



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the Landlords' application under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order of \$3,415.28 for damage that the Tenant, their pets or their guests caused during the tenancy pursuant to sections 32 and 67;
- an order to keep the Tenant's security deposit pursuant to section 72; and
- authorization to recover the filing fee from the Tenant pursuant to section 72.

The Landlords and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Tenant called one witness, JR, to testify.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Tenant acknowledged receipt of the Landlord's notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package") on February 3, 2022. I find the Tenant was served with the NDRP Package in accordance with sections 88 and 89 of the Act.

The Tenant did not submit any documentary evidence for this hearing.

Preliminary Matter – Tenant's Request for Adjournment

The Tenant stated she has photographs of the rental unit taken at the start of the tenancy that she wished to submit as evidence, which had not been submitted because of the process required. The Tenant testified she was diagnosed with a critical illness in

December 2021. The Tenant stated she has had two surgical operations and two moves since February 2022. The Tenant requested an adjournment to serve the Landlords with her evidence.

One of the Landlords, WC, testified she recently saw the Tenant post an advertisement for her business. The Landlord argued that if the Tenant was well enough to run her business, the Tenant could have submitted her evidence for this hearing in time. In response, the Tenant argued that she needed money to support her family after losing her job.

WC argued the Landlords have waited a long time to have this hearing and would be prejudiced by further delay. Records from the Residential Tenancy Branch indicate that the Landlords made this application on January 21, 2022.

Rule 7.9 of the Rules of Procedure states:

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

Based on the foregoing, I find that an adjournment is not warranted in the circumstances as it arises primarily from the Tenant not having submitted her evidence in time for this hearing. I am unable to conclude that the Tenant's failure to submit evidence in time was not due to the Tenant's neglect or that it was beyond the Tenant's control. I find the Tenant acknowledged that she is running a business, so I do not find it would have been unduly burdensome for the Tenant to submit evidence before the hearing. I also find that there would be prejudice to the Landlords caused by adjourning. As such, I directed that this hearing continue without being adjourned.

Issues to be Decided

1. Are the Landlords entitled to compensation for damage to the rental unit?
2. Are the Landlords entitled to recover the filing fee?
3. Are the Landlords entitled to retain the Tenant's security deposit?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on April 1, 2018 and ended on November 22, 2021. The Tenant paid a security deposit of \$350.00 which is held by the Landlords.

The parties agreed that the parties signed a condition inspection report upon move-in, which has been submitted into evidence. The parties further agreed that the Tenant was paid \$420.00 at a rate of \$20.00 per hour plus \$175.00 in cleaning supplies and mouse traps for the Tenant to clean up the rental unit upon move-in. The parties agreed that the Landlords' previous tenants did not leave the rental unit in clean conditions.

WC testified the Landlords were abroad when the Tenant was moving into the rental unit, so they had a friend, SM, help conduct the move-in inspection with the Tenant. WC testified she had wanted to hire someone to clean the rental unit at first, but the Tenant and the Tenant's friend said they will clean the rental unit and be paid. WC stated the move-in inspection was done afterwards. WC testified it was the Tenant's choice to do the cleanup versus having someone else do it. WC testified that is why she understood the condition inspection report indicated checkmarks for the move-in inspection.

The condition inspection report submitted into evidence shows the following conditions at the time that the move-in inspection was completed on March 28, 2018:

- The entry screen door had a "P" indicating "poor" condition with a "missing screen". The entry backdoor handle is stated to be missing.
- The refrigerator is stated to be "dirty but good condition".
- The dishwasher had a checkmark indicating "good" condition.
- The living room ceiling had a checkmark indicating "good" condition.

- The tub/shower/taps/stopper in the main bathroom had a “P” indicating “poor” condition.
- The sink in the main bathroom had an “F” for “fair”, with a comment that there is a “chip” and “no stop”.
- The washer/dryer had an “F” for “fair”, with a comment that there is a “leak” under the washer.

WC testified that during the tenancy, the Landlords purchased and installed a brand-new fridge. WC testified that the Landlords also replaced the leaking washer for the Tenant with a new 5.8L washing machine in May 2019.

