



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated October 21, 2021; for a monetary order of \$972.00 for damage or compensation for damage under the Act, retaining the security deposit for this claim; and to recover the \$100.00 cost of her Application filing fee. Early in the hearing, however, the Landlord told me that the Tenant had moved out on March 24, 2022, and, therefore, the Landlord no longer seeks an order of possession for the rental unit.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 40 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about it. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application and the Notice of Hearing. The Landlord testified that she served the Tenant with these documents by attaching them to the rental unit door on February 22, 2022. She provided a photograph of these documents on the door of the rental unit, as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application, and I continued to hear from the Landlord.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and she confirmed these addresses in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties.

At the outset of the hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised the Landlord that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Landlord affirmed that she was not recording the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The tenancy agreement states, and the Landlord confirmed that the periodic tenancy began on June 1, 2019, with a (final) monthly rent of \$1,435.00, due on the first day of each month. The Landlord confirmed that the Tenant paid her a security deposit of \$700.00, and no pet damage deposit. The Landlord said she holds the security deposit in full to apply to her claims.

The Landlord submitted a monetary order worksheet setting out her monetary claims, as follows:

	Receipt/Estimate From	For	Amount
1	[Local glass company]	Installing three large windows	\$602.00
2	Strata Council	Purchase garage & building entry fobs	\$200.00
3	[Locksmith]	Change the locks because reported as a break in	\$170.00
		Total monetary order claim	\$972.00

#1 WINDOW RE-INSTALLATION → \$602.00

In the hearing the Landlord explained these claims as having resulted from vandalism committed by a family member of the Tenant's authorized occupant. The Landlord said:

The windows were removed and found downstairs in the parking garage. The [glass company] put the windows back in. It was a family member who removed it, and insurance didn't cover it, because it was a family member of the authorized occupant who did this. She had someone living there and they had a big fight or something and he did all this stuff because.... The windows were double-glazed, hard to break quietly, so he removed them.

The Landlord said that the glass company had a \$350.00 emergency call out charge and that they invoiced \$252.00 to re-install the windows. The Landlord submitted a receipt from the glass company for \$252.00 for the installation, but there was nothing about an emergency call out charge on the receipt. Rather, the Landlord had submitted a quote from another company that estimated the emergency call out costing \$250.00, which was not claimed in this Application.

The Landlord submitted copies of text communications she had with the Tenant, wherein he acknowledged responsibility for the vandalism costs incurred by the Landlord. One such exchange is as follows:

Landlord: Thu, Jan 13, 9:03 AM

So how did you want to start paying back the money owed to me for the vandalism costs? You can start paying right away. etransfer is probably best for keeping track. Thx

Tenant: Thu, Jan 13, 9:03 AM

I could pay an extra 200 on rent day or bi weekly

Landlord:

Bi-weekly is better for me. It separates from the rent and clear records for both of us to keep track of. Thx

Tenant:

Ok, also . . . [unrelated question follows].

In a written statement, the Landlord said: "I would like to add that the tenant as well as

the authorized occupant are both working people as I am and should be held responsible for their actions.”

#2 GARAGE AND BUILDING FOBS → \$200.00

In the hearing, the Landlord explained this claim, as follows:

He stole the fobs, too. The locks needed to be changed, because he was given a key and a fob. They were provided two each.

The Landlord said that she is responsible for the cost of the keys and fobs, if her tenant does not return them. The Landlord submitted a copy of a returned cheque showing that she paid \$200.00 for the cost of new fobs for the rental unit.

#3 CHANGE THE LOCKS → \$170.00

The Landlord said that a break-in was reported by the Tenants, and they did not return their keys; therefore, the Landlord had to replace the lock. She did not direct me to an invoice or receipt she had submitted for this claim.

Additional Claims

The Tenant also submitted a document requesting additional costs that she has incurred to be added to this Application; however, she did not submit a Landlord Request to Amend an Application for Dispute Resolution, form RTB-42L for these changes. The Landlord would also have had to serve the Tenant with this form and details of the requested amendment to the claim for me to consider it in this proceeding.

However, the Landlord may apply for another hearing to claim any additional costs she has incurred from this tenancy. Pursuant to section 60 of the Act, the Landlord would have to apply for any additional claims within two years of the date that the tenancy ended.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

A party who applies for compensation against another party has the burden of proving

their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In your case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

#1 WINDOW RE-INSTALLATION → \$602.00

Section 32 of the Act requires a tenant to repair any damage they caused in the rental unit. Section 32 (3) states:

- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

The Landlord did not direct me to, nor could I find an invoice or receipt from the glass company's emergency call-out charge, which means the Landlord has not fulfilled the requirement of step 3 of the Test to justify the value of the loss claimed. As such, I dismiss this portion of the claim without leave to reapply.

However, I find that the Tenant acknowledged his responsibility for the Landlord's claims in the text communications between the Parties, although this does not address the value of the claims. As such, and pursuant to sections 32 and 67 of the Act, I award the Landlord with recovery of **\$252.00** for this claim.

#2 GARAGE AND BUILDING FOBS → \$200.00

Based on the undisputed evidence before me in this matter, I find that the Landlord has provided sufficient evidence to justify this claim on a balance of probabilities. As such, I award the Landlord with recovery of **\$200.00** from the Tenant in this regard, pursuant to sections 62 and 67 of the Act.

#3 CHANGE THE LOCKS → \$170.00

Based on the undisputed evidence before me in this matter, I find that the missing keys renders the residential property less safe and secure for the next tenant(s) living there. As such, I find that this loss on the part of the Tenant required the Landlord to change the lock. However, the Landlord did not provide an invoice or a receipt for this cost, which is inconsistent with step 3 of the Test. Accordingly, I dismiss this claim without leave to reapply.

The evidence before me is that the Tenant's authorized occupant's guest removed the windows from the rental unit and that the Tenants did not return the rental unit keys. I find that despite her lack of evidence to support the amounts claimed in this regard, that the Landlord did incur loss, as a result of this tenancy. I find that these costs were not part of normal wear and tear, which may be overlooked.

Policy Guideline #16 ("PG #16") states that an arbitrator may also award nominal compensation in situations where establishing the value of the damage or loss are not as straightforward.

I find that the Tenant is responsible for breaches of section 32 of the Act, for which the Landlord has not been fully compensated. As such, I award the Landlord with an additional, nominal award of **\$148.00** for these matters, pursuant to section 67 and PG #16.

Summary and Set Off

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security deposit of \$700.00 in complete satisfaction of the Landlord's monetary awards.

Monetary awards:

#1	Windows	\$252.00
#2	Fobs	\$200.00
#3	Locks	\$ 0.00
	Nominal award	<u>\$148.00</u>
	TOTAL	<u>\$600.00</u>

Given her success in this matter, the Landlord is also awarded recovery of her **\$100.00**

Application filing fee from the Tenant, pursuant to section 72 of the Act, for a total monetary award of \$700.00. I authorize the Landlord to retain the Tenant's **\$700.00** security deposit in complete satisfaction of these awards.

Conclusion

The Landlord is predominantly successful in her Application for compensation from the Tenant for damage under the Act in the amount of **\$600.00**. The Landlord did not provide sufficient evidence to prove her claims fully on a balance of probabilities to be compensated for the full amount claimed. The Landlord is also awarded recovery of the **\$100.00** Application filing fee from the Tenant.

The Landlord's claim for an order of possession for cause is dismissed without leave to reapply, as the Tenant had already moved out at the time of the hearing.

The Landlord is authorized to retain the Tenant's full **\$700.00** security deposit in complete satisfaction of these awards.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: May 11, 2022

Residential Tenancy Branch