



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on March 21, 2023, and June 20, 2023. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit; and,
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The Landlords (agents of) and one of the Tenants was present at the hearings and provided affirmed testimony. Both parties confirmed receipt of the each other's evidence packages and no service issues were raised.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage to the unit?
- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Background and Evidence

The Landlord stated that:

- monthly rent was \$1,700.00 and was due on the first of the month.
- The Landlord holds a security deposit in the amount of \$700.00
- The Tenants provided their forwarding address in writing and the Landlord received this on June 16, 2022, as part of the move-out inspection report that was completed.
- The Landlord filed the application against the deposit on June 30, 2022.
- A move-in inspection was done on March 15, 2016
- The tenancy ended and a move-out inspection was done on June 16, 2022.

The Landlord provided some photos of damage to the unit, as well as numerous invoices and receipts.

The Landlord is seeking several monetary items as follows, and as laid out on the monetary order worksheet:

1) \$111.98 – Kitchen faucet replacement

The Landlord stated that the kitchen faucet was new at the start of the tenancy, and at the end of the tenancy, the faucet was worn out and was leaking. The Landlord pointed to the invoice from the plumber to show that it could not be repaired, and instead needed replacement. A receipt for this amount was provided for Home Depot

The Tenant stated that during the tenancy, the faucet was replaced with one that would work with his portable dishwasher, which he bought to use. The Tenant did not dispute that the faucet was leaking at the end of the tenancy.

2) \$60.00 – Pest Control treatment to eliminate urine smell

The Landlord stated that they hired a pest control company to come and investigate the source of some odours that the Tenants suggested were caused by rodents or raccoons. The Landlord stated that 3 days after the Tenants moved out, the Landlord questioned the Tenants about the urine smell and at that time, the Tenants said that there were feral cats that were peeing on the outside of the house. The Landlord pointed to an invoice for this item, and stated that it was to investigate the urine smell and inspect for rodents and raccoons (no evidence of either were found). The Landlord stated that this smell ended up being from the Tenants' pet cats who urinated inside.

The Tenant stated that there were several issues with racoons and rats in the yard, and this was an issue outside of their control. The Tenant also noted that there were lots of stray cats in the neighbourhood who urinate in the gardens around the property. The Tenant also acknowledged that his daughter brought in a stray cat, which had several kittens while living in the house, although he states this should have largely been contained to the lower bedroom area.

- 3) \$110.88 – Window blinds
- 4) \$524.51 – Window blinds
- 5) \$260.96 – replacement window screens

The Landlord stated that several blinds in the house were ruined by the Tenants and their 9 children. The Landlord provided receipts for the above noted amounts and the Landlord installed these blinds herself after buying them from Home Depot. The Landlord also stated that several window screens were broken at the end of the tenancy.

The Tenants acknowledged that they broke the blinds and the window screens and agreed to be responsible for these items, in full.

- 6) \$84.00 – house cleaning
- 7) \$294.00 – house cleaning

The Landlord stated that the house required extra cleaning after the Tenants left for a variety of reasons. The Landlord provided two invoices, as noted above, the first of which was for general cleaning of the rental unit right after the Tenants left. However, the Landlord stated that this first session was not enough, as the cleaner could not get rid of the strong urine smell. The Landlord stated that the cleaner came back for a second session, and this included power washing of the garage floors, as well as further cleaning of the urine smell, dirty cupboards, kitchen and washroom. The Landlord also stated that the window sills were filthy. The landlord pointed to the move-out inspection report to show that several areas of concern were noted at the time of move-out.

The Tenant stated that he is offended the Landlord feels they did not clean enough. The Tenant pointed out that the house was not very clean at the start of the tenancy. The Tenant pointed out that the caulking in the tub was failing and was not his fault, and also that the Landlord did a poor job painting last time, which is why some of the walls were not looking great.

- 8) \$13,410.18 – Remedial services for flooring (urine and asbestos)
- 9) \$4,959.90 – Flooring replacement cost
- 10) \$56.00 – Ozonator Rental

The Landlord stated that after the Tenants moved out of the rental unit, it became apparent that there was a strong smell of pet urine in the basement of the home, as well as in the garage. The Landlord stated that the smell was not as apparent at the time the move-out inspection was done, and the smell became more and more noticeable in the days after the Tenants moved out. The Landlord explained that the Tenants were not permitted to get cats or any pets as part of their tenancy agreement, yet the Tenants brought cats into the home anyways. The Landlord stated that they brought in professional cleaners to try to clean up the urine smell, to no avail, which is why they hired a professional remediation company to remove the existing flooring and apply specialized treatments to remove the smell.

