



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

This review hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties were represented at the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was represented by an agent (the "tenant"). In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The landlord confirmed receipt of the review consideration decision and tenant's evidentiary materials. The landlord testified that they served the tenant in accordance with the Substituted Service order of August 17, 2022 by email on August 23, 2022. The landlord provided a record of the outgoing email to the tenant's email address as proof of service. The tenant's agent disputed that they were served with the landlord's materials and were unaware of whether the tenant received the landlord's materials by email. Based on the testimonies, I find each party has been served in accordance with sections 88 and 89 of the *Act* and Residential Tenancy Rule of Procedure 7.3 and in any event have been sufficiently served pursuant to section 71 of the *Act*.

Naming of Parties

At the outset of the hearing the tenant's agent e stated that the tenant is now deceased, having passed away at some point prior to the review hearing after the review consideration decision was granted.

The tenant's agent testified that they are the executor of the tenant but have not yet been issued Letters of Probate or Administration. No documentary evidence was submitted showing that the agent

Section 1 of the *Act* defines a tenant as including the estate of a deceased tenant.

Policy Guideline 43 provides as follows:

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate must be named. If the deceased is a respondent to an application, the personal representative must be named and served. If the applicant does not know the name of the deceased's personal representative at the time of filing an Application for Dispute Resolution, the deceased's name can be filled in on the application (e.g. John Doe, deceased). At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.

The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant.

In the present case I find there is a paucity of documentary evidence to support the tenant's agent's submission that they are the personal representative or that the tenant is now deceased. While I have no reason to disbelieve the agent, in the absence of documentary evidence I decline to change the style of cause for this application and name the agent as the personal representative of the estate of the tenant at this time.

Issue(s) to be Decided

Should the decision of February 18, 2022 be upheld, varied or set aside and replaced?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This fixed term tenancy began in March, 2020 for a term set to end on August 31, 2020. The monthly rent was \$5,900.00 payable on the first of each month. A security deposit of \$2,900.00 was paid at the start of the tenancy and is still held by the landlord. The rental unit was a furnished apartment.

The addendum to the agreement provides that “the Tenant must pay for a professional move-out clean or have the Rental Unit and applicable areas of the Residential Property delivered in a similar industry standard of cleanliness.” This lists 14 separate points for specific things to clean and the method for doing so, and also defines “normal wear and tear.”

The tenancy ended in February 2021. The parties agree that the tenant sent an email dated February 22, 2021 informing the landlord they had vacated the rental unit. In the email the tenant writes, “. . .we propose that you apply the \$2900 deposit as full and complete satisfaction of the end of our lease.”

There was some discussions between the parties and it was ultimately decided that the landlord was authorized to retain the full security deposit of \$2,900.00 and no rent would be payable on March 1, 2021 despite the notice given by the tenant. The terms of the agreement were summarized in an email from the tenant’s agent SW dated February 23, 2021.

The landlord and a family member of the tenant acting as agent attended at the rental unit to perform a move-out inspection and complete a condition inspection report on February 26, 2021.

The landlord provided a copy of the ‘Condition Inspection Report’ that details the condition of the rental unit at the start and at the end of the tenancy upon that final inspection meeting. The landlord noted the condition of leather furniture, 3 cracks in wall mirrors, the stainless-steel countertop badly scratched, and missing hangers. The landlord listed specifically a \$250 move-out fee as per the building/strata rules, a \$360 cleaning fee, cracked mirror replacements, countertop buff by a professional service, refurbishing of leather furniture. The tenant’s family member signed to indicate they

agreed the report fairly represented the condition of the unit at the end of the tenancy. The report also contains the landlord's notation: "Tenant agreed in writing to forfeit security deposit due to late notice. The Landlord also submitted photographs showing damage to the wall mirrors, the leather furniture, the countertop, and the messy state of the rental unit, with "no cleaning at all."

