



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDL-S, MNDCL-S, FFL
For the Tenant: MNSDB-DR, FFT

Introduction

The Landlord filed an Application for Dispute Resolution on August 22, 2021 seeking compensation for monetary loss to them, and for damage they allege was caused by the Tenant. Additionally, they are seeking reimbursement of the Application filing fee.

The Tenants (hereinafter the “Tenant”) filed their own Application on September 7, 2022 seeking the return of the security deposit and pet damage deposit, and reimbursement of the filing fee. They applied via the direct request method. With the Landlord’s Application already in place, the Tenant’s Application was crossed with that of the Landlord.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 8, 2022. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Preliminary Matter – Disclosure

The Tenant confirmed they received the notice of this hearing from the Landlord. This included the Landlord’s prepared documentary evidence.

The Tenant attempted notification of their Application to the Landlord via registered mail. They used the address on the tenancy agreement they had. The registered mail was unclaimed by the Landlord and the Landlord explained that the post office box

address that the Tenant used for mail was that set out in the tenancy agreement which had by then expired. The Landlord moved into the rental unit after the tenancy ended, and the Tenant moved out.

The Landlord address is set out on the Condition Inspection Report completed jointly with the Tenant at the end of the tenancy when the parties met to review the condition of the rental unit. The Landlord disclosed this document to the Tenant as part of their Application process. I find the Tenant did not undertake reasonable efforts to ascertain the Landlord's correct address; therefore, with service of their own evidence to the Landlord not completed I give no consideration to the Tenant's evidence they provided for their Application and in response to what the Landlord prepared.

I advised the parties in the hearing that the Tenant's claim involves the return of the security deposit to them. Because the Landlord applied for compensation utilizing the deposit they were still withholding after the tenancy, by default the return of the deposit to the Tenant was in issue.

Issues to be Decided

Is the Landlord entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to compensation for damage caused by the Tenant, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to the return of the security deposit, pursuant to s. 38 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 67 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement and both parties in the hearing confirmed its basic details. The tenancy started in 2017. The latest tenancy agreement in place was that which started on August 15, 2020, with the fixed term ending on August 14, 2021. The agreement specified that the Tenant must vacate at the end of the tenancy. The rent amount was \$2,600. As indicated on page 3, the Tenant paid a security deposit of \$1,250 and a pet damage deposit of \$625.

In the hearing, the Tenant provided that their last day in the rental unit was August 10, 2021. The Condition Inspection Report provided by the Landlord shows the move-out date as August 15, 2021, the date of the final meeting. Though not recorded in the document, the Tenant provided their forwarding address to the Landlord at that time. They did not agree with the Landlord's record of the final state of the rental unit, and thus did not sign the Condition Inspection Report. According to the Tenant, the final meeting was "adversarial." The Tenant stated they took their own photos of everything within the rental unit.

In the hearing the Landlord verified that the Tenant did not sign the Condition Inspection Report. The Report lists specifics on the final page for damage to the rental unit. These are:

- front door glass not as original;
- a damaged kitchen countertop;
- entry closet door damaged;
- refrigerator unclean/door cracked;
- incorrect living room wall colour;
- nails in walls; and
- dead lawn in the yard.

The Landlord did not complete a list of their claim showing amounts. On their Application, they provided combined amounts for repairs or replacements. In the hearing, I reviewed each item listed in the Condition Inspection Report, and the Landlord's Application with input from each party. The Landlord's evidence and Application provides the following amounts; for items of "no specific value", the Landlord did not provide an invoice and did not give testimony on the amount of the expense associated with the item.

#	Items	\$ claim
1	front door glass replacement	1,951.98
2	damaged marble stone countertop	3,150.00

3	entry closet door damage	no value provided
4	repainting/nails in walls damage	262.50
5	refrigerator unclean/door cracked	no value provided
6	lawn	no value provided
Total		5,364.48

- 1 According to the Landlord the Tenant broke the glass and replaced it on their own in 2017. The Landlord wants the same glass as in the doorway originally at the start of the tenancy, a gallery-designed "bubble" effect. The Landlord found the same designed glass in Texas, and on their inquiry that firm sent a quote to the Landlord for \$1,951.98. Of this amount, \$624.77 is for shipping of that item. The Landlord did not add an amount for labour involved with installing replacement glass.

