



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL, MNDL-S, MNDCL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for: a monetary order for unpaid rent of \$3,950.00, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated February 15, 2023 ("10 Day Notice"); a monetary order of \$3,274.35 for damages, retaining the security deposit to apply to these claims; and to recover their \$100.00 Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 50 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about it. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served the Tenant with these documents and her evidence by email. She said the Tenant confirmed receipt of these documents, and that he said the Landlord could send her evidence the same way, which she did. The Landlord said she uploaded copies of these email exchanges between the Parties, but I could not find it in the evidence before me. However, based on the testimony and

evidence before me, I find it more likely than not that the Tenant was served with the Notice of Hearing documents and the Landlord's evidence by email on April 12, 2023.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Landlord that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Landlord said she was not recording the hearing.

The Landlord miscalculated the amount of rent owing at the time of the Application, saying that it was \$3,950.00, rather than \$4,650.00 when the Application was served. The Landlord said that the Tenant vacated the rental unit on March 17, 2023, and she thought that she could not claim for the time he was not there. However, I advised the Landlord that the Tenant still owes her for the rest of March, because she could not have found another tenant for March 18, especially given the amount of damage left behind by this Tenant.

Pursuant to Rule 4.2 and section 64 (3) (c) of the Act, I amend the Application to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the Landlord's error in the original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$3,950.00 to \$4,650.00.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Landlord said that the rental unit was new in 2021, and that this Tenant was her first tenant in the suite. She confirmed that the fixed term tenancy began on June 26, 2021, and ran to June 30, 2022, and that the Parties then entered another fixed term tenancy. The Landlord said that the Tenant was required to pay the Landlord a monthly rent of \$1,550.00, due on the first day of each month. She confirmed that the Tenant paid her a security deposit of \$775.00, and no pet damage deposit.

#1 UNPAID RENT → \$4,650.00

In the hearing, the Landlord confirmed that the 10 Day Notice was signed and dated February 15, 2023, and that it has the rental unit address. It was served in person and by email on February 16, 2023, with an effective vacancy date of March 17, 2023, which is automatically corrected by section 53 of the Act to be February 26, 2023. The 10 Day Notice was served on the grounds that the Tenant failed to pay the Landlord any rent in January through March 2023. I note that the Tenant's signature is on the bottom of the first page of the 10 Day Notice, acknowledging its receipt.

In the hearing, the Landlord said that the Tenant paid his rent in December 2022 in installments throughout the month. However, the Landlord said that the Tenant has not paid any rent since then, and that he lived in the rental unit until vacating it on March 17, 2023. As such, the Landlord states that the Tenant failed to pay \$1,550.00 per month from January through March 2023, for a total of \$4,650.00 owing currently. The Landlord also spoke of having fined the Tenant \$25.00 any time he was late paying rent. However, as she did not claim these fees in the Application, it would be administratively unfair to add them now.

In the hearing, the Landlord said that she was able to rent out the unit again, "Just now".

#2 COMPENSATION FOR OTHER MONEY OWED → \$3,274.35

The Landlord had the following four claims in this section.

A. Refrigerator Damage → \$881.56

In the hearing, the Landlord explained this claim, as follows:

He damaged the fridge door – see photos. Everything is brand new in this house.

There are three holes on the fridge door. The supplier said to replace the door, you have to purchase all the different parts. These parts were out of stock. He said I can check online for the availability of parts, but nothing has appeared online yet.

The Landlord said that the refrigerator still works, but she said:

It's still working, but everything is brand new. I'm not sure if I have to replace it, but I want to, because we have everything new in this house. I want to replace everything he damaged.

The Landlord said that, like everything else, the refrigerator was new in 2021, at the start of the tenancy. She said this was her first tenant in the new rental unit.

The Landlord submitted photographs showing small holes in side of the refrigerator door. The Landlord also submitted a spreadsheet showing the seven parts that need to be replaced for the refrigerator door and the cost of each, plus shipping and taxes, which totals to \$881.56.

B. Range Burners → \$100.99

The Landlord explained what was wrong with the range burners, as follows:

He burned it up. He put the friar on top of it. When I turned on the electricity, it's full of smoke and everything's melted. He put it away, and I took it out and tested it. He forgot to turn off the air fryer.

