



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes (L) MNRL-S, MNDL-S, MNDCL-S, LRSD, FFL
 (T) MNDCT, MNSD
 (T) MNDCT

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for unpaid rent under section 67 of the Act
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

The hearing also concerned the Tenant's Applications under the Act for:

- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act

Landlord P.R. attended the hearing with G.S., legal counsel

Tenant S.S. attended the hearing with J.A., tenant advocate

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

At the commencement of the hearing, the parties confirmed service of their respective proceeding package and evidence to the other party.

Preliminary Matters

During the course of the tenancy, the parties were involved in several arbitrations before the RTB (file numbers on the cover page to this Decision), some of which are at issue in this proceeding.

In the prior arbitration proceeding file number ending -391, the Tenant obtained a monetary order regarding a disputed rent increase. The Tenant subsequently sought enforcement before the small claims court. As part of that proceeding, the parties agreed the Landlord's unpaid rent claim in the present application was set-off against the Tenant's enforcement of her monetary order against the Landlord from the prior arbitration proceeding. Therefore, the parties agreed the Landlord's claim for unpaid rent for the period February 1 to March 10, 2024, (when the Tenant vacated the rental unit) was no longer at issue. I dismiss without leave to reapply the Landlord's application for unpaid rent provided in the present application. I make no findings on the Landlord's request for unpaid rent.

A prior scheduled hearing in this matter was adjourned as the Landlord sought judicial review of a decision (file no. ending -391) regarding a disputed rent increase. The Landlord stated he had applied for a stay of these proceedings pending resolution of the matter by the Supreme Court as it concerned the Tenant's disputed rent increase for additional months not covered by the decision from which appeal had been sought. The Landlord stated at the commencement of this proceeding the Supreme Court had not granted a stay of these proceedings (or had not otherwise heard the stay request filed by the Landlord). The parties agreed to proceed with the Tenant's disputed rent increase application, which the parties had agreed to join to the Tenant's other pending application.

This proceeding thus concerns all currently outstanding applications filed by the parties regarding this tenancy.

Issues for Decision

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Is the Tenant entitled to a Monetary Order for the return of all or a portion of the security deposit?

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord and/or the Tenant entitled to recover the filing fee for this application from the other party?

Background and Evidence

I have reviewed the evidence, and I have considered the testimony of the parties, but will refer only to what I find relevant to my decision.

Evidence established this tenancy began on May 1, 2020, and ended on March 10, 2024. The Tenant provided the Landlord with a security deposit in the amount of \$1,100.00. The Landlord testified the Tenant did not provide a pet damage deposit on June 1, 2021. A copy of the tenancy agreement was provided in evidence. A move-in condition report was not completed at the start of the tenancy. After vacating the rental unit, on March 13, 2024, the Tenant provided her forwarding address to the Landlord. A copy of the correspondence dated March 13, 2024, wherein the Tenant's advocate provided the Tenant's forwarding address to the Landlord, with a request for return of the Tenant's security deposit, was submitted in evidence.

The Landlord requests a monetary order for damages and compensation for loss he alleges the Tenant bears liability. The Landlord testified that when the Tenant vacated the unit it was damaged and required extensive cleaning of the interior and the yard. The Landlord submitted invoices from a contractor which for repair to damage to the unit as well as cleaning of debris in the yard, cleaning of the interior of the unit, carpet cleaning as well as repair of damage to the unit. The Landlord submitted a move-out inspection report dated March 10, 2024. The Landlord testified the Tenant did not attend the move-out inspection but the report accurately records the condition of the rental unit at the time the Tenant vacated. The Landlord also submitted numerous photographs of the unit in support of the move-out inspection report. The Landlord submitted an affidavit from witness S.S.D., wherein the witness describes the poor condition of the rental unit and the Landlord providing the Tenant an opportunity to sign the move-out inspection report, stating she refused to do so. The Landlord conceded he did not complete a move-in inspection report at the start of the tenancy, but stated the move-out inspection report indicating no damage to the unit at the start of the tenancy was representative of its condition.

The Landlord testified the damage to the rental unit allegedly caused by the Tenant required a contractor to repair with the cost totaling \$4,540.20. The Landlord provided copies of invoices from the contractor in support.

