



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$1,100.00 for damage or compensation under the Act; for a monetary order for the return of double the security deposit; and to recover the \$100.00 cost of her Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing, the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Landlord said he had received the Application and the documentary evidence from the Tenant and had reviewed it prior to the hearing. The Landlord confirmed that he had not submitted any documentary evidence to the RTB.

Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and the Parties confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Is the Tenant entitled to recovery of her \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on December 1, 2020, with a monthly rent of \$1,100.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$550.00, and no pet damage deposit.

The Parties agreed that the tenancy ended when the Tenant vacated the rental unit on October 31, 2021. They also agreed that the Tenant gave the Landlord her forwarding address via text, which was their normal means of communicating.

#1 MONETARY ORDER FOR COMPENSATION UNDER THE ACT → \$1,100.00

In her application, the Tenant explained her first claim, as follows:

From October 25th - October 31st [residential property address] was unusable to me (my rent was paid until October 31st) because \$230 for [the Landlord] having his handyman doing renovations starting on October 25th and moving a new tenant in on October 30th, when my rent was paid until October 31st.

He also got rid of my property that was still in the house, it was \$855 worth of Reno materials, which I had offered to [the Landlord] for \$550 but he said he would take a few things, but he took everything and paid me Nothing.

In the hearing, the Tenant said:

When we first moved in, it was a run-down property. When we moved in, he was thinking of upgrading the kitchen – replace cabinets and stuff. I saw cabinets for sale and I bought them, I messaged him and asked to put them in.

I messaged him the next month. Could you pay your handyman to put them in, and pay me back the cost of them? He said wait and see, because it was the winter – wrong time to do it, as the pipes could freeze.

When we gave him our notice - we bought our own house - I had asked him if he wanted to purchase the stuff I had purchased for the property. He said, 'we'll see'. He came over and I told him how much I paid for them. He said too much. So, I said I would give it to him for \$550.00.

He said he will take the cupboards for his garbage. We had moved out on the ... but we wanted to sell the stuff out of there. And he had called me two days later, saying the handyman's there and it's empty. I said we still have it until the end of the month. He said someone wants to move in early. I said, but you'll have to pay me back for the time I already paid you. We never talked, but whenever I went to the rental unit, his handyman was always there renovating. I still had weeks, but I stayed away.

On the 30th, I went there for the rest of my stuff. There were people in there with their stuff and pictures on the wall. 'What are you doing in my house?' They said 'It's not your house'.

I messaged [the Landlord] – asking where's all my stuff? He said 'We garbaged it for you, it was dirty and we cleaned it, so you owe us some money'.

The Landlord replied:

My comments are simple. She has some cabinets and a sink and needed to revisit the kitchen. We agreed to pay \$230.00 and we could do that stuff – cabinets and one sink. Her stuff was in the house. She said I bought this for myself, but was I interested to buy cabinets? I said sure, I can buy this stuff, She asked \$230. I can pay you that.

I can't use anything without her agreement. I asked her if we can start working in the kitchen. She had all the stuff out. She claimed there was some stuff she left there. Nothing was broken, so the handyman was working there.

I asked the Landlord why he allowed a handyman to do renovations on the rental unit before the end of the tenancy. He replied:

He knows them, too, - they're friendly, smoking together. When she was living there, he works there sometimes. Two to four days before she moved out, we asked if she minded.

I owe her \$230.00, then the \$550.00. She cleaned, but not as good as it should be. I had to clean the house and clean the yard. I paid at least \$275.00 – I used my own truck to load stuff. From her \$550.00 I take \$275.00 for cleaning. And willing I'm to pay the \$230.00, but anything else, I'm not responsible. She was a good tenant.

I asked the Landlord how he calculated the \$275.00 he claims the Tenant owes him for cleaning. He said: "I spent at least a day – a full day cleaning and taking garbage out and dumping her stuff."

