



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL, MNRL, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on August 6, 2021 seeking compensation for rent owing, damages to the rental unit, and other money owed. They also applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 18, 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. Each party confirmed they received the prepared documentary evidence of the other; on this basis, the hearing proceeded as scheduled.

Issues to be Decided

Is the Landlord entitled to compensation for unpaid rent, damages to the rental unit, and/or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement and both parties in the hearing confirmed the basic details therein. The tenancy started on July 15, 2019, and the initial fixed term was extended after the initial set period, on a month-to-month basis. The rent amount of \$1,800 did not increase over the length of the tenancy. The Tenant paid a security deposit of

\$900. The Tenant pointed out that utilities were included in the basic rent amount. An addendum to the agreement adds that “Late rent is subject to a charge of 3.00/day to a maximum of \$25.”

The tenancy ended with the Landlord issuing a One-Month Notice to end the tenancy on May 13, 2021, with the set move-out date for June 15, 2021. The Tenant confirmed their final day in the rental unit was June 15, 2021. The Tenant agreed to use the security deposit amount of \$900 for the final one-half month of rent. This is stated in the Landlord’s email to the Tenant on July 8, as it appears in the Landlord’s evidence. The Tenant did not object to this statement in their email response on the following day.

In the evidence the Landlord provided a completed Condition Inspection Report (the “report”). This was for the final inspection that took place jointly with the property manager and the Tenant on June 15, 2021. The report provides “not cleaned & damage” on the final page, with the security deposit amount “TBD [i.e., to be determined] by the Landlord, up to 900”. The Tenant signed the report for the move-out meeting. The Landlord included photos of the inside of the rental unit as well as the yard space in their evidence. For each space in their own lists accompanying the pages of photos, the Landlord indicated “poor”.

In the hearing, the Tenant stated they offered the Landlord \$450 for carpet cleaning and the cost of a broken window which was an accident. The Tenant provided the final page of the report in their evidence, showing that they requested a cleaner when they moved in. As stated on the report – as of the completion of the initial move-in condition inspection – the Landlord noted “cleaner requested”. Specifically, the Tenant noted in their evidence description: “Stains on all carpets. The walls where [sic] covered in a layer of dirt. windows all broken. Burn on carpet in front of fireplace.” This version of the report also lists “DT” [i.e., dirty] for walls in the bedrooms

The Landlord did not accept this offer. The Landlord kept the security deposit and does not make a claim to it in this Application. Their rationale is that the Tenant did not provide a forwarding address. The Tenant confirmed they provided an email address to the Landlord only at the end of the tenancy.

The Landlord focused their claim on what they alleged were damages to the rental unit. They listed the separate items in the claim in the Monetary Order Worksheet they signed and dated on August 6, 2021:

#	Items	\$ claim
1	painting	1,500

2	repairing fridge and stove	1,343
3	cleaning	252
4	repairing	250
5	fixing the balcony	400
6	fixing the glass window	200
7	carpet stains	250
8	remove all the junk	100
9	replacing dishwasher	700
10	unpaid rent	1,824
Total		6,819

I reviewed the claim line-by-line in the hearing. The parties presented their testimony and evidence on each of the points above as follows:

- 1 The Landlord presented that walls inside the rental unit were damaged. The report throughout lists walls as “not clean/marks” for some rooms. They also indicated, with their collection of receipts they presented, that “It costs \$1,500 to repair the walls of the living room, dining room, Kitchen, hallway, master bedroom, bathrooms.” They provided an invoice dated June 2, 2021 showing the work completed, and an invoice dated June 29, 2021 for purchased paint.

The Tenant presented that there was only affected painted areas in the bathroom, and that occurred with the installation which was in the 1970s. The Tenant noted their own experience as a builder. The Tenant presented that there was no need to paint the whole house interior, with extant paint throughout being carried over from when the home was built. The Tenant also included an image of their message to the Landlord on July 20, 2019 to show they advised the Landlord of damage to the wall in the bathroom, which was a scrape to the paint of the doorframe.

- 2 The Landlord presented that they had to purchase a new fridge and stove because those used by the Tenant here were “very dirty”. The Landlord provided an invoice dated June 22, 2021 for \$1,343, new stove and fridge. In their written description, they stated “It costs \$1,343 for replacing the fridge and stove since their conditions were beyond fixable and multiple cleaning companies have refused to clean them up after viewing.”

The Tenant presented that the stove worked fine, and they had cleaned the inside of the stove at the end of the tenancy. They noted the fridge was “very old”, and “disgusting when [they] moved in”. The appliances were “all breaking down when [they] moved in”

and “when [they] left, everything worked.” The report at the start of the tenancy notes “not cleaned” for the stove, and the indicator for “dirty” for the refrigerator.