The Landlord pointed to the general cleaning invoice from the house cleaners to show that they noted a “very strong” smell of urine in the basement garage, the bedrooms, and the basement living room. Further, the Landlord also provided an estimate and email from the one remediation company (after basic cleaning had failed). This company noted that there was a “very pungent” odour of animal urine and ammonia throughout the basement (garage, bedroom, and bathroom). The company also stated that in order to get rid of the smell, the flooring would have to be removed, since the urine had likely seeped through the joints of the vinyl plank flooring (332 square feet). The company also stated that the concrete slab will need to be treated with odour absorbing chemical wash. An estimate for this work was provided as follows:

ACTIVITY	AMOUNT
Asbestos Abatement • All contents removed and plumbing disconnects completed prior to abatement • Prepare necessary paperwork and file with Work Safe BC • Set up poly as required to create containment • Create negative air pressure within containment • Set up asbestos banner tape • Workers to don appropriate PPE • DOP machines • Provide air monitoring and air clearance • Set up three stage decon with shower and hot water tank • Remove and set aside all baseboards in work area • Remove and dispose of vinyl sheet flooring in kitchen, dining room and closet approx. 410 sqft under HIGH-risk work procedures • Tear down containment under moderate-risk work procedures • Dispose of all debris at approved facilities • Provide a clearance letter upon completion	10,988.50
Clean Demolition • Removal of vinyl plank flooring and underlay from laundry room, bedroom 1, all hallways and bathroom • Apply odor removing chemical to subfloor	3,125.88
* Estimate does not include anything not mentioned above. Any additional/suspect/concealed items found which have not been surveyed or tested will be charged as additional.	
Stipulations: • All contents & appliances to be removed prior to tech arrival • Furnace must be turned off during abatement • All plumbing & electrical disconnects to be completed by others • Electrical power must be disconnected from work area with 2 temp GFCI protected circuits provided	SUBTOTAL 14,114.38 GST @ 5% 705.72

Subsequently, the Landlord obtained a second quote from a different company for the remediation of the floors, and they stated as follows:

To whom it may concern,

Upon inspection of the site at [REDACTED] on June 30, 2022, there was a cat urine smell throughout the basement and in the garage. It was determined the flooring needed to be removed and the concrete underneath cleaned and have a sealant product applied in the basement and the concrete cleaned and sealant applied in the garage.

In the basement the flooring was removed, the concrete cleaned, and two coats of the sealer applied. These actions helped to dissipate the smell. The garage was cleaned and two coats of the sealer applied. These actions were not enough and a third coat of sealant was applied in the garage followed by a thermal fog to dissipate the smell.

Sincerely,

[REDACTED]

Project Manager

The Landlord ended up employing the second remediation company at an overall cost of \$13,410.18, as per the receipts provided into evidence. This receipt is itemized as follows:

PRICING

Site protection	\$	210.00
Demo	\$	880.00
Abatement	\$	6,900.00
Equipment	\$	1,296.00
Supplies	\$	150.00
Bio-Wash	\$	1,067.00
Disposal	\$	140.00

GST # [REDACTED]

WCB # [REDACTED]

Subtotal	\$	10,643.00
10% overhead	\$	1,064.30
10% profit	\$	1,064.30
Subtotal	\$	12,771.60
GST	\$	638.58
TOTAL	\$	13,410.18

The Landlord explained that part of the reason the urine remediation was so high was because there was asbestos containing linoleum from many decades ago in some areas of the basement. The Landlord stated that this all had to be removed in order to treat the concrete floor with odour absorbing chemicals. The Landlord stated that there was a portion of newer floors in the basement where the Tenant had installed (materials paid for by the Landlord) basic flooring over the basement floors. The Landlord stated that all of this needed to be removed and replaced to get rid of the urine smell.