The Landlord said the range was new in 2021. The Landlord submitted photographs of dirty burner pans, and dirty burners with dirty pans beneath. She also provided a diagram of the cooktop parts that can be replaced and the cost to do this.

C. Blind Replacement → \$150.00 (Est.)

I asked the Landlord what happened to the blind, and she said:

This claim is very conservative. He used the air fryer and burned it. The shape changed in the kitchen. He put a hot frier beside the blind.

I haven't found one of this type yet. Maybe I need to check with the builder,

because our house is quite new and everything came from the builder. I checked supply stores and found that the smaller size is \$200.00 or \$300.00. This window is a large window in front of the kitchen, so it will be more than \$150.00.

The Landlord confirmed that the blinds were new when the residential property was new in 2021, just before the tenancy started. The Landlord provided photographs showing some of the slats in a blind to be warped in a way that it appears that heat is most likely to have caused the morphed shape.

D. Baseboard Heaters → \$400.00 (Est.)

The Landlord explained this claim, as follows:

They were new and he smoked in the house and it was stained by the smoke. Everything is stained inside, so when you turn on the heating, there's a gap and then it's full of the smell inside, and I tried to clean them. So, four heating units.

We tried our best, but it's not working and we cannot clean the smell - you can see the pictures – it's burned on. Everywhere is like this - the glass, the wall is smoky. See pictures of the ventilation system – brand new they were white and now it's yellow. And the wall is yellow.

He was a very heavy smoker and he promised he would smoke outside. But he was sick for a few weeks, but the smoke amount in the house is not from just a few weeks. See the pictures of the window – see the colour of the water on the glass. Everything is smoky.

The Landlord provided photographs of a baseboard heater that has yellow/brown spots on it. She said the heaters are all the same in the living room, bedroom, and bathroom. The Landlord has estimated \$100.00 each for the replacement of these units.

E. Deep Cleaning → \$1,400.00

The Landlord's evidence is that it took two people cleaning the rental unit for 28 hours each to do a sufficient job cleaning the rental unit. She said they charged \$25.00 an hour each. I asked her to explain why it took this much cleaning, which amounts to each person working 5 hours a day for 5.6 days.

I asked her how she arrived at this amount, and she said:

We have a quote from a smoke removing company. They said if they removed the smoke, it would take three people at \$85 each and one day with a device on in the house for a whole day for this sized unit. After all this, we still need to repaint. If we used them, they cannot guarantee to get rid of the smell.

I asked if the Landlord arranged for these people to do the cleaning, and she said:

No, we would rather to do it by ourselves. We cleaned every day for two hours after work, using baking soda and vinegar and detergent that they recommended to us. We estimated a \$25.00 hourly rate for ourselves.

I asked if they each worked for 28 hours, and she said:

Yes, the whole day on the weekends. We had to wash the walls completely three times and use the soda and vinegar and then the water – everywhere - glass, cabinets, windows. He never cleaned up the house at all, and there are many heavy stains. And also, the washer and dryer were full of oily, smelly things.

The Landlord's photographs of different parts of the rental unit included yellowy looking:

- Wall vents for air circulation;
- Baseboard heaters;
- Dirty windows – a yellow, spotty haze;
- Wall marks and dirt;
- Dirty cupboards and shelves;
- Filthy blinds; and
- Dirty walls and ceiling.

A photograph of the bathtub also contained yellowy dirty water from the cleaning. Yellowy water was evident in many of these photographs, showing the cleaning that was done and had to be done.

The Landlord uploaded a text from potential renters, to whom the Landlord wanted to rent the unit, but these people did not want to rent it, because of the smell of smoke.

F. Cleaning Supplies → \$50.00 (Est.)

The Landlord explained this claim, as follows:

We used all of our cleaners from home, plus two big bottles of vinegar from [an international retailer], no receipt because we bought everything in groceries from [the international retailer]. We used countless paper towels. If I calculated everything – 10 pair of gloves, vinegar, paper towel, and the baking soda, also the dish soap - I think just for paper towel it's \$50.00.

