



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Parties	File No.	Codes:
(Landlord) K.S.	210050925	MNDL-S, FFL
(Tenant) L.F.	910070002	MNSD, MNDCT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties. The hearing spanned two sessions, as we did not have enough time to review the Parties' claims in one hearing, so we adjourned and reconvened for a second hearing to complete the Parties' submissions.

The Landlord filed a claim for:

- \$2,500.00 compensation for damage caused by the tenant, their pets or guests to the unit or property – holding the pet and security deposits; and
- recovery of the \$100.00 application filing fee.

The Tenant filed a claim for:

- \$16,645.75.00 monetary loss or other money owed;
- \$2,500.00 for the return of the security deposit and pet damage deposits; and
- recovery of the \$100.00 application filing fee;

The Tenant, her assistant, A.P, and the Landlord appeared at the first teleconference hearing and gave affirmed testimony. Only the Landlord attended the reconvened hearing. This meant that we did not have an opportunity to review the Tenant's claims.

I explained the hearing process to the Parties in the first hearing, and gave them an opportunity to ask questions about the hearing process. During the hearings, the Tenant

and the Landlord were given the opportunity to provide

their evidence orally and 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; 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. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlord provided her email address in the Application, and the Tenant provided her mailing address in the hearing. They confirmed their understanding that the Decision would be emailed to the Landlord and mailed to the Tenant, and any Orders would be sent to the appropriate Party in this manner.

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

Background and Evidence

The Parties agreed that the fixed-term tenancy began on August 15, 2018, with a monthly rent of \$2,500.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,250.00, and a pet damage deposit of \$1,250.00. The Landlord confirmed that she holds the deposits in full to apply against her Application.

The Parties agreed that the tenancy was frustrated by the well running dry, and that the Tenant vacated the residential property on September 27, 2021.

The Parties agreed that they conducted a move-in inspection of the residential property at the start of the tenancy, but they said it took about 20 minutes and they did not document the result in a condition inspection report ("CIR"). However, I note the Parties agreed on the property needing repairs to the skylight and blinds at the start of the tenancy. The Parties agreed that there was a CIR for the move-out inspection, although it has nothing checked off.

LANDLORD'S CLAIMS

In her application, the Landlord explained her claims, as follows:

There is damage to the house. No keys returned need lock smith Fireplace damage needs repairs Flooring damage needs replacement Blinds damage need replacement Broken deck glass need replacement Log pole ruined by cat needs to be sanded repaired and new stain Hot tub repairs or new one Tenant took the forms without my knowledge, as I left them on table and when I came back the forms were gone. Vacuum need replacement Tractor needs battery, Tenant didn't want to finish the inspection

The Landlord submitted a monetary order worksheet with her claims, and we reviewed these claims consecutively in the hearings.

#1A KEYS CUT → \$230.43

The Landlord said:

[The Tenant] gave us four keys – blanks and did not fit the door. The house key is a different form the keys she submitted to me. I handed her two and she gave me four, and they were wrong ones.

The Tenant said:

In my defence, I took back the keys and haven't any other proof. We tried the keys before we took them back - just not at move out, because of all of craziness. We returned the keys.

#1 FIREPLACE → \$350.00

The Landlord explained this claim as follows:

See the picture of the fireplace. There was a hole pushed into the back of the fireplace, and it was broken. We needed to get it filled. If you put a log in there too far you can put a hole in it if you push too hard. There's pictures of it – pages 23 and 24.

I looked at the Landlord's photographs and viewed the fire place from the front, as well as a close up photo showing the inside, with a brick or portion pushed in. The Landlord said it was a fire hazard this way.

The Landlord said: "I have not had that fixed, so this is just an estimate - an estimate from a special fire place store. There were no documents from him with this estimate."

The Tenant said:

The inside was mentioned during our [move-out] walkthrough that the back brick had been moved. You have to put a log on top of the brick – it looks terrible in the picture, but it would just be a caulking to fix it. It was not maliciousness; we were burning wood and it was broken – it just turned; air still goes up the pipe. It still works.

The Landlord said that his son moved into the residential property in May 2022, after the tenancy ended. The Landlord said her son has not needed to use the fireplace, because the weather was warmer after he moved in.