The Landlord provided a copy of a receipt in the amount of \$4,959.90 to pay for new flooring in the basement of the home, once the above noted urine remediation was completed. This is itemized as follows:

Area	Style/Item	Total
BASEMENT	ARDEX FEATHER FINISH CEMENT-BASED GRAY 10LB	111.12
BASEMENT	U-LAY SUBFLOOR	78.51
BASEMENT	SKIMCOAT/FLOAT >400SF	309.32
BASEMENT	PREP CONSTRUCTION	207.69
BASEMENT	AXIS (SPC 2.5MM) 7.25X48	2,131.50
BASEMENT	ROBERTS 2350 ADHESIVE 4 GAL	228.61
BASEMENT	LVT/LVP NON-GROUTED	1,656.96
TO SUPPLY AND INSTALL:		
- NEW GLUE DOWN VINYL PLANK FLOORING TO ENTIRE BASEMENT AREA (EXCLUDING FURNACE ROOM/UNDER STAIRWELL)		
- AREAS TO BE PREPPED AND SKIM COATED WITH ARDEX FEATHER FINISH AS NEEDED TO CREATE SUITABLE SUBSTRATE		
- PROSOL, AXIS SERIES, "CASCADE" GLUE DOWN VINYL PLANK		
- ROBERTS ADHESIVE		
- PROBLEM AREA IN DOWNSTAIRS CLOSET TO HAVE NEW SUBFLOOR INSTALLED OVER TOP PRIOR TO FLOORING		
BASEMENT Sub Total:		4,723.71

RB007209-003

Est Subtotal \$4,723.71

GST \$236.19

Sales Tax \$0.00

Total \$4,959.90

The Tenant stated that he has 9 children, and one of them brought in a stray cat from outside and allowed the cat to stay in the basement of the home for a period of time. The Tenant stated that he did not give his daughter permission to bring in the cat, but she did it anyways. The Tenant stated that the cat eventually got pregnant, and gave birth to a litter of kittens in the house. The Tenant stated that he tried to set his daughter, and the cats, up in a contained area of the basement, so he does not believe that the cats made a mess everywhere as the Landlord is asserting. The Tenant stated that he is not aware that the cats went to other areas of the house, but he stated he is "not a cat expert".

The Tenant stated that part way through the tenancy, he installed some floors in the basement for the Landlord, and he does not feel he should be responsible for replacing these floors again, due to the cat urine. The Tenant stated that if the cat urine smell was that bad, then the Landlord ought to have noticed the smell when she did an inspection before the Tenants moved out. The Tenant pointed out that he does not believe the urine smell was as bad as the Landlord is portraying and he opined that the smell likely wouldn't have permeated the linoleum (into the concrete), as the Landlord has stated. The Tenant asserted that the cats/kittens were largely contained one part of the basement, and weren't all over the house.

The Landlord stated that the smell did not start coming out of the flooring until all of the contents were removed. The Landlord stated that they never wanted pets in the rental unit for this reason.

11) \$140.50 – Pickup Truck Rental

12) \$101.87 – Pickup Truck Rental

13) \$42.56 – Chainsaw Rental

The Landlords explained that the Tenants failed to adequately maintain the property and the garden beds required significant work, and many of the shrubs, hedges, and blackberry bushes on the property were totally overgrown. The Landlords provided photos of the yard, and the overgrown foliage, as well as some of the items and debris left. The Landlords stated that they tried to use their van as much as possible to clear out some of the debris, but they had to rent a truck on a couple of occasions, as well as rent a chainsaw to cut up a dead plum tree that was taken down during the tenancy.

The Tenant opined that he took good care of the yard, and was always doing regular maintenance in the yard. The Tenant stated that the yard was totally overgrown at the

start of the tenancy, and he did his best to stay on top of it. The Tenant stated that the Landlords knew the plum tree was dead, and did nothing about it.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

The burden of proof is on the applicant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence (condition inspection report, photos and invoices) and the testimony provided at the hearing, I find as follows:

Extinguishment and the Security Deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit 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 a security deposit at the end of a tenancy.

Sections 23 and 35 of the *Act* states that a 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, and at the end of the tenancy before a new tenant begins to occupy the rental unit. 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.

In this case, it appears both parties participated in the move-in and move-out inspections. Overall, I find there is no evidence that the Landlord extinguished their right to claim against the deposit by not complying with the Act.

I accept that the Tenants provided their forwarding address to the Landlord on June 16, 2022, as this is when the Landlord acknowledged receiving it. I note the Landlord filed this application on June 30, 2022.

