Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord February 10, 2022 (the "Application"). The Landlord applied as follows:

- To recover unpaid rent
- For compensation for damage to the rental unit
- For compensation for monetary loss or other money owed
- To keep the security and pet damage deposits
- To recover the filing fee

This matter came before me September 27, 2022, and was adjourned. An Interim Decision was issued September 28, 2022, and should be read with this Decision.

The Landlord appeared at the reconvened hearing and intended to call J.C. and A.M. as witnesses. It was not necessary to hear from A.M. during the hearing. M.O. appeared at the hearing for the Tenants. 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 provided affirmed testimony.

At the reconvened hearing, the only service issue remaining related to videos submitted by the Landlord. The Landlord said they would not rely on the videos and therefore I did not go into this further and have not considered them.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all admissible 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 recover unpaid rent?
4. Is the Landlord entitled to keep the security and pet damage deposits?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Wall and paint repair for 2 of 5 rooms, 40% of total cost	$253.20
2	Utilities, gas Dec to Jan	$164.18
3	Utilities, electricity Dec to Jan	$153.26
4	Floor repairs	$375.00
5	Light bulbs	$97.17 $13.04
6	Cleaning and supplies	$30.75 $252.00
7	Stolen shelving unit	$640.60
8	Loss of rent Dec	$2,250.00
9	Filing fee	$100.00
	TOTAL	**$4,329.20**

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started in July of 2021 and was for a fixed term ending in March of 2022. Rent was $2,250.00 per month due on the first day of each month. The Tenants paid a $1,125.00 security deposit and $1,125.00 pet damage deposit.

The parties agreed the Tenants moved out of the rental unit November 30, 2021.

M.O. testified that the Tenants provided the Landlord with a forwarding address in writing in February or March of 2022. M.O. then changed this to December 29, 2021. The Landlord testified that they received a forwarding address in February of 2022 and then changed this to January 27, 2022. M.O. testified that the forwarding address was sent by registered mail; however, neither party could provide the tracking number for this.

The Landlord submitted a Condition Inspection Report ("CIR") and the parties confirmed it is accurate as to move-in. The parties agreed the Tenants already lived in the rental unit when the Landlord purchased it. The parties agreed a new tenancy agreement was done up between the parties and an inspection was completed.

The Landlord testified as follows about a move-out inspection. The Tenants moved out with no notice November 30, 2021. The Landlord did not know until December 04, 2021, that the Tenants had moved out. The Tenants had not scheduled a move-out inspection or provided a forwarding address. The Landlord did not offer the Tenants two opportunities, one on the RTB form, to do a move-out inspection. The Landlord did a move-out inspection on their own and completed the CIR.

M.O. testified as follows about a move-out inspection. The parties did not do a move-out inspection together. The Landlord issued the Tenants a 10 Day Notice in August 2021. The Tenants disputed the 10 Day Notice and a hearing was set for December 10, 2021. The Tenants decided to move out November 30, 2021, and let the Landlord know this December 01, 2021. The Landlord did not offer the Tenants two opportunities, one on the RTB form, to do a move-out inspection. The move-out CIR is simply the Landlord's own conclusions about the state of the rental unit.

In reply, the Landlord testified that the December 01, 2021 email was the first notice they received from the Tenants that the Tenants were moving and the Landlord only received the email December 04, 2021. The Landlord agreed with the timeline provided by M.O. about the 10 Day Notice, dispute and hearing.

The Landlord testified that they claimed against the pet damage deposit for scratches on walls of the rental unit from the Tenants' cat.

M.O. disputed that there was pet damage in the rental unit at the end of the tenancy.

#1 Wall and paint repair for 2 of 5 rooms, 40% of total cost $253.20

The Landlord is seeking compensation for wall and paint repair for damage at the end of the tenancy. The entire rental unit was painted and repaired; however, the Landlord based the cost sought on 2/5 of the total cost because there are five rooms in the unit and two were excessively damaged at the end of the tenancy. The Landlord testified that there was pet damage to walls, excessive damage from hanging photos and posters as well as a smell that would not come out of one of the rooms.

