



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNSDS-DR, MNDCT, FFT
Landlord: MNDL-S, FFL

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*.

On September 14, 2021, the tenants amended the above application to also seek:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*, and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

Both parties testified that they received the other's application for dispute resolution and evidence. The landlord confirmed receipt of the tenants' amendment. I find that both parties were sufficiently served with the above documents, for the purposes of this *Act*, pursuant to section 71 of the *Act*, because both parties confirmed receipt.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
4. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
5. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
6. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2020 and ended on July 31, 2021. Monthly rent in the amount of \$2,100.00 was payable on the first day of each month. A security deposit of \$1,050.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The landlord did not ask the tenants to complete and did not complete move in or move out condition inspection reports.

The landlord testified that the tenants damaged the subject rental property and is seeking compensation as seen below for that damage:

Item	Amount
Cleaning	\$369.60
Painting	\$1,727.25
Ceiling repair	\$2,178.75
Total	\$4,275.6

Cleaning

The landlord testified that the tenants left the subject rental property dirty at the end of the tenancy and that he had to hire a professional cleaner which cost \$352.00. The landlord entered into evidence a receipt for \$352.00 plus tax which shows that the landlord paid \$352.00, but did not pay the tax. The landlord testified that the cleaner made an error on the receipt and that he was only required to pay \$352.00.

The landlord entered into evidence time stamped photographs of the subject rental property dated June 10, 2020 which he testified show the condition of the subject rental property a few days before the tenants moved in. The photographs show that the subject rental property is clean.

The landlord entered into evidence photographs of the subject rental property he testified were taken on July 31, 2021, the day the tenants moved out. The photographs show the kitchen covered in grease, dirty blinds, dirty walls, dirty bathroom faucet, dirty bathroom drawers, dirty bathroom fan, and a dirty living room ceiling fan.

Tenant A.B. testified that the landlord lied about everything, and that the subject rental property was dirty when she moved in. Tenant A.B. testified that the subject rental property was clean when the tenants moved out. The tenants entered into evidence a signed witness statement which states in part:

....On July 31, 2021, we assisted [the tenants] in moving to [redacted for privacy] from [the subject rental property]. We finished a little late in afternoon because we waited a little bit for them as they were mopping up and tidying up the place. We testify that we saw from our naked eye that they vacuumed, mopped the floor, [tenant A.B.] brushed the toilet bowl, scrubbed the toilet floor and wiped the walls and the counters. We walked around the house ourselves to see if they missed anything. We did see that the apartment was clean before we left....

The landlord testified that it wasn't that the tenants didn't clean at all but did not clean everything.

Painting

The landlord testified that the subject rental property was last painted approximately five years before the tenants moved in. The landlord testified that the walls were all in good condition when the tenants moved in and that the tenants put many holes in the walls of the subject rental property and did a poor patch job when they left. The landlord testified that the holes were patched with too much mud and need to be sanded down. The landlord testified that the paint used to paint the patches does not match the wall paint and that the walls need to be repainted because of this.

The landlord entered into evidence photographs of the subject rental property time stamped June 10, 2020. The landlord entered into evidence photographs of 10 patched holes in the walls of the subject rental property. The landlord testified that the photos of the patch jobs were taken on July 31, 2021. The patch jobs can be seen to be poorly done with too much mud and mis-matched paint.

Tenant A.B. testified that the landlord is lying about everything and that the landlord promised that he would fix the holes when she moved in. Later in her testimony, tenant A.B. testified that she caused the holes in the walls by hanging pictures on the walls, which is allowed. The photographs entered into evidence by the landlord show that a number of holes are located one to two feet from the ground. Tenant A.B. testified that she purchased patching supplies and paint to patch and paint the holes.

The landlord testified that he had an estimate for re-painting and repairing the walls, totalling \$1,725.25. The landlord testified that he has not had the repairs and re-painting done yet because he does not have the money for it.

