



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL (Landlord)
MNDCT, MNETC, MNSD, RPP (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross applications for dispute resolution filed by the parties.

The Landlord filed their application January 19, 2022 (the “Landlord’s Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit
- For compensation for monetary loss or other money owed
- To keep the security deposit
- For reimbursement for the filing fee

The Tenant filed their application July 21, 2022 (the “Tenant’s Application”). The Tenant applied as follows:

- For compensation for monetary loss or other money owed
- For compensation because the Landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose
- For return of the security deposit
- For return of personal property

The Landlord appeared at the hearing. The Landlord called D.V. as a witness at the hearing. The Tenant appeared at the hearing with their partner who also lived in the rental unit. I explained the hearing process to the parties. I told the parties they are not

allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties and D.V. provided affirmed testimony.

In relation to the Tenant’s Application, the Tenant agreed they are not alleging that the Landlord failed to follow through with a notice ending the tenancy but that the purchaser who purchased the rental unit from the Landlord failed to follow through. In these circumstances, the Tenant needs to file an application for dispute resolution against the purchaser, not the Landlord. The request for compensation because the Landlord ended the tenancy and has not complied with the Act or used the rental unit for the stated purpose is dismissed with leave to re-apply against the correct party.

In relation to the Tenant’s Application, the request for return of personal property is the same as the request for compensation for monetary loss or other money owed and therefore the request for return of personal property is dismissed without leave to re-apply.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing packages and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?
5. Is the Tenant entitled to compensation for monetary loss or other money owed?
6. Is the Tenant entitled to return of the security deposit?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started October 01, 2019, and was a month-to-month tenancy. Rent was \$1,250.00 per month due on the first day of each month. The Tenant paid a \$625.00 security deposit.

Landlord's Application

The parties agreed the Tenant moved out of the rental unit January 04, 2022.

The parties agreed the Tenant provided their forwarding address to the Landlord by text message a few days after January 04, 2022; however, neither party knew the date. The documentary evidence shows the text was sent and received January 12, 2022.

The parties agreed the Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy.

The parties agreed the Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The parties agreed no move-in inspection or Condition Inspection Report ("CIR") was done and the Tenant was not provided two opportunities, one on the RTB form, to do a move-in inspection.

The parties agreed no move-out inspection or CIR was done and the Tenant was not provided two opportunities, one on the RTB form, to do a move-out inspection.

The Landlord sought the following compensation:

Item	Description	Amount
1	Garbage removal	\$816.39
2	Overholding compensation	\$120.96
3	Missing day of work	\$440.00
4	Filing fee	\$100.00
	TOTAL	\$1,477.35

#1 Garbage removal \$816.39

The Landlord sought compensation for having to hire someone to remove items the Tenant left in the rental unit and on the property at the end of the tenancy. The Landlord testified that the garbage removal included both the Landlord's and Tenant's items and cost \$2,040.97. The Landlord sought two-fifths of the total cost for the portion of the Tenant's items that were removed. The Landlord confirmed the Tenant left the items shown in the photos submitted. The Landlord submitted an email and timeline of events completed by D.V. The Landlord submitted receipts or invoices for the garbage removal.

The Tenant agreed a portion of the items thrown out were the Tenant's items. The Tenant submitted that the amount of compensation requested should be lower because the Landlord had the Tenant's personal items removed and thrown out. The Tenant testified that most of the items thrown out were items the Tenant wanted to keep and pick up from the rental unit at some point. The Tenant agreed they left the items shown in the photos submitted by the Landlord.

#2 Overholding compensation \$120.96

The Landlord sought the equivalent of four days of rent for January when the Tenant still lived in the rental unit but did not pay rent or overholding compensation.

The Tenant agreed they stayed in the rental unit for four extra days in January. The Tenant said this was because of the weather and the resulting problems getting a moving truck to move them. The Tenant could not point to any legal basis for not paying rent or overholding compensation for the four days in January.