M.O. questioned why the Landlord calculated the amount sought the way they did. M.O. disagreed that two rooms in the rental unit were excessively damaged at the end of the tenancy. M.O. took issue with the evidence provided because the CIR is only the Landlord's view of the state of the rental unit at the end of the tenancy. M.O. pointed to photos submitted by the Tenants showing the state of the rental unit the day they moved out. M.O. submitted that any "damage" is reasonable wear and tear and was already present at the start of the tenancy as shown in the move-in CIR. M.O. submitted that the Landlord is relying on photos taken during the tenancy of the rooms with "excessive damage"; however, the rooms were cleaned after an inspection and the Landlord was fine with them.

#2 Utilities, gas Dec to Jan $164.18
#3 Utilities, electricity Dec to Jan $153.26

The Landlord seeks compensation for utilities paid for a period after the Tenants moved out. The Landlord testified that the utilities were used because of the repairs that had to be done in the rental unit.

M.O. disputed that the Tenants should owe for utilities for a period after the tenancy.

#4 Floor repairs $375.00

The Landlord seeks compensation for repairs to scratches on the kitchen floor at the end of the tenancy. The Landlord testified that the Tenants dragged a wine barrel into the kitchen which caused a scratch on the floor. The Landlord relied on photos of the damage in evidence.

M.O. testified that the Tenants did not scratch the kitchen floor and it was not scratched at the end of the tenancy as shown in the Tenants' photos. M.O. testified that the

Landlord's photo is from September, prior to the end of the tenancy, and shows a small scratch that was not there at the end of the tenancy.

In reply, the Landlord acknowledged their photo may be from September and submitted that the Tenants' photo is from too far away to see the scratch.

The Landlord called J.C. as a witness in relation to the floor scratch. J.C. testified as follows. J.C. attended the rental unit to look at damage to the concrete floor. There were surface scratches and a "bit of a divot" on the floor which required patching and polishing. J.C. gave the Landlord a quote which was approved and J.C. completed the work.

In response to M.O.'s question about where the damage to the floor was, J.C. said they do not have a floor map in their head, they do a lot of work, it was on the floor. J.C. testified that the damage was on a small area of the floor and that there were a couple of other things they threw in because they charge a minimum fee to attend and do work. In relation to the additional work, J.C. testified that, if they remember correctly, they repaired a stain or something like that or just another nick on the floor. J.C. said they think the stain was in the main living area. J.C. testified that their repairs were done throughout the floor and they are not sure exactly where the damage being referred to was. J.C. testified that they did repairs throughout the whole house and sealed the floor to prevent further damage.

I found J.C. did not seem to recall specifically what they did in the rental unit because they consistently used phrases such as, "if I remember correctly", "something like that", "I think" and "not sure exactly". Further, there were lengthy pauses during M.O.'s questions and J.C.'s answers at some points.

#5 Light bulbs $97.17 and $13.04

The Landlord seeks compensation for replacing light bulbs that were burnt out at the end of the tenancy. The Landlord relied on photos to prove light bulbs were burnt out at the end of the tenancy.

M.O. testified that no lights were burnt out at the end of the tenancy and noted that one receipt in evidence is dated January 17, 2022, and the other is not dated.

#6 Cleaning and supplies $30.75 and $252.00

M.O. agreed the Tenants are responsible for these costs.

#7 Stolen shelving unit $640.60

The Landlord seeks compensation for a shelving unit that was in the rental unit and taken by the Tenants at the end of the tenancy. The Landlord submitted that the unit was part of the home and was the Landlord's because it was anchored to the wall.

M.O. testified that the hutch referred to was the Tenants and belonged to them. M.O. testified that the tenancy agreement and move-in CIR do not refer to the hutch.

In reply, the Landlord testified that the contract of purchase and sale with the previous owner did not say the Tenants could remove the shelving unit.