- 3 The Landlord provided a receipt dated June 24, 2021 for “basic cleaning inside of the house.” The Tenant provided that the agent who handled their initial move in “commented how gross it was”. They also provided that they did “some” cleaning at the end of the tenancy.
- 4 The Landlord here provided a written description that added “repairing the drawers, replacing the hanger wheel for the cabinet door and installing the screen doors.” This work, except for drawer repair, is listed on the provided June 29, 2021 receipt. The completed report states “island drawer broken”. The Tenant rebutted this by stating the cabinet door broke within the first week, and they had repaired the drawer 6 or 7 times on their own. At one point, the Tenant took the screen door right off because it did not work at all.
- 5 In their written description, the Landlord provided that “It costs \$400 for fixing the balcony.” The report does not specifically list balcony damage in the space provided for that. The Landlord did not provide photos of balcony damage. The Landlord provided a letter from the municipality, citing them for the bylaw violation of unsightly property. The Landlord in their description of this piece of evidence noted this included the balcony. In the hearing the Landlord described buying “more than 10 pieces of wood.” The Tenant rebutted this to say that treated wood, as used for the balcony, last for 20 years, and it was rotting out.
- 6 The Landlord provided an invoice for work completed on July 19, 2021 “for fixing the glass window of the front door.” The report does note a broken window; however, photos attached do not show this in detail. The Tenant in the hearing described glass broken; however, this was in the bathroom.
- 7 The Landlord gave the amount of \$250 as an estimate to remove carpet stains throughout the rental unit. There are photos provided with the report of the entirety of each room in the rental unit. The report for each room notes “not clean” for carpet. The Tenant in the hearing provided that this amount given by the Landlord was “outrageous, because carpet cleaning comes in for \$150.”
- 8 The Landlord provided an estimate of \$100 for work to remove “all the junk the Tenants left behind.” The images of the garage and yard in the pictures show an empty garage, and a yard free of clutter. The Landlord provided pictures from the municipality taken in April 2021, showing a state of disarray in the backyard area. The Tenant provided that

leftover junk in the yard was not theirs; it belonged to the Landlord. Additionally, all the other items left in the garage belonged to the Landlord.

- 9 The Landlord presented messages from their replacements tenants on July 28, 2021 wherein they proposed splitting the cost of a used dishwasher with the Landlord. This was because the insides of the dishwasher were “gross” and “clearly no one has ever cleaned it.” In their written description, the Landlord stated, “It costs \$700 to replace the dishwasher (estimate)”. In the hearing, the Landlord noted they purchased a new dishwasher for \$700.

The Tenant rebutted this by stating they had emails from the Landlord stating the exact same issue. The Tenant had a repairperson come in for that exact issue, and that repairperson discovered there was a missing tube in the dishwasher. As proof of this, the Tenant provided their message to the Landlord of October 26, 2019 wherein they identified the missing tube, meaning only the bottom rack of the dishwasher was getting cleaned. The Landlord approved the Tenant’s request to purchase the tube and make the installation on their own, stating they were happy to reimburse the cost for that.

- 10 On the Application, the Landlord presented that the Tenant did not pay rent on time “seven times during the tenancy.” This was a total of 10 days, for \$30 added to this piece of their claim as per the addendum rate of \$3 per day.

Additionally, the Landlord presented the Tenant did not pay rent for the last full month of the tenancy, June 2021. The Tenant allegedly also refused to let the Landlord’s agent show the property to prospective new tenants. Combined with damages in the rental unit requiring repair, this left the rental unit unfit for rental as of July 31, 2021, just before the Landlord’s Application.

The Landlord explained the claim amount of \$1,824 includes \$900 for the one-half month of rent for the remainder of June 2021. This was the time the Landlord needed to clean and make repairs in the rental unit, through to the end of June. The remaining \$900 represents the time in the following month the Landlord was not able to rent out the rental unit, due to the Tenant’s refusal to allow prospective tenants to view the unit, and the uncleanness at the end requiring further clean up. The Landlord could not rent out the rental unit for July 1st, and new tenants could only move into the rental unit for July 23,

The Tenant provided that they tried to transfer \$400 for June 2021 rent to the Landlord, but they did not accept it. By June 12, they were messaging to the Landlord’s agent

that they felt the Landlord would not return the security deposit “with all the stuff [the Landlord has] tried pulling.” The agent inquired and informed the Tenant that the Landlord had seen the \$400 transfer; however, they clarified the correct rent amount for June 2021 was \$900. This same message from the Tenant to the Landlord’s agent appears in the Landlord’s own evidence.

