



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.

H.I. appeared as the Landlord. The Landlord was joined by his agent, I.V.. P.A. appeared as the Tenant.

The parties 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.

The Landlord advised that their application materials were served on the Tenant. The Tenant acknowledged receipt without objection. Based on the Tenant’s acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* that the Tenant was sufficiently served with the Landlord’s application materials.

Issues to be Decided

- 1) Is the Landlord entitled to an order for unpaid rent?
- 2) Is the Landlord entitled to compensation for damages to the rental unit?
- 3) Is the Landlord entitled to other compensation?
- 4) Is the Landlord entitled to claim against the security deposit?
- 5) Is the Landlord entitled to his 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 parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit on January 24, 2021.
- The Tenant moved out of the rental unit on August 15, 2022.
- Rent of \$1,650.00 is due on the first day of each month.
- The Tenant paid a security deposit of \$825.00 to the Landlord.

I am provided with a copy of the tenancy agreement 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 an order for unpaid rent?

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent.

I am advised by the Landlord that the Tenant failed to pay rent for the month of August 2022 and he seeks this from the Tenant. According to the Landlord, the rental unit was re-rented in September 2022.

The Tenant acknowledges that she did not pay rent but argued that she had a personal emergency which required her to move out. She further says that she gave the Landlord notice in April 2022 but stayed longer as the Landlord was out of country and she agreed to help him find a new tenant. Review of the tenancy agreement shows it was for a fixed term ending on January 31, 2023.

In this instance, there is no dispute the Tenant failed to pay rent for August 2022. Even if I were to accept that the Tenant was permitted to break the term of her lease, it does not matter. The Tenant acknowledges moving out of the rental unit in mid-August. Rent is due on the first. Her obligation to pay rent does not end because she gave sufficient notice. It ends when the tenancy is over, which did not occur until she vacated.

I find that the Landlord has established rent had not been paid by the Tenant, in breach of the tenancy agreement and s. 26 of the *Act*. I further find that the Landlord suffered lost rental income that could not have been mitigated due to the Tenant's continued occupation of the rental unit. I grant this portion of the Landlord's claim in the amount of \$1,650.00.

The Landlord also made mention of a liquidated damages clause for 2 months rent under clause 8 of the tenancy agreement's addendum. However, Rule 2.2 of the Rules of Procedure limits the claim to what is stated in the application. The application only seeks rent for August 2022, and makes no mention of liquidated damages. As the claim is limited to the application, I do not grant the Landlord this relief as it was not pled.

2) Is the Landlord entitled to compensation for damages to the rental unit?

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.”

The Landlord provides a monetary order worksheet claiming the following amounts:

Repairs/Painting	\$1,975.00
Repairs/Painting to Ceiling	\$500.00
Cleaning Costs	\$200.00
Fridge Part Replacement	\$39.20

The Landlord seeks \$39.20 for replacement parts to the fridge. The Tenant does not take issue with this portion of the Landlord’s claim and agreed to pay this amount. Accordingly, I grant this portion of the Landlord’s claim.

The Landlord advises that the rental unit’s walls were damaged by the Tenant during the tenancy and has submitted photographs of the damage in evidence. The photographs show scuffs, adhesive hangers still in place, and some screw holes. There is also a hole in the ceiling near to a light fixture. The Landlord directs me to an invoice in evidence dated August 16, 2022 in which the cost for these repairs and painting totalled \$1,975.00.

The Tenant acknowledges putting up a TV on the wall and a small dent in the roof but says that she put up pictures on the wall, arguing that this was largely normal wear and tear and that the damage is minor. The Tenant further argues that the cost seems inflated.

I have reviewed the photographs and find that some of the damage would constitute normal wear and tear, such as the scuff marks. It is unclear whether the adhesive hangers caused any damage when they were removed. I also note that tenants are not generally expected to cover the expense of repainting an entire rental unit at the end of their tenancy, only to cover the costs for damage caused by them. In this case, there is some evidence that some of the damage was beyond reasonable use of the rental unit, such as the screw holes and a hole in the ceiling that appears to be approximately 3 inches in diameter.

I find that some of the damage constitutes a breach of s. 37(2) of the *Act*, whereas other damage does not. The Landlord’s invoice does not itemize the costs for the repairs and

painting, which is unfortunate because I do accept some of the expenses are rightly attributable to the Tenant. Accepting that some of the damage was caused by the Tenant, including a hole in the roof that was significantly large, I find that it is appropriate to reduce this portion of the Landlord's claim to \$800.00. This reflects that much of the work mentioned within the invoice and shown in the photographs are normal wear and tear.

The Landlord also seeks the cost for repairs to dents to the ceiling. Photographs provided show dents in the textured ceiling that appear to be consistent with someone throwing a ball at the roof. The Landlord says that the \$500.00 claimed is an estimate as no work was done to repair this damage. This point is noted in the invoice mentioned above with respect to the other repairs. The Landlord's evidence also includes a handwritten estimate of \$500.00 for the work dated August 24, 2022.

