Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S

Introduction

The Landlord seeks monetary compensation pursuant to s. 67 of the *Residential Tenancy Act* (the "*Act*") for damages to the rental unit. The Landlord seeks his monetary order by claiming against the security deposit.

W.M. appeared as the Landlord. He was joined by P.C.. The Tenant did not appear, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that the Tenant was personally served with the Notice of Dispute Resolution and the evidence on January 29, 2022. I find that the Landlord served their application materials in accordance with s. 89 of the *Act*.

Issue to be Decided

1) Is the Landlord entitled to monetary compensation for damages to the rental unit?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on March 1, 2020.
- The Landlord obtained vacant possession of the rental unit on February 2, 2022.
- Rent of $2,500.00 was payable on the first day of each month.
- The Landlord holds a security deposit of $1,250.00.

The Landlord provides a copy of the written tenancy agreement.

A move-in condition inspection report was put into evidence. The Landlord advised that no move-out condition inspection report was conducted. The Landlord says that there they attempted on several occasions to arrange for the move-out inspection, but that the Tenant refused on those occasions. P.C. advised that on or about February 10, 2022, she was at the rental unit and the Tenant attended to retrieve items he had left behind. The issue of the move-out inspection was canvassed by her with the Tenant and she indicates that the Tenant refused to participate. The Landlord confirmed no move-out inspection report was conducted in the Tenant's absence. The Landlord indicates that no forwarding address has been provided by the Tenant.

The Landlord claims $8,745.45 and submitted a monetary order worksheet with respect to these various claims. I reproduce the monetary order worksheet claims below:

Item	**Amount**
Plumbing Damage	$687.75
Steamer to Clear Plumbing	$800.01
Furniture/Appliance Damage	$1,456.98
Blind Repair/Replacement	$2,473.13
Garage Door Repair	$1,323.46
Broken/Missing Window Latch	$353.67
Broken Light Fixture	$164.99
Bi-fold Door Repair	$432.00
Supplies to Fix Broken Outdoor Spigot	$53.49
Loss of Insurance Deductible	$1,000.00

I am advised by the Landlord that the issues with respect to damages to the rental unit were first noted following a blockage in the plumbing that occurred in November 2021. In the Landlord's telling, there was a significant block in the plumbing brough about by the Tenant flushing baby wipes down the toilet. The Landlord indicates that the plumber they retained found baby wipes in the plumbing.

The Landlord drew my attention to clause 1 of the addendum to the tenancy agreement which specifically mentions that Tenant is responsible for all clogged drains/toilets and that cleaning wipes are not to be flushed down the toilet. It further states "Any damages done to the lines from putting products down them may be charged back to the tenant." The addendum was initialled by the Tenant.

The Landlord was not specific on the damages brought about by the November plumbing blockage, though they did indicate it was significant such that they made an insurance claim. The Landlord seeks the loss of the deductible of $1,000.00 due to the plumbing blockage, $800.01 to flush the line from the house to the street, and $687.75 for the cost of a plumber. Copies of receipts and a letter from the insurer are put into evidence by the Landlord. The Landlord confirmed the expenses claimed in this application were not paid by their insurer.

The Landlord noted two broken appliances during the November 2021 inspection of the rental unit, including a broken microwave and oven. It appears that the microwave is no longer functional as the door had been pulled such that cannot close properly. The oven control panel was damaged as well and a photograph of it shows it to be broken and the LCD display pushed out of the panel. The Landlord says that the Tenant had said his brother damaged the microwave, though later argued it was normal wear and tear. The Landlord estimates that the oven and microwave are between 6 and 10 years old.

An estimate is put into evidence showing that the replacement cost for both appliances is $1,456.98. The Landlord says that since the Tenant has vacated the rental unit, both appliances were replaced at a cost of approximately $1,800.00. The Landlord advised that they would be holding to the amount claimed in the application despite the increased cost in replacing the appliances.

The Landlord and P.C. testified to custom blinds being destroyed throughout the rental unit. The Landlord provides photographs of the same. I am told the blinds are approximately 6 years old. An estimate for the cost of replacing the damaged blinds was

put into evidence indicating the cost at $2,473.13. The Landlord advised that since the Tenant has vacated, some of the blinds have been replaced at an approximate cost of $1,000.00. No receipts of the actual expense were put into evidence.

There is an issue with the garage door opener as it is no longer functioning. The estimated cost of its replacement is $1,323.46 based on an estimate put into evidence. The Landlord advises that the garage door opener has not been repaired or replaced since the Tenant vacated the rental unit.