Pursuant to 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 Tenants' forwarding address in writing to repay the security deposit or file a claim against it. In this case, the Landlords filed their application within time. I find the Landlords complied with section 38(1) of the *Act*.

Next, I turn to the Landlord's monetary items, as laid out above. They will be addressed in the same order as above:

1) \$111.98 – Kitchen faucet replacement

I have reviewed the testimony and evidence on this matter. Neither party disputes that the faucet was new early on in the tenancy, and that it was leaking at the end of the tenancy. I find it important to note that the Tenant purchased their own portable dishwasher and was hooking that up to the sink for several years. This was something the Tenants chose to do, which was above and beyond what the tenancy agreement provided for. I find it more likely than not that regularly hooking up a dishwasher to a kitchen faucet would cause excessive wear and tear to a faucet. I find this goes beyond reasonable wear and tear and I find the Tenants ought to be liable for this item. I award this item, in full.

2) \$60.00 – Pest Control treatment to eliminate urine smell

I have reviewed the testimony and evidence on this matter. As noted on the Landlord's worksheet, this item was listed as an expense related to potential rodent issues, and related urine odours. It appears the Tenants suggested to the Landlord that rodents may have been the cause of the smell, which is partly what motivated the inspection in the first place. However, no evidence of rodents were found when the unit was inspected. Rather, the inspection revealed that there was a smell of urine inside the house. I accept that the smell of urine was largely coming from inside the house. I find it more likely than not that the urine smell was caused by the Tenants' daughter's cats

who she cared for in the basement of the home. I find the Tenants ought to be liable for this item, given the likely origin of the urine smell was the cat, and several kittens that were brought into the house and cared for in the basement (where the urine smell was). I award this item in full.

- 3) \$110.88 – Window blinds
- 4) \$524.51 – Window blinds
- 5) \$260.96 – replacement window screens

Since the Tenants acknowledged they damaged these items, and did not dispute being responsible for them, I award these 3 items, in full, totalling \$896.35.

- 6) \$84.00 – house cleaning
- 7) \$294.00 – house cleaning

I have reviewed the testimony and evidence on this matter. Regardless of how the rental unit was at the start of the tenancy, I note the Tenant is still required to leave the rental unit in a reasonably clean state, and undamaged, pursuant to section 37(2) of the Act. Having reviewed the photos and move-out inspection report, I find there were several areas of concern, including the cupboards, the windows/ledges, floors, countertop, refrigerator, and some ceilings/walls. Overall, I find there is sufficient evidence to show that the unit was not left in a manner which complies with section 37(2) of the Act, and I accept that more cleaning would have been required, prior to re-renting the unit. Further, I accept that the Tenant's daughter's cat (and kittens) would have likely caused or contributed to a urine smell, which would have taken time to try and clean (from floors in different areas). Overall, I find the Tenants are responsible for this item, in full, \$378.00.

- 8) \$13,410.18 – Remedial services for flooring (urine and asbestos)
- 9) \$4,959.90 – Flooring replacement cost
- 10) \$56.00 – Ozonator Rental

I have reviewed the testimony and evidence on this matter. It is not disputed that the Tenant's daughter obtained a cat, without consent, and brought the cat inside the home. The Tenant also acknowledged that the cat then got pregnant, and had a litter of kittens in the home for a period of time. Although the Tenant asserts that his daughter kept the kittens and the cat contained in the basement of the home. I note the Landlord provided quotes and letters from tradesmen and contractors stating that the urine smell was widespread, intense, and not contained. When weighing these two versions of events, I

find the Landlord has provided a more detailed and compelling account of the urine smell, which was clearly identified as such by the restoration company and others helping clean up. I accept that this smell would likely have gotten worse after the Tenant moved out, and after the belongings were moved out so that all affected flooring as wall areas were exposed.

Also, I note there are multiple opinions of the various contractors who were brought in after the tenancy ended to assess the smell, and they were consistent in that the smell was not just contained to one small area in the basement, as the Tenant asserts. I find it more likely than not that the cat, and the numerous kittens, spent time in other areas, beyond the small part of the basement the Tenant asserts, as the urine was detected in various places in the basement and garage. I find it more likely than not that the cat urine issue was throughout large portions of basement and garage, and that it was not as contained as the Tenant suggests.