I asked the Tenant to explain how she calculated the amount of her claim, and she said:

The \$230.00 is calculated from rent divided by 31 days and times six days. The \$855.00 reno materials – flooring, a sink, a new tap, paint - that's what I paid off of people for good prices, and I could have got my money back selling it on market place.

I have a friend always over and she helped me moved out. Every time we went to clean it, he had his handyman there, so I couldn't finish cleaning or get my stuff. The handyman wasn't a friend; we knew who he was, but he's not someone I would have left alone in our house.

The Landlord responded:

I have agreed that the stuff worth \$230.00. From the security deposit, I'll take \$275.00 out. The house was empty the last few days, and she okayed us to do work. Other than that, we only used the cabinets and the sink. The handyman never saw anything there. I always locked it up.

She said she cleaned out some, but not as much as it should be. I did a standard cleaning - the kitchen was really bad.

#2 RETURN OF DOUBLE THE SECURITY DEPOSIT → 1,100.00

The Tenant explained this claim, as follows: “It’s my understanding that he had 15 days from giving him my forwarding address or making a claim against it, but neither was done - that is the rules.”

The Landlord said:

I said I can’t give your whole security deposit; it was a mess. She went to arbitration. She was a good tenant, but the stuff I bought from her I’ll return. But \$275.00?

Anything else, the last few days the house was empty and we used it for renovations, and she permitted us. On the phone, she said you can do the renos. We rented it on the first, maybe the new tenant put some stuff in on the 31st. The new tenant asked if the house was empty; she already allowed us to use it for renovations.

Analysis

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

I must first remind the Landlord that this is not his Application, and that the Tenant was not willing to settle her dispute with him on his terms. As such, I do not have authority to grant the Landlord any compensation in this proceeding. Further, the Landlord did not submit any documentary or photographic evidence to support his assertions.

Before the Parties testified, I let them know how I analyze the evidence presented to me. I said 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 this case, the Tenant must prove:

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

4. That the Tenant did what was reasonable to minimize the damage or loss.
("Test")

#1 MONETARY ORDER FOR COMPENSATION UNDER THE ACT → \$1,100.00

The Landlord did not dispute that the Tenant paid her rent in full for October 2021. He did not dispute that he arranged for a handyman to do renovations in the rental unit from October 25 to 31st. The Landlord insisted that the Tenant gave him permission to do the renovations before her tenancy ended; however, he did not provide any documentary evidence to support this claim, and the Tenant firmly denies that this is true.

The Tenant claims \$230.00 for the time during her tenancy in which the Landlord allowed a handyman to do renovations without her permission, and allow the new tenants to move in early. The Tenant said it was not possible to finish cleaning the rental unit or be there with the handyman working. I note that the handyman probably contributed to any mess left in the kitchen.

Further, the Tenant said she was taken by surprise to find strangers in the rental unit on October 30th, when the Tenant went there for the rest of her stuff. She said the new tenants even had pictures on the walls.

I agree with the Tenant that the Landlord exceeded his authority in doing renovations in the rental unit before the end of the tenancy. I find that the Tenant did not give him permission to do this, nor did she give permission for the next tenants to move in early.

Section 29 (1) of the Act states that a landlord's right to enter a rental unit is restricted. A landlord must not enter a rental unit for any purpose, unless one of the following applies:

- (a) the tenant gives permission at the time of entry or not more than 30 days before entry;
- (b) the landlord gives written notice to enter, setting out a reasonable purpose, and the date and time of entry – only between 8 a.m. and 9 p.m.;
- (c) the landlord enters to provide housekeeping or related services;
- (d) the landlord has an RTB order authorizing entry; or
- (e) the tenant has abandoned the rental unit; or (f) an emergency requires entry to protect life or property.

The written notice of entry must be **deemed received** by the tenant **at least 24 hours**

and not more than 30 days **before entry**. For example, notice posted to the door or put in the mail box/slot is deemed received by the tenant three days after it is left this way. A landlord may inspect a rental unit monthly, in accordance with subsection (1) (b) above.