In further reply, M.O. testified that the contract of purchase and sale did list items included with the home and did not mention the hutch.

#8 Loss of rent Dec $2,250.00

The Landlord seeks loss of December rent given how the tenancy ended. The Landlord confirmed they issued the Tenants a 10 Day Notice in August, the Tenants disputed the 10 Day Notice and a hearing was set for December 10, 2021; however, the Tenants moved out of the rental unit November 30, 2021, without telling the Landlord beforehand. The Landlord testified that the unit was re-rented January 01, 2022. The Landlord testified that they had repairs done in the rental unit in December and new tenants could not move into the unit until January anyway.

M.O. acknowledged the timeline of events as set out by the Landlord in relation to how the tenancy ended. M.O. acknowledged the Tenants did not provide the Landlord with written notice ending the tenancy and only told the Landlord December 01, 2021, that they were moving.

Both parties submitted documentary evidence which I have reviewed and will refer to below as necessary.

Analysis

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

Security and pet damage deposits

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits 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 security and pet damage deposits at the end of a tenancy.

Based on the testimony of both parties, I find the Tenants participated in the move-in inspection and therefore did not extinguish their rights in relation to the security or pet damage deposits under section 24 of the *Act*.

Based on the testimony of both parties and the CIR, I do not find that the Landlord extinguished their rights in relation to the security or pet damage deposits under section 24 of the *Act*.

In relation to section 36 of the *Act*, the Tenants could only extinguish their rights in relation to the security and pet damage deposits if the Landlord offered them two opportunities, one on the RTB form, to do a move-out inspection. The Landlord did not do so and therefore the Tenants did not extinguish their rights pursuant to section 36(1) of the *Act*.

Pursuant to section 36(2)(a) of the *Act*, the Landlord had to offer the Tenants two opportunities, one on the RTB form, to do a move-out inspection. I acknowledge that the Tenants moved out of the rental unit November 30, 2021, without notice. However, based on the Landlord's evidence, I find M.O. emailed the Landlord December 01, 2021, letting them know the Tenants had moved out. When the Landlord received the email December 04, 2021, the Landlord could have provided the Tenants two opportunities, one on the RTB form, to do a move-out inspection through M.O. at the email used. However, the Landlord did not provide the Tenants two opportunities, one on the RTB form, to do a move-out inspection and therefore extinguished their right to

claim against the security and pet damage deposits solely for damage to the rental unit pursuant to section 36(2) of the *Act*.

The Landlord claimed against the security deposit for loss of rent, and therefore something other than damage, and was still entitled to do so in accordance with section 38(1) of the *Act*. The Landlord claimed against the pet damage deposit for damage to the walls caused by the Tenants' cat. Given the Landlord had extinguished their right to claim against the pet damage deposit for damage to the rental unit, the Landlord had to return the pet damage deposit to the Tenants in accordance with section 38(1) of the *Act*. The Landlord was no longer allowed to claim against the pet damage deposit for pet related damage.

Based on the testimony of both parties, I find the tenancy ended November 30, 2021, when the Tenants moved out.

I accept the Landlord's testimony that they received the Tenants' forwarding address in writing January 27, 2022. I do note that an address was provided to the Landlord earlier than this; however, it is not clear that it is a forwarding address and M.O. referred to the Tenants providing a forwarding address after providing the address in the emails. Further, M.O. testified that the forwarding address was provided by registered mail. The Tenants should have provided the tracking number for this so that I could see when the Landlord received the registered mail; however, the Tenants did not do so. In the circumstances, I find it appropriate to accept the earliest date provided by the Landlord, January 27, 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 Tenants' forwarding address in writing to repay the security and pet damage deposits or file a claim against them for something other than damage to the rental unit. Here, the Landlord had 15 days from January 27, 2022. The Application was filed February 10, 2022. I find the Landlord complied with section 38(1) of the *Act* in relation to the security deposit. However, the Landlord did not comply with section 38(1) of the *Act* in relation to the pet damage deposit because the Landlord was no longer permitted to claim against it for damage to the rental unit as explained above. Given this, and pursuant to section 38(6) of the *Act*, the Landlord must return double the pet damage deposit to the Tenants.

