



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on June 30, 2022 and amended that on February 8, 2023. They seek compensation for damage to the rental unit and other money owed. Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 21, 2023.

Both parties attended the conference call hearing; another individual called in on the Tenant’s behalf (herein referred to as the “Tenant”) and explained the issues from their perspective, being in close communication with the Tenant. The Tenant provided a written explanation with documented evidence to the Residential Tenancy Branch on March 13 and to the Landlord on that same date. The Landlord stated they received this material, albeit very near the date of the scheduled hearing.

At the start of the hearing, I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

Issues to be Decided

Is the Landlord entitled to compensation for damages to the rental unit and/or other money owed, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement and both parties in the hearing confirmed the basic details. The tenancy started on October 1, 2019 as stated in that document. The rent amount of \$4,500 did not increase during the tenancy. The Tenant paid a security deposit of \$2,250, still held by the Landlord as of the date of this hearing.

The agreement notes: “tenant to do yard maintenance/owner to do major seasonal clean up (spring/fall)”.

Another part of the agreement reads: “The landlord and the tenant agree that the house will be professionally cleaned at the tenant’s cost when the tenancy ends.”

The record shows the parties met to inspect the condition of the rental unit at the start of the tenancy on October 1, 2019. The parties jointly signed a “House Condition Inspection Report” that the Landlord provided in their evidence. This included a furniture inventory. In a written statement prepared for this hearing, the Tenant stated they never received a copy of this report at the time of its completion. In their evidence, the Tenant provided their messages to the Landlord noting many places in the rental unit not cleaned at the start of the tenancy. According to the Tenant, the Landlord did not respond to these from October 4.

The tenancy ended on June 15, 2022. This was the result of an end-of-tenancy notice issued by the Landlord. According to the Landlord they ended the tenancy because of the Tenant’s refusal to pay rent in March 2022.

The parties met at the rental unit to inspect the condition on June 15, 2022. The Landlord (via their agent) completed the same “House Condition Inspection Report” and made notations in red to reflect changes/observations. This noted marks/holes on walls throughout, some incidental cleaning needed in separate rooms, and a carpet stain described as a water mark. There are also notes about blinds that fell off. Notably, the yard space was turned into a vegetable garden. In a summary assessment, the Landlord noted the home and carpets were professionally cleaned, both ranked as “good”, noting “some kitchen area not cleaned.”

In the hearing the Landlord noted that the Tenant did not sign the report, with it being “obvious why they did not sign”. The Tenant responded to say the entire final move-out meeting was four hours in duration, and the Tenant never obtained a copy of the final condition inspection report. The Tenant added the report was not presented to them for their signature, and they only saw it after the Landlord delivered their evidence in this matter on February 21, 2023.

In the written summary they prepared for this hearing, the Tenant noted only that 3 light bulbs needed to be replaced, and they read “many scratches and holes” also in that report’s move-in comments. They believe the only area not cleaned was that identified in the report as in the kitchen, with the hood fan and sink. Following the inspection, the Tenant learned of the need for more cleaning via text messages and photos from the agent some days later, and the Tenant requested to visit the rental unit again to rectify some of the claims. The Tenant made this request on June 23; however, the Landlord declined the Tenant’s request to revisit. These messages are translated in the Tenant’s evidence.

The Landlord filed this Application on June 30, 2022, with some amounts claimed for compensation based on estimates. On February 8, 2023, the Landlord amended the total compensation amount to \$17,986.58, based on completed repairs and further cleaning. This amount consists of:

- \$9,896.59 for repair of damages, cleaning and paying “garbage fines”.
 - \$5,731.58 paid to a firm to repair damages, invoiced on September 2, 2022
 - \$3,045 paid to a cleaning firm, invoiced on August 15, 2022
- \$280 for a fine “incurred by the tenant for leaving garbage on the roadway in front of the house”.
- \$5,640 for a landscaping work estimate (“major clearing and replanting”) to be completed in spring 2023
- \$840 paid for partial cleaning of yard, invoiced on October 18, 2022, noted as “landscaping” on the invoice
- \$2,450, estimate to re-upholster armchairs, two in living room (\$2,000) and three in the dining room (\$450), to be completed in spring or summer 2023.

The Landlord provided proof of damage in the rental unit with 34 photos, described in a list for each photo. This is to show the need/justification for each of their claimed amounts.