In addition to the claims for damages and/or cleaning in the rental unit, the Landlord made a specific monetary claim of \$550 as other money owed to them. This involves noise complaints received from other building residents against the Tenant. The Landlord provided a separate written piece addressing this, stating: “Previous downstairs tenants . . . have reported to the landlords sustained, unreasonable and unbearable disturbance from the Tenants in dispute.” The Landlord cites the addendum clause “j” re: conduct, whereby a tenant who causes other tenants to vacate “because of noise or other disturbance, harassment or annoyance shall indemnify the landlord for any reasonable costs and losses caused thereby.” The Landlord provided a series of messages to them from prior tenants setting out each disturbance caused by the Tenant here.

These messages set out the Tenant’s own family situation with children crying or carrying on in the rental unit at a level of noise causing disturbance to neighbouring residents. Additionally, there is the use of power tools, and the Tenant here apparently being the only building resident who has access to a breaker switch needing resetting.

In the hearing the Tenant presented that the building is set up with a lower suite that is “illegal”, not being built to have anyone downstairs. All the other building residents were aware they had a child. The Tenant also set out their awareness of other residents’ true reasons for being evicted, not ending the tenancy for the chief reason of complaints against the Tenant here.

Analysis

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:

1. That a damage or loss exists;

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

As set out above, the Landlord presented two separate categories: damages/cleaning/rent in the rental unit; and money owed to them for the Tenant's noise. 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/cleaning/rent:

- 1 From the photos provided, I am not satisfied, specifically, of the need to paint in miscellaneous rooms within the rental unit. I find the walls were not clean at the start of the tenancy as shown in the excerpts from the report presented by the Tenant. These pages are what is in the completed report from the Landlord. I am not satisfied that the rental unit needed more extensive repainting because of the Tenant here. The duration of this tenancy was approximately 2 years, and the Landlord has not presented any need for painting beyond what is normal and reasonable wear and tear within that time. For these reasons, I dismiss this piece of the Landlord's claim.
- 2 I am not satisfied the fridge and stove required replacement. The Landlord provided that "multiple cleaning companies [had] refused to clean them up after viewing"; however, this is not evidence that the fridge and/or stove were inoperable such that they required replacement. The photos provided by the Landlord do show the need for cleaning inside each appliance; however, replacement of them is not an effort at minimizing the costs to the Tenant. Without evidence the appliances were not working, I am not satisfied of the need for their replacement due to an unclean state. I dismiss this piece of the Landlord's claim for this reason.
- 3 From the Landlord's detailed photos, I am satisfied of the need for extra cleaning above what the Tenant stated they completed at the end of the tenancy. There is a level of dirt throughout in more hard-to-capture areas. I find this warrants compensation to the Landlord. This is cleaning that the Tenant should have completed at the end of the tenancy. I so award the \$252 portion of the claim to the Landlord.
- 4 I am not satisfied of the need for repairs throughout the rental unit as claimed by the Landlord here. The photos do not capture the detail of items needing repair. Additionally, the report notes "island drawer broken" but other than this notation, there is

no evidence of the need for repair. The other items are not depicted clearly in photos. Because there is no additional evidence on these items, I dismiss this portion of the Landlord's claim. It is not clear that the Landlord undertook repair to the unit because of the neglect or other actions of the Tenant, and I am not satisfied there are any items requiring repair beyond reasonable wear and tear.

- 5 The Landlord's proof of balcony damage attributable to the Tenant is insufficient to establish that they have a valid claim. There are no photos of specific balcony damage that the Landlord included with their report. The citation from the city for bylaw violations does include photos; however, nothing showing balcony damage – as contributing to the unsightly property – is in that evidence. The Landlord merely noted they purchased some wood for balcony repair; however, there is no record of that. With no record of an expense to them, or evidence of actual damage requiring repair, I dismiss this piece of the Landlord's claim.
- 6 Similar to the points above, the Landlord did not provide adequate proof of actual damage. There are photos with the report showing the entryway; however, they do not show damage to the glass of the front door. I dismiss this piece of the Landlord's claim due to lack of proof of the damage.
- 7 The Landlord provided photos with the report; however, these do not show sufficient detail to justify the expense of \$250 for carpet cleaning. There are no noted stains or specific dirty areas depicted in the pictures. I am not satisfied of the value of this estimate; however, I find the Tenant was agreeable to carpet cleaning and did not prove they had the carpets cleaned at the end of the tenancy, as the addendum listed as a requirement. I find the amount of \$150 is fair recompense to the Landlord for this cost to them.
- 8 There is not no evidence showing junk left behind by the Tenant. The Landlord did not provide proof of this portion of there claim; therefore, I dismiss this piece.
- 9 I find the Tenant has provided proof the dishwasher was not functioning properly during the time they occupied the rental unit. This was in later 2019 when they proposed repairing the dishwasher on their own, replacing a missing part. This shows the Landlord has not demonstrated the Tenant was responsible for a non-functioning or not-fully-functioning dishwasher. Additionally, the Landlord did not provide proof of a new purchase, or a source for the \$700 estimate which forms their claim here. There is not sufficient evidence of damage, or even a purchase. I dismiss this piece of the Landlord's claim for this reason.