WC testified that the tenancy ended due to frustration by a flood. WC testified that the flood only affected the basement of the house, but there had been an evacuation order requiring all occupants to vacate. WC testified that in light of the circumstances, the Landlords gave the Tenant additional time to remove her belongings by January 15, 2022.

WC testified the Tenant did not attend a move-out inspection scheduled for January 16, 2022 despite several reminders. WC testified that the Tenant did not provide a forwarding address.

WC testified the Tenant had rented a truck for two days and removed some belongings, but ultimately left behind numerous articles, including couches, chairs, mattress, bunkbeds, broken patio furniture, other household items, as well as bags of garbage. The Landlords submitted photographs showing items and garbage left inside the rental unit and outside on the porch.

The Landlords’ evidence indicates there was also damage to the rental unit, including:

- The Tenant installed a dance pole in the living room, leaving a hole in the ceiling.
- The bathtub faucet, spout, and surround were broken. A portion of the wall had to be taken out so the copper piping could be replaced.
- The dishwasher was not working.
- The back entrance door was kicked in.
- The front entrance door was removed and the door jamb broken.
- The bathroom sink had dark stains as if acid had been poured in it.
- The washing machine was “destroyed” and the front panel had been pried open. WC explained that the Landlords are seeking the cost of a smaller replacement unit. WC testified the Tenant did not inform the Landlords about a problem with

the washing machine until they were told that the Tenant would eat up \$250.00 from rent. WC testified the 3.0 or 3.5L washing machine left behind by the Tenant is too small for a rental.

- The toilet paper holder was broken.
- A light cover and closet doors were missing.

The Landlords submitted photographs of the rental unit in support. WC testified the Landlords were left with the cleanup and garbage removal.

The Landlords submitted a monetary order worksheet for the damages claimed as follows:

Item	Amount
Washing Machine	\$837.70
2 Exterior Doors and Labour	\$1,336.76
Tub Surround	\$650.82
Labour for Ceiling Repair (3 hours at \$20.00 per hour)	\$60.00
Clean Up and Removal of Garbage and Items Left Behind (12 hours at \$20.00 per hour)	\$240.00
Second-hand Sink and Labour	\$130.00
Second-hand Dishwasher and Labour	\$160.00

In response, the Tenant acknowledged she was paid but denied that she had “wanted” to clean the rental unit upon move-in. The Tenant stated that the rental unit was “rat-infested” and that she wanted to leave but had “no options”. The Tenant she had “three or four” pictures showing mouse droppings everywhere, and that a portion of the money she had received from the Landlords was spent on mouse traps.

The Tenant testified that the mess left behind was due to the flood damage. The Tenant testified that the sewers were backed up. The Tenant testified that there was no water in the rental unit in November 2021, so it was not possible for her to clean.

The Tenant denied pouring acid in the sink. The Tenant testified that she made the rental unit better than it was originally.

The Tenant testified that the washing machine purchased by the Landlords had fallen out of the truck and came pre-dented. The Tenant testified she was told by one of the Landlords, LC, that the washing machine was reduced to clear, so it might have come

with an issue. The Tenant testified that she was told by a neighbour, G, who is a mechanic, that there was an issue with the washing machine's electric panel. The Tenant testified she handwashed clothes for 2 months until she purchased another washing machine which she left in the rental unit.

The Tenant testified she wanted the items that were left in the rental unit. The Tenant testified the Landlords had given those items to G prior to January 15, 2022. The Tenant testified that some of those items are currently in G's backyard. The Tenant testified she did not have a place to store those items due to the flood. The Tenant testified that she did not have a place to go to at the time. The Tenant testified she had to purchase new furniture to replace the ones given to G.

The Tenant stated that the Landlords kicked the door in. The Tenant stated the Landlords put cardboard in so they could see who was coming in and out. The Tenant testified she had been given multiple eviction notices by the Landlords.

The Tenant testified that the conditions of the rental unit at the start of the tenancy was horrible. The Tenant stated that the condition inspection report reflects this. The Tenant acknowledged she had been hired by the Landlords to clean the rental unit.

