Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of $1,649.00 for damages to the unit, site or property, to retain the tenant's security deposit and pet damage deposit towards any amount owing, and to recover the cost of the filing fee.

The hearing began on February 15, 2022 and after 62 minutes the hearing was adjourned to allow additional time for both parties to complete their testimony and presentation of documentary evidence. As a result, an Interim Decision was issued dated February 16, 2022 (Interim Decision). The Interim Decision should be read in conjunction with this decision. On June 2, 2022, the hearing reconvened and after an additional 37 minutes, the hearing concluded.

Attending both dates of the teleconference hearing were the landlord and the tenant. The parties were affirmed and the hearing process was explained to the parties. A summary of the submissions, testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed having been served with the documentary evidence and having had the opportunity to review that evidence, I find that both parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 15, 2020 and was scheduled to convert to a month-to-month tenancy after March 1, 2021. Monthly rent was $1,825.00 per month and was due on the first day of each month. The tenant paid a security deposit of $900.00 at the start of the tenancy, which the landlord continues to hold. The landlord's monetary claim for $1,649.00 is comprised of $100.00 filing fee plus the following:

ITEM DESCRIPTION	**AMOUNT CLAIMED**
1. Kitchen drywall	$15.00
2. Kitchen cabinets	$328.00
3. Kitchen labour	$140.00
4. Flooring underpad	$240.00
5. Flooring material	$960.00
6. Flooring transitions	$90.00
7. Flooring labour	$480.00
8. Paint walls labour	$120.00
9. Bathroom furniture	$40.00
10. Dump trailer	$39.00
11. Dump fees	$134.00
12. Dump Labour	$180.00
13. Taxes	$332.00
SUBTOTAL	**$3,098.00**
(Less 50% depreciation applied by landlord)	*-($1,549.00)*
TOTAL	**$1,549.00**

The tenant provided their written forwarding address on the outdoing Condition Inspection Report (CIR) dated July 22, 2021. There was no amount listed for deduction by the tenant and there was no written approval for deductions from the security deposit. The landlord filed their application claiming towards the tenant's security deposit on August 4, 2021, which is within the 15-day timeline provided for under section 38 of the Act.

Regarding item 1, during the hearing, the landlord requested to reduce this portion to $5.00. The landlord stated they did not know the age of the drywall but that the portion that was replaced was about $5.00 per sheet for a total of 1 sheet. The incoming CIR was dated September 5, 2020 and in indicates in the kitchen that walls and trim where in good condition versus the outgoing CIR dated July 22, 2021 states water damage due to leak and that the landlord testified that the mould on the drywall was not discovered until later. The landlord did not provide a receipt or quote for the $5.00 amount claimed. The landlord stated that they have 15 years in the construction business so that is how they are basing the value of the claim. In their application they write the following:

> Landlord is a journeyperson electrician with 15 years of general renovation and construction experience.
>
> [reproduced as written]

The tenant's response to this item was that all damage was a result of a plumbing leak and that they could not see behind the cabinets, is not their responsibility and that there are no receipts.

The landlord referred to a July 29, 2021 document from a plumbing and heating company that reads in part as follows:

> Service Date: July 5, 2021
> We were called to repair a leak coming from under a kitchen sink. When I got to the jobsite, I inspected the leak under the kitchen sink and found that it was leaking from the faucet. It appeared that the faucet had been leaking for quite some time. I replaced the faucet and there were no further leaking. The toilet was also running so I replaced the fill valve and the supply line during the same visit.
>
> [reproduced as written]

The tenant stated that on July 4, 2021, when they first discovered the leak from the kitchen faucet they called the landlord on the same day and the landlord attended on

July 6, 2021. The tenant stated that they were away about one month before discovering the leak on July 4, 2021.

The landlord was asked why the rental unit address did not match on the July 29, 2021 report, which was indicated as a typo on the document. The landlord stated that mould does not grow that quickly and that the leak would have been happening a long time however the photo evidence shows the mould was solely behind the cabinets and would not have been visible without removing the cabinetry.

Regarding item 2, the landlord has claimed $328.00, less 50% depreciation, to replace a water-damaged kitchen base cabinet related to the same water leak described above in item 1. The landlord was asked about the age of the home, which they indicated was built in 1999. The landlord was unsure if the cabinets were the original cabinets and stated that they purchased the home in 2011. The landlord stated that they paid $300.00 to a carpenter and submitted a quote dated 09/01/2021 in the amount of $328.95 before taxes.

The photo evidence shows a cabinet that was swollen from water damage. Other photos shows mould on the rear drywall behind the cabinets and swollen melamine portions of the cabinetry. Submitted in evidence was a July 5, 2021 invoice for $654.52 for the following:

INSTRUCTIONS	QUANTITY	DESCRIPTION AND MATERIAL USED	AMOUNT
- Water was leaking from the old faucet. It's not fixable so I installed a Huntington brass pullout faucet. Tested OK.	1	Huntington brass	188 00
	1	Misc. Tek Ctg	15 00
	2	20" Supply line	27 78
	1	Fluid Master fill Valve	25 50
- Running toilet. Installed new fill valve.		[redacted]	

[personal credit card number remove to protect privacy]

The tenant's response to this item was that there was no invoice for the $328.00 being claimed and disagrees that they are responsible for the plumbing issue.

