



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing occurred by conference call based on an Application for Dispute Resolution filed by the Landlord September 01, 2022 (the “Application”). The Landlord applied:

- To recover unpaid rent
- For compensation for damage to the rental unit
- To keep the security and pet damage deposits
- To recover the filing fee

N.E. appeared at the hearing for the Landlord. The Tenant appeared at the hearing with Legal Counsel. The Tenant called E.S. as a witness during the hearing.

The Landlord provided a Monetary Order Worksheet setting out the amounts sought which totalled more than the amount stated on the Application. The Tenant and Legal Counsel confirmed receipt of the Monetary Order Worksheet so I have considered the amounts set out in it.

Both parties provided evidence for the hearing. I confirmed service of the hearing package and evidence, and there were no service issues.

The parties were given an opportunity to provide relevant evidence and submissions. I have considered all 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 recover unpaid rent?
2. Is the Landlord entitled to compensation for damage to the rental unit?
3. Is the Landlord entitled to keep the security and pet damage deposits?
4. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord sought the following:

Item	Description	Amount
1	Blind repair	\$236.25
2	Suite clean	\$607.50
3	Patio door & screen repair	\$325.50
4	Window repair quote	\$3,703.88
5	Lock and toilet seat	\$143.32
6	Patch and paint damage	\$1,377.04
7	Stair carpet clean	\$126.00
8	August and September rent	\$6,464.00
9	Filing fee	\$100.00
	TOTAL	\$13,083.49

A written tenancy agreement was provided and the parties agreed it is accurate. The tenancy started June 11, 2021, and was for a fixed term ending June 30, 2022. The tenancy then became a month-to-month tenancy. The parties agreed rent was \$3,248.00 effective July 01, 2022. Rent was due by the first day of each month. The Tenant paid a \$1600.00 security deposit and \$1,600.00 pet damage deposit.

The parties agreed the Tenant provided the Landlord their forwarding address on August 04, 2022.

A Condition Inspection Report (the "CIR") was provided. The parties agreed the CIR is accurate as it relates to the move-in inspection. The Tenant said they received a copy of the CIR in person on the date of the move-in inspection.

The parties agreed N.E. and Legal Counsel for the Tenant did a move-out inspection August 19, 2022. The parties agreed Legal Counsel received a copy of the CIR in person at the move-out inspection.

N.E. testified that the Landlord kept the pet damage deposit for damaged blinds and carpet cleaning due to pet hair. The Tenant and Legal Counsel said the pet damage deposit should not have been kept because there was no pet damage in the rental unit and the carpet was clean at move-out.

#1 Blind repair \$236.25

N.E. stated as follows. A blind in the bedroom had teeth marks on it at the end of the tenancy. The damage is noted on the CIR and Legal Counsel agreed with the CIR at the move-out inspection. The CIR states, "animal damage to blind". The blind could not be repaired and had to be replaced. The invoice for replacing the blind is in evidence. The Tenant's evidence about a blind relates to a different blind in the rental unit.

The Tenant and Legal Counsel stated as follows. The damage to the blind in the bedroom was minor. There were only a couple teeth marks on the blind. There was only cosmetic damage to the blind and the damage did not require the blind to be replaced.

#2 Suite clean \$607.50

N.E. stated as follows. The Tenant did not leave the rental unit reasonably clean. The Landlord is relying on photos, the CIR and an invoice in evidence.

The Tenant and Legal Counsel stated as follows. The Tenant cleaned the rental unit at the end of the tenancy. It may be that around two further hours of cleaning were required; however, the 13.5 hours claimed by the Landlord is excessive. The Tenant's photos show the rental unit was clean. The Tenant had to leave the rental unit quickly due to threats from a neighbour.

#3 Patio door & screen repair \$325.50

N.E. stated as follows. The lock on the patio door was broken off and the door could not be locked. The handle had to be replaced. A photo of the handle is in evidence.

The screen on the patio door was coming out of the frame and had to be replaced. The Landlord is relying on photos, the CIR and an invoice in evidence.

Legal Counsel said the Tenant agrees to pay for this claim.