There is also a claim for the replacement of cranks and locks for windows that is said to be broken by the Tenant. Photographs of the damage were put into evidence by the Landlord. This was repaired and I am advised that it cost $353.67, which corresponds with the invoice provided by the Landlord in their evidence.

With respect to the broken light, the Landlord provides a photograph of a light fixture left dangling by its wires after being detached from the electrical box in the roof. In their claim, the Landlord estimated the cost of this repair at $164.99. However, the Landlord advised at the hearing that the actual cost of this repair was $21.99 after it was reattached by the painter/handyperson who undertook repairs at the end of the tenancy.

The Landlord further provides a photograph of an outdoor spigot that appears to have been left on and had frozen solid. The Landlord says this was discovered in November 2021 and was caped and repaired at a cost of $53.49, with the receipt being put into evidence.

The bifold doors were said to have been damaged by the Tenant and photographs were put into evidence showing the same. The Landlord estimates the cost of their replacement at $432.00, though no work has been undertaken since the Tenant vacated the rental unit.

The Landlord further advised that there has been an additional $5,000.00 worth of damage to the rental unit that is not included in their claim, including an additional $1,358.00 for repairs to the walls throughout the rental unit.

Analysis

The Landlord seeks compensation for damages to the rental unit. The Landlord advances their claim against the security deposit.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38.

Policy Guideline #17 states the following with respect to the retention or the return of the security deposit through dispute resolution:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
    - a landlord's application to retain all or part of the security deposit; or
    - a tenant's application for the return of the deposit.

    Unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

I am satisfied that the parties complied with their requirement to complete a move-in condition inspection report pursuant to s. 23 of the *Act*. The Landlord admits no move-out condition inspection report was completed though indicates that the Tenant refused to participate on several occasions. Section 35 requires a move-out condition inspection report be completed and further provides that a landlord may do so without the tenant if the tenant has refused to participate on two occasions.

In this case, both the Tenant and the Landlord have breached their obligation under s. 35 of the *Act* with respect to the move-out condition inspection report, such that there are overlapping extinguishments under s. 36. Policy Guideline 17 is clear that in these types of cases, the party who breached their obligation first will bear the loss. In this case, that would be the Tenant as he refused to participate in the move-out inspection despite the Landlord's multiple attempts to do so, with the last taking place on or about February 10, 2022.

I find that the Tenant breached his obligation to participate in the move-out inspection report as required under s. 35 of the *Act* such that his right to the return of the security deposit is extinguished under s. 36(1).

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the 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.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 32(2) and 32(3) of the *Act* imposes an obligation on tenants to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and to repair damage to the rental unit or common areas that are caused by their actions or neglect or by a person permitted on the residential property by the tenant.

Further, section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property. Policy Guideline 1 defines reasonable wear and tear as the "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

Dealing first with the damages claimed resulting from the plumbing blockage in November 2021, I have no difficulty finding based on the Landlord's undisputed evidence that the Tenant breached his obligation under s. 32 of the *Act* during the tenancy. There is a further breach of clause 1 of the tenancy agreement addendum, which specifically prohibits the flushing of cleaning wipes down the toilet. I am satisfied that the Tenant or a person permitted at the rental unit by the Tenant caused the plumbing blockage which resulted in financial loss to the Landlord.

I further find that the Landlord has quantified this aspect of their monetary claim, specifically the $800.01 for steam cleaning the plumbing lines, the $687.75 for the cost of a plumber, and the $1,000.00 for the lost deductible for the subsequent insurance

claim. I am satisfied based on the undisputed evidence from the Landlord that the plumbing blockage caused significant damage to the rental unit that required an insurance claim, which resulted in the loss of the deductible. These amounts are all supported in the documentary evidence and the Landlord could not have mitigated their damages under the circumstances.

I find that the Tenant breached his obligations under s. 32 and 37 of the *Act* with respect to the window crank and latch, and the outdoor spigot, based on the Landlord's undisputed evidence. The Landlord provides an estimate of $353.67 for the window crank and latch and a receipt for $53.49 for the spigot, which they say they paid. The Landlord's suffered a loss in this amount and could not have mitigated their damages. Accordingly, I find that they have quantified their claim in the amount of $407.16 with respect to these amounts.

Looking first at the appliance damage claimed, I find that the Tenant breached his obligations under s. 32 and 37 of the *Act* in damaging the oven and the microwave. I make this finding based on the Landlord's undisputed evidence. The Landlord has quantified this aspect of their claim in the amount of $1,456.98 and indicate the appliances were replaced at a cost of approximately $1,800.00.

