



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNRL-S OPN OPR (landlord);
FFT MNDCT MNSD (tenant)

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession pursuant to section 46;
- A monetary order for unpaid rent pursuant to section 67;
- An order to retain the security deposit pursuant to section 72;
- A monetary order for compensation pursuant to section 67; and
- Authorization to recover the filing fee for this application pursuant to section 72.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation pursuant to section 67;
- A monetary order for the reimbursement of the security deposit pursuant to section 38; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord submitted an amendment to the monetary claim on September 24, 2018 to increase the claim to \$4,100. 85. The landlord did not provide an explanation or a breakdown of the increase.

This hearing was originally scheduled to deal only with the landlord's application. During the hearing, it came to my attention that the parties had a second hearing scheduled for January 22, 2019 to deal with the tenant's application for claims relating to the same tenancy. The case numbers of the applications are referenced on the first page of the decision.

The parties consented to both applications being heard at this hearing. Accordingly, I so ordered.

Therefore, I cancelled the hearing scheduled for January 21, 2019 between the parties and heard all matters in issue between the parties with respect to both applications.

The landlord and the tenant acknowledged receipt of each other's evidence with respect to both matters. They raised no issues of service. I find both parties served pursuant to section 89 of the *Act*.

Both parties were given full opportunity to be provide affirmed testimony, present evidence, cross examine the other party and make submissions. The tenant called her mother JP as a witness to provide affirmed testimony.

As the tenant vacated the unit on September 15, 2018, the landlord requested withdrawal of the application for an order of possession

Accordingly, I amended the landlord's claim to withdraw the application for an order of possession.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent pursuant to section 67;
- An order to retain the security deposit pursuant to section 72;
- A monetary order for compensation pursuant to section 67; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Is the tenant entitled to the following:

- A monetary order for compensation pursuant to section 67;
- A monetary order for the reimbursement of the security deposit pursuant to section 38; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Background and Evidence

Each party submitted many documents and lengthy, acrimonious testimony in support of their respective claims. The hearing lasted 102 minutes. While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions, evidence and arguments are reproduced here. The relevant aspects of this matter and my findings are set out below.

The parties testified they signed a two-year fixed term tenancy beginning September 15, 2017 for monthly rent of \$1,550.00 payable on the first of the month. The tenant paid a security deposit of \$775.00 at the beginning of the tenancy which the landlord holds. The tenant has not provided the landlord with written authorization to withhold the deposit nor has she provided her forwarding address in writing.

A copy of the tenancy agreement was submitted as evidence.

The tenant vacated the unit on September 15, 2018. The tenant acknowledged she did not provide notice of her intention to leave and did not pay rent for the month of September 2018.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice") on September 10, 2018. The landlord filed an application for dispute resolution on September 14, 2018.

The tenant filed an application for dispute resolution on September 23, 2018.

I address each party's claims and the other party's response under corresponding headings below.

Landlord's claims

Landlord's claims - Summary

The landlord submitted an Amendment to her application to increase her monetary claim to \$4,100.85. However, at the hearing, the landlord itemized her claim as **\$3,831.00** only and withdrew her claim to any greater amount. She provided details of her claim as follows:

ITEM		AMOUNT
Rent		
	September 2018	\$1,150.00
	Half of October 2018	\$775.00
Electrician's Expense - reimbursement		\$250.00
Flooring costs – estimate of replacement cost		\$1,206.00
Cleaning costs - estimate		\$350.00
Filing fee - reimbursement		\$100.00
TOTAL		\$3,831.00

Landlord's claim: rent

The landlord testified the tenant vacated the unit during a fixed-term tenancy agreement on September 15, 2018 without providing the landlord any notice of her intention to do so.

The landlord testified she rented the premises to another tenant on October 15, 2018 and is therefore claiming compensation from the tenant for rent for the month of September and half of the month of October 2018, in the amount of \$1,150.00 and \$775.00 respectively, for a total of \$1,900.00.

Tenant's reply to the landlord's claim: rent

The tenant acknowledged she did not pay rent for the month of September 2018 or provide the landlord with any notice of her intention to vacate.