The Landlord also testified the Tenant removed two recycling or disposal bins for municipal trash pick-up at the end of the tenancy. The Landlord submitted invoices dated May 22, 2024, from the municipality for replacement bins costing \$125.00. The Landlord was required to provide the bins as part of a settlement agreement with the Tenant in a prior arbitration (file no. ending -094).

The Landlord also requested reimbursement from the Tenant for the cost of pest control for a mice/rat infestation in the rental unit. The Landlord and Tenant agreed in prior arbitration proceedings (file no. ending -094 and -593) the Tenant was to provide access to the unit for a pest control company to inspect, make recommendations and provide rodent and pest control services. The Landlord was responsible for arranging for the pest control company. There was no mention of which party was to pay for the pest control services. The Landlord takes the position in this application the Tenant is responsible, based upon the inspection conducted by the pest control company that attributed the infestation to the Tenant's maintenance of the unit. The Landlord also provided in evidence an invoice from the pest control company for \$1,145.93. The Landlord's counsel stated the Tenant never notified the Landlord regarding the rodent infestation.

The Tenant denied she was responsible for the rodent infestation, her advocate instead urging that the rental unit's construction flaws allowed for rodent entry. The Tenant further denied the condition of the unit as alleged by the Landlord at the time she moved out. The Tenant's advocate noted that in a prior arbitration (file no. ending -094) the Tenant was entitled to deduct the cost of carpet cleaning as the parties' settlement required the Tenant to rent a carpet cleaner, deducting the cost against rent upon providing a receipt to the Landlord. The Tenant's advocate noted the photographs provided by the Landlord were photographs he had submitted in prior arbitration proceedings that pre-dated the Tenant vacating the rental unit. The Tenant's advocate stated the photographs were taken by the Landlord in October or November 2023 when the parties agreed during arbitration (proceeding ending -593) the Tenant would remove certain items in the rental unit to allow access for pest control. The Tenant's advocate also attributed the damage the Landlord described to the rodents in the unit, which the Tenant argued entered the rental unit by virtue of the poor construction of the unit. The Tenant's photographs submitted in evidence taken of the unit at the time the tenancy began, indicated different wall colors and doorknobs. Furthermore, the Tenant's advocate stated, the Landlord's failure to conduct a move-in condition inspection report precluded the Landlord from advancing his claim the Tenant was responsible for the damage.

The Tenant's advocate noted the parties' agreement wherein the Landlord was required to obtain the additional disposal and recycling bins was entered into on January 10, 2024, but the Landlord did not obtain the bins until April, 2024, after the tenancy ended.

The Tenant's application regarding a disputed rent increase related to the prior arbitration between the parties (file no. ending -391). The decision in that arbitration found the Landlord had violated the Act when increasing the Tenant's rent. However, the Tenant had paid the increased rent amount for four months (October 2023 through January 2024) not covered by the decision and thus not included in the monetary order granted the Tenant. Based upon the prior finding the Landlord had impermissibly increased the Tenant's monthly rent by \$280.00, the Tenant requested a monetary order in the amount of \$1,120.00. The Tenant's advocate stated it was an oversight the additional months of rent overpayment was not requested in the prior proceeding.

Landlord's counsel testified the additional sum assessed to the Tenant was not an impermissible rent increase but was for the water utility charges. The Landlord provided various water bills incurred during the tenancy which the Landlord claimed the Tenant had failed to pay. The Tenant's advocate replied the water usage charges "were tacked on as part of the rent increase," as all utilities were included in the monthly rent. In any event, Tenant's advocate contended, the prior arbitration finding the Landlord's rent increase violated the Act was *res judicata* in the present application.

The Tenant introduced into evidence a copy of correspondence to the Landlord dated March 13, 2024, providing for the Tenant's forwarding address. The letter to the Landlord requests the Landlord return the Tenant's security deposit and pet damage deposit, totaling \$2,200.00, plus applicable accrued interest as of the date of the letter. The Tenant's advocate's position is the Landlord's right to claim against the security deposit is extinguished by virtue of his failure to conduct a move-in inspection and prepare the necessary report. Additionally, the Tenant's advocate states the Landlord's refusal to return the security deposit to the Tenant entitles her to an award doubling the security and pet damage deposits. The Tenant's advocate noted the tenancy agreement indicated a pet damage deposit had been paid by the Tenant on June 1, 2021. The Tenant stated she had paid the pet damage deposit in cash but the Landlord did not provide a receipt. The Tenant's advocate stated the Tenant does not use the services of a financial institution, instead using her son's bank account. Thus, she was unable to provide banking records to establish the withdrawal of the sum for the pet damage deposit which she states she paid in cash to the Landlord.