The Landlord’s invoice (\$5,731.58) for completed damage repairs includes 23 miscellaneous items:

1. closet doors repair: \$130
2. kitchen sink seal: \$50
3. toilet repair: \$152.96

4. shower head replace: \$120.97
5. 41 separate light bulb replacements (for \$721.60)
6. front door repair: \$120
7. alignment of kitchen cabinet doors: \$50
8. main bathroom stopper repair: \$76.48
9. electrical cover plates: \$30
10. wall repair and painting: \$350
11. mold treatment (\$225)
12. installation of blinds (\$680)
13. tile repair: \$150
14. caulking all showers and toilet: \$200
15. a change of kitchen faucet: \$400
16. house number reattach: \$50
17. kitchen flooring, material and labour: \$1,436.64
18. table glass: \$220
19. a wireless doorbell: \$145
20. garbage dump: \$100
21. wall patches: \$0
22. master bedroom door repair: \$0
23. carpet fastening in dining room: \$50

The Tenant in the hearing stated the movers in the move-out process damaged the wall along the staircase; however, this would still rest with the Tenant as damages. In their evidence, the Tenant provided a copy of their notification to the Landlord of the broken bi-fold door and blinds, in February, 2021. The Tenant stated they did not receive any assistance from the Landlord on this request.

The Landlord provided 33 photos, which a description list for each, for extra cleaning in the rental unit. The Landlord's invoice paid to the cleaning firm includes \$1,000 for move out cleaning, \$700 for carpet cleaning, and \$1,200 for "high pressure washing".

The Tenant presented their own paid invoices for general cleaning (\$840) and carpet cleaning (\$735) at the very end of the tenancy. This work paid for was part of the reason the Tenant sought to return to the unit on June 23, to verify cleaning they paid for and to look closely at damages they heard about via text messages. In their written statement, the Tenant also wrote that they paid for extra cleaning at the start of the tenancy when their requests about this on October 4, 2019 received no response. In regard to the carpet specifically, the Tenant noted the carpet was subject to staining because of a roof leak in December 2019. (In response, in the hearing, the Landlord

noted this was limited to one single spot, not the whole of the carpeting in the rental unit.)

The Landlord included an image of the bylaw violation fine issued by the city on June 29, 2022, for failure to properly “enclose wildlife attractants.” This was the garbage fine and a letter from the City dated June 29 describes the bylaw department’s visit. This was a response to a call about waste strewn across the roadway at the Landlord’s address. In the hearing, the Tenant acknowledged that they were responsible for this.

For further landscaping, the Landlord provided a quote dated June 26, 2022, for “gravel cleaning and removal”, and “sod planting”. The subtotal is \$6,840. The Landlord provided 6 photos that show many plants and bushes, pots set up on pallets, weeds, and the yard being dug up.

On upholstery, the Landlord provided a printout of a sheet that states: “On average, the cost to reupholster a dining room chair costs between \$150 to \$300 each.” A second printout states: “Most Canadian homeowners spend an average of \$388 to \$1,702 per piece of reupholstery.” The Tenant provided no submission on this issue in the hearing.

Analysis

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide enough evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

For what the Landlord presented as compensable damages within the rental unit, in summary I find it difficult to link a large part of the work undertaken to either the duration of the tenancy, and find that most items were not identified in the final condition

inspection meeting. Basically the Landlord has not shown that either a damage exists, nor that it stems from actions or neglect of the Tenant during the tenancy. On a few items, the Tenant notified the Landlord about issues; however, these were not looked into, and that is a questionable effort at mitigation.

It is necessary to reproduce the separate 23 items of work for which the Landlord paid for:

1. closet doors repair: \$130 – I find the Tenant notified the Landlord of this earlier on in March 2021, with no solution proffered by the Landlord. This represents a cost that was not mitigated. These doors needing resetting (not proven as damaged) existed for the Tenant, not repaired, for the later part of this tenancy.
2. kitchen sink seal: \$50 – Never mentioned in the inspection reports as an issue.
3. toilet repair: \$152.96 – Never identified as an issue therefore, I cannot find this is damage linked to the Tenant.
4. shower head replace: \$120.97 – Never identified as an issue to the Tenant who could have addressed this if given the chance.
5. 41 separate light bulb replacements (for \$721.60) – The inspection report noted only 5 lightbulbs, in total, needing replacement. The Tenant readily identified this as 3 separate lightbulbs from the condition inspection report. This piece of the Landlord's claim is inflated beyond belief. Any burnt-out lightbulbs I find are reasonable wear and tear and in this piece the Landlord did not mitigate the claim. Additionally, not made known to the Tenant at the end of the tenancy and the Tenant could have replaced lightbulbs on their own for minimal cost.
6. front door repair: \$120 – Never identified as an issue; therefore, I cannot find this was damage linked to the Tenant, or anything other than maintenance.
7. alignment of kitchen cabinet doors: \$50 – I attribute this to reasonable wear and tear throughout this tenancy that started in 2019.
8. main bathroom stopper repair: \$76.48 – Never identified as an issue to the Tenant.
9. electrical cover plates: \$30 – Never identified as damaged in the report. Tenant could have been afforded the opportunity to repair this on their own at minimal cost.
10. wall repair and painting: \$350 – Condition of walls throughout the report was listed as "similar", even to the same number of holes in the wall in the entry. Any other marks or scratches I find are routine wear and tear over the course of this tenancy and not damage. Any instances of wall marks or holes are a matter of routine maintenance.
11. mold treatment (\$225) – Never identified as an issue stemming from the tenancy.