The tenant testified she is not responsible for any rent claimed by the landlord because of the following:

- The unit was uninhabitable, and the tenant had to vacate without notice on September 15, 2018 for health and safety reasons;
- The unit was uninhabitable because the dishwasher did not function, and the toilets did not work properly;
- Regarding the dishwasher:

- In July 2018, smoke came from the dishwasher's electrical wiring at the rear of the appliance;
- The landlord's husband attempted a repair of the dishwasher;
- The tenant called the fire department, described the repairs, and was told not to use the dishwasher in its current condition;
- The tenant did not inform the landlord that the dishwasher did not work properly until one week before she vacated;
- The tenant subsequently refused admission to the unit by the landlord and the electrician to conduct repairs;
- As a result, the tenant did not have a working dishwasher for the last two months of the tenancy and seeks reimbursement from the landlord in the amount of \$50.00 a month for two months;
- Regarding the toilets:
 - The toilets "erupted" on October 7, 2017;
 - The landlord's husband cleaned up the water and overflow, and fixed the toilets;
 - The toilets subsequently ran constantly requiring manual removal of the lid and adjustment of the float valve;
 - The tenant did not give the landlord notice of the continuing problems with the toilets as she had "given up" on communicating with the landlord.

Landlord's claim – electrician invoice

The landlord testified the tenant notified her in July 2018 that the dishwasher was not working. She stated her husband fixed the dishwasher.

The landlord testified she was surprised when the tenant informed her one week before she vacated that the dishwasher had not worked since July 2018 when the landlord's husband had repaired it.

The landlord testified she immediately provided four days notice of her intention to attend at the unit with an electrician. However, the parties agree that when the landlord attended with the electrician on September 13, 2018, the tenant denied them entry. The landlord submitted a letter from the electrician dated September 13, 2018 stating the tenant denied him entry and an invoice in the amount of \$250.00.

The landlord requests reimbursement from the tenant in the amount of \$250.00.

Tenant's reply to the landlord's claim – electrician invoice

The tenant denies she is responsible for the landlord's claim for this expense. The tenant acknowledged she did not allow the landlord or the electrician admittance to the unit as she was "fed up" with the landlord.

Landlord's claim – reimbursement for damaged flooring

The landlord claimed the tenant is responsible to reimburse her for \$1,026.00, being the estimated cost of replacing part of the laminate flooring in the unit.

The landlord's claim for damaged flooring begins with the toilet overflow on October 7, 2017 which she acknowledged was not the fault of the tenant.

The landlord testified that the landlord's husband immediately attended at the unit and repaired the toilets and cleaned up the water which had spilled onto flooring. Afterwards, the tenant informed the landlord that the floor was drying after the clean up and no further drying was necessary. The landlord claimed she relied upon this information and did not bring commercial drying units to the unit to dry the flooring. As a result, the wet flooring did not dry properly and warped. The landlord submitted an estimate of \$1,206.00 for the cost of replacing the flooring. However, the landlord stated she has not replaced the flooring and has subsequently rented the unit.

The landlord claims the tenant had a responsibility to inform her that the water damaged the flooring in order that the landlord could take remedial action right away and prevent any damage.

Tenant's reply to landlord's claim – reimbursement for damaged flooring

The tenant denies any responsibility for damage to the flooring.

The tenant testified she was not an expert on flooring. She stated that the landlord's husband saw the water damage on October 7, 2017 and was in a better position than she was to predict damage to the flooring. The tenant claims it was the landlord's responsibility to examine the flooring and determine if it needed drying to prevent permanent damage, not hers. The tenant denies any responsibility for notifying the landlord or for the consequences of her expressing her opinion that the floor looked dry.

Landlord's claim – cleaning costs

The landlord submitted pictures of the uncleaned vacant unit, showing dirt and miscellaneous items of clothing and other possessions left behind. The landlord also submitted pictures of food left in the refrigerator, and stained flooring.

The landlord claims reimbursement of \$350.00 from the tenant, representing an estimate of the time she spent cleaning the unit, based on 20 hours at \$15.00 an hour.

The parties testified they had scheduled an inspection for the evening of September 17, 2018, at 7:00 PM.