To get rid of the smoke and smell, and also the brush to wash. I didn't do this individually; we just went out and bought what we needed. \$50.00 is not enough.

G. Ozone Machine → \$189.28

The Landlord explained this claim, saying that the cleaning companies she spoke with said they would need to use one of these machines at the end of the cleaning, to further improve the smell. The Landlord said:

We turned it on for three days and it improved a little bit, but the smell came back. We used it in each room - every room - you have to leave it. We bought it from [an online vender]. It's not working for more than two days. It comes back.

He was smoking everywhere - not outside or by the window or the fan. When you spray the vinegar and soda on the wall, everywhere is yellow and running. Everywhere you see the yellow water. I uploaded the photos. After we cleaned it, it still smelled, so we had to try using this machine.

The Landlord submitted an invoice for the purchase of this machine for the amount claimed.

Analysis

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

Before the Landlord testified, I let her know how I analyze evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline #16 ("PG #16") sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;

2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
 3. The value of the loss; and,
 4. That the Landlord did what was reasonable to minimize the damage or loss.
- ("Test")

#1 UNPAID RENT → \$4,650.00

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

As set out in PG #16:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.

Further, section 67 of the Act allows an arbitrator to determine the amount of compensation to be awarded to a party if another party has not complied with the Act, the regulations, or a tenancy agreement.

Based on the evidence before me in this matter, I find the Tenant lived in the rental unit without paying rent in January through March 2023. I, therefore, **award the Landlord** with unpaid rent of **\$4,650.00**, pursuant to sections 26 and 67 of the Act.

#2 COMPENSATION FOR OTHER MONEY OWED → \$3,274.35

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons permitted on the property or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged. However, sections 32 and 37 also say that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

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

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

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

[emphasis added]

A. Refrigerator Damage → \$881.56

Based on the Landlord's testimony in the hearing and her photographs of the damage to the refrigerator door, I find that what the Tenant has done consists of more than mere wear and tear. However, I note that the refrigerator still works and the replacement parts have not yet been purchased. However, they have all been identified and priced for the total that the Landlord has claimed.

I find the Landlord has provided sufficient evidence to prove on a balance of probabilities that the Tenant damaged the refrigerator door, which is contrary to sections 32 and 37 of the Act. This breach of the Act has caused the Landlord to incur damage or loss, and the value of that loss is clearly set out in the Landlord's evidence.

Further, I find the Landlord has fulfilled the fourth step of the Test by seeking out replacement parts, rather than an entirely new refrigerator. Based on everything before me in this matter, I **award the Landlord with \$881.56** from the Tenant based on sections 32 and 67 of the Act.

B. Range Burners → \$100.99

While the Landlord said the Tenant was using an air fryer on top of the burners that

caused this condition to arise, she did not say how she knew this. I find it looks more like something boiled over on the stove and burned onto the burners. Regardless, the Landlord said that when she turned the burners on that it caused them to emit smoke and smell. I find it more likely than not that trying to burn off whatever was singed onto the burners would have caused the smoke detectors to go off, and possibly added further smell to the unit.

Based on the evidence before me in this matter, I find that the Landlord has provided sufficient evidence to establish the steps of the Test, including the fourth step. Some landlords would try to replace and claim for the entire appliance, rather than the specific pieces affected by the tenant's breach of the Act. I find that the Landlord has done what is reasonable in the circumstances to mitigate her damage, including the amount claimed in this situation. I, therefore, **award the Landlord with \$100.99** for this claim, pursuant to sections 32 and 67 of the Act and PG #16.

C. Blind Replacement → \$150.00 (Est.)

Again, I find that the Landlord provided sufficient evidence to establish that it is more likely than not that the Tenant caused damage to the rental unit that he did not repair, contrary to sections 32 and 37 of the Act. I find from the Landlord's evidence that she underestimated the amount that it will cost to replace the blind. However, I find this to be appropriate, as the Landlord said she has not contacted the builder yet, who may be able to get her a better deal on the blind than she can get through retail stores. Then again, the builder may be of no assistance, so the Landlord will have underestimated this claim.

When I consider everything before me on this matter, I find the Landlord has fulfilled her burden of proof on a balance of probabilities. I, therefore, **award the Landlord with \$150.00** pursuant to sections 32 and 67 of the Act.