Policy Guideline #40 sets out that I may consider the useful life of an item that is damaged by a tenant. The reason that the useful life of an item is considered is because, as here, claiming the replacement value of an item that has a market value impacted by its age would not be appropriate. Compensation under the *Act* should, as much as possible, accurately reflect the actual loss and put the party back in the same position they would have been had the breach not occurred. Policy Guideline #5 specifically discusses the topic of betterment, which is replacing something that is old with something that is new.

The microwave was said to be 6 years old and had an estimated replacement cost of $399.99. Policy Guideline #40 indicates the useful life of a microwave is 10 years. Therefore, I find that the appropriate level of compensation for the damaged microwave is $160.00 ($399.99 x .4). With respect to the oven, the Landlord advised it was 10 years old and Policy Guideline #40 lists the useful life of an oven at 15 years. The LL claims the cost of the oven at $1,049.99. Therefore, I find that the appropriate level of compensation for the oven is $350.00 ($1,049.99 x .33).

The Landlord advanced the claims on estimates alone and advised that some of the work had not been completed at the time of the hearing. It is their claim and they must quantify it. The issue with the course of action taken by the Landlord is that the actual cost of the loss may vary when the expense is incurred, a point that is made clear based on their own evidence where the cost of repairing the light was estimated at $164.99 but is said to have actually cost $21.99. I provide this general comment at the outset for explanation with respect to the claims set out below.

Dealing next the damaged blinds, I find that the Tenant breached his obligation under s. 32 and 37 of the *Act* and caused financial loss to the Landlord as a result. I have difficulty quantifying this aspect of the claim as the Landlord was unclear what blinds were replaced, though provide an estimate of $1,000.00 being spent. I have no reason to doubt that the Landlord has spent $1,000.00 to replace the blinds. Policy Guideline #40 indicates the useful life of blinds at 10 years and the Landlord estimated the age of the blinds were 6 years. Accordingly, I find the appropriate level of compensation with respect to the blinds is $400.00 ($1,000.00 x .4).

The Landlord provides evidence of the broken light and indicates it cost $21.99 to repair despite the estimate in their claim that it cost $164.99. I find that the Tenant breached his obligation under ss. 32 and 37 with respect to the damaged light and the Landlord's suffered a loss of $21.99 to repair the light. I am satisfied this aspect of the claim has been made out.

The final aspects, that of the garage door and the bifold doors, I find that the Landlord has failed to quantify these aspects of their claim. It is their claim and they bear the burden of proving it, which includes quantifying their claim. Given that the uncertainty with respect to the cost of the repair or, if necessary, replacement of these doors, I find that the Landlord's have failed to make out these aspects of their claim. The Landlord claim for the bifold doors and garage door is dismissed without leave to reapply.

The Landlord provided further submissions with respect to the repair of walls, indicating it cost some $1,358.34. Additional claims were said to exist with respect to damages to the rental unit. With respect, these amounts are not part of the Landlord's original claim. Rule 2.2 of the Rules of Procedure is clear that a claim is what is stated in the application. As these aspects are not part of the application, I make no findings with respect to these claims as they are not properly put before me.

Consolidating the amounts set out above, I find that the Landlord has established a monetary claim as follows:

Item	**Amount**
Insurance deductible	$1,000.00
Plumber Cost	$687.75
Steam Cleaning of Plumbing	$800.01
Window latch/crank	$353.67
Outdoor Spigot	$53.49
Microwave	$160.00
Oven	$350.00
Light Repair	$21.99
Blind Replacement	$400.00
Total	$3,826.91

I find that the other aspects of the Landlord's monetary claim have not been made out as required under the 4-part test for s. 67. Accordingly, they are dismissed without leave to reapply.

As per Policy Guideline #17, despite the Tenant's right to the return being extinguished, the $1,250.00 shall be taken into account such that it is applied to the total amount to be paid by the Tenant, such that the monetary award under s. 67 shall be $2,576.91 ($3,826.91 - $1,250.00).

Conclusion

The Landlord has established a monetary claim in the amount of $3,826.91.

I make a total monetary order taking the following into account:

Item	**Amount**
Total Monetary Claim	$3,826.91
Less security deposit held by the Landlord	- $1,250.00
Total	$2,576.91

Pursuant to s. 67 of the *Act*, I order that the Tenant pay **$2,576.91** to the Landlord.

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with 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: June 10, 2022

Residential Tenancy Branch