The Landlord said the fireplace was put in in about 2008 or 2009.

The Tenant said: "Just that it had been in there for quite a few years. We used it to save on costs; we didn't damage it in any meaningful way."

#2 BEDROOM FLOORING → \$960.76 Materials + \$500.00 Labour

The Landlord said the flooring was new in 2007, when they moved in that year. "So, 11 years later, and it was new when we moved in", she said.

That is the first pictures on page 9 of mine. It has little holes and little cut outs. This is \$500.00 for the labour and the rest for the flooring cost. See the [national

hardware store] receipt in the 8-page package, and the labour from [B.H.] on page 9 in the next package.

When I asked the Landlord why she needed to replace the flooring, she said:

There was a hole in the floor. [The Tenant] has admitted to putting a hole in it. Her bed leg or something. We couldn't find a match to match the flooring. It was brand new when she moved in.

The Landlord said that the holes are small, but that they had to replace the whole flooring. She said they did not have any extra pieces of flooring, nor could they find any to match the flooring in order to repair the hole.

The Tenant said:

There were indeed tiny holes from a 2" x 1" gash went right through flooring. [The Landlord] put it in himself, but it has never done that at any place. They stated that there was extra flooring – they said there is extra, if we need to replace it, but we didn't have time to replace it. Its not a whole floor that needed to be replaced. I never noticed it, until my bed moved.

The Landlord said:

We had to put in a whole new flooring, because they couldn't find a match. She thought the flooring in the storage room was for this, but no, that's for the upstairs extra flooring.

The Landlord submitted an invoice from a national hardware chain, which charged \$857.82 plus tax for a total of \$960.76 for "Sterling Oak 'A'" flooring.

The Landlord said the flooring was installed by her husband. She said he is a contractor. "My husband installs flooring all the time. He's in construction."

The Landlord submitted an invoice from [B.H.], her husband, for the installation of the new flooring, as follows:

Jan 17, 2022

To: [Landlord]

[residential property address]

Remove baseboards and flooring,
Install new flooring and reinstall baseboards.
Removal of old flooring

\$500.00

#3 VACUUM → \$340.48

We reviewed this claim in the reconvened hearing, to which the Tenant did not attend. As such, there was no testimony from the Tenant for the claims from here forward.

The Landlord explained this claim, as follows:

That was the vacuum handle that was broken. That was the replacement cost. I think the one I bought is \$320.00. There's a picture. It was the power head that was broken, It is on page 25. The handle has all the turn on and turn off mechanisms, but that's missing – see black box. [The Tenant] said she would look after it. I do have a receipt for it; the vacuum was a little cheaper than the estimate. So the total paid was \$295.00 + 35.00 taxes, so \$330.00

I found the quote for \$430.48; however, I was unable to find the \$330.00 receipt in the Landlord's submissions.

I asked the Landlord about the age of the vacuum, and she said:

We build it in 07 and they moved in 2018 ,so it was 11 years old. Actually, we put it in in 08, so it was 10 years old at the start of the tenancy.

#4 LOG → ~~\$1,700.00~~ \$1,472.35

The Landlord explained this claim, as follows:

We had feature logs and their cats scratched it, and I had to get it sanded and stained. See her picture in the third package - that has a big cat tree. She said it was a cougar that did that. I have my picture of the log.

The Landlord was referring to a structural post at the front of the building, which is a large log, which the Landlord considers a feature of the residential property. The Landlord continued:

In my summary, before they moved in, I had a realtor there, and everything. There is a picture she took with the big cat tree against the log, and I submitted that picture. They built that because the cat was damaging the log, going up and down. That proves it.

The Landlord submitted a photograph of the front of the residential property, which shows a curving, cat-sized ladder beside the structural post or log at the front of the building – the “cat tree”.

The Landlord said:

Obviously, they put the cat tree, because we complained about the cat damaging the log. I don't think a cougar is going to go up and down the log. Yes, it's a rural property, so there's bear, cougar, moose - that's just what live on the land.

