



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order pursuant to ss. 38 and 67 seeking compensation for unpaid rent by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 to pay for repairs caused by the tenant during the tenancy by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 compensating for loss or other money owed by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

This matter had been scheduled for hearing on January 26, 2023 and February 17, 2023 but had been adjourned twice as outlined in my previous interim reasons.

E.C. appeared as the Landlord. The Tenant did not attend the hearing, nor did someone attend on her behalf. The hearing was conducted in her absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

As noted in my interim reasons of February 17, 2023, the Tenant acknowledged receipt of the Landlord’s application and evidence. Accepting this, I find that pursuant to s. 71(2) of the *Act*, the Tenant was sufficiently served with the Landlord’s application materials.

Issues to be Decided

- 1) Is the Landlord entitled to a monetary order for unpaid rent?
- 2) Is the Landlord entitled to a monetary order for damage to the rental unit?
- 3) Is the Landlord entitled to a monetary order for other compensation?
- 4) Is the Landlord entitled to claim against the security deposit?
- 5) Is the Landlord entitled to her filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The Landlord confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on December 15, 2021.
- The Tenant vacated the rental unit on April 1, 2022.
- Rent of \$2,800.00 was due on the first of each month.
- A security deposit of \$1,400.00 was paid by the Tenant.

A copy of the tenancy agreement was put into evidence by the Landlord.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

1) *Is the Landlord entitled to a monetary order for unpaid rent?*

The Landlord advised that the Tenant gave notice to vacate the rental unit on March 23, 2022. Review of the tenancy agreement shows that the tenancy was for a fixed term ending on June 30, 2022. The Landlord advises that she was able to re-rent the rental unit on May 1, 2022 and seeks one month's rent in compensation for improper notice.

Section 45(2) of the *Act* requires tenants in a fixed term tenancy to give notice with an effective date that is no sooner than the end of the fixed term. I accept that under these circumstances the Tenant did not provide notice in compliance with s. 45(2) of the *Act*. Indeed, she gave notice she was vacating a mere week before leaving.

I find that the Tenant breached the notice requirement set by s. 45(2) of the *Act*, which gives rise to the Landlord's claim for compensation. I further find that the Landlord mitigated her damages by re-renting the rental unit on May 1, 2022. Accordingly, I find that the Landlord has established a monetary claim of \$2,800.00 for this portion of her application.

2) *Is the Landlord entitled to a monetary order for damage to the rental unit?*

The Landlord provides a monetary order worksheet in which she claims the following damage to the rental unit:

Painting Costs	\$309.05
Repair Costs	\$409.40
Cleaning Costs	\$889.35
Sofa Cleaning	\$200.50
Frame Repair	\$342.58
Replacing Duvet	\$130.03
Replacing Pillow	\$33.59
Replacing Hamper	\$45.91
Replacing Shower Curtain	\$272.16
Console Replacement	\$253.82
Drain Cover Replacement	\$8.87
New Key Cut	\$5.60
Replacing Towels	\$53.72
Replacing Stained Books	\$100.80

Review of the tenancy agreement shows that the rental unit was furnished.

Section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property. Policy Guideline 1 defines reasonable wear and tear as the “natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.”

a) Condition Inspection Report

The Landlord provides a copy of a condition inspection report. The Tenant signed off on the move-in inspection. I am told by the Landlord, and accept, that she was given a copy of the move-in inspection report. I accept the formalities imposed by the *Act* for the move-in inspection were followed.

The Landlord further advises that the move-out inspection was not conducted jointly. She says that the inspection was scheduled for April 11, 2022 and that the Tenant showed up on that occasion but was combative and left. The Landlord says that she tried rescheduling with the Tenant, but that the Tenant did not respond.

The Landlord’s evidence includes a text message and email dated April 19, 2022 providing final notice for the walkthrough. The move-out condition inspection report indicates it was conducted on April 20, 2022. I accept that the formalities imposed by the *Act* for the move-out inspection were also followed and the Tenant refused to participate.