#4 Window repair quote \$3,703.88

N.E. stated as follows. The Tenant screwed air conditioning units into the vinyl trim of the windows. There were several large screw holes in multiple windows. Emails in evidence show the damage could not be repaired and the windows had to be replaced. The Landlord is relying on photos, emails, the CIR and an invoice in evidence.

The Tenant and Legal Counsel stated as follows. There were only two holes in a window and the damage was cosmetic, it did not impact the use of the window. The damage to the window was not significant enough to warrant replacement of the window. The Tenant may be responsible to pay for some depreciation in the value of the window, but not responsible to pay for full replacement. The Tenant is relying on RTB Policy Guideline 1 and what it says about window coverings.

#5 Lock and toilet seat \$143.32

N.E. stated as follows. The Tenant replaced the original door lock with a keypad lock without permission. The keypad had to be replaced because it was not consistent with the rest of the townhouses and because the Tenant may have still had access with the keypad. A toilet seat in the rental unit had been replaced during the tenancy with one that did not fit the toilet. The toilet seat had to be replaced at the end of the tenancy. The Landlord is relying on photos, the CIR and Home Depot receipt in evidence.

The Tenant and Legal Counsel stated as follows. The Tenant had permission to install the keypad if "everything went back". The Tenant offered to put the original lock back on but the Landlord never responded to their email. The Tenant did not put the original lock back on because of leaving so quickly. The toilet seat at issue never fit properly and was never changed by the tenants.

E.S. testified that a toilet seat in the rental unit was wobbly and did not fit well from the start of the tenancy. E.S. said they never changed a toilet seat in the rental unit.

#6 Patch and paint damage \$1,377.04

N.E. stated as follows. There were large screw holes and gouges in the walls of the rental unit that had to be patched and painted. Only the damaged walls were painted, not the entire rental unit. The Landlord is relying on photos, the CIR and an invoice in evidence.

The Tenant and Legal Counsel stated as follows. There were some holes in the walls at the end of the tenancy but this was normal wear and tear. The Tenant agrees to pay for patching and painting the wall the television was mounted on because it left larger holes. The painting invoice shows the Landlord had almost the entire rental unit painted which was excessive. The Tenant should only be responsible for 1/3 of the cost of painting.

In reply, N.E. referred to the CIR and said they set out the number of large screw holes in each area.

#7 Stair carpet clean \$126.00

N.E. stated as follows. The carpet was not clean at the end of the tenancy as dog hair was easily pulled up from the carpet. The Tenant says they cleaned the carpet but they have not provided documentary evidence of this. The Landlord is relying on photos, the CIR and an invoice in evidence.

The Tenant and Legal Counsel stated as follows. The Tenant borrowed a steam cleaner and cleaned the carpet at the end of the tenancy. The Tenant's photos show the stairs were clean.

#8 August and September rent \$6,464.00

N.E. stated as follows. The Tenant told the Landlord August 04, 2022, that they had moved out of the rental unit at the end of July and wanted to do a move-out inspection. This is the first the Landlord had heard about the Tenant moving out. The Tenant did not pay August rent. The Landlord could not re-rent the unit for September given the extent of the cleaning and repairs that had to be done.

The Tenant and Legal Counsel stated as follows. The Tenant moved out of the rental unit quickly due to threats from a neighbour which was also a tenant of the Landlord. The Landlord knew about the threats and did not address the issue.

The Tenant and Legal Counsel could not point to correspondence with the Landlord that complied with the breach letter requirements set out in RTB Policy Guideline 8.

Both parties provided documentary evidence which I will refer to below as necessary.

Analysis

Under 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 are 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 the 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 CIR and testimony of the parties, I find the Tenant or Legal Counsel participated in the move-in and move-out inspections and therefore the Tenant did not extinguish their rights in relation to the security or pet damage deposits under sections 24 or 36 of the *Act*.

Based on the CIR and testimony of the parties, I find the Landlord complied with the *Act* and *Regulations* in relation to the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security or pet damage deposits under sections 24 or 36 of the *Act*.

The Landlord was allowed to claim against the pet damage deposit because the CIR states there was animal damage to a blind and the Landlord has claimed for the cost to replace the blind.