I only had an estimate at first, but \$1,472.35 was the final price. That was done. A little less than the estimate of \$1,700.00

The Landlord directed me to the Tenant's response to this claim, which reads as follows:

[D.S.'s] estimate for repair of log. During the time that we lived at [residential property address], we never saw our animals damage this log or any other. I was also chased by a cougar on the property that chased me as I ran into the front entrance of the home, directly where [the Landlords] are claiming the log was damaged by our cats. Pictures of the text messages showing the date that conservation officer came on the property searching for cougar.

A close-up photograph of the log submitted by the Landlord shows scratch and or dirt marks along much of the post or log.

#5 GLASS RAILING, BLUE BOX → \$103.22

The Landlord explained this claim, as follows:

[The Tenant] has stated in her submissions that she would be paying for those,

even though she wanted her full deposit back. She didn't give them back yet, but she said she would pay for – the blinds, the railing the blue boxes, and the dump run - she said she'd pay for. I have the actual prices on those.

The glass railing – one of the panels broke.

The Landlord submitted a photograph showing glass panels along the upper balcony on the outside of the residential property. However, one of the glass panels is missing.

The Landlord provided the Tenant's written comments about this claim, as follows:

In august 20, 2021 the [Tenants] were out doing yard maintenance when from twenty feet away the weed whacker picked up a rock, shooting it at the glass railing. We as tenants would like to take 103.22\$ from our deposit as the glass railing was hit with a rock while weed whacking.

#6 BEDROOM PLUG → \$10.00

The Landlord explained this claim, as follows:

It was a plug that got burned out. I have a picture of that – just after the log - you will see the burned out plug. It would have smelled so bad. My husband is in construction, so he fixed it. Mitigation.

The Landlord submitted a photograph of a burned outlet that they had to replace at the end of the tenancy.

#7 BEDROOM BLINDS → \$442.05

The Landlord explained this claim, as follows:

Those are the ones I had replaced as she moved in. She had put a tear in that, and see the picture – beginning of the package on my page one - this is the invoiced amount. In her forms, [the Tenant] said she would pay for that.

In the Tenant's written comments to the Landlord about this claim, the Tenant said:

I, [L.F.], would like to take from my deposit 442.05\$ to replace the blinds.

First two months we didn't have a blind but [K.] brought a new one and we installed it. When we moved out on September 27, 2021, there was a 2 inch tear in the fabric blind.

The Landlord said that these blinds were new at the start of the tenancy. She submitted an invoice from a national hardware chain for new blinds costing a total of \$442.05.

#8 BENCH → \$430.00

The Landlord explained this claim, as follows:

There's a log bench with a picture. The cat scratched it up. See the photograph just after the log and the plug-in, so it is on page 33, 34, 35, the last three pages of the April packages. – see it in 8-page package. I had the estimate that's one day's labour and stain. This has not been done yet

The Landlord said that the bench is “about ten years old”.

The Landlord's photograph of a bench shows worn areas across the bench. The Landlord has drawn lines on the photograph to point out the damage she says was done by the Tenant's cat.

#9 TRACTOR BATTERY → \$180.76

The Landlord explained this claim, as follows:

[The Tenants] took the battery with them. The tractor wasn't working and they fixed it to make it work; we agreed that they could use it, if they got it to work. The battery worked at the start, but the front axel didn't work, and they spent money to repair it, and that's the agreement we had. She has it in her statement that they spent money to repair.

In a statement by the Tenant provided by the Landlord, the Tenant said the following about this claim:

We moved in August of 2018 they said ([K.] and [D.]) if we can get the tractor fixed and running that we could use it for snow removal. The two [A.s] spent 1225.00\$ on tractor parts. And they spent three days and got the tractor fixed and running.

The Landlord submitted an invoice for a tractor battery, which cost \$172.16, plus GST equals \$180.76.

#10 HOLE IN BATHROOM → \$50.00

The Landlord explained that there was a hole in the wall of the bathroom at the end of the tenancy that was not there at the start. The Landlord submitted a photograph of a hole in drywall, which I infer is in the bathroom.

The Landlord submitted an invoice from her husband dated January 17, 2022, for \$50.00 to “patch drywall in lower bathroom”.

In the Tenant’s written statements submitted by the Landlord, the Tenant said the following about this claim: “The landlord and contractor made the hole themselves to put a camera in to see water piping.”

#11 FREEZER → \$1,354.63

The Landlord said the following about this claim: “I can’t get the paint smell out of the freezer, but she admitted in her video clip that she put the paint the freezer.”

