



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 was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$1,476 for damages to the unit, site or property, to retain the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

The landlord, the spouse of the landlord, the tenant and an agent for the tenant, JG (agent) attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. The parties were affirmed and both parties stated that they understood the expectations surrounding their conduct during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed having received documentary evidence and that they had the opportunity to review that evidence, I find that both parties were sufficiently served in accordance with the Act.

The hearing began on May 13, 2022, and after 57 minutes was adjourned to allow additional time for both parties to present and respond to evidence. On September 8, 2022, the hearing continued and after an additional 56 minutes, the hearing was adjourned for the same reason as the first adjournment. On January 13, 2023, the hearing continued and after 58 minutes, the hearing concluded. The hearing lasted a total of 171 minutes.

Preliminary and Procedural Matters

At the outset of the hearing the parties confirmed their email addresses. The parties confirmed their understanding that the decision would be emailed to both parties. If the landlord is entitled to a monetary order, it will be emailed only to the landlord for service on the tenant.

During the hearing, the tenant's agent was cautioned on several occasions to cease interrupting the landlord and the undersigned arbitrator. The agent was also ordered during the January 13, 2023, portion of the hearing not to discuss their previous dispute resolution hearing at this hearing as it was not relevant to the matters before me. When the agent violated my order, the agent was removed from the dispute resolution hearing and the hearing continued without the agent present.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A month-to-month tenancy began on January 1, 2020. Monthly rent was \$1,000 per month and was due on the first day of each month. The tenant paid a security deposit of \$500 and a pet damage deposit of \$500 at the start of the tenancy, which the landlord continues to hold. The interest for both deposits will be calculated later in this decision.

The landlord's monetary claim of \$1,476 contains an addition error and is actually \$1,171.87 comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Carpets deep cleaning	\$325
2. New bedroom lock	\$40.34
3. Suite professional cleaning	\$210
4. Bath tap drain	\$19.03
5. Air cleaning from pot	\$367.50

6. Damages repair	\$210
TOTAL	\$1,171.87

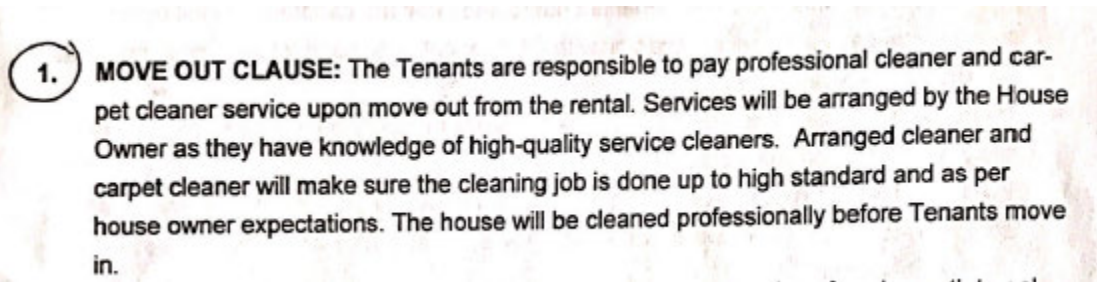
Although the landlord mentioned parking fees during the hearing, all parties were advised that I will not be considering parking fees and that pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 2.9, a claim may not be divided and as such, no parking fees will be considered and there is no leave to reapply for parking fees.

Regarding item 1, the landlord has claimed \$325 for deep carpet cleaning. The landlord stated that the tenant abandoned the rental unit on February 22, 2021. The tenant claims they provided written notice on January 29, 2021 in writing that the tenant would be vacating on February 10, 2021, which I will address later in this decision. The tenant admitted that they returned the rental unit keys via regular mail on March 8, 2021, and the landlord confirmed that they received the rental unit keys sometime in March 2021 but could not be sure it was March 8, 2021.