Compensation

Section 7 of the *Act* states:

> 7 (1) If a…tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying…tenant must compensate the [landlord] for damage or loss that results.
>
> (2) A landlord…who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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:
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> - 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 Wall and paint repair for 2 of 5 rooms, 40% of total cost $253.20

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…

I note at the outset that I agree the move-out CIR is not compelling evidence of the state of the rental unit at the end of the tenancy because it is the Landlord's own view of the

state of the rental unit. When parties do not agree on the move-out CIR as to the state of the rental unit, I expect to see further evidence such as photos or witness statements to support the parties' positions about the state of the rental unit at the end of the tenancy.

Based on the Landlord's photos, Tenants' photos and the move-in CIR, I accept that the Tenants did cause some damage that is beyond reasonable wear and tear to the walls of the rental unit. The Landlord's photos show stains on the entrance wall and kitchen wall, neither of which are noted in the move-in inspection. The photos from both parties show that the Tenants' hutch left a mark on the wall when it was removed and show a hole in the wall associated with the hutch. The Tenants' photos show damage to the stairwell/hall wall that is beyond "small nicks" present during the move-in inspection and shown on the move-in CIR.

I am satisfied based on the evidence of both parties that the Tenants did cause some damage that is beyond reasonable wear and tear to the walls of the rental unit and did not repair this before moving out in breach of section 37 of the *Act*.

I accept that at least some of the walls in the rental unit had to be repaired and painted due to the Tenants' breach. The Landlord is only seeking $253.20 for repairs and painting which I find to be very reasonable. I award the Landlord the amount sought.

#2 Utilities, gas Dec to Jan $164.18
#3 Utilities, electricity Dec to Jan $153.26

I do not accept that the Tenants owe the Landlord for utilities used by the Landlord, cleaners or repair persons after the end of the tenancy, when the Tenants no longer had possession of or access to the rental unit, because the Tenants had no control over when or how the utilities were used in the unit at that point.

This claim is dismissed without leave to re-apply.

#4 Floor repairs $375.00

I decline to award the Landlord compensation for repairs to the floor of the rental unit. I note that the floor is concrete and has marks and discoloration all over it given the nature of concrete floors. Looking at all of the photos of the floor, it is very difficult to tell

what is “damage” versus natural marks or discoloration. The floor is not one uniform color or texture.

The Landlord has submitted a photo of the kitchen floor showing a white mark near a wine barrel. The photo was clearly taken during the tenancy because the Tenants’ wine barrel is still in the rental unit. I cannot tell from the photo whether the white mark is something that could have been removed or not. It is not obvious from the photo that the white mark could not have been removed by the Tenants prior to the end of the tenancy. The Tenants submitted a photo of the same area and I cannot see the white mark in their photos. I acknowledge that the Tenants’ photo is not perfect; however, I do not agree that it is taken so far away from the relevant area that one could not see the white mark.

Given the evidence from both parties before me, I cannot be satisfied that the Tenants damaged the kitchen floor beyond reasonable wear and tear and I dismiss this claim without leave to re-apply.

#5 Light bulbs $97.17 and $13.04

The parties disagreed about whether there were light bulbs burnt out at the end of the tenancy. I do not find the notation in the CIR sufficient evidence of lights being burnt out at the end of the tenancy given the reason already stated above. The Landlord did not submit photos of burnt-out lights. In the absence of further evidence, I am not satisfied the Tenants left lights burnt out in the rental unit and this request is dismissed without leave to re-apply.

#6 Cleaning and supplies $30.75 and $252.00

M.O. agreed the Tenants would pay for this item and the Landlord is awarded the amounts sought.

