evidence had been exchanged, and the only evidence not received by the landlord is a copy of the tenancy

agreement. The parties agreed that the tenancy agreement provided by the landlord will be referred to in this hearing. However, later in the hearing the tenant's interpreter indicated that the landlord had not served any photographs. The landlord has provided proof of sending all evidence by registered mail, and all evidence of the parties, with the exception of the tenant's copy of the tenancy agreement, has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for keys, fobs and previously missed rent payments?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?

Background and Evidence

LANDLORD'S TESTIMONY:

The landlord testified that this fixed-term tenancy began on August 1, 2017 and reverted to a month-to-month tenancy after August 1, 2018, which ultimately ended on or about November 6 or November 7, 2020. Rent in the amount of \$2,300.00 was originally payable under the tenancy agreement on the 1st day of each month which was increased in 2019 to \$2,500.00 by mutual consent. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$2,300.00, however half of it was a furniture deposit, and the rental unit was rented to the tenant furnished. The rental unit is an apartment in a strata complex.

The tenant is in arrears of rent the sum of \$7,500.00 for October, 2017 and June, 2018 and April, 2019. Other payments were not paid on the 1st day of each month. The landlord has provided a Monetary Order Worksheet, marked as Version 2, setting out the following claims, totaling \$45,231.59, and the landlord claims the maximum amount permitted under the *Act* of \$35,000.00:

- \$7,875.00 for re-doing cabinets;
- \$13,555.50 for labour and contracting services for the entire apartment;
- \$1,644.91 for tiles;
- \$10,000.00 for countertop replacement;

- \$4,958.20 for replacement of appliances;
- \$177.98 for removal of illegally dumped furniture;
- \$120.00 for replacement of unreturned keys/fobs; and
- \$6,900.00 for missed rent payments.

No move-in condition inspection report was completed at the beginning of the tenancy, and at the end of the tenancy the tenant didn't show up.

The landlord has provided an Invoice dated July 4, 2017 showing that the flooring was new at the beginning of the tenancy. An advertisement for the rental has also been provided, showing photographs of the condition of the apartment and furniture. The photographs show no loose wires hanging, which was not the case at the end of the tenancy. By the time the tenant moved out, there was extensive damage. Further, keys were not returned, and the tenant dumped the furniture which the landlord was fined for by the strata.

The tenant sublet the rental unit without the landlord's knowledge. The landlord went to the rental unit to replace the washer and dryer and found other tenants there who confirmed they lived there.

At the end of the tenancy the kitchen counter was burned and water damage existed throughout. The countertop was replaced but with stone and the original countertop was not stone. The landlord believes the cost would be about \$200.00 difference. Copies of invoices have been provided for this hearing.

The stove was left very dirty and rusty, and the dishwasher and fridge were damaged. The fridge was left in very bad shape with parts missing and very dirty. The landlord has provided a receipt for replacing the appliances, in the amount of \$4,958.20, however to be "more fair" the breakdown would be about \$3,000.00 because the landlord had upgraded. The dishwasher and fridge were moldy inside and could not be used. The landlord also purchased a range and a fridge, but could not find the same kind, and the landlord purchased newer appliances of the same size but a different brand. The microwave was rusty inside and could not be used so was replaced with a similar one. The appliances were 7 or 8 years old before the tenancy began.

The tenant also left water damage to floors, window sills and door frames, and photographs have been provided. The door frames and sills are bent and cracked, likely by leaving the windows open while it was raining. The landlord testified that some water came from the bathroom and from the kitchen sink area, draining down onto the kitchen cabinets as well, which is what caused the damage to the flooring. An invoice

has also been provided for this hearing, and the amount of the Invoice is \$13,555.50 which includes labor to replace the flooring as well as new paint and labor for the kitchen renovations and to remove garbage left by the tenant.