The Landlord provided pictures showing the original glass in the doorway, as well as the replacement installed by the Tenant. In describing their uploaded photos provided to the Residential Tenancy Branch, the Landlord stated "We need the original glass back. It made the house lower its value cause of this mismatched glass with the door."

The Tenant recalled that the glass in the doorway shattered when closing the door. They had to replace this immediately at the time because of the gap this would leave in securing the front-door entrance. They had requested the cost of replacement from the Landlord at some point but had not received reimbursement. They submit what the Landlord chose here for replacement is "an ornate stained-glass window, very expensive". The Landlord did not make the replacement of the glass, and the glass the Tenant had replaced still remains in place in the doorway.

- 2 The Landlord submitted the countertop was broken, and in 3 pieces. This is marble stone to be replaced, in one piece 1 metre x 2.5 metres. According to the Landlord they informed the Tenant in the final inspection that they could replace the countertop on their own; otherwise, the Landlord would undertake to replace the countertop. Photos show a break, or crack, from one corner of the sink to the countertop edge.

The Tenant acknowledged the countertop was broken; however, this was due to the original installation of the countertop that rested on cabinets around the sink. The Tenant stated this amount is quite high.

- 3 The Landlord provided a photo showing closet door damage. This shows a closet door of its track at the top of the door. The Landlord stated the door “cannot be opened or closed.” They already had this fixed by the painter. The invoice provided in evidence by the painter does not show this as a separate charged item for work completed.

In the hearing the Tenant stated this sort of thing happens in any home. This is wear and tear. It happened near the end of the tenancy, requiring a simple new part to rectify the problem.

- 4 The Landlord presented the colour of the living room was different from that originally painted at the start of the tenancy. The colour was originally yellow, but the Tenant had repainted the living room white, so the Landlord paid to have the colour painted to the original.

The Landlord presented a quote for painting, dated August 22, 2021, for \$262.50. The work undertaken by the painter also included fixing holes in the walls. The Landlord’s photos show nails remaining in the walls, higher up near the ceiling.

The Tenant stated they could provide witness testimony that they cleaned up nail holes within reach before moving out. They were not able to reach holes in the stairwell. At no time did the Landlord inform them that the original yellow colour in the living room needed to remain, and the Tenant did paint the living room near the start of the tenancy.

- 5 In the hearing, the Landlord stated they did not add a specific expense item for this, they only included photos of the dented fridge door and fridge interior “to show the Tenant did not do well” in their efforts at cleaning at the end of the tenancy.

In rebuttal to this, the Tenant maintained they paid over \$600 for cleaners, and “the fridge was spotless.” The “crack” in the front door was due to a magnet attached to the fridge.

- 6 The Landlord indicated they provided an invoice for lawn replacement in their evidence; however, this does not appear in their documents. The Landlord could not recall the amount in the hearing. This claimed amount was for lawn damage resulting from the Tenant’s lack of care. On their Application, the Landlord

stated: "Lawn is not mowed and part of it is dead. It needs to be replaced." They indicated no specific dollar amount on the Application.

The Tenant recalled the heatwave in August 2021 and the instruction to not water the lawn. They stated that lawn is able to regrow with sufficient watering and care.

Analysis

The Landlord did not provide a concise statement of their claimed amounts for damages. This makes assessment of their claim difficult. On some items the Landlord did not provide a value, and it was not clear whether they were presenting these items to show the general lack of care from the Tenant, thereby bolstering their claim for specific items, or leaving an assignment of value up to my discretion. This lack of specificity has affected the veracity of the Landlord's claim.

Regarding the deposits, the *Act* s. 38(1) states:

- 1) . . . within 15 days after the later of
 - (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,the landlord must do one of the following:
 - (c) repay . . . any security deposit . . . to the tenant
 - (d) make an application for dispute resolution claiming against the security deposit

Further, s. 38(6) provides that

- 6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit . . .

Additionally, s. 38(7) specifies that a pet damage deposit may be used only for damage caused by a pet to the residential property, should the Landlord be entitled to retain an amount.

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the

landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide enough evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

To determine the Landlord's eligibility for compensation, I carefully examine the evidence they presented for each item, to establish whether they have met the burden of proof.