#7 Stolen shelving unit $640.60

I do not accept that the hutch in the rental unit was part of the property or the Landlord’s. The hutch is not a shelving unit and is clearly a piece of furniture. From an objective view, there would be no reason to believe the hutch is part of the rental unit. The Landlord submitted that the hutch was anchored to the wall and therefore part of the property. Furniture being anchored to the wall does not change it from being the

Tenants' property to being part of the rental unit or the Landlord's property. It may be that in the purchase of the property, the Landlord thought the hutch belonged to the previous owner or was part of the rental unit; however, that is an issue between the Landlord and previous owner. Further, it may be that in a purchase and sale it matters whether furniture is anchored to the wall, but this does not apply to a tenancy. As well, the previous owner could not have sold the Tenants' furniture. There is no documentary evidence before me showing the hutch belonged to the previous owner or came with the rental unit. There is no mention of the hutch in the move-in CIR. There is no evidence before me that this was a furnished rental at the outset. I am not satisfied the hutch was part of the rental unit or belonged to the Landlord and this request is dismissed without leave to re-apply.

#8 Loss of rent Dec $2,250.00

This was a fixed term tenancy. The Tenants could only end the tenancy in accordance with section 45 of the *Act* which states:

> (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> > (a) is not earlier than one month after the date the landlord receives the notice,
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> > (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
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> > (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
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> (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The Tenants were not permitted by the *Act* to end the tenancy November 30, 2021, unless section 45(3) of the *Act* applied. The parties agreed the first time the Tenants told the Landlord they were moving was in an email December 01, 2021, and therefore I

do not find that section 45(3) of the *Act* applied. Nor did M.O. argue that section 45(3) of the *Act* applied.

I note that the tenancy did not end pursuant to the Landlord's 10 Day Notice. The Tenants disputed the 10 Day Notice and a hearing was set for December 10, 2021. The Tenants were entitled to remain in the rental unit until December 10, 2021, and a decision was made by an arbitrator about the validity of the 10 Day Notice. I accept that the Landlord would have had no idea the Tenants were moving out November 30, 2021, when they had disputed the 10 Day Notice and a hearing had been set for December 10, 2021. If the Tenants wished to move out of the rental unit before the December 10, 2021, they had to provide the Landlord with proper notice or come to an agreement with the Landlord about this. The Tenants did neither and instead told the Landlord December 01, 2021, that they had moved out. This is not proper or sufficient notice. I find the Tenants breached the tenancy agreement and section 45 of the *Act.*

I accept that the Landlord lost December rent due to the Tenants' breach.

I accept that the Landlord did not know until December 04, 2021, that the Tenants had moved out and that the Landlord then had to have the rental unit cleaned and repaired due to breaches by the Tenants found above and acknowledged by M.O. in relation to cleaning. I do not find it reasonable to expect the Landlord to have re-rented the unit for December in the circumstances. I award the Landlord loss of rent for December.

#9 Filing fee

Given the Landlord has been partially successful in the Application, they are entitled to reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

The Landlord is entitled to the following compensation:

Item	Description	Amount
1	Wall and paint repair for 2 of 5 rooms, 40% of total cost	$253.20
2	Utilities, gas Dec to Jan	-
3	Utilities, electricity Dec to Jan	-
4	Floor repairs	-
5	Light bulbs	-

6	Cleaning and supplies	$30.75 $252.00
7	Stolen shelving unit	-
8	Loss of rent Dec	$2,250.00
9	Filing fee	$100.00
	TOTAL	**$2,885.95**

The Landlord is considered to hold the following:

- Security deposit $1,125.00 + interest of $3.91 = $1,128.91
- Pet damage deposit $1,125.00 + interest of $3.91 = $1,128.91
- Pet damage deposit doubling = $1,125.00
- Total = $3,382.82

The Landlord can keep $2,885.95 of the above pursuant to section 72(2) of the *Act*. The Landlord must return $496.87 to the Tenants and they are issued a Monetary Order in this amount.

Conclusion

The Landlord must return $496.87 to the Tenants and they are issued a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord 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: March 06, 2023

Residential Tenancy Branch