# Dispute Resolution Services



Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the "Application") that was filed by the Landlord under the *Residential Tenancy Act* (the "*Act*"), seeking:

- Compensation for damage to the unit or property;
- Compensation for other money owed;
- Authorization to withhold the security deposit against any money owed; and
- Recovery of the filing fee.

The hearing was originally convened by telephone conference call on October 9, 2018, at 1:30 PM and was attended by the Tenants, two agents for the Landlord (the "Agents") and a witness for the Landlord, all of whom provided affirmed testimony. The hearing was subsequently adjourned an interim decision was made on October 9, 2018. The reconvened hearing was set for November 22, 2018, at 11:00 AM and a copy of the interim decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the "Branch") in the manner requested during the hearing. For the sake of brevity I will not repeat here the matters discussed in the interim decision and as a result, the interim decision should be read in conjunction with this decision.

The hearing was reconvened by telephone conference call on November 22, at 9:00 AM and was attended by the same parties as the original hearing. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

**Preliminary Matter #1**

Although the Application states that the Landlord is seeking $2,313.18 in compensation; $2,213.18 for damage to the property and other money owed, and $100.00 for recovery of the filing fee, the Monetary Order Worksheet indicates that the Landlord is actually seeking $3,968.28 in compensation. Specifically, the Landlord only sought $2,213.18 in the Application for damage to the hardwood floors, walls, and doors, replacement of a fireplace remote, cleaning and replacement costs for the glass of the gas fireplace and igniter, repair costs for a laundry sink and unpaid municipal utilities.

Rule 6.2 of the Rules of Procedure states that the hearing is limited to the matters claimed in the application unless the arbitrator allows a party to amend the application. Rule 4.1 of the Rules of Procedure provides information on how parties may add, alter, or remove claims made in the original application prior to the commencement of the hearing and rule 4.2 states that an arbitrator may amend an application in the hearing in circumstances that could reasonably have been anticipated, such as when the amount of rent owing has increased since the time the application was filed.

No Amendment to an Application for Dispute Resolution form was filed by the Landlord in compliance with rule 4.1 increasing their monetary claim from $2,313.18 to $3,968.28 and I find that simply submitting documentary evidence, including a Monetary Order Worksheet, does not constitute an Amendment under the *Act* or the Rules of Procedure. Given the nature of the claims, I also do not find it reasonable to amend the application based on the information given at the hearing as the Landlord easily could have amended their Application in compliance with the *Act* and the Rules of Procedure, should they have wished to do so, and I do not find that the claims made by the Landlord could reasonably have been anticipated by the Tenants based on the Application itself. As a result, the hearing proceeded on the basis that the Landlord was only claiming $2,313.18 in monetary compensation for both damage to the rental unit and other money owed.

**Preliminary Matter #2**

Although the parties agreed that the Application, the Notice of Hearing and the majority of the documentary evidence before me was sent and received in accordance with the *Act* and the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”), the Tenants disputed receipt of video evidence from the Landlord. However, the

Tenants acknowledged receipt of photographic evidence from the Landlord which the Agents alleged were simply still images taken directly from the videos themselves. Having reviewed both the photographic and video evidence, I conclude that the photographs are in fact still images taken directly from the videos. As a result, I find no prejudice to either party in accepting the video evidence for consideration in this matter as the Tenants agreed that they received and had time to consider the photographic evidence which I find was taken directly from the videos.

**Preliminary Matter #3**

Although settlement was proposed during the hearing, ultimately a settlement agreement could not be reached between the parties. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Branch under Section 9.1(1) of the *Act*.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the unit or property?

Is the Landlord entitled to compensation for other money owed?