In regard to the separate items of damage, repair, or cleaning:

- 1 I find the replacement glass, already changed by the Tenant in 2017, does not diminish the value of the house overall. The Landlord did not provide they were attempting to sell the property; therefore, I don't find the question of diminished value is a fair measure of any expense stemming from the tenancy.

Further, I find the Landlord did not explore an alternative in the interest of minimizing expenses associated with glass replacement; they did not examine the alternative measure of replacing the remaining original glass to match the piece put in place by the Tenant when the glass broke in 2017. Additionally, it appears there was no earlier examination of replacing the glass to something matching at the time the original glass broke. That likely would have mitigated the loss.

I am not satisfied of the need for glass that matches to the original that I infer was in place from when the home was first built. In any event it is very difficult to find, as is evident in the Landlord locating something similar in Texas. This proves the glass involved is more like an antique, and the Landlord should have undertaken that assessment at the time of the damage, instead of taking this up with the Tenant 4 years later at the end of the tenancy. The Landlord did not provide the cost of a suitable alternative that would make the glass functional instead of an exact match to glass installed when the home was first built.

I find the Landlord did not mitigate the damage; therefore, I grant no award for this piece of the Landlord's claim.

- 2 Similar to the point above, I find the Landlord did not provide evidence they examined repair of the countertop, as opposed to its replacement. As discussed in the hearing, the Tenant went through the effort of consulting with a contractor about the countertop specifically. That revealed an installation that was faulty; I find this more likely to be the cause of damage to a marble stone countertop, which could only be broken with some extreme force.

I find the Tenant provided ample evidence to show the damage to the countertop resulted from faulty installation, as opposed to damage they caused. This outweighs the evidence of the Landlord attributing the broken countertop to the actions of the Tenant. Additionally, I find it more likely than not, this item was in place since the home was built and had over the years exceeded its useful life; therefore, replacement with an entirely new countertop cost is not in order, and not an effort at minimizing the expense.

- 3 The Landlord did not provide sufficient evidence to show the entry closet door required specific work. I find there was no substantial work undertaken to fix this problem and the Landlord did not establish that there was actual damage. I dismiss this piece of the Landlord's claim.
- 4 I find the Landlord provided sufficient evidence to show they repainted the living room because the Tenant had changed the original colour. Though the Tenant provided there was no instruction to *not* paint the living room, there was no evidence they undertook to clarify this at any time during the tenancy. Given that the claim is for a single room being repainted – as opposed to the entire rental unit – I am satisfied the Landlord minimized this portion of their claim. I so award the Landlord the cost of repainting, for \$262.50.
- 5 The Landlord did not claim a specific amount for this. Without a value indicated for damage or repair, I make no award here.
- 6 The Landlord did not provide an amount for any expense associated with dead lawn. I find there was no damage to the lawn that could not grow back with sufficient care from the Landlord; therefore, I dismiss this portion of the claim.

As stated by the Tenant in the hearing, the Landlord raised no issue attributable to damage from the Tenant's pet. I so order the Landlord to return the amount of the pet damage deposit to the Tenant in full. This amount is \$625.

I find the tenancy ended on August 15, 2021. I accept that the Tenant provided their forwarding address to the Landlord at that time even though it is not recorded in the Condition Inspection Report. The Landlord properly filed their Application for a claim against the deposit amounts on August 22, 2021; this is within 15 days as the *Act* requires. Because the Landlord met this statutory timeline, there is no doubling of the deposit amounts awarded to the Tenant.

I grant the Landlord \$262.50, offset from the security deposit amount. The Landlord must return the remainder to the Tenant.

The return of the filing fee is discretionary, based on the success of an applicant in the dispute resolution process. Because the Landlord was unsuccessful in the majority of their claim, I find they are not eligible for reimbursement of the Application filing fee. Because the Tenant was for the most part successful in their Application for the return of the deposits, I grant them the reimbursement of the Application filing fee.

Conclusion

Pursuant to s. 38 and 72 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,712.50 for compensation as set out above. I provide this Monetary Order in the above terms and the Tenant must serve the Monetary Order to the Landlord as soon as possible. Should the Landlord fail to comply with the Monetary Order, the Tenant may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: March 23, 2022

Residential Tenancy Branch