D. Baseboard Heaters → \$400.00 (Est.)

The Landlord may have been trying to minimize or mitigate this claim by estimating this amount. However, she had otherwise advised me of having spoken with someone about the cost of her claims, but she did not direct me to any documentary evidence to establish the amount claimed herein.

I find from the Landlord's evidence that she estimated this, herself, rather than having contacted a supplier. As such, I find that the amount claimed is not sufficiently

researched to comply with the third step of the Test of establishing the value of the claim. I, therefore, **dismiss it without leave to reapply**, pursuant to section 62 of the Act.

E. Deep Cleaning → \$1,400.00

I find that the Landlord provided sufficient evidence of the filthy condition in which the Tenant left the rental unit, based on having smoked and not having cleaned anything at the end of the tenancy.

As a result, I find the Landlord was forced to do a large amount of cleaning to render this unit fit for the next tenant. I, therefore, **award the Landlord with \$1,400.00** in cleaning costs incurred in this process, pursuant to sections 32, 37, and 67 of the Act.

F. Cleaning Supplies → \$50.00 (Est.)

Given the Landlord's testimony and the photographs of the condition of this unit at the end of the tenancy, I find that they would have needed a not insignificant amount of gloves, paper towel, vinegar, and baking soda to clean the dirty, smoke-smelling rental unit. I find that the Landlord has more than shown that the Tenant breached the Act by the condition in which he left the rental unit. While receipts are preferable, I find it more likely than not that the amount of supplies needed to clean this rental unit to a reasonable condition would have cost more than the \$50.00 claimed by the Landlord.

As a result, I find that the Landlord provided sufficient evidence to fulfill her burden of proof in this matter on a balance of probabilities. I, therefore, **award the Landlord with \$50.00** from the Tenant in this matter, pursuant to sections 37 and 67 of the Act.

G. Ozone Machine → \$189.28

The Landlord's evidence is that the rental unit still smelled of cigarette smoke, even after an extensive cleaning job. She said that the people who clean units with this type of smell also used an ozone machine, and as a result, the Landlord thought it prudent to use one, too. Unfortunately, the Landlord determined that the smell came back a couple days after the unit was used in specific rooms. However, I find that the Landlord was trying their best to remove the smell of cigarette smoke from their relatively new rental unit, and they took advice from apparent experts in this process. I find this is a reasonable approach to have taken and I **award the Landlord with \$189.28** from the Tenant for this claim, pursuant to sections 37, 67 and 62 of the Act.

Summary and Off Set

The Landlord has been awarded the following amounts for her claims.

#1	\$4,650.00	-unpaid rent;
#2 A.	\$ 881.56	-refrigerator door parts;
B.	\$ 100.99	-burner replacement;
C.	\$ 150.00	-blind replacement;
D.	\$ 0.00	-baseboard heaters;
E.	\$1,400.00	-deep cleaning;
F.	\$ 50.00	-cleaning supplies;
G.	\$ 189.28	-ozone machine.
	<u>\$7,421.83</u>	TOTAL AWARD

Given the Landlord's success in this matter, I also award her recovery of her **\$100.00** Application filing fee from the Tenant, pursuant to section 72 of the Act, for a total award of **\$7,521.83**.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$775.00 security deposit in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain the Tenant's **\$775.00** security deposit, pursuant to section 72 of the Act.

I grant the Landlord a **Monetary Order** of **\$6,746.83** from the Tenant for the remaining amount owing from the monetary awards, pursuant to sections 62 and 67 of the Act.

Conclusion

The Landlord is predominantly successful in her Application, as she provided sufficient evidence to meet her burden of proof on a balance of probabilities for most claims. The Landlord is awarded **\$7,521.83** from the Tenant, including recovery of her **\$100.00** Application filing fee.

The Landlord is authorized to retain the Tenant's **\$775.00** security deposit in partial satisfaction of the Landlord's monetary awards. I grant the Landlord a **Monetary Order** from the Tenant of **\$6,746.83** for the remainder of the monetary awards owing.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: May 10, 2023

Residential Tenancy Branch