Ceiling repair

Both parties agree that tenant A.B. damaged the ceiling of the subject rental property by banging on it with a broom handle. The landlord entered into evidence photographs of numerous circular dents in the ceiling caused by the tenant's banging of a broom on the ceiling. The landlord testified that he counted over 90 dents, photographs of same were

entered into evidence. The landlord testified that the photographs were taken on July 31, 2021.

The landlord entered into evidence an estimate for the ceiling repair in the amount of \$2,178.75. The landlord testified that the repair has not yet been made because he does not have the money for it.

The tenant testified that she should not be responsible for the cost of the repair because she banged on the ceiling because the landlord did not deal with her noise complaints regarding the upstairs tenants. The tenant testified that she banged on the ceiling with a broom because the upstairs tenant walked around in high heels in the early morning vacuuming.

Tenant A.B. is claiming the following damages arising from this tenancy:

Item	Amount
FOB deposit fee	\$50.00
Repair to shoe closet door	\$30.00
Garbage dump	\$50.00
Replace dresser	\$125.43
Total	\$255.43

Tenant A.B. testified that she is also seeking the return of the security deposit in the amount of \$1,050.00.

FOB deposit fee

Both parties agree that the tenants paid a fob deposit of \$50.00 to the landlord. Both parties agree that the tenants returned the fob to the landlord at the end of this tenancy. Tenant A.B. testified that the landlord has not yet returned the fob deposit. The landlord testified that he returned the fob deposit.

Repair to shoe closet door

Tenant A.B. testified that the shoe closet door was damaged at the start of the tenancy and that the landlord said that he would fix it but he did not. Tenant A.B. testified that

because the landlord did not fix it, she hired someone to fix it for \$30.00.

The tenants entered into evidence a signed witness statement which states in part:

....In August 1st, 2020, we helped [the tenants] move into [the subject rental property]. As we were moving stuff into the place in [the subject rental city], we confirm that we did notice that the bifold door for the shoe closet was broken. [Tenant A.B.] paid us an additional \$30 to fix it....

The landlord testified that the tenant never advised him of the damaged door and that he was never asked to repair it or pay for its repair. The landlord testified that the first time he heard of an issue with the shoe closet door was in this application for dispute resolution. The landlord testified that the repair was unauthorized. The tenants did not enter into evidence any communications such as text messages or emails regarding the shoe closet door.

Tenant A.B. testified that she did not tell the landlord about the repair until this dispute because it was only \$30.00.

Garbage dump

Both parties agree that the landlord left three garbage bags full of old clothes and blankets at the subject rental property in a nook. The landlord testified that he used them for sound proofing. Both parties agree that the tenants originally agreed for the bags to remain at the subject rental property. Tenant A.B. testified that while she initially agreed, the bags smelled bad and she hired someone to haul them to the dump which cost \$50.00.

The tenants entered into evidence a signed witness statement which states in part:

....The following day [tenant A.B.] called me, [name redacted for privacy] again to help dump three garbage bags. I asked what was inside and she said they were full of smelly linen and some dirty clothes left behind. I [name redacted for privacy] came at around 5:00 PM and picked up the three bags and threw them out at the dumpsite. She paid another \$50 for gas and for the help....

The landlord testified that he agreed to pay the tenant the \$50.00 for the above claim.

Replace dresser

Tenant A.B. testified that after she moved out of the subject rental property, she noticed that the bottom of her dresser was covered in mold and had to be thrown out. Tenant A.B. testified that the subject rental property was full of mold and that this mold ruined her dresser. Tenant A.B. testified that the landlord should pay for the dresser's replacement because it was damaged by the condition of the subject rental property.

The tenants entered into evidence a receipt for a dresser and a plant in the amount of \$125.43. Tenant A.B. testified that she did not realize the receipt included a plant and is not seeking that cost. The receipt states that the plant is \$12.99 plus tax, and the dresser is \$99.00 plus tax. The tenants entered into evidence photographs of the dresser showing mold on it.

Tenant A.B. testified that the dresser was only one year old and was purchased at the start of this tenancy. The tenants entered into evidence a receipt dated July 31, 2020 for the same dresser in the amount of \$99.00 plus tax.