The Landlord submitted a quotation from a local appliance store for a 16 cubic foot upright freezer, which was quoted as \$1,354.63.

There were no comments from the Tenant in the Landlord’s materials. There were no notes about a freezer claim in the Landlord’s monetary order worksheets.

Analysis

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

#1A KEYS CUT → \$230.43

Section 25 of the Act sets out landlords’ and tenants’ requirements surrounding rekeying locks for rental units. Section 25 states:

Rekeying locks for new tenants

25 (1) At the request of a tenant at the start of a new tenancy, the landlord must

(a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and

(b) pay all costs associated with the changes under paragraph (a).

(2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

People have the ability to copy most keys; therefore, if a tenant returns the rental unit keys to the landlord at the end of the a tenancy, it does not mean that the tenant has not had more keys copied for the residential property. Regardless, according to Policy Guideline #1, “The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense.”

However, as set out in section 25 of the Act, it is a landlord’s responsibility to re-key locks to the rental unit, if they are so requested by subsequent tenant(s). As a result, I find that the Landlord does not have the authority under the Act to charge the Tenant for the cost to re-key the rental unit; therefore, pursuant to section 62 of the Act, **I dismiss this claim without leave to reapply.**

#1 FIREPLACE → \$350.00

I find from the Parties’ testimony in the first hearing that the Tenant acknowledged having done this damage to the fireplace; however, she said the fireplace can still be used.

The Landlord has not had this damage repaired, and they did not submit a written estimate of the cost to repair it. I find the Landlord has proven the first two steps of the Test in this matter; however, she has not provided sufficient evidence to prove the value or cost of the loss on a balance of probabilities. As a result, I dismiss this claim without leave to reapply, pursuant to section 62 of the Act.

#2 BEDROOM FLOORING → \$960.76

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant’s pets. Section 37 requires a tenant to leave the rental unit undamaged.

However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have

suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in Policy Guideline #16 ("PG #16"), "the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements and provides me with guidance in determining damage to capital property. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

In PG #40, the useful life of laminate flooring is 10 years. The evidence before me is that flooring was new in 2007, so they were approximately 14 years old at the end of the tenancy and had no years of useful life left. As a result, the flooring was overdue to be replaced, and therefore, I find that the Landlord does not have a monetary claim against the Tenant for this matter. Therefore, and pursuant to section 62 of the Act, I **dismiss this claim without leave to reapply**.

#3 VACUUM → \$340.48

I find that the Landlord has reduced her claim in this matter to \$330.00. The Tenant did not attend the reconvened hearing to dispute this claim. PG #40 does not address the useful life of vacuum handles, and therefore, I have no mechanism to depreciate this item in my analyses.

While I am concerned that I could not find a copy of the invoice, I find it more likely than not that the Landlord is being truthful in this matter, and therefore, based on the evidence before me overall, I **award the Landlord** with **\$330.00** from the Tenant, pursuant to section 67 of the Act.

#4 LOG → ~~\$1,700.00~~ \$1,472.35

The Tenant's statement implying that a cougar had damaged the log indicates to me that the damage was not there at the start of the tenancy, or the Tenant would have said that.

I find the damage is more than mere wear and tear. Further, I find it unlikely that a cougar did this damage, because it appears to have been made over the course of time, with repeated scratching or marking of the log. I find it hard to believe that a cougar would have risked exposure by repeatedly returning and climbing and scratching the log. I find that the damage is more consistent with the behaviour of pet cats, which I find to be common knowledge.

When I consider all the evidence before me overall in this matter, I find it more likely than not that the Tenant's cat(s) damaged the log, and that the Tenant is, therefore, responsible for its repair. As such, I **award the Landlord** with **\$1,472.35** pursuant to sections 32, 37 and 67 of the Act.

#5 GLASS RAILING, BLUE BOX → \$103.22

Given the Tenant's written statement claiming responsibility for the broken glass panel of the railing, I **award the Landlord** with **\$103.22** for this claim, pursuant to section 67 of the Act.