The Tenant indicated that she did not have a place to go after the evacuation order and argued that she had a right to reside at the rental unit. The Tenant testified that on January 1, 2022 when she tried to pack her belongings, she was assaulted by LC. The Tenant stated that the police were involved. The Tenant indicated she did not want to return to the rental unit after that. The Tenant stated that the Landlords locked her out of the house.

The Tenant testified that she rented a truck the week prior to January 15, 2022.

The Tenant argued that the Landlords should not be charging her for damage after a flood. The Tenant testified that she had gone on "dump runs" to get rid of garbage. The Tenant testified that some items, such as a cabinet, had been left behind by the previous tenants and she assumed they came with the rental unit.

The Tenant testified that the exterior doors were damaged due to the flood. The Tenant testified that the bathtub did not have a surround at the start of the tenancy. The Tenant also stated that the tub surround was already cracked and mouldy.

The Tenant testified that the rental unit was damaged at the start of the tenancy, but she had no choice because she had already given notice at her previous place.

The Tenant argued that the costs claimed by the Landlords for the tub surround and exterior doors were unreasonable.

The Tenant testified that she would have gone back to the rental unit to clean it if the assault had not taken place.

The Tenant called a witness, JR, to testified during the hearing. The Tenant explained that JR is a friend who stayed at the rental unit occasionally. JR testified that the Tenant received various notices of eviction from the Landlords. JR testified that the rental unit was "unlivable", in a bad shape, and no floor on the house was "level". JR testified that there was 3 to 5 feet of flood water in the basement. JR testified that the Tenant was assaulted and he did not want the Tenant to return to the rental unit.

In reply, WC testified that the Landlords did not claim any damage to the basement or any exterior damage. WC testified the that the sewer did not back up on the top floor. WC testified the top floor is 6 feet high, so no water went on the top floor.

WC testified the Landlords sent a letter dated January 9, 2022 to the Tenant asking the Tenant to let the Landlords know when she wanted the water turned on to clean the house. The letter also included a reminder for the move-out inspection on January 16, 2022 at 11:00 am.

WC testified that the Landlords were around when the washing machine broke down, but the Tenant did not notify the Landlords.

WC testified on January 15, 2022, the Tenant rented a truck for two days and took what she wanted.

WC testified the Landlords did not kick in the doors. WC testified the damage was done by the Tenant.

WC testified that JR had not seen the rental unit at the start of the tenancy. WC acknowledged that the rental unit is an older house that has a slant.

WC denied that there had been an assault. WC explained that no one was allowed at the house due to the evacuation order. WC testified the Landlords saw a light on and found the Tenant inside the rental unit. WC testified that the Tenant was very aggressive when asked to leave and the police were called.

WC stated that the Tenant's furniture had been abandoned. WC testified that the furniture had not been removed before January 15, 2022, as the Tenant had her truck at the rental property on January 15 and 16, 2022. WC testified that the Landlords cleaned up the remaining items approximately 2 weeks later. WC testified the Tenant never came back for the items and never contacted the Landlords to hold the items. WC testified that their next-door neighbour mentioned someone might want a mattress. WC testified all articles left behind were in poor condition and worth less than \$500.00. WC stated the Landlords sold a trampoline for \$100.00, as well as a crate and a chest of drawers for \$10.00 each. WC stated that the rest were advertised for free, but no one took the items. WC emphasized that the Tenant's items were abandoned and the Landlords had to deal with them.

Analysis

1. Are the Landlords entitled to compensation for damage to the rental unit?

Sections 32(2), (3), and (4) of the Act require a tenant to maintain and repair the rental unit as follows:

- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

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.

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this application, the Landlords seek compensation for damages relating to (a) washing machine, (b) exterior doors, (c) tub surround, (d) ceiling repair, (e) cleanup and garbage removal, (f) sink, and (g) dishwasher.

a. Washing Machine

Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises (“Policy Guideline 1”) states that the “landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant”.