The tenants entered into evidence a doctor's note dated August 12, 2021 which states:

[Tenant A.B.] was seen via telehealth on July 16th 2021 due to environmental allergies.

The landlord testified that the tenants never told him about a mold problem at the subject rental property during the tenancy, and there was no mold problem after the tenants moved out. The landlord testified that the subject rental property is now tenanted, and the new tenants have not complained of mold. The landlord testified that he does not know how the mold got on the dresser, for all he knows the tenants could have left a moldy banana or other such item under the dresser. The landlord testified that the tenants have not provided any proof of mold in any other area of the house by way of photographs or other evidence. The landlord testified that he is not responsible for replacing the tenants' dresser.

Tenant A.B. testified that she did not tell the landlord about the mold until the move out day.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Cleaning

The tenants testified that they left the subject rental property clean, the landlord testified that while the tenants cleaned some areas, many others were not left in an acceptable level of cleanliness.

I found the landlord's testimony to be more credible than tenant A.B. because tenant A.B., on several occasions, testified that the damage claimed by the landlord was all based on lies, and later agreed that she caused the damage. I find that this inconsistency decreased the credibility of tenant A.B. I accept the landlord's testimony that the photographs showing dirt/grease in the subject rental property were taken on July 31, 2021. I accept the landlord's testimony that the "before" photographs were taken on June 10, 2020 and represent the condition of the subject rental property on move in.

I find that the witness statement entered into evidence by the tenants confirms that the tenants cleaned some of the subject rental property but based on the photographs entered into evidence by the landlord, did not clean sufficiently. I find that the cleanliness of the subject rental property did not meet the standard required under section 37(2)(a) of the *Act*. I find that the landlord has proved the value of the loss suffered as a result of this breach in the amount of \$352.00 as set out in the receipt entered into evidence. I accept the landlord's testimony that he only paid \$352.00 for the cleaning. I find that this is a reasonable price. Pursuant to section 67 of the *Act*, I award the landlord the cost of cleaning in the amount of \$350.00.

Painting

The landlord testified that the tenants made numerous holes in the walls and did a poor job of filling those holes, adding too much putty without properly sanding them down and painting them with a colour that does not match the walls.

Tenant A.B. initially testified that the landlord was lying and that the walls had holes when she moved in; however, tenant A.B. later testified that she caused the holes by hanging pictures on the walls. Tenant A.B. agreed that she filled the holes and painted them with supplies she purchased. I find that it is highly unlikely that the tenants would have filled holes they did not cause.

Based on the time stamped photos entered into evidence, I find on a balance of probabilities, that the holes in the walls were not present at the start of the tenancy, and that they were caused by the tenants. I find that the holes are larger than those expected to be caused by hanging pictures and do not constitute regular wear and tear.

The landlord entered into evidence an estimate for repairing the walls and re-painting broken down as follows:

- 2 bedrooms and a bathroom walls sanded dings dents repaired 2 coats of paint- \$1,320.00
- Paint and supplies- \$325.00
- GST 5%- 82.25
- Total: \$1,727.25

Residential Tenancy Guide #40 states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

When determining the quantum of damages owed by a tenant to a landlord for damage to the landlord's property, the useful life of the item requiring replacement must be considered. If the useful life of the item has expired, the landlord is not entitled to monetary damage as the item would likely have to be replaced soon anyways.

Policy Guideline #40 states that the useful life for interior painting is four years. Therefore, at the time the tenants moved out, the useful life for the paint was expired;

therefore, the landlord is not entitled to compensation for re-painting. I find; however, that the landlord is entitled to damages for the repair of the drywall. The estimate entered into evidence does not breakdown the cost of repairing the walls and the cost of painting the walls, the amount is presented as a lump sum. The landlord has therefore not proved the value of the loss as required under Policy Guideline #16.

Residential Tenancy Policy Guideline 16 states that 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. I find that the landlord is entitled to nominal damages for the repair of the walls, in the amount of \$250.00.