There is no evidence before me supporting the Landlord's testimony that the Tenant gave him permission to enter to do renovations. There is no evidence before me that the Landlord gave the Tenant proper notice of this intended entry, pursuant to the Act. Nor is there evidence to support the Landlord being authorized to enter the rental unit for any other reason pursuant to section 29 of the Act.

I find that the Landlord's unlawful use of the rental unit to do renovations warrants compensation to the Tenant. The Tenant paid \$1,100.00 to the Landlord for use of the residential property from October 1 through October 31st. However, the Landlord effectively reneged on his part of this bargain by having renovations done during the last six days of the tenancy.

\$1,100 divided by 31 days is \$35.48 per day. I find that the Landlord infringed the Tenant's rights to use the rental unit for the last six days of October, which calculates to \$212.88. I, therefore, **award the Tenant with \$212.88** from the Landlord, pursuant to section 67 of the Act.

The Tenant's evidence is that she left building materials such as cabinets, a sink, a new tap, and paint. She said she agreed to sell these to the Landlord for \$550.00. The Tenant said she paid \$855.00 for these items; therefore, she would still lose money by selling them to the Landlord for \$550.00.

The Landlord said he agreed to pay \$230.00 for the items; however, he took them before having paid anything to the Tenant.

When I consider the evidence before me, overall, I find that the Tenant was reasonable in her request for \$550.00 from the Landlord for the building materials he obtained from her without paying anything. I, therefore, **award the Tenant with \$550.00** from the Landlord in this regard, pursuant to section 67 of the Act.

#2 RETURN OF DOUBLE THE SECURITY DEPOSIT → 1,100.00

Section 38 of the Act states that a landlord must do one of two things at the end of the tenancy. Within 15 days of the later of the end of the tenancy and receiving the tenant's

forwarding address in writing, the landlord must: (i) repay any security deposit and/or pet damage deposit; or (ii) apply for dispute resolution claiming against the security deposit and/or pet damage deposit. If the Landlord does not do one of these actions within this timeframe, the landlord is liable to pay double the security and/or pet damage deposit(s) pursuant to section 38(6) of the Act.

Section 38 (6) of the Act states that if a landlord does not comply with section 38 (1) of the Act, then the Landlord (a) may not make a claim against the security deposit or any pet damage deposit, and (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the tenancy ended on October 31, 2021, and that shortly before or after, the Tenant texted him her forwarding address. I find that 15 days have long passed since the latter of these two events. As such, I find that the Landlord is liable to pay the Tenant double her \$550.00 security deposit. I, therefore, **award the Tenant with \$1,100.00** from the Landlord for the return of double her security deposit, pursuant to sections 38 and 67 of the Act.

Summary

The Tenant has been largely successful in her Application, as she provided sufficient evidence to meet her burden of proof on a balance of probabilities. The Tenant has been awarded the following amounts from the Landlord:

\$ 212.88	-Landlord's use of the rental unit without Tenant's permission;
550.00	-reimbursement for building materials the Landlord kept; and
<u>1,100.00</u>	-return of double the \$550.00 security deposit.
<u>\$1,862.88</u>	Total Awards

Given her success in this matter, I also award the Tenant with **\$100.00** for the recovery of her Application filing fee from the Landlord, pursuant to section 72 of the Act.

I grant the Tenant a **Monetary Order** from the Landlord for **\$1,962.88**, pursuant to section 67 of the Act.

This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenant is successful in her Application, as she provided sufficient evidence to meet her burden of proof on a balance of probabilities. The Tenant is awarded \$1,862.88 for her claims, as well as being awarded recovery of her \$100.00 Application filing fee from the Landlord.

I grant the Tenant a **Monetary Order** of **\$1,962.88** from the Landlord. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: July 27, 2022

Residential Tenancy Branch