#3 Missing day of work \$440.00

The Landlord sought compensation for one day of work they missed because they had to attend the rental unit and clean it given how the Tenant left it as shown in the photos. The Landlord testified that they are a massage therapist and had to cancel their appointments for the day which resulted in a loss of income of \$440.00. The Landlord testified that they do not live in the area of the rental unit so had to travel to the rental unit to clean it.

The Tenant said there is not much they can say about this claim, and they understand the Landlord's position.

Tenant's Application

The Tenant sought return of the security deposit.

The Tenant sought \$600.00 in compensation for items the Landlord threw out at the end of the tenancy. The Tenant testified that they were going to come back and get the items from the rental unit; however, the Landlord threw them out. The Tenant acknowledged the items were not removed on January 04, 2022, when they moved most of their items. The Tenant said it was difficult to go back to the rental unit once they moved given the weather and that the Landlord was clear they would throw the items away January 05, 2022. The Tenant submitted that the Landlord was required to hold the items for 60 days because the value of the items exceeded \$500.00. The Tenant testified that the items thrown away included a bunk bed they made themselves out of lumber which cost \$250.00, loveseat, bedside table, gardening and landscaping tools, children's items, hockey equipment and net, patio furniture, planter pots and gardening and composting worms. The Tenant testified that they let the Landlord know they would come back for their items on January 05 or 06, or as soon as possible.

The Tenant submitted photos and text messages. I note that the Tenant sent the Landlord a text message January 03, 2022, stating they only had yard stuff they were going to come back to the rental unit for. The Tenant also sent the Landlord a text January 05, 2022, stating they do not want the stuff they left in the house, other than plants and a hockey net.

The Landlord agreed the Tenant said they wanted to return and pick up some of their belongings after January 04, 2022; however, the Landlord said the Tenant could not return and pick them up. The Landlord testified that them and D.V. offered to attend the rental unit with a truck to help the Tenant move their belongings; however, the Tenant declined the offers. The Landlord testified that they started removing items from the rental unit January 05, 2022, because they had sold the rental unit and were required to remove the items by the contract of purchase and sale. The Landlord testified that the Tenant's partner attended the rental unit January 05, 2022, but did not say anything about wanting specific items. The Landlord testified that items were removed from the rental unit from January 05, 2022, to January 08, 2022. The Landlord disputed that the value of the items removed and thrown out exceeded \$500.00.

D.V. testified that they offered to help the Tenant with getting a moving truck and the Tenant declined the help. D.V. testified that items were removed from the rental unit January 05, 2022, pursuant to the contract of purchase and sale, as well as past this date.

Analysis

Pursuant to rule 6.6 of the Rules, it is the applicant who has the onus to prove their claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Landlord's Application

Security deposit

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the parties about move-in and move-out inspections, I find the Tenant did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for garbage removal, overholding compensation and missing a day of work to clean the rental unit, none of which are claims for damage.

Based on the testimony of the parties, I accept that the tenancy ended January 04, 2022, when the Tenant moved out of the rental unit.

Based on the testimony of the parties and text message in evidence, I accept that the Tenant provided their forwarding address in writing to the Landlord January 12, 2022.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in

writing to repay the security deposit or file a claim against it. Here, the Landlord had 15 days from January 12, 2022. The Landlord's Application was filed January 19, 2022, within time. I find the Landlord complied with section 38(1) of the *Act*. I find the Landlord was entitled to claim against the security deposit.

Compensation

Section 7 of the *Act* states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(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.

RTB Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

#1 Garbage removal \$816.39

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

The Tenant was required to remove their belongings from the rental unit at the end of the tenancy. Based on the testimony of the parties, text messages and photos, I find the Tenant left items in the rental unit at the end of the tenancy in breach of section 37 of the *Act*. I accept that the Landlord had to hire someone to remove the items and throw them out. I accept based on the receipts or invoices that the cost of having items removed from the rental unit and property exceeded \$816.39. I accept that the cost of removing the Tenant's items was around \$816.39 given the number and size of the items left in the rental unit as shown in the photos. I do not accept the Tenant's submission that the amount awarded should be reduced because they wanted to come back for some of their items because I find this is a compensation issue, not an issue in relation to this claim. I award the Landlord \$816.39.