The issue I have with this portion of the Landlord's claim is that the amount claimed is an estimate and that no costs have been incurred. Even if I were to accept that the Tenant caused this damage, which seems probable, the Landlord's claim requires proof of actual loss. In other words, the cost must be incurred. I find that this portion of the Landlord's claim is speculative, and that the Landlord has failed to quantify this portion of the claim. It is, therefore, dismissed without leave to reapply.

The Landlord finally seeks the cost of cleaning the rental unit. Photographs provided show the rental unit in to be in an unclean state, including food left in the fridge, bits of garbage on the balcony, garbage under the sink, and a dirty oven. I accept that the rental unit was not adequately cleaned at the end of the tenancy, such that the Landlord has demonstrated the Tenant breached s. 37(2) of the *Act*.

The Landlord says that he did much of the cleaning himself, though does not seek compensation for his time. His claim is limited to costs incurred with a cleaning company and has provided an invoice dated August 20, 2022 in evidence demonstrating the cost of \$200.00. I find that the Landlord has established this portion of the claim and shall receive this amount.

In total, I grant the Landlord \$1,039.20 (\$39.20+\$800.00+\$200.00) for this portion of the claim.

3) Is the Landlord entitled to other compensation?

Pursuant to the Landlord's monetary order worksheet, he claims the following under this portion of the application:

Unpaid Utilities	\$434.98
Strata Fine	\$250.00
FOB Key Fee	\$65.00

The Landlord seeks compensation for unpaid utilities in the amount of \$434.98. The Tenant took no issue with this portion of the Landlord's claim and agreed to paying it. Accordingly, I grant this portion of the Landlord's claim.

The Landlord seeks \$250.00 for strata fee he says he incurred due to the Tenant's conduct. The Landlord's evidence includes a letter from the strata management company dated August 17, 2022 stating the following amounts were owed:

\$50.00	Bylaw fine Income
\$200.00	Bylaw Violation: Late Payment

I asked the Landlord whether the Tenant had signed a Form K, which is a standard form in which tenants acknowledge receipt of the strata bylaws and acknowledge they will comply with them. The Landlord says she had and that it was in evidence. The Tenant was unaware of signing a Form K. The Landlord's evidence does not include a copy of a Form K signed by the Tenant.

To be clear, the Tenant's obligation to comply with the strata rules is not a necessary implication of her tenancy but flows from her tenancy agreement, which is met if a Form K is signed at the beginning of the tenancy. In this instance, I find that the Landlord has failed to establish that the Tenant breached the tenancy agreement as it does not appear she was under any obligation to comply with the strata rules. I would further note that the bylaw infractions noted in the letter of August 17, 2022 are not clearly attributable to the Tenant based on the description provided. This portion of the claim is dismissed without leave to reapply.

Finally, the Landlord seeks \$65.00 saying the key FOB was not returned at the end of the tenancy. He says he paid this amount to the strata for the replacement. The Tenant denies not returning the FOB, saying she left it at the front desk for the residential property. The Landlord says he checked with the front desk, who deny receiving it from the Tenant.

I find that the Tenant failed to return the FOB to the Landlord, which is in breach of her obligation to do so under s. 37(2) of the *Act*. To be clear, s. 37(2)(b) requires a tenant to give the FOB to the landlord. The front desk in this instance is not the landlord, nor would the person there be an agent for the landlord as this is a strata building. I accept that the Landlord incurred a fee of \$65.00 for its replacement and is entitled to this amount.

In total, I grant the Landlord \$499.98 (\$434.98 + \$65.00) under this portion of his application.

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. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38. Where a landlord's right to the security deposit is extinguished by either ss. 24 or 36 of the *Act*, the landlord may not claim against the security deposit for damage to the rental unit and must return it.

I find that the issue of extinguishment is irrelevant here. Even if the Landlord's right to claim against the security deposit is extinguished, he may still claim against the security deposit for other claims, which he has done in his unpaid rent claim.

Further, I enquired when the forwarding address was provided. The Landlord denies the Tenant provided her forwarding address at the end of the tenancy, saying his application was sent to the address for the Tenant's parents which he says was given to him at the beginning of the tenancy. I am directed to the tenancy agreement, which notes the address on the first page. The Tenant says she did give her forwarding address on August 14, 2022.

I find it more likely than not that the Tenant did not give her forwarding address in writing at the end of the tenancy. I suspect that the Tenant verbally informed the Landlord that she would be moving back with her parents, which does not satisfy the component that the address be giving in writing.

I find that the 15-day filing deadline set by s. 38(1) of the *Act* is not applicable as the Tenant failed to provide her forwarding address.

Pursuant to s. 72(2) of the *Act*, I order that the Landlord retain the security deposit of \$825.00 in full against his monetary claims.

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

The Landlord was largely successful, such that I find he is entitled to his filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee.

Conclusion

I find that the Landlord is entitled to the following amounts:

Item	Amount
Unpaid Rent	\$1,650.00
Damage to the Rental Unit	\$1,039.20
Other Compensation	\$499.98
Filing Fee	\$100.00
Less Security Deposit Retained	(\$825.00)
TOTAL OWED BY THE TENANT	\$2,464.18

Pursuant to ss. 67 and 72 of the *Act*, I order that the Tenant pay **\$2,464.18** 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 with 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: June 02, 2023

Residential Tenancy Branch