The landlord seeks a monetary award of \$8,883.83 for the following items:

Item	Amount
Damage to Leather Chairs	\$1,000.00
Damage to Sofa	\$2,127.99
Damage to Wall Mirror	\$1,830.31
Damage to Countertop	\$3,004.89
Replacement of a Pot	\$400.00
Replacement of Silk Hangers	\$80.00
Cleaning Services	\$360.00
Unpaid VOD Bill	\$80.64
TOTAL	\$8,883.83

The tenant agrees with the portion of the landlord's claim seeking cleaning services in the amount of \$360.00 and \$1,506.17 of the cost for the damage to the wall mirror. The tenant disputes the balance of the application.

In addition to the condition inspection report the landlord submitted some estimates, invoices and receipts, photographs and written submissions in support of their claim. The tenant submitted some photographs of their own as well as written submissions.

The tenant also gave lengthy testimony complaining about the condition of the suite, the lack of heating and discomfort caused to the tenant.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

As the tenant agrees with the portion of the application seeking a monetary award for cleaning services in the amount of \$360.00, I find this portion of the application is established and issue a monetary award accordingly.

Regulation 21 provides that a condition inspection report completed in accordance with the Act and regulations is evidence of the state of repair and condition of a rental unit unless there is a preponderance of evidence to the contrary.

I find the handful of photographs submitted by the tenant and their testimony to be insufficient to rebut the evidentiary weight of the inspection report. I find that their own evidence demonstrates some damage to the furniture claimed by the landlord and their claim that the damage is not attributable to the tenancy is not persuasive.

Based on the evidence I find the landlord has shown that there was damage to the chairs and sofa of the rental unit and that the cost for repair and replacement are \$3,127.99 as claimed. Accordingly, I issue a monetary award in that amount.

I am satisfied with the evidence that damage was caused to the mirrors. The landlord claims the amount of \$1,830.31 for the work which I note is lower than the amount shown in the estimate provided by a glass repair farm. I am satisfied that the amount claimed by the landlord is accurate and they have taken reasonable steps to mitigate their losses. Therefore, I issue a monetary award in the amount of \$1,830.31 as claimed in their application.

I am not satisfied that the landlord's claim for repairs and work to the countertops is reasonable or commensurate with the actual damage. The landlord's own evidence shows that some marring of the countertop is noted but it appears to be discrete and limited in scope. I do not find there is a basis for the amount claimed for this work and consequently dismiss this portion of the application.

I am not satisfied with the landlord's claim for missing pots, hangers or other items. I find insufficient evidence such as an inventory of the items initially provided at the start of the tenancy, that would assist in determining what items have gone missing or needed to be replaced. In the absence of compelling evidence showing what items were provided I dismiss this portion of the application.

I also find insufficient evidence of the outstanding VOD bill and consequently dismiss it without leave to apply.

Section 38(4) provides that a landlord may retain an amount from a deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain the amount.

In the present case I accept the undisputed evidence of the parties that the tenant gave written authorization by their correspondence of February 22, 2021, which was subsequently affirmed by the tenant's family member on February 23, 2021 that the landlord may retain the full \$2,900.00 deposit and no rent would be payable for March 1, 2021.

I find the tenant's agent's submissions complaining about the state of the rental unit to be irrelevant to the matter at hand and in any event has been superseded by the written authorization provided by the tenant.

Based on the foregoing I issue a monetary award in the landlord's favour in the following amount:

Item	Amount
Damage to Leather Chairs	\$1,000.00
Damage to Sofa	\$2,127.99
Damage to Wall Mirror	\$1,830.31
Cleaning Services	\$360.00
TOTAL	\$5,318.30

As the landlord was successful in their application, they are also entitled to recover the filing fee from the tenant.

Conclusion

I find it appropriate to replace the decision of February 18, 2022 with this present decision.

I issue a monetary order in the landlord's favour in the amount of \$5,418.30. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in 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: July 12, 2022

Residential Tenancy Branch