In this case, I note the Tenant testified that the washing machine purchased by the Landlords came pre-dented and was a clearance item that may have had a defect. I find WC testified the Landlords only became aware of the issue after the Tenant claimed a reduction in rent. Based on the parties’ testimonies, I infer that the washing machine breakdown did not have anything to do with the flood that ended the tenancy. While I find that the Tenant should have promptly informed the Landlords of the problem with the washing machine, I find the Landlords have not provided sufficient evidence to explain what caused the washing machine to stop working. I find I am unable to conclude on a balance of probabilities that the washing machine failed due to improper operation or negligence on the Tenant’s part. I find it is equally possible that there may have been a defect with the washing machine that caused it to fail. As such, I decline to award compensation to the Landlords under this part.

b. Exterior Doors

Having reviewed the photographs of the doors, I find one is missing entirely and another has a crack near the doorknob that was taped over. I find the Tenant had stated that the doors were damaged by the flood, but also stated that they were damaged by the Landlords. I find this testimony to be somewhat inconsistent. I find the way that one door was missing entirely and the crack in the other door to not resemble damage caused by a flood. I agree with the Landlords that the crack in the second door appears as if someone had kicked it in. I find it unlikely that the Landlords would cause damage to their own property. I find the Tenant indicated she was residing at the rental unit despite the evacuation order and the Landlords asking the Tenant to leave. Based on the foregoing, I find on a balance of probabilities that the doors were damaged by the actions or neglect of the Tenant or a person permitted on the property by the Tenant.

I accept WC's testimony that the Landlords received a quote of \$1,336.76 to purchase and install two replacement doors. However, I find the original doors would have been quite old by the time of replacement. The photograph of the cracked door shows that it is quite old. I also find that the condition inspection report had indicated that the doors were in poor conditions at the start of the tenancy. I find that the doors would have depreciated significantly in value by the time that they were damaged. I find that given the age and poor conditions of the doors at the start of the tenancy, a 90% reduction of the replacement cost claimed would be appropriate in the circumstances. In my view, the reduction would not be 100% as I find the original doors would have at least served the very basic function of closing off the entryways.

As such and pursuant to sections 32(3) and 67 of the Act, I award the Landlords 10% of the cost to purchase and install two new doors, or \$133.00.

c. Tub Surround

I have reviewed the photographs submitted by the Landlords and agree that the bathtub spout looks as if someone had jumped on it, causing it to bend downwards and the surrounding wall to crack. I find on a balance of probabilities that this damage was caused by the actions or neglect of the Tenant or someone for which the Tenant was responsible. I accept the Landlords' evidence that their cost to repair the tub surround was \$650.82. However, I find the condition inspection report had indicated that the tub/shower/taps/stopper in the main bathroom were in "poor" conditions at the start of the tenancy. As such, I find again that a significant reduction in the replacement cost

representing the amount of depreciation would be appropriate, given the age and original condition of the bathtub area. Pursuant to sections 32(3) and 67 of the Act, I award the Landlords 10% of the replacement cost of the tub surround, or \$65.00.

d. Ceiling Repair

Policy Guideline 1 states:

RENOVATIONS AND CHANGES TO RENTAL UNIT

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

I accept the Landlords' evidence that the Tenant had installed a dance pole in the living room without the Landlord's consent and had not returned the living room ceiling to its original condition prior to leaving the rental unit. I find the \$60.00 damages claimed by the Landlords for repairing the hole left in the ceiling by the dance pole to be reasonable in the circumstances.

Pursuant to sections 32(3) and 67 of the Act, I order the Tenant to pay the Landlords \$60.00 for repairing the ceiling.

e. Cleanup and Garbage Removal

I find that the photographs submitted by the Landlords show the rental unit was left in dirty conditions, including greasy pans left on a dirty stovetop and the inside of the oven was dirty. I find that such conditions would not have been caused by flood damage.

Policy Guideline 1 states that "at the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher". In this case, I find it is clear from the photographs that no such cleaning occurred.

Furthermore, I find the Tenant acknowledged that she would have gone back to the rental unit to clean it if it were not for an incident of alleged assault with the Landlords. While I make no finding as to whether there had been an assault, and whether the Tenant had a justifiable reason for not wanting to return to the rental unit, I find that the Tenant still had an obligation to arrange for someone else to clean the rental unit if she did not want to return herself for any reason. I find the Tenant acknowledged that the rental unit still needed cleaning at the end of the tenancy.

In addition, I find the photographic evidence to show that bags of garbage and broken household items were left behind inside the rental unit and outside on the patio.