I find the Tenants clearly breached the tenancy agreement by bringing in cats, who in turn had numerous kittens, without the Landlord's consent. I find the Tenants ought to be liable for some of the damage that occurred and for remediating the urine smell, which is widely known to be pungent and stubborn to remove. I accept that this issue would have required special attention and treatment, which is exactly what the Landlord did when they brought in remediation experts. That being said, I do not find the Tenants are responsible for the entirety of the amounts on the Landlord's invoice for \$13,410.18, because I do not find the Tenants are responsible for the removal of the asbestos. The asbestos was part of decades old flooring, already in place, which appears to be well beyond its useful life expectancy and its removal should not be the responsibility of the Tenants, as removal of flooring beyond its useful life expectancy should be reasonably expected to occur at some point, whether due to normal wear and tear, or whether it is due to issues the Tenant caused. I note the Policy Guideline #40 suggests that various flooring products have a useful life of between 10-20 years, and I find the flooring underneath was well beyond that, regardless of the fact it was in reasonable condition. Generally speaking, I find the Landlord is required to pay for the asbestos abatement, however I find the Tenant is responsible for urine smell remediations, and some of the subsequent flooring replacement.

That being said, I note the Landlord used ServiceMaster as a contractor for both urine and asbestos remediation and for the removal of the urine damaged materials (and for some treatments). However, the abatement amount noted on that invoice does not clearly specify what part of this is for urine smell, and what is for asbestos. This makes it difficult to ascertain exactly what part of the invoice the Tenants ought to be liable for. I

find the Landlords have failed to sufficiently detail this part of their claim and the invoice. However, to assist in determining a reasonable value, I turn to the previous estimate provided by “Scott’s Asbestos”, which was a contractor who bid on the job previously, and itemized the work more clearly. I note the approximate proportion of asbestos related costs in that quote was 75% of the overall job, and it appears the other portion was related to disposal, clean up, and urine treatments. In the absence of clear evidence and explanation from the Landlord in terms of cost breakdowns on the ServiceMaster invoice for asbestos related work, I find it reasonable to utilize the approximate split from the previous company. I find the Tenant is liable for 25% of item #8, \$13,410.18, which amounts to \$3,352.55.

With respect to item #9, the costs to re-install flooring in the basement in the amount of \$4,959.90, I note the Landlord paid for flooring to be installed by the Tenant about only a couple/few years before the end of the tenancy in around half of the basement. It is not clear what was in the remainder of the basement, whether it was other flooring types, or whether it was bare concrete at the end of the tenancy. The Landlords did a poor job explaining what portions of the floor were covered and which were not, and also what types of flooring were in various locations in the basement. I do not find the Tenants are liable for the replacement costs for all the flooring in the basement. However, I do find they are liable for 50% of the costs, since it appears some of the basement flooring was newer (within last 3-4 years) and this flooring had to be removed to properly address the cat urine smell, and some other older flooring types were also removed. In the absence of evidence from the Landlords showing clear floorplans (sq footage), flooring types and the age of the flooring in various areas, I find a 50% split is reasonable on this, since there was a notable amount of newer flooring in the basement and this issue was precipitated by the Tenant’s unlawful pet acquisition. I award \$2,479.95 for this item.

Further, I find the Tenant is liable for the ozonator rental, as I accept this was a reasonable attempt to mitigate some of the cat urine smell. I award \$56.00.

- 11) \$140.50 – Pickup Truck Rental
- 12) \$101.87 – Pickup Truck Rental
- 13) \$42.56 – Chainsaw Rental

I have reviewed the testimony and evidence on this matter. I note Policy Guideline #1 states the following:

PROPERTY MAINTENANCE

3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

I note the truck rentals were largely to remove trimmings and yard waste from major pruning jobs which the Landlords felt were overdue. However, I find this work qualifies as a major project/pruning job, rather than routine yard maintenance. I find this extent of pruning and hauling is such that it is largely the responsibility of the Landlord. I decline to award the pickup truck rentals. With respect to the chainsaw rental, I also find this is the Landlord's responsibility because it is considered a major pruning/cleanup job that the Landlord is responsible for.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlords were successful with the application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the Act, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Total of items above	\$7,334.83
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$700.00)
TOTAL:	\$6,734.83

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$6,734.83**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: July 7, 2023

Residential Tenancy Branch