



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNRL-S MNDL-S FFL**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”). The Landlord applied for the following:

- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for compensation to make repairs that the Tenant, their pets or their guests caused during the tenancy pursuant to section 67;
- authorization to keep the Tenant’s security deposit under section 38; and
- authorization to recover the filing fee for the Application from the Tenant pursuant to section 72.

The Landlord’s agent (“KR”) appeared at the participatory hearing. The Tenant did not attend the hearing even though I left the teleconference hearing connection for the entire duration of the hearing scheduled for 1:30 pm. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Dispute Proceeding Hearing (“NDRP”) generated when the Landlord applied. I also confirmed throughout the duration of the hearing that the Tenant was not in attendance and that KR and I were the only ones on the conference call. KR was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

KR stated the Landlord served the NNDR and its evidence (collectively the “NDRP Package”) by email on April 14, 2023. KR stated service of the NDRP Package by email was made pursuant to an order for substituted service made by an adjudicator of the Residential Tenancy Branch dated April 12, 2023. Based on the undisputed evidence of KR, I find the NDRP Package was served by the Landlord on the Tenant in accordance with the provisions of sections 88 and 89 of the Act. Pursuant to section 44 of the *Residential Tenancy Regulations*, I find the NDRP Package was deemed to have been served on the Tenant on April 17, 2023, being three days after it was emailed by the Landlord to the Tenant on April 14, 2023.

KR stated the Tenant did not serve any evidence on the Landlord for this proceeding.

Issues to be Decided

Is the Landlord entitled to:

- a monetary order for unpaid rent?
- a monetary order for compensation to make repairs that the Tenant, their pets or their guests caused during the tenancy?
- keep the Tenant's security deposit?
- recover the filing fee of the Application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

KR submitted into evidence a copy of the signed tenancy agreement dated June 30, 2022, between the Landlord and Tenant. The agreement states the tenancy commenced on June 30, 2022, for a fixed term ending June 29, 2023, with rent of \$940.00 payable on the 1st day of each month. The Tenant was required to pay a security deposit of \$400.00. Paragraph 2(b) of the agreement stated the Tenant was required to pay \$25.00 for late payments of rent. KR stated the Tenant paid the security deposit and that the Landlord was holding it on behalf of the Tenant. Based on the foregoing, I find there was a residential tenancy between the parties and that I have jurisdiction to hearing the Application.

KR stated the Landlord obtained an Order of Possession for the rental unit pursuant to a dispute resolution proceeding filed with the Residential Tenancy Branch that was heard on March 20, 2023. KR stated the Order of Possession was served on the Tenant by email on April 14, 2023. KR stated she called the Tenant on March 31, 2023 to arrange for a move-out inspection of the rental unit at 1:00 pm on April 1, 2023. KR stated the Tenant told her that he would not attend the inspection and that he would leave the keys for the rental unit in the kitchen. KR stated the Tenant vacated the rental unit on April 1, 2023 and the Landlord took back

possession of the rental unit. KR stated the Tenant did not serve the Landlord with a written notice providing his forwarding address. As noted above, the Landlord obtained an order for substituted service in order to serve the NDRP Package on the Tenant by email.

KR stated the Tenant did not pay any rent whatsoever for the months of November 2022 to March 2023 inclusive, totaling \$4,700.00, calculated as follows:

Date	Rent Owed	Paid	Balance
November 1, 2022	\$940.00	\$0.00	\$940.00
December 1, 2022	\$940.00	\$0.00	\$1,840.00
January 1, 2023	\$940.00	\$0.00	\$2,820.00
February 1, 2023	\$940.00	\$0.00	\$3,760.00
March 1, 2023	\$940.00	\$0.00	\$4,700.00
Total	\$4,700.00	\$0.00	\$4,700.00

KR submitted into evidence a copy of the ledger for the rental unit to corroborate her testimony on the arrears owing by the Tenant. KR stated the Landlord was seeking to recover the unpaid rent of \$4,700.00 from the Tenant.

KR stated the Tenant was late paying the rent for five months from November 2022 to March 2023. KR referred to paragraph 2(b) of the tenancy agreement that provides the Tenant was required to pay \$25.00 for each late payment. KR stated the Landlord was seeking compensation of \$250.00 for the late payment fees.

KR stated the Landlord was seeking \$2,992.00 for damages caused to the rental unit by the Tenant, his guests and/or pet as follows:

Damage Claimed	Amount Claimed
Replacement of Carpeting	\$2,150.00
Replacement of 2 closet doors, door trim drywall, doorknob and blinds	\$537.00
Paint	\$60.00
Cleaning Fee	\$245.00
Total:	\$2,992.00

KR stated the carpet in the living room was stained and had a strong odour of ammonia. KR stated the carpet in the bedroom was completely shredded, had a strong smell of ammonia and there was pet feces left behind. KR submitted three photos of the carpeting to corroborate her testimony. KR stated the carpets were replaced in the rental unit in 2018.