I provide this explanation because s. 21 of the Regulations specifies that a condition inspection report completed in accordance with the *Act* is evidence of the state of repair and condition of the rental unit on the date of the inspection absent a preponderance of evidence to the contrary. As the condition inspection process was followed, I accord significant weight to the condition inspection reports.

b) Painting Costs

The Landlord testified that there were gouges left in the entryway of the rental unit and what appeared to be nail polish on the walls of the bathroom. The inspection report shows that small dents and scratches were present in the entryway for the rental unit

when the tenancy began. I accept that the entryway damage pre-existed the tenancy such that it is not attributable to the Tenant. I further accept that the nail polish is attributable to the Tenant.

The Landlord says that it cost \$309.05 to repaint the affected portions of the rental unit and provides a receipt dated April 26, 2022 as evidence. Given that some of the work is attributable to the Tenant and other is not, I find that it is appropriate to grant half the cost for repainting the rental unit to the Landlord.

I find that the Landlord is entitled to \$154.53 for repainting the rental unit.

c) Repair Costs

The Landlord testified that an entryway bench and the cabinet drawers were damaged by the Tenant. Photographs provided show drawers to be loose in on their slides. None of this damage is noted on the move-in condition inspection report.

I find that the Landlord has established that the Tenant has breached s. 37(2) of the *Act* with respect to this damage. An invoice provided shows costs of \$409.50, though this includes \$80.00 for wall repair, which the Landlord says were to repair the gouges in the entryway. As noted above, this damage is not attributable to the Tenant.

Subtracting the expense related to the wall repair, I accept that the Landlord is entitled to \$325.50 for these repair costs (\$70.00+\$130.00+\$110.00+GST) and find she is entitled to this amount.

d) Cleaning Costs

The Landlord testified that the rental unit was left in an unclean state, including stains on the couch, a point that is noted within the move-out inspection report. The state of uncleanliness is further reinforced by the photographs provided by the Landlord.

I find that the Landlord has established that the Tenant left the rental unit in an unclean state in contravention of her obligation under s. 37(2) of the *Act*. I am told by the Landlord that it cost \$889.35 to clean the rental unit and \$200.50 to clean the sofa. I have been provided receipts for these amounts. I accept that the Landlord quantified her loss and is entitled to these amounts.

In total, I find that the Landlord has established cleaning costs of \$1,089.85 (\$889.35+\$220.50).

e) Replacement Costs

As mentioned above, the rental unit was furnished.

The Landlord testified that the glass for a framed picture on the wall was shattered by the Tenant. The Landlord says that the cost of repairing the frame was \$324.58, which is supported by a receipt in evidence. I accept the Landlord's undisputed evidence that the Tenant damaged the picture frame in breach of s. 37(2) of the *Act* and is responsible for the damage totalling \$324.58.

The Landlord also testified that a console table was damaged by the Tenant as it's top was black but that the paint had peeled. The Landlord's evidence includes photographs of the damage. The Landlord says the Tenant caused the damage and that the console was practically new, having been purchased 6 months prior to the beginning of the tenancy. The Landlord further testified that the console could not be repaired as she discussed this with the repair contractor, who advised that it could not be. The Landlord advised it cost \$253.82 to replace the console table with the same table as the original.

I accept that the Tenant caused the damage to the console table in breach of her obligation under s. 37(2) of the *Act*. I further accept that the Tenant is responsible for the replacement of the console as it was new when the tenancy began. Finally, I accept that the console table could not be repaired and had to be replaced, such that mitigation is not an issue. I find that the Landlord is entitled to \$253.82 for the console.

The Landlord further testified that the Tenant took towels and a duvet cover at the end of the tenancy. The Landlord also testifies that a pillow and laundry hamper were heavily stained such that they were replaced. I accept the Landlord's undisputed testimony that these items were taken by the Tenant at the end of the tenancy and that the pillow was stained, all of which is in breach of her obligations under the *Act*. I find that the Landlord is entitled to \$263.25 (\$53.72+\$130.03+\$33.59+45.91), all of which is supported by receipts in evidence.

The Landlord also seeks the cost for replacing a shower curtain at the rental unit, which she says was badly stained by the Tenant and could not be cleaned. According to the Landlord, the shower curtain was less than a year old and in good condition when the

tenancy began. The Landlord seeks \$272.16 for the shower curtain replacement, which she says is the same as was damaged by the Tenant. I enquired on the cost of the shower curtain. The Landlord acknowledged it is more expensive but that she is an interior designer by trade and that many of the items in the rental unit were higher end.