Regarding item 3, the landlord has claimed $140.00 for labour related to items 1 and 2, less 50% depreciation. The landlord testified that the amount was comprised of $30.00 per hour at 5 hours, which would actually total $150.00. The tenant's response to this

item was that there was not professional invoice and disagrees that the plumbing issue was their responsibility.

Regarding items 4, 5, 6 and 7, all are related to a flooring claim by the landlord as described on page two of this Decision. The landlord stated that the impacted area was from the living room to the entrance and required all laminate flooring to be replaced due to water damage. The landlord stated that the size was approximately 480 square feet (SF). The landlord also stated that there was foam “underpad” also required. The landlord submitted a document from a Home Depot website and clarified that the amount ended up being more then the material was purchased. The landlord claims at the flooring store, the material was about $2.10 per SF, which was 480SF x $2.10 for a total of $1,008.00 but confirmed they didn’t recall a specific amount. The landlord stated that the total SF of the rental unit is 642SF and that the kitchen is tile, not laminate.

Regarding transitions, the landlord testified that there were 8 flooring transitions at $13.00 each for a total of $90.00, although 8 times $13.00 is actually $104.00. The landlord testified that they are charging $30.00 per hour for their labour for 16 hours. The landlord confirmed that the bedroom flooring was not replaced.

The tenant testified that the incoming CIR indicates “Laminate floor damaged/in poor condition” and “D” for damaged for the living room flooring. In addition, the kitchen flooring indicates “D” for damages also with “tile chipped in many spots”.

Regarding item 8, the landlord has claimed $120.00 to repaint the rental unit walls comprised of 4 hours at $30.00 per hour. The landlord stated that the tenants installed a TV mount so there were holes. The photo presented by the landlord shows a small area on a large wall were approximately 6 to 7 small drywall patches were showing before being repainted. The landlord stated they are not charging for the cost of paint. During the hearing, the parties reached a mutual agreement for the amount of **$20.00** for this item, which will be accounted for later in this Decision.

The remainder of the items were discussed at the reconvened hearing where the landlord stated they did not have anything in front of them when they called into the hearing. The landlord clarified that they were at work on a crane during the reconvened portion of the hearing without their documents in front of them.

Regarding item 9, the landlord has claimed $40.00 for bathroom furniture. The landlord stated that the bathroom furniture was comprised of a wooden toilet paper holder that was screwed to the wall above the toilet. The landlord stated that amount of $40.00 was

“thrown at a dart board” in terms of estimating the value. The landlord stated that for $40.00 they could find something similar from Winners but that after the tenant vacated the rental unit, the wooder holder was missing. The tenant’s response to this item was that they did not consent to the landlord leaving any “furniture” in the rental unit and that it “might have been there.”

Regarding items 10, 11 and 12, all items relate to dumping costs including a trailer, dump fee and dump-related labour. The landlord testified that he obtained the amount of $39.00 from the Home Depot website and confirmed that no receipt was submitted. The landlord also stated that the dump fee of $134.00 was paid at the dump site, and a receipt was not submitted for my consideration. Regarding the labour, the landlord testified that it took 6 hours at $30.00 per hour to remove the damaged materials (flooring, cabinets, drywall) and to load the trailer, drive to dump and dump the damaged materials.

The tenant disagreed with items 10, 11 and 12 by reaffirming that the plumbing issue was not their fault and that they reported it as soon as possible to the landlord.

Regarding the outgoing CIR, the landlord confirmed that their uncle attended the inspection versus the landlord.

Regarding item 13, the landlord could not articulate how the amount of $332.00 was reached and for which items tax was applied or not.

The landlord’s final comments were that they were not aware of the rules surrounding evidence submission. The landlord was advised during the hearing that the Notice of Hearing and application contained links to all of that information for both parties. The landlord stated that they had strata insurance which was fine for mortgage purposes. The landlord also testified that they were in a different province but that they called the tenant back the same day they reported the leak. The landlord indicated that they had people they could trust to go and help the tenant while they were still there and that when the plumber receipt was received, they were shocked at the amount.

The landlord denies that the eviction was not legal and that they decided to rent instead of selling. The landlord testified that the repairs were huge due to black mould, that the floors were cupped and damaged, and that the tenant would have had to leave for a couple of weeks or a month and that it was “mind boggling” at how much damage could occur from a small leak. The landlord stated that the tenant did not pay attention to things because in their experience with a previous leak to the rental unit dishwasher you

could see the water coming out from the flooring and there was almost no damage as it was caught in time. The landlord claims that there would be no way the tenant would not have wet socks given the amount of water from the faucet leak that the landlord claims would have been 5-6 months and that by not noticing it, the tenant has been neglectful.