12. installation of blinds (\$680) – The Tenant notified the Landlord about this in March 2021 and I find there was no assistance from the Landlord to rectify the issue. The agreement specifies that the Tenant should notify the Landlord of the need for repairs, and this is precisely what the Tenant did for this item. There was no breach by the Tenant in this regard and the Landlord could have reasonably settled this matter at the time. Further, the non-repair in all likelihood hampered the Tenant's use of the blinds, and likely served to increase the degree of damage.
13. tile repair: \$150 – Not identified specifically as damage at the end of the tenancy; not presented as damage to the Tenant at the time of inspection. I attribute this to wear and tear over the course of the tenancy that began in 2019.
14. caulking all showers and toilet: \$200 – Not identified specifically as an issue at the end of the tenancy. I find this is routine maintenance for what was regular wear and tear over the course of this tenancy.
15. a change of kitchen faucet: \$400 – Never identified as an issue in the condition inspection report, despite the move-out meeting taking 4 hours.
16. house number reattach: \$50 – Never identified as an issue stemming from this tenancy.
17. kitchen flooring, material and labour: \$1,436.64 – Not specific on type of work listed on this invoice. Evidence provided by the Landlord does not easily link this to the tenancy, with a single photo (labelled as "scratches" however showing a single mark that is not easily identifiable as a scratch) on hardwood floors. The single photo of some mark on the floor does not prove that damage exists; this expense is not justified with evidence from the Landlord.
18. table glass: \$220 – Not identified as damaged in the report as at the end of the tenancy, even though apparently obvious. Landlord did not present something to show the value of glass replacement or even its size; no receipt for its purchase.
19. a wireless doorbell: \$145 – Not identified as an issue in the Landlord's evidence. Appears to be some upgrade that is not in any way linked to the tenancy.
20. garbage dump: \$100 – I infer with reason that this is for the contractor's own work after completion of work above, given that it appears on this invoice. Given that I have dismissed the great majority of this piece, I also dismiss this.
21. wall patches: \$0
22. master bedroom door repair: \$0
23. carpet fastening in dining room: \$50 – Not identified as an issue to the Tenant.

In sum, I conclude the majority of this work is upgrades, routine maintenance, or other cosmetic adjustments in the rental unit. The Landlord has not proven definitively that damage arose during the tenancy. This tenancy, along with a paid security deposit,

does not exist as a type of windfall for the Landlord to make other repairs and changes to existing items that were in place. There is also no evidence of periodic inspections by the Landlord during the tenancy. While the Landlord expressed their sadness over the state of things at the end of the tenancy, there is no evidence of periodic inspections that would act as a measure of surety to them about their property and minimize costs and impact to them at the end of a tenancy.

Additionally, if the Landlord intends to rely on a condition inspection at the start and end of the tenancy, I urge them to reconsider having this work undertaken by an agent who signed off the condition inspection noting 'yes' to professional cleaning and carpet cleaning, and 'good' for a cleanliness ranking on those items. The specific note of "some kitchen area not cleaned" does not justify in any way a claim for damages totalling \$5,731.58 as the Landlord presented here. Moreover, condition of walls throughout is listed as "similar" as what was recorded upon move in. That points to very large gaps in what was identified to the Tenant upon move out, what was recorded in the final report (not even provided to the Tenant), and what is an evidently high standard of cleanliness that the Landlord has in mind for this rental unit.

This is also my rationale for dismissing the Landlord's claim for cleaning costs and carpet cleaning costs at the end of the tenancy. The purpose of a condition inspection meeting would be to identify flaws of this nature. I find the report – again, not provided to the Tenant – does not record significant stains on carpets or other needs for repeat cleaning. I dismiss the costs of cleaning and carpet cleaning and find the Tenant paid this work on their own as the agreement specified and there was no breach by the Tenant in this regard.