The landlord testified that the home was built in 2010 and that the landlord purchased the home in 2016. The landlord described the carpeted area of the home as all areas being carpet except for kitchen, entry and hallway. The landlord was uncertain if the carpets were original but described them as excellent shape at the start of the tenancy.

The Condition Inspection Report (CIR) was submitted in evidence and has an incoming inspection date of December 31, 2019 and an outgoing inspection date of February 23, 2021. The landlord testified that the outgoing condition inspection had been scheduled for February 28, 2021 at 1PM but that the tenant instead decided to vacate and move out before February 15, 2021. On February 15, 2021, the landlord testified that they gave the tenant a second notice of inspection posted to the tenant's door scheduling the outgoing inspection for February 18, 2021 at 3PM and that the landlord attended but the tenant failed to do so. As a result, the landlord stated they posted a Notice of Final Opportunity for a Condition Inspection on the rental unit door on February 18, 2021 scheduled for February 22, 2021 at 4PM. The landlord stated that they waited on February 22, 2021, and the tenant failed to attend so the landlord returned on February 23, 2021 and completed the inspection without the tenant present as the tenant refused to attend the outgoing inspection.

The landlord did not provide any photo evidence of the carpet. The landlord referred to the addendum to the tenancy agreement, which includes the following:



I will address the above-noted clause later in my analysis below. The receipt submitted by the landlord for carpet cleaning is for \$325 and is dated February 28, 2021 and is from Central Interior Carpet Cleaning (CICC).

The tenant's response to item 1 was that they called the owner of CICC. The tenant also stated that the tenant normally cleans the carpets on their own but did not feel safe as the landlord refused to wear a mask during COVID. The tenant stated that they have an autoimmune issue and that their father had terminal cancer. The tenant claims there were two areas rugs and not four. The agent claims the landlord attempted a home invasion by forcing their way into the rental unit.

The landlord's rebuttal was that the invoice only indicates "area rugs" and does not provide a number on the receipt. In addition, the landlord objected to any harassment allegation as the tenant and their agent were not being truthful during the hearing.

Regarding item 2, the landlord has claimed \$40.34 for the cost to replace a damaged bedroom lock. The landlord presented the outgoing CIR which indicates the bedroom door and lock were broken. The landlord stated that the tenant did not mention the lock during the tenancy. The landlord presented black and white photos of some of the pictures of the damage, which were blurry and will be addressed later in this decision. The landlord presented a copy of their Visa receipt in the amount \$40.34 dated February 23, 2021 from Delainey's Lock & Key.

The tenant's response to item 2 was that the door was open the entire time and denies breaking the lock. The agent confirmed that the door was open during visits as the space was used as an extension of the living room. The tenant testified that they lived alone and never locked doors except for the front door.

Regarding item 3, the landlord has claimed \$210 for the cost to clean the house to a reasonable standard. The landlord testified that the tenant left the rental unit in a dirty condition. A receipt was presented in the amount of \$210 dated February 24, 2021. The

outgoing CIR was also presented which included many areas with the code listed as dirty. The receipt included the following in terms of cleaning details:

QUANTITE	
7 hrs	Move out clean: oven, fridge,
	cabinets, washroom, floors,
	washing walls in 5 rooms
	due to strong marijuana smell
	in the unit in order to remove
	odour

The landlord stated that the tenant left calcium deposits on the sink tap and that the inside of the oven was dirty, the bathtub was dirty and that the fridge, cabinets, floors and wash needed to be washed.

The tenant's response to this item was that the oven was broken for a substantial time during the tenancy. The tenant claims they cleaned that oven but that you are unable to clean between the oven glass. The tenant admitted that they did not do some of the cleaning because they were too scared to live there. The agent stated that things got very toxic during the tenancy. The tenant stated that they left the rental unit in the same condition as they received it. The tenant does admit to three tape issues on the wall where marks were made from tape. The tenant denies smoking cannabis in the rental unit. The tenant claims that the landlord picked up the rent monthly and that the rental unit would smell like cannabis during the tenancy if that was the case.