#2 Overholding compensation \$120.96

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 57 of the *Act* states:

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

The effect of sections 26(1) and 57 of the *Act* is that the Tenant was required to pay rent, or the equivalent, while the Tenant remained in possession of the rental unit. The parties agreed the Tenant did not move out of the rental unit until January 04, 2022.

There is no issue that the Tenant did not pay rent, or the equivalent, for these four days. The Tenant did not point to any authority under the *Act* to withhold rent. Not being able to move because of the weather does not relieve the Tenant of their obligation to pay rent, or the equivalent, while they remained in possession of the rental unit. I find the Tenant owes the Landlord \$120.96 and award the Landlord this amount.

#3 Missing day of work \$440.00

Section 37 of the *Act* applies to this claim as well.

I find based on the photos submitted that the Tenant failed to leave the rental unit reasonably clean at the end of the tenancy and therefore breached section 37 of the *Act*. I accept that the Landlord had to attend the rental unit and clean it because the Tenant did not dispute this. In relation to the amount sought, I do not find it appropriate to award the Landlord their employment income for the day it took to clean the rental unit because the Landlord could have hired cleaners to clean the rental unit and should have done so if this would have cost less than the Landlord cleaning the rental unit. The average cost to hire cleaners is \$25.00 per hour. I accept it took the Landlord a workday to clean the rental unit because the Tenant did not dispute this. Further, from the photos it looks like no cleaning was done by the Tenant at the end of the tenancy. I award the Landlord \$25.00 x 7.5 hours for cleaning the rental unit as this is what the average cost would be. I award the Landlord \$187.50.

#4 Filing fee \$100.00

Given the Landlord has been partially successful in the Landlord's Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Summary

The Landlord is entitled to the following compensation:

Item	Description	Amount
1	Garbage removal	\$816.39
2	Overholding compensation	\$120.96
3	Missing day of work	\$187.50
4	Filing fee	\$100.00
	TOTAL	\$1,224.85

The Landlord can keep the \$625.00 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$599.85 pursuant to section 67 of the *Act*.

Tenant's Application

The Tenant is not entitled to return of their security deposit because the Landlord is entitled to keep it pursuant to section 72(2) of the *Act*.

Section 7 of the *Act* and RTB Policy Guideline 16 apply to the Tenant's claim for compensation as well.

I understood the Tenant to rely on the abandonment provisions set out in Part 5 of the *Regulations* which include the following:

24 (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that the tenant has vacated after the tenancy agreement has ended...

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property

25 (1) The landlord must

(a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,

(b) keep a written inventory of the property,

(c) keep particulars of the disposition of the property for 2 years following the date of disposition, and

(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

(a) the property has a total market value of less than \$500,

(b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or

(c) the storage of the property would be unsanitary or unsafe.

I find the Tenant expressly agreed to the Landlord not storing items pursuant to Part 5 of the *Regulations* in the January 05, 2022, text message stating that the Tenant did not want their items other than plants and a hockey net. I do not accept based on the evidence provided that the plants and hockey net had a value exceeding \$500.00. There is no clear evidence of what plants the Tenant sought to keep and there is no evidence of the hockey net such that I can determine that the plants and hockey net were worth more than \$500.00. Further, I find it unlikely that the plants and hockey net were worth more than \$500.00 given the nature of these items. I am not satisfied the Landlord was required to store the Tenant's items and therefore I am not satisfied the Landlord breached the *Regulations*. I note that it was in fact the Tenant who breached section 37 of the *Act* by leaving items in the rental unit and on the property after the end of the tenancy. In the circumstances, I am not satisfied the Tenant is entitled to compensation and I dismiss this claim without leave to re-apply.

Summary

The Landlord is entitled to \$1,244.85, can keep the security deposit and is issued a Monetary Order for \$599.85. The Tenant is not entitled to return of the security deposit or compensation.

Conclusion

The Landlord is entitled to \$1,244.85. The Landlord can keep the security deposit. The Landlord is issued a Monetary Order for \$599.85. This Order must be served on the

Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: September 07, 2022

Residential Tenancy Branch