I accept the Landlord's undisputed testimony that the shower curtain was damaged by the Tenant, which is in breach of her obligations under the *Act*, and that the Landlord is entitled to compensation. I accept that replacement cost is appropriate here as the shower curtain was practically new. I find that the Landlord is entitled to \$272.16.

The Landlord also seeks the cost of replacing a drain cover, which says was missing from the bathroom. I accept that the Tenant damaged or took the drain cover such that the Landlord is entitled to the cost for its replacement of \$8.87.

Similarly, I am told and accept that the Tenant failed to return a key at the end of the tenancy, which is in breach of her obligations under the *Act*. I find that the Landlord is entitled to the cost for the new key of \$5.60.

Finally, the Landlord seeks the cost for replacing books from the rental unit that were either taken or stained. A receipt in evidence shows the cost for this was \$100.80. I accept that the Landlord is entitled to the replacement costs for the books that were taken, but not the book that was stained. The image of the stained book appears to be fingerprints, which is not so significant that it ought to be replaced. I find that the Landlord failed to mitigate her damages with respect to this portion. I find that the excluding the dirty book, the replacement for the books taken is \$58.28.

In total, I find that the Landlord has established a monetary claim of \$1,186.56 (\$324.58+\$253.82+\$263.25+\$272.16+\$8.87+\$5.60+\$58.28) for the various replacement expenses.

f) Summary

Adding the various amounts for this portion of the Landlord's claim, I find that she is entitled to \$2,756.44 (\$154.53+325.50+\$1,089.85+\$1,186.56).

3) Is the Landlord entitled to a monetary order for other compensation?

The Landlord's monetary order worksheet also mention claims for other compensation, namely a move-out fee of \$200.00 and costs of \$1,575.00 for the Landlord's time, as billed by her interior design business.

First, the Landlord's claim is limited to what is stated in her application. In this case, that is for \$200.00, which is in relation to the move-out fee. Second, even if the application properly pled, I take a dim view of a landlord seeking compensation for their time in addressing various issues at the end of the tenancy. I accept that it is time consuming to manage a rental unit. However, that is a cost of doing business, which is compensated through other means, being rental income.

Looking strictly at the issue pled, being the move-out fee, the Landlord's evidence includes an addendum in which the Tenant agreed to pay a move-out fee of \$200.00. As explained by the Landlord, this fee was charged to her by the strata and is imposed by the bylaws. The Landlord says that the Tenant signed a Form K when the tenancy began.

I accept that the strata imposes a \$200.00 move-out fee and that the Landlord paid this amount when the Tenant moved-out. I further accept that the Tenant agreed to pay this, as evidenced by the addendum. I find that the Landlord has established entitled to \$200.00 for the move-out fee.

4) Is the Landlord entitled to claim against the security deposit?

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

The Landlord testified that the Tenant never provided her forwarding address at the end of the tenancy. I accept that this is the case. I find that the 15-day deadline imposed by s. 38(1) of the *Act* has not been triggered.

I have turned my mind to the question of extinguishment and find that the Landlord has complied with all relevant sections of the *Act* concerning the condition inspection report such that it does not apply.

I order under s. 72(2) of that the Landlord retain the security deposit of \$1,400.00 in partial satisfaction of the amounts ordered.

5) *Is the Landlord entitled to her filing fee?*

I find that the Landlord was largely successful in her application and is entitled to her filing fee. I order under s. 72(1) of the *Act* that the Tenant pay the Landlord's \$100.00 filing fee.

Conclusion

I grant the Landlord a total monetary order taking the following into account:

Item	Amount
Compensation for Rent	\$2,800.00
Compensation for Damage	\$2,756.44
Compensation for Other Loss	\$200.00
Landlord's Filing Fee	\$100.00
Less the Security Deposit Retained by the Landlord	-\$1,400.00
TOTAL	\$4,456.44

Pursuant to s. 67 and 72 of the *Act*, I order that the Tenant pay **\$4,456.44** to the Landlord.

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed enforced by the Landlord at the Provincial 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: June 14, 2023

Residential Tenancy Branch