The landlord replied to the agent by stating since you are fighting for the tenant during this hearing, why not attend the outgoing inspection and represent the tenant then? The agent responded by saying they were busy. The tenant stated they did not know that was possible.

Regarding item 4, the landlord has claimed \$19.03 for a new bathtub drain. The landlord testified that when the tenant first moved in, they were excellent and would tell them about anything that required attention or repair. Once the landlord filed their claim, the tenant changed and claims things "were that way" after the fact. The outgoing CIR indicates that the drain was broken. The receipt submitted is for \$19.03 and is dated February 23, 2021. The incoming CIR was signed by the tenant and confirms that the tenant agreed with the condition of the rental unit at the start of the tenancy. There are no issues mentioned with a drain in the incoming CIR.

The tenant's response to this item was that the walk-through at the start of the tenancy was short, lasting only five minutes. The landlord denied that the walk-through was only five minutes long and stated that the tenant is not being truthful during the hearing.

Regarding item 5, the landlord has claimed \$367.50 for cleaning the odour of pot/cannabis from the rental unit. The landlord submitted an invoice from Kleen Aire Services in the amount of \$367.50. The landlord called witness LN (LN) who was affirmed.

Witness LN stated the following:

- They have known the landlord for 5 years.
- That they know the rental unit to be a non-smoking rental unit.
- That they had a good relationship with the tenant.
- That they were available to assist with the outgoing CIR but was never asked to do so by the tenant.
- That they knew the tenant was a regular pot smoker.
- That they were called as a witness to view the suite.
- That they witnessed a strong marijuana (pot) smell in the rental unit after the tenant vacated.
- That the family of witness did not smoke pot.
- That they described the landlord as being good, follow regulations and really honest and a nice person.
- That they were familiar with the agent who lived upstairs.
- That the agent would party, would verbally accost, and that they were awful to live next door to.

Upon cross-examination by the agent, that the tenant was ordered not to present evidence from a previous hearing regarding the agent and the agent refused to comply with my order. As a result, the agent was removed from the teleconference hearing and the tenant was advised that they could complete the cross-examination of the witness. As the tenant had no questions for the witness, the witness was excused.

The tenant testified that they did use cannabis but always outside and stated the smell could come from anywhere. The tenant did admit during the hearing that on one occasion they hung up their jacket and it smelled like cannabis but could not recall the date when asked. The tenant also claims they would always ask visitors to smell for cannabis. The tenant claims the landlord should have cleaned the duct work yearly and failed to do so.

Regarding item 6, the landlord has claimed \$210 for labour to address the damages for items 2 and 4 and the wall damage. The tenant did not deny the wall damage during the hearing. The landlord provided their own receipt for their labour and noted that they are not charging to replace a ceiling tile in this amount as follows:

In order to repair some damages in the suite house owner used their own supply in stock in order to reduce tenants costs: weather strip, drywall mud and sand paper.

ceiling tile was replaced for our expense

SERVICE and DESCRIPTION	TIME	CHARGE PER HOUR	TOTAL
Bath drain: purchase and installation	2 hours	30	60
Weather strip replacement	1 hour	30	30
Drywall repair	2 hours	30	60
Bedroom door lock replacement: supply and installation	2 hours	30	60
Final Total	7 hours		210

The landlord clarified that their labour charge is \$30 per hour for 7 hours for a total of \$210. The outgoing CIR was presented in support of the need for the labour charged by the landlord. The tenant had previously admitted in the hearing that they did call damage to the walls with tape.

The landlord called witness DD (DD) who was affirmed and who stated the following:

- That they were familiar with the rental unit address.
- That they were familiar with the tenant and that they had helped to shovel snow for the tenant during the tenancy.
- That at the start of the tenancy, the unit had no odour, was clean and no smell of pot and not damage, just perfect condition.
- That they were present after the tenant abandoned the rental unit as the tenant failed to attend for the outgoing inspection.
- That the condition of the rental unit at the end of the tenancy was that the unit smelled strongly of marijuana and that there were bad damages also.
- That they witnessed repairs as they wanted to learn more about trades.
- That that bath drain, weather stripping, wall damage in two rooms had to be repaired in addition to a broken door lock, ceiling tile replaced and burned out lightbulbs.
- That they recall the charges to the tenant being the door lock and bath drain.