The landlord had some renovations done to the cabinets, countertops, appliances, flooring and ceiling light after the tenant moved out. The light fixture was an older model and wasn't working at the end of the tenancy, and could not be repaired by a contractor so it was replaced with a similar light in the same price range. The cabinets were about 20 years old prior to the tenancy, and an invoice has been provided for this hearing, which does not include countertops. There was no upgrade to the cabinets.

The landlord also testified that the closet sliding door was damaged due to water damage and could not be used. It was close to the bathroom. The frame was damaged very badly. Photographs have been provided.

During the tenancy it is unlikely that the tenant ever cleaned the kitchen or bathroom ceramic tiles, which were left very oily, dirty, black and some were cracked at the end of the tenancy. The landlord purchased similar tiles to replace them, and has provided an invoice.

The furniture in the rental unit was damaged at the end of the tenancy with scratches and animal feces. All furniture was damaged. The landlord originally paid about \$20,000.00 which the landlord has not claimed because the landlord can't find a receipt.

The tenant was required to notify the strata when moving out and book an elevator. The tenant didn't do so, and the landlord was fined, but does not recall the amount. However, the tenant dumped the furniture and the landlord was given another invoice from the strata for the cost of taking it to the landfill. A copy of the letter from the strata and an invoice for \$177.98 have been provided for this hearing.

The tenant was provided with 2 garage fobs at the beginning of the tenancy as well as 4 elevator fobs, but the tenant didn't return any at the end of the tenancy. The landlord has provided a receipt in the amount of \$120.00 for replacing the garage fobs.

The landlord has also provided a bank statement and testified that the account was used exclusively for deposits of rent. No rent payments were received for October, 2017 or June, 2018 or April, 2019. The landlord had asked the tenant to pay the late rental fee, but the tenant said he was out of the country and had no money, and it was too difficult to pay it. The landlord wanted to help out so gave the tenant time to pay.

However the tenant kept delaying and finding excuses and never did pay the rent for those months, and rent was never paid on time.

The landlord sent photographs to the tenant to point out damages and the tenant responded that there was no move-out condition inspection report completed, but the landlord had a witness to the damages. The landlord's photographs were taken on November 2, 2020 when the landlord met with the tenant's mother at the rental unit. The landlord called the tenant about the damage and asked to meet in person to discuss it, and the tenant tried to delay the time and then refused to reply to the landlord's messages. The landlord does not know when the tenant's items were moved out, but the keys were not returned and the landlord completed the move-out condition inspection report in the absence of the tenant on November 4, 2020 and a copy has been provided for this hearing.

TENANT'S TESTIMONY:

The tenant disputes ever missing paying rent, and testified that he gave the landlord notice to end the tenancy. The tenant also disputes subletting the rental unit.

The tenant did a general cleaning at the end of the tenancy, but not deep cleaning. Garbage had been removed, so there was none there when the tenant left. There was no damage to the rental unit except wear and tear. The window calking needed to be replaced, and there was some mold there.

The furniture also had wear and tear, such as scratches on the sofa, but it was very old. The only damage caused by the tenant was a hole on the fake grass on the balcony, a toilet seat and the countertop in the kitchen.

The parties had a dispute resolution hearing earlier wherein the landlord was ordered to repay double the amount of the security deposit, and the landlord has been paying monthly.

The tenant made an appointment with the landlord for a move-out condition inspection but the landlord didn't show up. After a few days the landlord found the time but the tenant was at work.

The interpreter for the landlord interrupted the tenant's testimony stating that the interpreter for the tenant was telling the tenant how to testify; what to say and not say. That was disputed by the tenant's interpreter however the landlord's interpreter was adamant that it was very clear in the Native language of both parties.

Analysis

Firstly, the tenant's interpreter affirmed that he would well and truly interpret the hearing from the English language to the tenant's Native language and from the tenant's Native language to the English language to the best of his skill and ability. The landlord's interpreter was very adamant that the tenant's interpreter was not interpreting only, but telling the tenant how to testify. Therefore, I decline to consider any of the tenant's testimony as it cannot be relied upon.