#6 BEDROOM PLUG → \$10.00

The undisputed evidence before me is that the Tenant is responsible for the burned

electrical outlet, which the Landlord's husband fixed, aside from the cost of a new cover plate. I find the Landlord mitigated their damage in this claim and that all steps of the Test were fulfilled. I, therefore, **award the Landlord \$10.00** from the Tenant for this claim, pursuant to section 67 of the Act.

#7 BEDROOM BLINDS → \$442.05

Based on the undisputed evidence before me, I find that the Tenant has accepted responsibility for this claim, and therefore, I **award the Landlord with \$442.05** from the Tenant, pursuant to section 67 of the Act.

#8 BENCH → \$430.00

The Landlord's materials did not have any comments from the Tenant for this claim. I find that the photograph of a ten-year old wooden bench is not clear enough to show scratch damage that would have resulted from a cat. Further, without a properly completed CIR, there is no indication of the condition of the bench at the start of the tenancy. Based on the evidence before me overall on this claim, I find that the Landlord has not provided sufficient evidence to prove her claim on a balance of probabilities. I **dismiss this claim without leave to reapply**, pursuant to section 62 of the Act.

#9 TRACTOR BATTERY → \$180.76

The Tenant's comments on the tractor indicate that they spent money to repair it for the Landlord. I find that the Landlord does not dispute that the Tenant repaired the tractor, aside from a missing battery. I find that the Landlord has not proven that they are worse off because of the Tenant's actions surrounding the tractor, and therefore, I find that the Landlord has not proven the first two steps of the test in this claim. I, therefore, **dismiss this claim without leave to reapply**.

#10 HOLE IN BATHROOM → \$50.00

The evidence before me is contradictory between the Parties regarding who is responsible for this claim. As such, I find that the Landlord has not provided sufficient evidence to prove this claim on a balance of probabilities. I, therefore, **dismiss this claim without leave to reapply** pursuant to section 62 of the Act.

#11 FREEZER → \$1,354.63

Given that this matter was not claimed on the Landlord's monetary order worksheets, I find that the Tenant was not given proper notice of this claim, and that it is more likely than not that the Landlord added it in the hearing, in which the Tenant was not present.

Based on the evidence before me in this matter, I dismiss this claim without leave to reapply, pursuant to section 62 of the Act.

Summary and Set Off

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's security deposit of \$000.00 in partial satisfaction of the Landlord's monetary claim.

	For	Award
1	Keys	\$0.00
2	Bedroom flooring	\$0.00
3	Vacuum Handle	\$330.00
4	Structural post/Log	\$1,472.35
5	Glass panel - railing	\$103.22
6	Electrical outlet	\$10.00
7	Bedroom blinds	\$442.05
8	Bench	\$0.00
9	Tractor battery	\$0.00
10	Hole in bathroom	\$0.00
11	Freezer	\$0.00
	Total Awards	\$2,357.62

As the Landlord was only partially successful in her Application, I decline to award recovery of her \$100.00 Application filing fee from the Tenant.

In the hearing, the Landlord confirmed that she holds the Tenant's **\$2,500.00** security

and pet damage deposits to apply to her claims. Pursuant to section 72 of the Act, I authorize the Landlord to retain **\$2,357.62** of the Tenant's deposits, and return the remaining **\$142.38** to the Tenant as soon as possible. Pursuant to section 67 of the Act, I grant the Tenant a **Monetary Order** from the Landlord for **\$142.38**, to be served on the Landlord, if necessary.

The Tenant's claim is dismissed without leave to reapply, pursuant to section 62 of the Act, as she did not attend the reconvened hearing to present the merits of her position.

Conclusion

The Landlord is partially successful in her Application, as she provided sufficient evidence to prove on a balance of probabilities her eligibility for **\$2,357.62** of awards. Given her limited success in this Application, the Landlord is not awarded recovery of her \$100.00 Application filing fee.

The Landlord is authorized to retain **\$2,357.62** of the Tenant's **\$2,500.00** security and pet damage deposits in complete satisfaction of the Landlord's awards. The Landlord is Ordered to return the remaining **\$142.38** of the Tenant's deposits to her as soon as possible.

In this regard, the Tenant is granted a monetary order from the Landlord for **\$142.38**, to be served on the Landlord, if necessary. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The Tenant's Application is dismissed without leave to reapply.

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: October 05, 2022

Residential Tenancy Branch