- That the landlord replaced on their own the light bulbs, drywall mud and paint, weather stripping and travel time.
- That an indoor air cleaning was arranged for.

Upon cross-examination the witness stated the following:

- The outgoing inspection took approximately half of a day as they went home about 9 or 10PM when it was dark.
- That the inspection was approximately five hours long but could not recall specifically.
- That they did attend the rental unit during the tenancy to shovel snow and to enter the rental unit to fix the stove.
- That they could not recall wearing masks during COVID.

After no further questions, the witness was excused.

Final comments by both parties

The landlord summarized their position that they provided the tenant every opportunity to participate in the outgoing condition inspection and that the tenant failed to do so. That the landlord has done their best to minimize the damage or loss by only claiming for some of their loss as indicated above.

The tenant summarized their position by stating that they hired their own cleaner so in essence, the tenant feels that they are being charged twice. The tenant also stated that the incoming inspection was five minutes long compared to a 5 hour outgoing inspection. The tenant stated they will pay for the drywall repair but that the weather stripping was already torn up and that they were afraid to remain in the rental unit.

The tenant also stated that they never closed or locked their doors, other than the front door and that they replaced bulbs when they would burn out. The tenant stated that they planted plants and made the place look good. The tenant stated that they misunderstood the addendum #1 and that they respected the place.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

I will firstly address the tenant's claim that they were afraid due to COVID and the lack of wearing masks. I find that I am not persuaded by that argument as this does not explain why the tenant could not have arranged for a friend or agent to attend an outgoing inspection on their behalf. Therefore, I fully accept the contents of what I find to be an undisputed outgoing CIR. In addition, I afford no weight to the unsupported allegation that the tenant was afraid of the landlord themselves as the tenant provided no evidence of contacting the police, such as a police file number, which I would have at the very least expected from the tenant.

Therefore, I find that I prefer the testimony of the landlord over that of the tenant as I find the explanations provided by the tenant to be unreasonable, vague, and nonsensical which I will address further below.

Item 1 - The landlord has claimed \$325 for deep carpet cleaning. The tenant provided no evidence that they had the rental unit carpets cleaned and I find that the landlord would more likely than not pay \$325 to clean the carpets unless it was required. Section 37(2)(a) of the Act applies and states:

Leaving the rental unit at the end of a tenancy

37(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,
[emphasis added]

Furthermore, I find the CIR supports the need for carpet cleaning and therefore I find the landlord has met the burden of proof and I award the landlord **\$325** as claimed. I find the tenant breached section 37(2)(a) of the Act by not cleaning the carpets before they vacated.

Item 2 – The landlord has claimed \$40.34 for the cost to replace a damaged bedroom lock. The landlord presented the outgoing CIR which indicates the bedroom door and lock were broken. The landlord stated that the tenant did not mention the lock during the tenancy and the tenant denies using the door lock or damaging it.

I afford no weight to the blurry photos submitted by the landlord but I do afford weight to the undisputed outgoing CIR that the tenant failed to attend to participate in. Therefore, I prefer the testimony evidence of the landlord who presented a copy of their Visa receipt in the amount \$40.34 dated February 23, 2021 from Delainey's Lock & Key over the tenant's testimony denying any damage. As such, I award the landlord **\$40.34** as

claimed and I decline to apply any depreciation due to damage as I find this damage is not reasonable wear and tear.