The Landlord denied the Tenant had ever paid a pet damage deposit. Landlord's counsel stated English is not the Landlord's first language and when he wrote in the tenancy agreement the pet damage deposit, it provides it was not paid but payment was expected by the Landlord. The Landlord's counsel further stated the Landlord's application for dispute resolution was submitted on March 23, 2024, within 15 days of the Tenant providing her forwarding address. Counsel argued that having timely filed a claim for damage to the unit and requesting retention of the security deposit as partial

satisfaction of any award, the Tenant was not entitled to a doubling of the deposit. Moreover, counsel stated the failure of the Landlord to conduct an inspection and prepare a condition report when the Tenant moved into the unit did not extinguish a right to claim against the security deposit when the application was made within 15 days of the Tenant providing the forwarding address. Landlord's counsel also argued the Landlord had not extinguished any right to claim against the security deposit as the Tenant had failed to attend the move-out inspection after being given two opportunities to do so.

The Tenant also requested aggravated damages in the amount of \$1,000.00, alleging the Landlord's continued litigation was an abuse of process, had caused delay in the Tenant's enforcement of her monetary order and was overwhelming to the Tenant resulting in increased stress and loss of sleep. The Landlord's counsel generally denied the basis for the Tenant's request for aggravated damages.

Analysis

Is the Landlord entitled to a Monetary Order for damage to the rental unit or common areas?

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Landlord has not provided sufficient evidence to establish a claim for damage to the rental unit or common areas.

The parties contested the condition of the rental unit at the time the tenancy ended. Although the Landlord completed a move-out inspection report, the lack of a move-in condition inspection report renders the assessment of damages allegedly caused by the Tenant difficult to ascertain, particularly considering the Tenant's competing evidence regarding the condition of the unit at the time she vacated. The Act places the burden

of conducting condition inspections of a rental unit on the Landlord. The Landlord did not substantiate the condition at the time the Tenant moved-in with a completed, signed inspection report. Having failed to do so, and absent other credible evidence or admission from the Tenant regarding any particular item of damage, the Landlord has not met his burden of proof in establishing the Tenant is responsible for any one of the items of damage he repaired at the end of the tenancy.

Therefore, I find the Landlord is not entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act.

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find the Landlord has established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlord presented evidence, and the parties had previously contested (file no. ending 094), the Tenant's liability for the rodent infestation in the rental unit. The decision noted the Tenant's failure to maintain the unit in a clean and sanitary manner, in violation of section 32(2) of the Act and the pest inspection report determined the rodent infestation was a result of the Tenant's lack of maintenance and over-cluttering/debris in the rental unit. I do not find the Tenant did not provide adequate evidence to support her position the construction of the rental unit was the cause of the rodent infestation. Therefore, I find the Landlord has established damage or loss under the Act and tenancy agreement for the pest control expense in the amount of \$1,145.93.

Additionally, the Tenant at the time of vacating the rental unit was responsible for cleaning the rental unit. Policy Guideline 1 provides the Tenant is required to clean the carpets: "Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year." The Tenant is responsible for cleaning the unit, including appliances, and yard, if applicable. In this case, the Landlord provided an affidavit from a witness stating the yard had debris and the interior had items remaining in it from the tenancy. The Landlord provided an invoice from a contractor for carpet cleaning (\$325.00 plus GST), cleaning "the whole house" (\$850.00 plus GST) and removing various items of debris and clutter in the unit and the yard (\$450.00 plus GST).

I find the Landlord has provided sufficient evidence to establish, on a balance of probabilities, a loss under the Act and tenancy agreement for the Tenant's failure to clean the unit, yard and carpets before moving out. However, the cost for cleaning the interior of the unit is excessive and I find it more reasonable that this charge be reduced by one-half. I find the Landlord has failed to establish the Tenant removed recycle or trash bins requiring replacement of these for \$125.00.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlord is entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act, in the amount of \$1,260.00 (including GST as charged by the contractor) for cleaning the unit and the yard; and, \$1,145.93 for the cost of pest control.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Is the Tenant entitled to a Monetary Order for the return of all or a portion of the security deposit?