The tenant's final comments were that they contacted the landlord as soon as they saw water damage and worked in good faith with the landlord to have the plumbing issue and damage repaired. The tenant stated that it was during this time that the landlord decided to evict them and that in documentation from the landlord, the landlord did not have insurance. The tenant also stated that the landlord was "hard to get hold of". The tenant felt that the landlord was not supportive in dealing with the plumbing issue and that the landlord seemed uninterested in fixing things. The tenant denies causing any leaks and that the landlord's application is very weak and has no receipts and asked "why should I pay for something he did without proof." The tenant testified that the leak may have been happening slowly and then became bad when they were away for a month. The tenant stated that they are not responsible for plumbing issues and that if the dishwasher leaked previously than it is just as likely that there are plumbing issues in the rental unit.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

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

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

I will first deal with item 9, as I find that the tenant did not deny taking the wooden toilet paper holder during the hearing and stated it “might have been there”. On the balance of probabilities, I find it more likely than not, that the tenant either accidently or purposely removed the wooden toilet paper holder and that $40.00 is a reasonable amount to replace a missing item. I afford no weight to a wooden toilet paper holder equating to a furnished rental unit, which I find the rental unit was not. As a result, I grant the landlord **$40.00** for this item. I do not apply depreciation as the item was taken.

I will now deal with the remainder of the claim. Section 7 of the Act applies which states:

> **Liability for not complying with this Act or a tenancy agreement**
>
> **7**(2) **A landlord** or tenant **who claims compensation for damage or loss that results from the other's non-compliance with this Act**, the regulations or their tenancy agreement **must do whatever is reasonable to minimize the damage or loss.**
>
> [emphasis added]

In addition, similar wording can be found in RTB PG 5, Duty to Minimize Loss which reads in part:

> **B. REASONABLE EFFORTS TO MINIMIZE LOSSES**
>
> A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement **must make reasonable efforts to minimize the damage or loss.** Usually this duty starts when the person knows that damage or loss is occurring. **The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.**
>
> In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:
>
> • remove and dry the possessions as soon as possible;
>
> • promptly report the damage and leak to the landlord and request repairs to avoid further damage;

> • file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.
>
> **Compensation will not be awarded for damage or loss that could have been reasonably avoided.**
>
> [emphasis added]

Also, as mentioned above, part 4 of the 4-part test for damage or loss states:

4. That the party making the application did what was reasonable to minimize the damage or loss.

Given the evidence before me, I find the landlord should had insurance on the rental property and that relying on strata insurance is not a sufficient method of attempting to reduce their damage or loss as strata insurance deductibles are extremely high. Furthermore, I find the landlord provided insufficient evidence to support that regular inspections were completed at the rental unit to ensure there was no damage such as leaks, etc. In addition, I find it more likely than not that the leak may have been very slow causing the black mould over a period of time, and that while the tenant was away for a period of a month, which is their right to do, the tenant is not expected to go under the sink to shut off the water before leaving for a month.

I agree with the tenant that if the dishwasher leaked and then the kitchen faucet leaked all within a tenancy shorter than one year, then it is more likely than not that there was substandard plumbing in the kitchen versus having a dishwasher and a faucet randomly failing and leaking water in that same period.

Given the above and the lack of receipts for work completed, I find that the landlord's claim, **with the exception of item 8, which was resolved by way of a $20.00 mutual agreement and item 9 for $40.00,** fails to meet all four parts of the test for damages or loss.

Therefore, I grant the landlord the $20.00 mutual agreement for item 8 and $40.00 for item 9. As the landlord's application was partially successful, I grant the landlord the filing fee of **$100.00** pursuant to section 72 of the Act. Given the above, I find the landlord has established a total monetary claim of **$160.00.**

As the landlord continues to hold the tenant's security deposit of **$900.00,** I authorize the landlord to retain $160.00 of the tenant's security deposit in full satisfaction of the

mutual agreement and money owed by the tenant to the landlord. The mutual agreement is made pursuant to section 63 of the Act.

I grant the tenant a monetary order of $740.00, which includes $0.00 in interest under the Act, for the balance of their security deposit balance owed by the landlord. Should the tenant be required to enforce the monetary order, the landlord is reminded that they could be held liable for all costs related to enforcing the monetary order.

Conclusion

Other than $140.00 claim established by the landlord, the remainder of their application is dismissed without leave to reapply, due to insufficient evidence.

The tenant is granted a monetary order of $740.00 for the return of their security deposit balance, which the landlord continues to hold. Should the tenant require enforcement of the monetary order, the monetary order must first be served on the landlord by the tenant and then may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlord may be held liable for the costs associated with enforcing the monetary order. This decision will be emailed to the parties. The monetary order will be emailed to the tenant only for service on the landlord, if necessary.

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: June 22, 2022

Residential Tenancy Branch