Policy Guideline 1 states that unless there is an agreement to the contrary, “the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy”.

The Tenant stated that she wanted to keep everything left behind in the rental unit. However, I do not find the Tenant’s testimony that the Landlords gave her belongings away to G before January 15, 2022 to be credible. Based on the photographs submitted, the items left in the rental unit appear to be in poor condition. Furthermore, I find the Tenant acknowledged that she had a truck at the rental unit to move her belongings. I find there is insufficient evidence to explain why the Tenant did not remove everything when she had the truck, or why the Tenant would hire a truck if the Landlords had already given her belongings away. I accept the Landlords’ evidence that the items left at the rental unit were abandoned by the Tenant after the Tenant removed what she wanted on January 15 and 16, 2022. I find there is insufficient evidence to suggest that the Tenant had contacted the Landlords to retrieve the remaining items.

Based on the evidence before me, I find that the Tenant had not met her obligation under section 32(2) of the Act to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and other parts of the rental property to which the Tenant had access. I further find that the Tenant did not clean up and remove garbage from the rental unit at the end of the tenancy as required under Policy Guideline 1.

I note the Tenant had argued that the rental unit was in dirty conditions at the start of the tenancy. However, I find the Tenant acknowledged she was paid to clean the rental unit before the parties signed the condition inspection report. I do not find the fact that the Tenant had cleaned the rental unit upon move-in to have any bearing on the

Tenant's obligations under the Act to maintain the cleanliness of the rental unit during and at the end of the tenancy.

Based on the state of the rental unit at the end of the tenancy as shown in the photographs submitted, I am satisfied that the Landlord's claim of \$240.00 for cleanup and garbage removal, at a rate of \$20.00 per hour for 12 hours, is reasonable in the circumstances.

Pursuant to sections 32(2) and 67 of the Act, I order the Tenant to pay the Landlords \$240.00 for cleanup and garbage removal.

f. Sink

I have reviewed the photographs submitted by the Landlords very carefully. I find the dark stains on the sink appear to be rust stains, which may be caused by sewer backup rather than someone pouring a corrosive substance down the drain.

I find the Landlords have acted very reasonably to mitigate their damages. However, I find I am unable to conclude that more likely than not, the stains were caused by a corrosive substance rather than sewer backup due to the flood. I find that since both explanations are equally likely, the Landlords have not proven on a balance of probabilities that the stains were caused by the intentional actions or negligence of the Tenant. Accordingly, I decline to award the Landlords any compensation under this part.

g. Dishwasher

In this case, I find there is insufficient evidence to explain why the dishwasher stopped working. I find that it is possible for the dishwasher to have stopped working due to the flood and sewer backup. Again, I find the Landlords have acted very reasonably to mitigate their losses under this part by purchasing a second-hand dishwasher. However, I am unable to conclude on a balance of probabilities that the dishwasher stopped working due to the deliberate actions or neglect of the Tenant. Therefore, I decline to award the Landlords compensation under this part.

2. Are the Landlords entitled to recover the filing fee?

The Landlords have been partially successful in this application. I grant the Landlords' claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

3. Are the Landlords entitled to retain the Tenant's security deposit?

Pursuant to section 72(2)(b) of the Act, I order that the Landlords are authorized to retain the \$350.00 security deposit held by the Landlords in partial satisfaction of the total awarded in this application.

The Monetary Order granted to the Landlords for the balance is calculated as follows:

Item	Amount
Exterior Doors	\$133.00
Tub Surround	\$65.00
Ceiling Repair	\$60.00
Cleanup and Garbage Removal	\$240.00
Filing Fee	\$100.00
Subtotal	\$598.00
Less Security Deposit	- \$350.00
Total Monetary Order for Landlords	\$248.00

Conclusion

I find the Landlords are entitled to compensation of \$598.00 from the Tenant. Pursuant to section 72(2)(b) of the Act, I authorize the Landlords to retain the Tenant's \$350.00 security deposit in partial satisfaction of the amount awarded.

Pursuant to sections 32 and 67 of the Act, I grant the Landlords a Monetary Order in the amount of **\$248.00** for the balance. This Order may be served on the Tenant, 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: September 30, 2022

Residential Tenancy Branch