KR stated the blinds were missing in the bedroom, the doorknob was badly damaged, a section of drywall was missing in the bedroom and two closet doors and trim were damaged. KR submitted into evidence three photos of the damage to corroborate her testimony. KR stated the Landlord was seeking \$537.00 to replace those items together with \$60.00 for paint to repaint the damaged surfaces. KR stated the walls were repainted before the Tenant moved into the rental unit.

KR stated the rental unit was not left in a reasonably clean condition when the Tenant vacated the rental unit. KR submitted a total of 19 photos that showed the condition of the rental unit. KR stated the Landlord was seeking recovery of the cost for cleaning the rental unit of \$245.00.

KR submitted into evidence copies of all the invoices for all of items claimed by the Landlord to replace and repair the damages to the rental unit.

KR stated the building in which the rental unit is located was build around 2000. KR submitted into evidence a copy of he move-in condition inspection report, dated June 30, 20222 that was signed by the Tenant and a copy of the move-out condition inspection report that was not signed by the Tenant as he refused to attend the move-out inspection on April 1, 2023.

Analysis

Rule 6.6 of the RoP states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on Rule 6.6, the onus to prove his case, on a balance of probabilities, is on the Landlords.

Sections 7 and 67 of the Act state:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
- 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 ("PG 16") addresses the criteria for awarding compensation. PG 16 states in part:

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 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.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlords must provide sufficient evidence that the four elements set out in PG 16 have been satisfied.

1. Security Deposit

Sections 23, 24, 35, 36, 38(1), 36(6), 38(1) and 38(6) of the Act state:

- 23(1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).

- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
 - (4) *The landlord must complete a condition inspection report in accordance with the regulations.*
 - (5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
 - (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.
- 24(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and
 - (b) the tenant has not participated on either occasion.
- (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.
- 35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

- (3) The landlord must complete a condition inspection report in accordance with the regulations.
 - (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
 - (5) The landlord may make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.
- 36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
 - (b) the tenant has not participated on either occasion.
- (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, *for damage to residential property* is extinguished if the landlord
- (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
 - (b) having complied with section 35 (2), does not participate on either occasion, or
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.
- 38(1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
- (a) *the date the tenancy ends, and*
 - (b) *the date the landlord receives the tenant's forwarding address in writing,*
- the landlord must do one of the following:*
- (c) *repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
 - (d) *make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

[...]

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis in italics added]

KR provided move-in and move-out condition inspection reports for the rental unit. The Tenant participated and signed the move-in condition inspection report. The Tenant refused to attend the move-out condition inspection and did not sign the report dated July 1, 2023. There is no evidence before me that the Tenant served a written notice on the Landlord that provided his forwarding address. As such, the Tenant is not entitled to an amount equal to double the amount of the security deposit pursuant to section 38(6) of the Act. There is no evidence the Landlord attempted to make two attempts to schedule the move-out condition or, service the Tenant with a written notice scheduling the move-out condition inspection as required by section 35(1) of the Act. However, as the Landlord has made a claim for unpaid rent, the Landlord's right to make a claim for unpaid rent against the security deposit was not extinguished by section 36(2) of the Act. As such, I find the Tenant is not entitled to an amount equal to two times the amount of the security deposit pursuant to section 38(6) of the Act.

2. Landlord's Claim for Unpaid Rent

The Landlord claims \$4,700.00 for unpaid rent owing for the months of November 2022 through March 1 2023 inclusive. KR provided a copy of the ledger for the rental unit disclosing that no payments for rent were received from the Tenant for those months.

Sections 26(1) of the Act states:

- 26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

Section 26(1) states a tenant must pay the rent when it is due unless the tenant has a right under the Act to deduct all or a portion of the rent. There was no evidence before me that the Tenant was entitled to deduct all or a portion of the rent. Based on the

undisputed testimony of KR, I find the Tenant owes \$4,700.00 to the Landlord for rental arrears. I find the Landlord has satisfied the burden, on a balance of probabilities, of establishing her claim that the Tenant owes \$4,700.00 for unpaid rent for the months of November 2022 to March 2023 inclusive. As such, I find the Tenant must pay the Landlord \$4,700.00 for the unpaid rent pursuant to section 67 of the Act. Pursuant to section 72(2) of the Act, I order that the Landlord may retain and apply the security deposit of \$400.00 to the rental arrears owing by the Tenant.