Further, I find that the Tenant was not afforded the opportunity to rectify any deficiencies – oddly, identified days after a four-hour inspection meeting – that were made known after the tenancy ended, via text message with pictures. This calls into question the entire process of a condition inspection meeting.

In regard to power washing, that is a specific job requiring specialized equipment. If that was a requirement from the Tenant, that would need to be explicit in the tenancy agreement, similar in nature to carpet cleaning. From the single photo provided by the Landlord, I do not see the need for power washing, and there is nothing to distinguish that as anything but a routine maintenance job that is the responsibility of the Landlord, minus a specific requirement in the agreement.

The Tenant in the hearing acknowledged responsibility for the city-imposed fine for garbage improperly placed on the street. I grant the Landlord compensation for the amount of \$280.

The Landlord explained in the hearing that the Tenant had replaced all of the gardening and plants that were in place at the rental unit property with their own plants that were fruits and vegetables. The Landlord speculated that this was some business run by the Tenant. The move-out inspection report notes that the Tenant turned the yard/garden into a vegetable garden. The Landlord presented pictures of several plants in pots, in various areas of the property, and vegetable plants that replaced what had appeared in the planter previously.

The tenancy agreement provided by the Landlord sets the responsibility for yard maintenance with the Tenant. It also notes “owner to do major seasonal clean up (spring/fall).” It is not known whether the Landlord followed up with work at the property – *i.e.*, the seasonal clean up – on a regular basis. I find the Landlord did not pursue the issue previously yet there was a greenhouse torn down. With a view to the 5 photos the Landlord sent, I don’t see several areas requiring work; however, I do see the need for wooden flats and other material, and I will accept that this stemmed from something the Tenant had started in the garden/yard and did not fully clean up at the end of the tenancy.

I grant compensation for \$840, the amount the Landlord paid for a yard clean-up in October 2022. Also, that invoice was for work noted as “landscaping” which I find covers the kind of work involved with a clean-up of the plants and pallets seen in pictures.

As per the agreement, the responsibility for a seasonal clean-up lies with the Landlord. The Landlord listed the amount of \$5,640 for work of a different nature they intended to undertake the following year in the spring. With the quoted work being gravel cleaning and removal, and sod planting, the quote is not specific enough on the work involved that links back to the tenancy, with issues involving either gravel or sod not apparent in the Landlord’s evidence. I conclude that is more major landscaping work, or an upgrade, not involving anything left behind by the Tenant. Additionally, I find this falls more in line with the “major” seasonal clean-up that the agreement sets as the responsibility of the Landlord. I accept there is a large amount of yard work involved; however, I find the Landlord did not address the issue with the Tenant adequately either during the tenancy or at the end of the tenancy.

The Landlord claims compensation for upholstery on 3 dining room chairs and 2 chairs in the living room. The information they provided is not specific to the job required for each of the items shown in their evidence; cost averages are varied enough in range to accommodate smaller or larger jobs, not specific to the furniture here. This does not establish the value of the damage or loss to the Landlord, without consideration as to why the Landlord has not had the work yet completed. The Landlord listed the dining room chairs as “antique”, imparting some other value to these items, but also implying they are older. I question why the Landlord would leave antique item furniture in the possession of a Tenant minus some special agreement on their care. I find it more likely than not that the pieces are older and would deteriorate in any event, even from common usage. The *Residential Tenancy Policy Guideline* 40. “Useful Life of Building Elements” sets a typical life cycle for furniture at 10 years. I find it more likely than not that the items are past their useful life cycle, being used for quite some time prior to the beginning of the tenancy.

With no accurate cost for the work involved, and my finding that the items are past their useful life cycle in any event, I grant no compensation to the Landlord for upholstering furniture items. There was no separate agreement in place for the care of these items.

In total, I find the Landlord has established a claim of \$1,120. This is based on a review of the available evidence and the parties’ testimony in the hearing.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit and/or pet damage deposit held by a landlord. The Landlord here has established a claim of \$1,120. After setting off the security deposit \$2,250, there is a balance of \$1,130. I am authorizing the Landlord to keep \$1,120 from the security deposit and grant a monetary order to the Tenant for the return of the balance to them.

Because the Landlord was somewhat successful in their claim, I grant \$50 reimbursement for the Application filing fee, subtracted from the balance owing.

Conclusion

Pursuant to s. 38 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$1,080 the recovery of the security deposit remainder in this matter. I provide this Monetary Order in the above terms and the Tenant must serve the Monetary Order to the Landlord as soon as possible. Should the Landlord fail to comply with the Monetary

Order, the Tenant may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: April 6, 2023

Residential Tenancy Branch