Ceiling repair

Both parties agree that the tenant damaged the ceiling, contrary to section 37(2)(a) of the *Act*. I find that the landlord has proved the value of the loss suffered as a result as evidenced by the estimate entered into evidence. I find the quantum of the estimate to be reasonable. I find that the tenants were not permitted to damage the subject rental property, even if the landlord did not adequately deal with their noise complaints [however, I make no finding on this point].

I award the landlord the cost of repairing the ceiling in the amount of \$2,178.75.

FOB deposit fee

As stated in earlier in this decision, the applicant bears the burden of proof. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that each party provided an equally probable but different explanation of the events regarding the fob deposit. As the tenants bear the burden of proof for their claim, I find that the tenants have not met that burden and their claim for the fob deposit. I therefore dismiss the tenants' claim for the fob deposit.

Repair to shoe closet door

I find that the tenants have not proved, on a balance of probabilities, that they informed the landlord of the issue with the shoe closet door or asked the landlord to repair that damage. I find that the tenants are not permitted to make unapproved repairs to the subject rental property and to later seek compensation for those repairs, unless they are emergency repairs as defined by the *Act*. I find that a repair to a shoe closet door is not an emergency repair. I therefore dismiss the tenants' claim for the repair to the closet door.

Garbage dump

Pursuant to the testimony of both parties, and the landlord's agreeance with the tenants' claim, I award the tenants \$50.00 for the cost of the dump run.

Replace dresser

I find that the tenant has not proved, on a balance of probabilities, that the subject rental property had any mold or that the landlord is responsible for the condition of the dresser. The tenants did not provide any documentary evidence to support tenant A.B.'s testimony that the subject rental property was full of mold. I find that the doctor note provided by tenant A.B. does not reference mold but "environmental allergies", I find that this is inconclusive and could refer to a great many things including dust and pollen.

I find that the tenants have not proved, on a balance of probabilities, that the landlord breached any section of the *Act*, tenancy agreement or *Regulation*, therefore the tenants' claim for the dresser is dismissed.

Security Deposit

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and

inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 24(2) of the *Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer the tenant two opportunities to complete the condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the “Regulations”), the second opportunity must be in writing.

The landlord testified that no joint move-in condition inspection was conducted and that no move in condition inspection report was completed. The landlord also testified that he did not provide the tenants with two opportunities to complete the move in inspection with the last opportunity provided in writing. Responsibility for completing the move in inspection report rests with the landlord. I find that the landlord did not complete the condition inspection and inspection report in accordance with the Regulations, contrary to section 24 of the *Act*.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in inspection and inspection report, I find that the landlord’s eligibility to claim against the security deposit for damage arising out of the tenancy is extinguished.

As I have determined that the landlord is ineligible to claim against the security deposit, pursuant to section 24 of the *Act*, I find that I do not need to consider the effect of the landlord failing to provide two opportunities, the last in writing, to complete the move out inspection and failing to complete the move out inspection report.

Section 38 of the *Act* requires the landlord to either return the tenants’ security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants’ provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord’s right to make such a claim has been extinguished under the *Act*.

In this case, while the landlord made an application to retain the tenants' security deposit within 15 days of receiving the tenants' forwarding address in writing, he is not entitled to claim against it due to the extinguishment provisions in section 24 of the *Act*. Therefore, pursuant to Policy Guideline #17, the tenants are entitled to receive double their security deposit in the amount of \$2,100.00.

As both parties were successful in their applications for dispute resolution, I find that each party must bear their own filing fee, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under sections 24 and 36 of the *Act*. I Order the tenants' doubled security deposit be deducted from the total monetary award granted to the landlord.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Cleaning	\$352.00
Nominal damages	\$250.00
Ceiling repairs	\$2,178.75
Less garbage dump fee	-\$50.00
Less doubled security deposit	-\$2,100.00
TOTAL	\$630.75

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: March 02, 2022

Residential Tenancy Branch