Section 38(4) allows a landlord to retain from a security and/or pet damage deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security and/or pet damage deposit, section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Section 38(6) of the Act states that if the landlord does not return the deposit(s) or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

The Tenant provided her forwarding address to the Landlord on March 13, 2024, and the Landlord timely applied for dispute resolution on March 23, 2024.

The Tenant takes the position the Landlord's right to claim against the security deposit is extinguished by his failure to conduct a move-in inspection and prepare a report accordingly. The Tenant further argues that the Landlord's retention of the security

deposit after providing her forwarding address mandates that the deposit amount to be returned is double the amount of the deposit.

As a threshold matter, the parties contested whether the Tenant had paid the \$1,100.00 pet damage deposit as provided in the tenancy agreement. I find the Landlord's evidence credible the Tenant did not pay the pet damage deposit but only the security deposit in the amount of \$1,100.00. The tenancy agreement provides the pet damage deposit was not paid at the time the tenancy agreement was signed, and the Tenant was unable to provide any corroborating evidence that she had paid the deposit. Therefore, I find the Landlord has presented sufficient evidence the Tenant only paid a security deposit in the amount of \$1,100.00.

Policy Guideline 17 provides:

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7 [relating to the Landlord providing at least two opportunities to the Tenant to attend an inspection], retains the following rights: a. to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit; b. to file a claim against the deposit for any monies owing for other than damage to the rental unit; c. to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and d. to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

10. The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit. Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled.

Pursuant to Policy Guideline 17, I find the Landlord timely applied for dispute resolution within 15 days of the Tenant providing her forwarding address. The Landlord retained the right to claim against the security deposit for sums other than damage to the unit (in this case, cleaning the unit and yard as well as the pest control costs to eradicate the rodents as opposed to any damage caused by the rodents). Therefore, the Tenant is not entitled to doubling the security deposit as damage.

Under section 72 of the Act, I allow the Landlord to retain the Tenant's security deposit of \$1,145.95, which includes interest, in partial satisfaction of the monetary award.

The issue of the security deposit has now been conclusively dealt with in this hearing.

Is the Tenant entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, the tenant must prove:

- the landlord has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the tenant acted reasonably to minimize that damage or loss

The issue of the Tenant's overpayment of rent to the Landlord as the result of the Landlord increasing the monthly rent in an amount that violated the Act and regulations was adjudicated in the prior arbitration proceeding (file no. ending -813). There was no dispute between the parties that the Tenant paid the Landlord rent for four months (October 2023 through January 2024) in the amount later determined by the arbitrator to be in violation of the Act and regulation. The Landlord's position that the additional rent sum was for unpaid water bills was not persuasive.

I find, consistent with the earlier arbitration decision on this issue, the Tenant overpaid the Landlord rent in the amount of \$280.00 for 4 months. Therefore, pursuant to section 67 of the Act, I find the Tenant is entitled to a monetary award in the amount of \$1,120.00.

The Tenant also requested aggravated damages in the amount of \$1,000.00 claiming the Landlord's litigation before various tribunals was unnecessary and in bad faith, resulting in great emotional strain and stress to her. Policy Guideline 16 states: "Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application."

I find the Tenant has not provided sufficient evidence to support a request for aggravated damages. The Landlord is entitled to pursue legal recourse through judicial review. The Tenant's stress as a result thereof is a common experience for litigants and does not rise to the level the Landlord's conduct resulted in "significant damage or loss" caused deliberately or through negligence.

For the above reason, the Tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act is granted for the overpayment of rent to the Landlord for the period October 2023 through January 2024.

Is the Landlord or the Tenant entitled to recover the filing fee for this application from the other party?

As each party was successful in their application, I find that because each party would be entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act, it is unnecessary to make separate awards of the filing fee to each party.

Conclusion

I grant the Landlord a Monetary Order in the amount of **\$139.98** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order under section 67 of the Act for reimbursement for pest control costs and cleaning the rental unit	\$2,405.93
Less Tenant's security deposit plus accrued interest	-\$1,145.95
Less monetary award under section 67 to Tenant for overpayment of rent for the period October 2023 to January 2024 (\$280.00/month)	-\$1,120.00
Total Amount	\$139.98

The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** 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 issued on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 20, 2024

Residential Tenancy Branch