- 10 I conclude the Tenant to the use of the security deposit for June 2021 rent. The Landlord provided an email from July 8 to the Tenant asking about damages and the expenses involved with that. The Landlord's statement is "We have no damage deposit from you to cover the repair costs, because you agreed to use your damage deposit to pay for your last month of rent." The Tenant responded to say, "We don't mind paying for damages" and "We understand there where [sic] damages we need to pay for." From this I find the Tenant did not object to the Landlord using the total of the security deposit for that final month of rent. Also, the Tenant did not raise that objection in the hearing. As well, the Tenant's earlier dialogue with the agent (as it appears in both parties' evidence) confirms the Tenant earlier on had the idea that the Landlord would use that security deposit amount for the final one-half month of rent, June 2021.

Aside from this, the Landlord's claim is for the remainder of June 2021 and the time in July they could not obtain new tenants due to residual clean up and repair in the rental unit. I am not satisfied that the preparation of the unit carried over into July. Purchases and repairs, as shown in invoices, were completed by the end of June. The one exception is door window repair, completed on July 19, 2021; however, I find that is not an incidental repair that would prevent new tenants from moving in earlier in July. As well, the photo evidence provided by the Landlord does not show a unit needing extensive repairs in order to make the unit rentable. It is unknown what efforts the Landlord made at promoting and advertising the new rental unit; therefore, I find the Tenant's own concerns about public health measures did not impede those efforts significantly, causing delay to the Landlord acquiring new tenants. July 23 is an odd date to begin a tenancy, and I can only conclude the new tenants chose that date out of preference, minus any other communication from the Landlord showing any delay owing to the actions of the Tenant here. In sum, the Landlord is not entitled to any amount of rent for the month of July 2021.

The Landlord ended the tenancy by way of a notice to the Tenant. The Tenant dropped their dispute of that notice to end the tenancy, which left the end-of-tenancy date for June 15, 2021. The Tenant committed to this date to move out, and there is no other communication showing they intended to occupy the rental unit beyond that date. There is no information from the Landlord showing they marketed the rental unit for new tenants to move in on that exact date. The Landlord should have anticipated this gap in the monthly rent for the month of June 2021. The tenancy ended by way of a notice to the tenant, giving a very specific end-of-tenancy date. I find the condition of the unit was not that which prevented its rental to new tenants, and this does not tie back to the Tenant here.

Aside from this, the Landlord showed that a fine of \$3.00 per day exists for each day rent payment is late. They provided the record showing accrual for the Tenant here, to \$30. For some reason, the addendum specifies that the amount is “not to exceed \$25”, which somewhat defeats the purpose of having a fine system in place. If the Landlord reduced this piece from \$30 to \$24 for this reason, that is not clear in their record. I find the scheme for this fine, as a form of penalty, is not authorized by the *Residential Tenancy Regulation*, which lists all non-refundable fees a landlord may charge, in s. 7. For this reason, I find the fee system in place via the addendum is form of contracting outside of the *Act* and the *Residential Tenancy Regulation* which is strictly barred by s. 5 of the *Act*. I dismiss this piece of the Landlord’s claim.

Regarding the Tenant compensating the Landlord for complaints of noise, the Landlord must prove – definitively – those other tenancies ended for the chief reason of other residents ending the tenancy on their own initiative, exclusively because of this noise issue. That is my interpretation of the clause in the addendum as it is worded there. The Landlord has not shown that the other short-term tenancies ended for that reason. There is no record of the Landlord bringing that aspect of noise issues to the Tenant’s attention in that manner. There is also no record of an attempt by the Landlord to end the Tenant’s own tenancy for that reason. Additionally, there is no method provided for how the amount of \$550 was decided – it is not known if that is lost rent income to the Landlord, other administrative costs, etc. Suffice it to say that noise was an issue; however, the Landlord has provided no evidence of ongoing notice to the Tenant, and the cost is not justified in terms of a dollar amount as representing a tangible expense (as “reasonable costs and losses”) to the Landlord. I dismiss this portion of the Landlord’s claim for these reasons.

Because the Landlord was unsuccessful in the majority of their claim, I find they are not eligible for reimbursement of the Application filing fee.

Conclusion

Pursuant to s. 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$402.00 for compensation set out above. I provide this Monetary Order in the above terms and the Landlord must serve the Monetary Order to the Tenant as soon as possible. Should the Tenant fail to comply with the Monetary Order, the Landlord 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 9, 2022

Residential Tenancy Branch