Item 3 - The landlord has claimed \$210 for the cost to clean the house to a reasonable standard. Consistent with my finding above, I find the tenant failed to prove that they cleaned the rental unit based on a lack of any receipts or photo evidence to support that the rental unit was left in a reasonably clean condition. Therefore, given the outgoing CIR, which I afford significant weight to and the summary of cleaning below, I grant the landlord **\$210** for cleaning costs. I have already found above that the tenant breached section 37(2)(a) of the Act. Also, I find that the tenant's argument regarding the oven being broken for a substantial time to be unreasonable and nonsensical as it still requires cleaning before vacating.

Item 4 - The landlord has claimed \$19.03 for a new bathtub drain. The landlord testified that when the tenant first moved in, they were excellent and would tell them about anything that required attention or repair. Once the landlord filed their claim, the tenant changed and claims things "were that way" after the fact. The outgoing CIR indicates that the drain was broken. The receipt submitted is for \$19.03 and is dated February 23, 2021. Due to the incoming CIR being signed by the tenant and confirms that the tenant agreed with the condition of the rental unit at the start of the tenancy and that there are no issues mentioned with a drain in the incoming CIR, I afford the outgoing CIR significant weight. I afford no weight to the tenant's argument that the inspection was only 5 minutes long as that does not change the fact that the tenant signed the incoming CIR. The tenant should not have signed a document if they disagreed with it in any way, which was not presented as an argument during the hearing. Accordingly, I grant the landlord **\$19.03** as claimed and I decline to apply depreciation as I find that a bathtub drain should not be damaged during such a short tenancy.

Item 5 - The landlord has claimed \$367.50 for cleaning the odour of pot/cannabis from the rental unit. Firstly, I find the tenant's response to this item to be nonsensical and vague. I am not persuaded that the tenant admits to smoking cannabis outside but only admits to bringing in a jacket one time that smelled like cannabis but could not recall the date of that one time. I find it more likely than not that the tenant would smell like cannabis every time they returned into the rental unit after smoking cannabis outside the rental unit. Furthermore, I afford the witness testimony significant weight as they claim to have smelled the rental unit before the tenant moved in, which had no odour compared to a strong smell of marijuana after the tenant vacated. Therefore, I find the tenant breached section 37(2)(a) of the Act by leaving a strong odour of cannabis in the rental unit. I grant the full amount claimed for this item as a result, in the amount of

\$367.50. I also find that the landlord would not spend that amount unless it was necessary.

Regarding item 6, the landlord has claimed \$210 for labour to address the damages for items 2 and 4 and the wall damage. As the tenant did not deny the wall damage during the hearing and given my findings for items 2 and 4 above and considering that I find the amount of \$210 to be a reasonable claim for labour, I award the landlord **\$210** as claimed for this item.

Based on the above, I find the landlord's claim is fully successful and as a result, I grant the landlord **\$100** for the recovery of the cost of the filing fee pursuant to section 72 of the Act.

I find the landlord has established a total monetary claim of **\$1,271.87** as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Carpets deep cleaning	\$325
2. New bedroom lock	\$40.34
3. Suite professional cleaning	\$210
4. Bath tap drain	\$19.03
5. Air cleaning from pot	\$367.50
6. Damages repair	\$210
7. Filing fee	\$100
TOTAL	\$1,271.87

As the landlord continues to hold the security deposit of the tenant of \$500 and a pet damage deposit of \$500, I find the combined deposits of \$1,000 (combined deposits) have accrued a total of **\$1.71** in interest under the Act. Therefore, I find the landlord is holding \$1,001.71 in combined deposits, including interest.

As the landlord continues to hold the tenant's \$1,001.71 in combined deposits including interest and pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain the tenant's full \$1,001.71 in combined deposits, including interest, in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of **\$270.16**.

Conclusion

The landlord's claim is fully successful.

The landlord has established a total monetary claim of \$1,271.87. The landlord has been authorized to retain the tenant's full combined deposits including interest in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The landlord is granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$270.16. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant. The tenant is cautioned that they can be held liable for the costs related to enforcement of the monetary order, including courts costs.

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: February 1, 2023

Residential Tenancy Branch