Is the Landlord entitled to withhold the security deposit against any money owed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Tenancy agreement in the documentary evidence before me for consideration states that the tenancy began on September 27, 2014, that a security deposit in the amount of $800.00 was paid and that rent in the amount of $1,600.00 was due each month. The parties agreed in the hearing that the tenancy ended on February 28, 2018, that the Tenants' forwarding address was received in writing by e-mail on March 2, 2018, and that the Landlord still holds the $800.00 security deposit. Although the Tenants agreed that they did not sign the move-out condition inspection report, ultimately the parties were in agreement that condition inspections and reports were both completed at the start and end of the tenancy in compliance with the Act and regulation and that the Tenants were provided with copies of the reports on the day the inspections were completed.

Although the Landlord initially sought $190.11 in outstanding municipal utilities, during the hearing the parties agreed that the all utilities have now been paid. Despite the foregoing the Agents sought $4.51 in late penalties charged by the municipality for late utility payments made by the Tenants. The Tenants did not dispute that these late penalties are owed to the Landlord.

The parties agreed that a gas fireplace was installed in the rental unit in January of 2015, that it was not to be used as a primary heat source for the rental unit, and that it was not cleaned or serviced by the Tenants at any point during the tenancy. However, the parties disputed whether the Tenants had in fact used the gas fireplace as a primary heat source, whether any use resulted in damage, and whether a fireplace remote was provided at the time of installation and not returned at the end of the tenancy. The Agents testified that the Tenants were clearly not using the furnace as a primary heat source according to their own testimony and alleged that they were therefore using the gas fireplace as the primary source of heat. The Tenants agreed that they did not use either the original furnace or a new furnace that was installed during the tenancy as the primary heat source for the majority of the tenancy as they did not believe that the ducting was installed properly and therefore it was inefficient. As a result, the Tenants stated that they instead used an electric space heater as their primary heat source.

The Agents testified that it would not have been possible for the Tenants to use a space heater to heat the home and therefore they must have been using the gas fireplace as their primary heat source. The Agents pointed to invoices from the fireplace maintenance company showing that the fireplace was cleaned and serviced by them at the end of the tenancy and that the igniter was replaced. The Agents stated that the Tenants should be responsible for these cleaning costs as they did not clean the fireplace at the end of the tenancy and that they should also be responsible for the replacement of the igniter as it was prematurely damaged due to their overuse. Further to this, the Agents testified that the fireplace glass was damaged by the Tenants overuse and lack of maintenance and sought $1,176.00 for the replacement of the fireplace glass and gasket.

In addition to the above, the Landlord sought $157.50 for the replacement of a fireplace remote that the Agents stated was provided to the Tenants when the fireplace was installed and not returned. In support of this testimony the Agents provided purchase and installation receipts for the fireplace as well an invoice for the purchase and installation of a fireplace remote. The Tenants denied ever having received a fireplace remote and stated that they therefore should not be responsible for its replacement. In

support of this testimony the Tenants pointed to the invoices from the Agents stating that they do not indicate that a fireplace remote was initially purchased or installed.

The Agents and their witness testified that the rental unit, including the hardwood floors, was in excellent condition at the start of the tenancy and that the hardwood floors had in fact been clear coated just prior to the start of the tenancy. Despite the foregoing, the Agents and witness testified that the flooring had some water damage and was badly gouged and worn at the end of the tenancy resulting in the need to sand, refinish and recoat all the hardwood floors. The Agents and witness stated that the damage was so significant that it could not possibly be wear and tear and that the oak flooring needed to be sanded to bear wood, then coated with three coats of finish. The Agent and witness testified that due to the nature of hardwood flooring, all the flooring needed to be sanded and refinished to ensure that it was level and consistent in color, which was very expensive; however, the Agents stated that the Landlord is only seeking $494.76 from the Tenants which constitutes only the cost for repairing the damaged areas, not the entire bill for sanding and refinishing all of the flooring. In support of this testimony the Agents provided significant documentary evidence in the way of videos, photographs, letters, invoices and condition inspection reports.