Early on September 17, 2018, or on the previous day, the landlord acknowledged putting the tenant's remaining possessions from the unit in garbage bags and putting the bags outside. The landlord testified she forgot about the scheduled inspection and presumed prematurely that the tenant had vacated the unit and abandoned everything left behind.

The parties agreed the tenant and her mother JP tried to gain access to the unit on the afternoon of September 17, 2018 at approximately 2:00 PM to clean the unit and the landlord refused to allow them entry.

The landlord submitted a copy of the condition inspection report on moving in signed by both parties. The landlord stated she conducted the inspection on moving out without the tenant who did not attend on September 17, 2018 at 7:00 PM. She submitted a copy of the moving out report signed by her only. The landlord submitted the report in support of her application for estimated cleaning expenses.

Tenant's reply to the landlord's claim – cleaning costs

The tenant denied responsibility for the claimed cleaning costs.

The tenant called her mother JP as a witness who provided affirmed testimony the two of them attended at the unit at 2:00 PM on September 17, 2018, prior to the inspection scheduled for 7:00 PM, to clean and move the remainder of the tenant's belongings.

The tenant and JP testified they found the landlord had filled garbage bags with the tenant's belongings and put them outside the unit.

The tenant testified that as the landlord did not permit her to clean the unit, she is not responsible for any cleaning costs.

Tenant's claims

Summary

The tenant claims reimbursement from the landlord in the amount of **\$2,275.00**. She itemized her claim as follows:

ITEM	AMOUNT
Damaged or destroyed belongings	\$1,000.00
Reduction in rent for lack of dishwasher (\$50.00 @ month x 2 months)	\$100.00
Two days lost wages	\$300.00
Return of security deposit	\$775.00
Reimbursement of filing fee	\$100.00
TOTAL	\$2,275.00

Tenant's claims – damaged or destroyed belongings

As discussed earlier, the parties testified they had a condition inspection scheduled for September 17, 2018 at 7:00 PM which the landlord overlooked. They testified the tenant and her mother attended at the unit at 2:00 PM that day to clean prior to the inspection. The parties agreed the landlord refused the tenant entry and she had already placed the remainder of the tenant's belongings in garbage bags and put them outside.

The tenant submitted pictures of the garbage bags and contents. The photographs show some items were broken, such as picture frames. The tenant testified that some of the liquid items, such as bleach, were in open containers placed on top of clothes in the bags; the fluid leaked or spilled onto her clothing, food and other possessions. Many items were damaged or ruined.

The tenant did not submit an itemized list of the damaged or ruined belongings, their original cost, their age, or their replacement value.

The tenant testified her estimate of the value of her damaged and ruined possessions was \$1,000.00 and she claims a monetary order in this amount for compensation.

Landlord's response to the tenant's claim – damaged possessions

As discussed, the landlord agreed with the tenant's version of events regarding the landlord putting the tenant's personal possessions in garbage bags overlooking the scheduled inspection for the evening of September 17, 2018.

However, the landlord disagreed she put liquids, such as an opened bleach container, on top of any of the items. The landlord disagreed with the valuation of the damaged or ruined items and said she estimated the items were worth \$300.00 to \$500.00 and not \$1,000.00 as claimed by the tenant.

Tenant's claim - lost wages

The tenant claimed she was unable to work for two days after the tenancy ended because of "harassment" from the landlord who demanded her forwarding address in multiple texts and emails.

The tenant produced no documentary evidence relating to her wages or employment earnings.

Landlord's response to tenant's claim - lost wages

The landlord denies that the tenant incurred any expense for lost wages for which she, the landlord, is responsible. The landlord stated she wanted to have the tenant's forwarding address so could return the security deposit.

Tenant's claim - compensation for dishwasher

As described earlier, the tenant claims compensation in the amount of \$50.00 a month for the last two months of the tenancy, for a total of \$100.00, during which time she testified she did not have a functioning dishwasher in the unit.

The tenant testified the landlord's husband effected unsafe repairs in July of 2018. The tenant testified she called the fire department, described the repairs, and was advised it was unsafe to use the dishwasher.

As stated above, the tenant acknowledged she did not inform the landlord that the dishwasher was not working until the last week of her tenancy. She acknowledged she refused to allow the electrician to enter the unit to fix the dishwasher.