3. Claim for Late Payments of Rent

KR stated the Tenant was late paying the rent five times. Paragraph 2(b) of the agreement stated the Tenant was required to pay \$25.00 for late payments of rent. I find the Landlord has established on a balance of probabilities, that the Tenant owes the Landlord compensation of \$250.00 for the late payments of rent. Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$250.00 for the late payments of rent.

4. Claim for Damages to Rental Unit

I find the condition of the rental unit at the time of move-in is consistent with the testimony provided by KR. I find the condition of the rental unit, based on the photos and testimony provided by KR, is consistent with the damages claimed by the Landlord. *Residential Tenancy Policy Guideline 40* ("PG 40") provides guidance for determining the useful life of building elements for determining damages and may be used by arbitrators when calculating the cost of replacement of damages items. KR submitted into evidence copies of all the invoices for the replacements required to repairs the damages to the rental unit.

KR stated the carpet in the living room was stained and had a strong odour of ammonia. KR stated the carpet in the bedroom was completely shredded, had a strong smell of ammonia and there was pet feces left behind. KR submitted three photos of the carpeting to corroborate her testimony. Based on the undisputed testimony of KR, I find the Landlord has proven, on a balance of probabilities, that the Tenant or his guests or pets, damaged the carpets. KR stated the carpets were replaced in the rental unit in 2018. KR provided an invoice for \$2,150.00 for replacement of the carpet. PG 40 states the useful life of carpeting is 10 years. As the carpet was 5 years old when the tenancy ended, I award the Landlord 50% of the cost of replacement of the carpet in the amount of \$1,075.00 ($\$2,150 \times 0.50$). Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$1,075.00 for replacement of the carpeting.

KR stated the blinds were missing in the bedroom, the doorknob was badly damaged, a section of drywall was missing in the bedroom and two closet doors and trim were damaged. KR submitted into evidence three photos of the damage to corroborate her testimony. KR stated the Landlord was seeking \$537.00 to replace those items together with \$60.00 for paint to repaint the damaged surfaces. KR stated the walls were repainted before the Tenant moved into the rental unit. The photos of the drywall indicate that the surrounding area was in good condition. Based on the undisputed testimony of KR, I find the Landlord has proven, on a balance of probabilities, that the Tenant, his guests or pet, removed or damages the foregoing items. As such, I find the Landlord is entitled to 50% of the cost of replacement of those items in the amount of \$268.50 ($\537.00×0.50). PG 40 states the useful life of interior paint is 5 years. As the paint was 1 year old when the tenancy ended, I award I find the paint was 1 year old when the tenancy ended, I award the Landlord 80% of the cost of the paint in the amount of \$40.00 ($\50.00×0.80). Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$308.50 replacements to the foregoing items and for paint.

KR stated the rental unit was not left in a reasonably clean condition when the Tenant vacated the rental unit. KR submitted a total of 19 photos that showed the condition of the rental unit. KR stated the Landlord was seeking recovery of the expense of cleaning the rental unit of \$245.00. Section 37(2) of the Act states:

- 37(2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I have reviewed all the photos submitted by the Landlord and find the rental unit did not comply with the requirements of section 37(2)(a) of the Act. I note that the following items were not cleaned: oven, bathtub, sink, toilet, walls, floors shelving and baseboard heater. Based on the undisputed testimony of KR, I find the Landlord has proven, on a balance of probabilities, that the Tenant did not leave the rental unit in a reasonably clean condition. I find the charge of \$245.00 to be reasonable for cleaning the rental unit. As such, I order the Tenant to pay the Landlord \$245.00 for compensation for cleaning the rental unit.

Based on the foregoing, I find the Landlord is entitled to recover a total of \$1,668.50 for damages to the rental unit, calculated as follows:

Damage Claimed	Amount Claimed	Amount Awarded
Replacement of Carpeting	\$2,150.00	\$1,075.00
Replacement of 2 closet doors, door trim drywall, door knob and blinds	\$537.00	\$308.50
Paint	\$60.00	\$40.00
Cleaning Fee	\$245.00	\$245.00
Total:	\$2,992.00	\$1,668.50

5. Claim for Filing Fee for Application

As the Landlord has been substantially successful in the claims made in the Application, pursuant to section 72 of the Act, I award the Landlord \$100.00 for the filing fee of the Application.

Conclusion

I order the Tenant to pay the Landlord \$6,318.50 as follows:

Purpose	Amount
Unpaid Rent for November 2022 to March 2023 inclusive	\$4,700.00
Fee for Late Payments of Rent (\$25.00 x 5)	\$250.00
Compensation for Damages to, and cleaning of, rental unit	\$1,668.50
Filing fee of Landlord's Application	\$100.00
Less: Tenant's Security Deposit	-\$400.00
Total:	\$6,318.50

The Landlord must serve the Monetary Order on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: May 12, 2023

Residential Tenancy Branch