The Tenants denied that the floors were in good condition at the start of the tenancy but acknowledged that the wear and damage they noticed at the start of the tenancy was not noted in the move-in condition inspection report. They testified that the floors were already showing signs of damage and wear at the start of the tenancy and that by the end, the clear coat had simply worn off and exposed the damage already present underneath for which they should not be responsible.

The Agents testified that the Tenants had scratched wood paneling in the rental unit and installed several locking mechanisms on doors without permission, causing damage. As a result, the Landlord sought $137.48 for the cost of repairing and repainting the damaged areas. In support of this testimony the Agents pointed to the move-in and move-out condition inspection reports, photographs of the damage and the locking mechanisms and several receipts. The Tenants stated that they did not damage the wood panelling in the rental unit, which is original to the home and was already scratched at the start of the tenancy, but acknowledged that they did not feel it necessary to document every little scratch on the move-in condition inspection report. Although the Tenants agreed that they did not seek or receive approval to install the extra locking mechanisms, they stated this was done for safety reasons due to a rash of break-ins in the area and that the Landlord and Agents, having seen these locks on numerous occasions, never asked that they be removed.

Finally, the Landlord sought $238.35 for cleaning and repairs of a laundry sink which they state was left dirty and clogged by the Tenants. The Tenants denied leaving the sink dirty or clogging and stated that it had always drained slowly. The Tenants also argued that the washing machine drains directly into the sink which could have clogged it due to no fault of their own. Although the Agents acknowledged that the washing machine drains into the sink, they stated that the sink was clearly clogged at the end of the tenancy with mud requiring both an attempt to unclog it and ultimately repairs to the piping an drain, and that it and was in good working order at the start of the tenancy. In support of this testimony they pointed to photographs of the laundry sink, the move-in condition inspection report showing no issues with the laundry sink, and the invoice for repairs. Although the Landlord had other plumbing repairs completed which are also shown on the invoice, the Agents testified that the $238.35 is only for the cost of drain cleaning and repairs.

Both parties provided considerable documentary evidence in support of their above noted arguments and testimony, which I have considered in rendering this decision. Testimony and documentary evidence was also provided by both parties in relation to the replacement of heating oil, removal of a large composter and kitchen flooring. However, I note that these claims were not cited by the Landlord in their Application and that the costs sought for them were in excess of the amount claimed by the Landlord in the Application.

Analysis

Although the Application states that the Landlord is seeking $2,213.18 in compensation for damage to the rental unit and other money owed as well as $100.00 for recovery of the filing fee, the Agents and witness provided testimony relating to $2,363.30 in damage for matters claimed in the Application. Further to this, the Agents and witnesses provided testimony and documentary evidence far in excess of the above noted amount claimed by the Landlord in the Application and for matters not disclosed or claimed in the Application, such as removal of a composter, kitchen flooring, and replacement of heating oil. As stated in the preliminary matters section of the decision, the hearing and decision are restricted to only the matters claimed in the original Application. As a result, I have made no findings of fact or law in relation to the composter, the kitchen flooring or the replacement of heating oil as these did not form part of the Landlord’s claim in the Application. I have also restricted the maximum amount which can be awarded to the Landlord in this matter to the $2,313.18 sought in the Application.

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

While the Agents and the Landlord's witness provided significant testimony and documentary evidence for my consideration that the Tenant's did not use the furnace as a primary heat source for the residence, the Tenants did not dispute this fact and stated that they instead used an electric space heater as their primary heat source. Although the Agents relied on their evidence and testimony as well as that of the Tenants, that they did not use the furnace as a primary heat source in order to support their argument that the Tenants damaged the gas fireplace by using it as a primary heat source, I find the evidence and testimony before me from the Landlord, who bears the burden of proof in this matter, falls significantly short of establishing that the Tenants either used the furnace as a primary heat source or that doing so resulted in damage to the fireplace. I do not find that failing to use the furnace establishes, in and of itself, that the Tenants used the fireplace as a primary heat source for the home, especially given their plausible testimony that they used an electric space heater to heat the home instead. Although it is clear from the photographs and invoices that the fireplace glass was dirty and that a spark plug igniter required replacing at the end of the tenancy, the documentary evidence from the service technician does not state *why* the igniter required replacement or that the glass either could not be cleaned further or was damaged by the Tenant's use or improper maintenance as alleged by the Landlord. As a result, I am not satisfied, on a balance of probabilities, that any damage to the fireplace glass or the replacement of the igniter is anything other than reasonable wear and tear through regular use of the fireplace and I dismiss the Landlord's claim for fireplace glass and gasket replacement as well as replacement of the igniter without leave to reapply.