The tenancy ended August 19, 2022, the date the move-out inspection was done.

The parties agreed the Tenant provided the Landlord their forwarding address on August 04, 2022.

Under 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 Tenant's forwarding address in writing to repay the security and pet damage deposits or file a claim against them. Here, the Landlord had 15 days from August 19, 2022, to repay the security and pet damage deposits or file a claim against them. The Application was filed September 01, 2022, within time.

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:

- 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.

I note at the outset that the Tenant had to comply with the *Act* regardless of what was happening with their neighbour. If the Tenant felt it was not safe to be at the rental unit dealing with end of tenancy matters, the Tenant had to have someone deal with the matters on their behalf. The Tenant needing to leave the rental unit quickly does not change their obligations under the *Act*.

I also note that Legal Counsel signed off on the CIR as accurate and therefore I accept the CIR shows the condition of the rental unit at the end of the tenancy.

#1 Blind repair \$236.25

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...

Based on the Landlord's photo and CIR, I accept there was damage to a blind in a bedroom. The damage is beyond reasonable wear and tear because it was caused by an animal and not by normal use of the blinds. The Tenant breached section 37 of the *Act*.

Based on the Landlord's photo, I find the damage to be very minimal. I do not accept that the blind had to be replaced due to the damage. RTB Policy Guideline 16 addresses damages and states:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I award the Landlord **\$25.00** as nominal damages for the blind damage.

#2 Suite clean \$607.50

Section 37 of the *Act* applies to this claim as well.

Based on the Landlord's photos and CIR, I accept some areas of the rental unit could have been cleaned more thoroughly and that the Tenant breached section 37 of the *Act*.

Based on the Landlord's photos, I find the cleaning required at the end of the tenancy was minimal. The Tenant did not have to leave the rental unit perfectly clean. The standard is reasonably clean. The photos from both parties show the rental unit was left reasonably clean for the most part.

I agree with Legal Counsel that maybe another two hours of cleaning was necessary at the end of the tenancy. Cleaning costs \$20.00 to \$25.00 per hour on average. I award the Landlord **\$50.00** for cleaning costs.

#3 Patio door & screen repair \$325.50

The Tenant agreed to pay this cost and the Landlord is awarded **\$325.50**.

#4 Window repair quote \$3,703.88

Section 37 of the *Act* applies to this claim as well.

The CIR has one note about screw holes in a window frame but does list two windows as damaged on page two. The Landlord's photos show screw holes in two separate windows. I accept the Tenant damaged two windows in the rental unit. The damage is beyond reasonable wear and tear, the screw holes did not result from normal use of the windows. The Tenant breached section 37 of the *Act*.

RTB Policy Guideline 1 does not apply because it does not address the type of damage done here.

The issue here is that the Landlord is asking for \$3,703.88, which is a large amount of money, without providing evidence that the windows had to be replaced due to the damage. The Landlord provided emails with the window company; however, the emails do not address whether the screw holes in the windows posed risk of further damage or impacted the use of the windows. The emails simply show the screw holes cannot be repaired but this is not the same as showing that the windows had to be replaced because of the screw holes. The emails do not show that the Landlord could not have left the windows as is.

Given the above, I award the Landlord half the amount sought being **\$1,851.94**. This amount is reasonable because the Tenant intentionally damaged the windows by putting screws into them, something well beyond reasonable wear and tear. It was unreasonable for the Tenant to put screw holes in the windows without talking to the Landlord about this first and I find this type of damage serious. The amount awarded accounts for the obvious depreciation in value of the windows due to the damage. However, in the absence of further evidence that the windows could not be left as is and had to be replaced, I am not satisfied the Landlord is entitled to more than the amount stated.

#5 Lock and toilet seat \$143.32

Section 37 of the *Act* applies to this claim as well.

The Tenant had to put the original lock back on at the end of the tenancy. There is no reason the Landlord needed to tell the Tenant this again given the Tenant said the Landlord gave permission to change the lock if “everything went back”. The Landlord did not need to re-state this at the end of the tenancy. The Tenant breached section 37 of the *Act*.