In order to be successful in a claim for damage or loss, the onus is on the landlord to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any damage or loss suffered.

Further, I refer to Residential Tenancy Policy Guideline 16 – Compensation for Damage or Loss which states, in part, that 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. In this case, the landlord has made some improvements that were not made as a result of the tenant's failure to comply with the *Act* or the tenancy agreement.

I have reviewed all of the landlord's evidence, including advertisements, and I accept the landlord's testimony that the tenant sublet the apartment without the landlord's consent, and did not leave the rental unit reasonably clean or undamaged at the end of the tenancy.

I also refer to Residential tenancy Policy Guideline #40 – Useful Life of Building Elements which puts the useful life of light fixtures, a wooden door and window framing at 15 years, and tile flooring at 10 years. The microwave, dishwasher and furniture have a useful life of 10 years, and cabinets and countertops have 25 years.

The landlord testified that the kitchen cabinets were about 20 years old prior to the tenancy, and I accept that the countertops were the same age. The landlord testified that the countertops were upgraded at a cost of about \$200.00 more than countertops that were not of an upgraded material. There is no evidence of that, and I dismiss the landlord's claim for countertops. However, the landlord also testified that the cabinets were not an upgrade. The \$7,875.00 claim would put the landlord in a better position, meaning that to allow the entire claim for cabinets, the landlord would have brand new cabinets, but would not have brand new cabinets if the damage had not occurred. I find that the landlord has established a claim of **\$1,575.00** for cabinets ($\$7,875.00 / 25 \text{ years} = \$315.00 \times 5 \text{ years remaining on the useful life} = \$1,575.00$).

The Invoice for the \$13,555.00 claim is for renovating the apartment. It shows the original contract was \$12,080.00 with extra items, such as supply and install a new closet sliding door for \$580.00 and new door casing for \$250.00. I have also reviewed the photographs provided by the landlord. A tenant cannot be held responsible for the landlord's renovations, but only for damage caused during the tenancy. Considering the evidence, I find that the landlord has established claims of **\$580.00** for the new closet sliding door and **\$250.00** for the door casing.

The landlord also testified that the replacement tiles were of similar quality and price. However, the useful life of tile is 10 years, and I find that the landlord's claim of \$1,644.91 for tiles would provide the landlord with new tiles, when the tiles had already out-lived their useful life, and I dismiss the claim for tiles.

With respect to the landlord's claim of \$4,958.20 for replacing appliances, the landlord testified that the stove at the end of the tenancy was very dirty and rusty; the dishwasher was also damaged and rusty; the fridge was in very bad shape, with missing parts and very dirty. Counsel for the landlord indicated that a "more fair" breakdown would be \$3,000.00 because the landlord upgraded, and the Invoice provided totals \$4,958.20. The onus is on the landlord to establish the amount, and a "fair price" is not proof. Since the landlord has upgraded, I dismiss the claim for appliances.

The landlord has provided an invoice for removal of the furniture allegedly dumped by the tenant. The landlord also testified that the rental unit was rented furnished, and the landlord paid about \$20,000.00 for the furniture at the time of purchase, but could not locate a receipt. I am satisfied that the landlord has established a claim of **\$177.98** for the cost of disposal.

I am also satisfied, given the evidentiary material, including an Invoice that the landlord had to replace keys and fobs after the tenancy had ended, and I find that the landlord has established the **\$120.00** claim.

With respect to missed rent payments, I accept the testimony of the landlord and submissions of Counsel that the specific bank account was used for this tenancy only. The landlord has provided the bank statements which contain no rent payments for October, 2017 or June, 2018 or April, 2019. The landlord testified that when asked to pay, the tenant said he was out of country and unable to do so, but kept delaying and finding excuses, and the rent wasn't paid, and rent never paid on time. I find that the landlord has established the claim of **\$6,900.00**.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the **\$100.00** filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$9,702.98.

This order is final and binding and may be enforced.

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: March 04, 2022

Residential Tenancy Branch