Despite the foregoing, I find that the Tenants none the less failed to clean the fireplace, which I find constitutes a portion of the rental unit for which they were responsible to clean at the end of the tenancy pursuant to section 37 of the *Act*. As the invoice in the documentary evidence before me states that the $154.70 was paid for servicing, including cleaning and the installation of a fireplace remote and new spark igniter, the invoice does not state which portion of this invoice is specifically for cleaning. As a result, I award the Landlord only $77.35 for the cleaning of the fireplace, which constitutes half of the servicing cost.

The Landlord's also stated that the Tenants received a fireplace remote when the fireplace was installed, which was not returned to them at the end of the tenancy; however, the Tenant's disputed this testimony. The Tenants stated that no remote was ever provided and they were able to turn the fireplace on and off without one. Although the Agents stated that this is impossible, no documentary or other evidence was submitted by the Landlord or Agents corroborating that a fireplace remote was a necessity for use of this fireplace. Further to this, the invoice for purchase and installation of the fireplace does not state that a remote was either initially purchased or installed. Although the Agents stated that a remote was one of the standard features available, and therefore not reflected on the invoice which shows only the total package price plus installation, I am not satisfied on a balance of probabilities that this is the case as neither the Landlord nor the Agents have submitted any documentary evidence to corroborate this testimony. As a result, I am not satisfied that a remote was initially purchased or installed with the fireplace and I therefore dismiss the Landlord's claim for the replacement and subsequent installation of the remote without leave to reapply.

Although the Tenants provided an explanation for why they installed additional locking mechanisms in the rental unit, ultimately they agreed that they did not have the Landlord's permission to do so and I am satisfied based on the testimony and documentary evidence before me for consideration that the installation of these locks caused damage to the rental unit. I am also satisfied, based on the photographic evidence, witness testimony, and the condition inspection reports that damage to the wood panelling and hardwood floor in the rental unit was not present at the start of the tenancy and constitutes more than reasonable wear and tear. As a result, I grant the Landlord's claim for $137.48 in repair costs for damage to the wood paneling and damage caused by the locks, as well as the $494.75 sought for sanding and refinishing damaged areas of the hardwood flooring. As all parties were in agreement that $4.51 in late utility payment charges were owed to the Landlord, I also award the Landlord these costs.

Although the Tenant's denied clogging the laundry sink of leaving it dirty, I find the condition inspection reports and the photographs submitted by the Landlord and Agents compelling evidence that it was in good working order at the start of the tenancy and clogged with mud at the end. As a result, I also award the Landlord the $238.35 sought for the cost of unclogging and repairing the laundry sink piping and drain.

As the Landlord was at least partially successful in the majority of the matters claimed in the Application, I also find that the Landlord is entitled to recovery of the $100.00 filing fee pursuant to section 72 of the *Act*. Further to this, I find that the Landlord is entitled to

retain the Tenants $800.00 security deposit towards the above owed amounts owed, pursuant to section 72 of the *Act*.

Based on the above, the Landlord is therefore entitled to a Monetary Order in the amount of $252.45 pursuant to section 67 of the *Act*; $952.45 for damage to the rental unit and other money owed, plus $100.00 for recovery of the filing fee, less the $800.00 security deposit retained.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of $252.45. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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 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: December 21, 2018

Residential Tenancy Branch