Landlord's response to tenant's claim – compensation for dishwasher

As discussed earlier, the landlord claimed she did not know the dishwasher was not working after her husband attended at the unit in July 2017 and repaired the appliance.

The landlord testified that as soon as she knew the dishwasher was not working, in the week before the tenant vacated, she attended at the unit with an electrician after giving the tenant notice and was denied entry by the tenant.

Analysis

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

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation by the other party of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on each party to prove entitlement to their claim for a monetary award.

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.

I will address each of the party's claims in turn.

Landlord's claim – rent

A tenant may only end a fixed term tenancy agreement in limited and specific circumstances as provided under section 45 (2) and (3) of the *Act*, which are situations

where a tenant is fleeing domestic violence or going into a care home, where the landlord has violated a material term of a tenancy agreement, or as authorized by the Director. None of these circumstances apply to this case.

The tenant testified she vacated suddenly because the dishwasher did not work for two months and the toilets did not automatically stop running for about 11 months. I accept the tenant's evidence she did not give notice to the landlord in a timely manner of either of these problems. With respect to the toilets, she did not give notice at all.

A tenant must inform a landlord of problems requiring repairs. If a tenant fails to do so, the tenant cannot complain that the landlord failed to remedy a situation about which the landlord had no knowledge.

I find the tenant has failed to establish on a balance of probabilities that the unit was uninhabitable as she claimed, or that the landlord failed to provide repairs.

I therefore find the tenant vacated the unit on September 15, 2018 without valid reason. I find the tenant is responsible to pay compensation to the landlord.

Section 7 of the *Act* provides that where a landlord claims against a tenant for loss of rent the landlord has a burden to prove the landlord took made every reasonable effort to minimize losses. I find the landlord took all reasonable steps to mitigate or minimize the loss of rent pursuant to section 7(2) of the *Act* and was able to rent the unit by mid-October 2018.

Considering the evidence of the parties, the documents submitted, and the burden of proof required, I find on a balance of probabilities that the landlord has established a claim against the tenant for the amount claimed for rent.

I therefore find the landlord is entitled to a monetary award for rent as claimed in the amount of **\$1,925.00** calculated as follows.

ITEM	AMOUNT
Rent for September 2018	\$1,150.00
Rent - Half month's rent for October 2018	\$775.00
TOTAL	\$1,925.00

Landlord's claim – reimbursement of electrician expense

The tenant acknowledged she informed the landlord that the dishwasher did not work during the last week she occupied the unit. The landlord gave proper notice of attending the unit with an electrician to repair the dishwasher. The tenant did not object to the scheduled appointment. Instead, she refused entry at the scheduled time without good reason. This is a violation by the tenant of her obligations to permit the landlord to enter pursuant to section 29 of the *Act*.

On a balance of probabilities and considering the evidence submitted and the testimony of the parties, I find the landlord has met the burden of proving her claim for compensation in this regard.

I find the tenant must compensate the landlord for the expense of \$250.00 for the electrician's invoice.

I award the landlord a monetary order for compensation in the amount of \$250.00.

Landlord's claim – damaged flooring

I will consider the landlord's claim for reimbursement for the estimated cost of replacement of the flooring damaged by water when the toilet overflowed on October 7, 2017.

The landlord acknowledged the tenant was not responsible for the water damage from the overflowing toilet. However, the landlord claimed the tenant failed to subsequently inform the landlord the flooring was wet and is therefore responsible for the damage.

The landlord testified her husband attended at the unit when the incident occurred for the repair and clean-up. Nevertheless, the landlord did not provide adequate drying and the flooring was damaged as a result. I find the landlord should have known the flooring needed drying and is therefore responsible for the resulting damage. I find the tenant is not in violation of the *Act*, regulations or tenancy agreement.

I have also considered the testimony of the landlord that she has not replaced the flooring damaged by the water and has rented the unit again. I find she has not established she intends to replace the flooring or that she is likely to incur this expense. I therefore find the landlord has not met the burden of proving a monetary loss.

For these reasons, I find the landlord has failed on a balance of probabilities to provide evidence of a compensable loss for which the tenant is responsible. Accordingly, I deny the landlord's claim for replacement of the flooring.