I accept the Landlord had to change the lock back to the original and that this cost \$74.98 plus tax for a total of **\$83.98**. The Landlord is awarded this amount.

I decline to award the Landlord compensation for the toilet seat. The Tenant and E.S. testified that the toilet seat was the same at the start and end of the tenancy and that they did not change it. Based on the Landlord’s photo of the toilet seat, I am not satisfied this is an issue the parties would have noticed and noted on the move-in CIR or that the tenants would have brought to the Landlord’s attention because it appears to be a very minor issue. I am not satisfied the tenants breached section 37 of the *Act* in relation to the toilet seat.

#6 Patch and paint damage \$1,377.04

Section 37 of the *Act* applies to this claim as well.

I accept there were numerous screw and nail holes in the walls of the rental unit at the end of the tenancy because the CIR states this. I also accept there were gouges in the walls because the CIR states this. The Landlord’s photos show holes and gouges in the

walls, not just where the television was. The photos show 13 areas of wall damage. I find the Tenant breached section 37 of the *Act*.

I accept the Landlord had to have the walls patched and painted where there was damage. I accept the patching and painting cost \$1,377.04 based on the invoice in evidence. I accept the Landlord did not have the entire rental unit patched and painted because the invoice supports this. I find the amount sought reasonable considering the areas that required patching and painting. I award the Landlord **\$1,377.04**.

#7 Stair carpet clean \$126.00

Section 37 of the *Act* applies to this claim as well.

The CIR states that the carpet on the stairs required cleaning. A photo from the Landlord in evidence supports that the carpet required cleaning. I am satisfied the Tenant breached section 37 of the *Act*.

I accept the Landlord had to have the carpet cleaned. I accept the carpet cleaning cost \$126.00 based on the invoice. I find the amount sought reasonable and award the Landlord **\$126.00**.

#8 August and September rent \$6,464.00

The Tenant had to pay rent while in possession of the rental unit under section 26 of the *Act*.

The Tenant was only allowed to end the tenancy in accordance with section 45 of the *Act* which states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) 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...

(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.

RTB Policy Guideline 8 explains material terms and states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I am not satisfied the Tenant complied with section 45(3) of the *Act* because the Tenant and Legal Counsel could not point to correspondence with the Landlord that set out the details required by RTB Policy Guideline 8.

The Tenant let the Landlord know August 04, 2022, that they had moved out. The Tenant's notice was effective September 30, 2022. The Tenant remained liable to pay for loss of rent up to this date.

However, the Landlord still had to minimize their loss by trying to re-rent the unit. The Landlord was not entitled to do nothing and claim loss of rent until the end of September. I do not accept N.E.'s position that the rental unit could not be re-rented due to the state of it at the end of the tenancy. The rental unit overall was left in a pretty good state and most of the issues noted could have been addressed with new tenants in the rental unit.

It is not reasonable to expect the Landlord to have re-rented the unit for August when they only learned August 04, 2022, that the Tenant had moved out. I award the Landlord August rent.

The Landlord is not entitled to September rent because I do not accept that they could not have re-rented the unit for September.

The Landlord is awarded **\$3,248.00**.

#9 Filing fee \$100.00

The Landlord is entitled to recover the \$100.00 filing fee under section 72(1) of the *Act* because they have been partially successful in the claim.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Blind repair	\$25.00
2	Suite clean	\$50.00
3	Patio door & screen repair	\$325.50
4	Window repair quote	\$1,851.94
5	Lock and toilet seat	\$83.98
6	Patch and paint damage	\$1,377.04
7	Stair carpet clean	\$126.00
8	August and September rent	\$3,248.00
9	Filing fee	\$100.00
	TOTAL	\$7,187.46

The Landlord can keep the \$3,200.00 security and pet damage deposits. The Landlord is issued a Monetary Order for the remaining \$3,987.46 under section 67 of the *Act*.

Conclusion

The Landlord is issued a Monetary Order for \$3,987.46. This Order must be served on the Tenant. If the Tenant fails to comply with the 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: May 29, 2023

Residential Tenancy Branch