Landlord's claim – cleaning costs

After listening to the testimony of the parties and the tenant's witness JM, I find the landlord did not permit the tenant to enter the unit to clean before the time set for the inspection. This was acknowledged by the landlord. Therefore, the landlord cannot claim against the tenant for the cost of cleaning.

I do not accept the condition inspection report as evidence supporting the landlord's claim as the tenant was denied the opportunity to clean before the time scheduled for the inspection.

I therefore find the landlord is not entitled to reimbursement for cleaning costs.

Summary of award to landlord

The award of the filing fee is considered at the end of the decision.

The landlord is granted a monetary order for outstanding rent and reimbursement of the electrician's expense as follows:

ITEM	AMOUNT
Rent for September 2018	\$1,150.00
Rent - Half month's rent for October 2018	\$775.00
Reimbursement Invoice Electrician	\$250.00
TOTAL	\$2,175.00

I dismiss the remainder of the landlord's claims without leave to reapply.

Tenant's claim – damaged or destroyed belongings

The landlord acknowledged she damaged some of the tenant's possessions when she put them in garbage bags on September 17, 2018 and put the bags outside. The amount of the compensation owed by the landlord is in dispute.

The tenant claims \$1,000.00 for this loss. She has submitted no evidence to establish her claim such as a list of items damaged and their value. An exact monetary value of the items is not possible because of the lack of evidence. In the circumstances, it is not surprising that the tenant could not produce receipts of purchase for common household items, food and a family's clothing.

The landlord suggests \$300.00 to \$500.00 as a realistic valuation although the landlord has not provided any basis for this estimate.

I accept the tenant lost several bags of personal possessions to damage from cleaning products accidentally spilled on them and from foodstuffs being put on top of many of the items. Considering the tenant's testimony and the photographs of her possessions, I find on a balance of probabilities that the tenant has met the burden of proving a monetary value of the damaged or ruined items in the amount of \$1,000.00.

Accordingly, I grant the tenant a monetary order in the amount of \$1,000.00 with respect to this claim.

Tenant's claim – compensation for dishwasher

As discussed earlier, the tenant has failed to establish that she notified the landlord the dishwasher was not working. Yet she claims \$50.00 a month compensation for the two months she did not have a dishwasher. When she notified the landlord the dishwasher was not working, the landlord promptly attended with a repair person. However, the tenant refused entry to the unit.

I find the tenant has not met the burden of proof in establishing this claim for monetary loss. I find the tenant failed to provide an opportunity to the landlord to comply with her repair obligations. Accordingly, I deny the tenant's claim to compensation for two months during which the dishwasher was not working.

Tenant's claim - lost wages

The tenant submitted copies of texts from the landlord after the tenant vacated in which the landlord requested her forwarding address. However, I find the tenant has failed to establish that the texts were sufficiently threatening or frightening to the extent that her health was disturbed, necessitating missed work.

The tenant has not submitted any evidence of her wages nor has she established the responsibility of the landlord for her inability to work for two days after she vacated.

I therefore find the tenant has not met the burden of proving on a balance of probabilities that she has experienced this loss or that the landlord is responsible. I therefore deny the tenant's claim for lost wages.

Parties' claims for filing fees

As both parties have been partially successful in their claims, I do not award reimbursement of filing fees.

Security deposit

I find the landlord is entitled to a set-off of the security deposit pursuant to section 72.

Summary of both claims

I award the landlord a monetary order in the amount of \$400.00 calculated as follows:

ITEM	AMOUNT
Rent for September 2018	\$1,150.00
Rent - Half month's rent for October 2018	\$775.00
Reimbursement Invoice electrician	\$250.00
Award to Landlord - Subtotal	\$2,175.00

ITEM	AMOUNT
Award to Landlord - subtotal	\$2,175.00
(Less award for damaged personal belongings of tenant)	(\$1,000.00)
(Less security deposit)	(\$775.00)
FINAL AWARD TO LANDLORD	\$400.00

Conclusion

I award the landlord a monetary order in the amount of \$400.00. 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) to be enforced as an order of that Court.

Dated: November 2, 2018

Residential Tenancy Branch