



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHAWNESSY SQUARE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$1,749.78 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, claiming the security deposit, and to recover the cost of their filing fee.

The Landlord's agent (the "Agent"), the Tenant, and her daughter (the "Representative") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant, the Representative, and the Agent were given the opportunity to provide their affirmed evidence orally and respond to the testimony of the other Party.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties.

Both Parties said they served the other with their Application and/or documentary evidence via registered mail. Both Parties provided Canada Post tracking numbers for their respective packages. The Agent said the Tenant's evidence was late, as it was submitted seven days before the hearing, but he confirmed that he had time to review it prior to the hearing. Accordingly, in fairness to both Parties, I have considered the Tenant's evidence as being before me.

I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision. I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recover the cost of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on August 1, 2012, with a monthly rent of \$735.00, due on the first day of each month. The Parties agreed that the Tenant paid a security deposit of \$367.50 and no pet damage deposit. The Parties agreed that the rental unit is an apartment in a 39-unit apartment building that was built in 1972. The Parties agreed that there were no issues surrounding the end of the tenancy, and that the Tenant moved out on December 17, 2018, for personal reasons. The Tenant said she gave the Landlord her forwarding address in a letter she sent via courier along with the rental unit keys on December 27, 2018.

Condition Inspection

The Agent submitted a move-in condition inspection report ("CIR") that lists components of each room in the rental unit. The CIR identifies everything as in "good" condition, with some written comments for issues, such as the kitchen cupboards: "bottom cabinet /right door/paint chipped on right side". The CIR also indicates that the living room floor covering is: "Good/6 inch x 8 inch orange stain/Dining Area/ 4 feet left of [indecipherable]...".

The Agent conducted a move-out condition inspection on December 31, 2018, in the absence of the Tenant. The Parties disagreed about the Tenant's interest in participating in the move-out inspection of the rental unit. The Agent said he gave the Tenant a written notice that the inspection would be conducted at 1 p.m. on December 31, 2018. The Tenant agreed that she received this notice, but she said she left the Agent a voicemail message saying that she would be moving out in mid-December to go live with her daughter in another town. She said she also talked to the Agent and told

him that she would be leaving on December 17, 2018. The Tenant said:

When I talked to [the Agent] I told him I was leaving on the 17th. He was rude disrespectful to me. Yes, I got the December 31st thing at 1 pm. We asked him to come at 11 o'clock on the 17th. He did not tell me that we could have another date. On the 17th we asked the maid if he was there. We texted him, called him, waited for him to come. The weather was bad. I am not trying to mess with him. He's called me a liar. Put me through hell.

The Tenant said she was unable to return to the rental unit for the scheduled condition inspection, because her daughter worked that day and could not give her a ride back to the

rental unit city. The Landlord had not given the Tenant a notice of final opportunity to do the outgoing CIR in writing.

The Landlord said he completed the move-out inspection on his own on December 31, 2018. It lists components of each room, indicating that they were "OK" with some written comments for issues, such as "Entrance door OK/Door stop spring damaged/numerous scratch marks exterior side". In the kitchen section, it lists "cabinets & doors (sink area) Needs cleaning/lower cabinet/ bottom floor board/paint blistering off".

The Landlord submitted a Monetary Order Worksheet that contained his estimates of what the costs would be of the following claims:

	Receipt/Est. From	Damage	Amount
1	Landlord	Water damage #101	\$ 122.02
2	Landlord	Cleaning Apt #208	\$ 223.12
3	Landlord	Water damage #208	\$ 244.50
4	Landlord	Repair damage #208	\$ 358.88
5	Landlord	Estimate carpet cleaning	\$ 211.72
6	Landlord	Estimate carpet repair	\$ 285.00
		Total monetary claim	\$1,445.24

Item 1 Water Damage – Landlord's Office

The Agent said that in May 2018 the Tenant overflowed water in her apartment that ran into the Landlord's office, which was below the Tenant's unit. The Agent said he went up to the Tenant's unit and she told him that she had spilled a couple of buckets of water. The Agent said in the hearing: "It had to be more than that, given the amount of water that ended up in my office."

In the hearing, the Tenant said: "I did have two big buckets of water that spilled, but I cleaned this mess up in less than about 30 minutes." The Tenant said that the Agent:

...walked through the kitchen, living room and he didn't really make any comment other than it is possible that it went under the fridge and rug. He didn't do anything. A couple of days later I went down to his office to see the damage. There had been water on his blinds and on the floor and on his chair. I was not aware of what other damage there was. I had to leave for [a personal matter] and he said we'd talk about this later, but that was the last of it.

The Representative said that previously there had been "...a huge flood from the fourth floor. She was out of her apartment for four months, as her apartment was the last to be fixed. There have been several issues with water in this building. All kinds of pipes meet in my Mom's apartment. She's had soap and water coming out of the pipes; there's been plenty of water issues in the seven years she's been there." The Parties agreed that there was a flood from another unit in early 2018 that affected a number of units, including the Tenant's rental unit.

The Agent said that the flood was back in 2012 and it was not in [the Tenant's] kitchen, it was in her bathroom and bedroom area.

The Agent uploaded a number of pictures of the office ceiling with water spots. He also there was damage done to cupboards in the rental unit. The Tenant said that the damage was there when she moved in.

The Agent submitted an invoice stating that it cost the Landlord \$122.02 to repair the damage in the Landlord's office, which included \$38.02 in materials and \$84.00 in labour. The Landlord did not specify how long it took to do these repairs or the amount charged per hour. He said that this type of work is done by in-house staff.

Item 2 – Cleaning Costs

The Agent submitted an invoice dated January 7, 2019, described as: "Cleaning of all items listed on Apt [rental unit address] Dec. 31, 2018 vacating condition inspection report." It listed materials as costing \$10.62 and labour as costing \$212.50.

The Tenant said that she submitted pictures of the rental unit when she moved out on December 17, 2018. She said the things she did not clean were the carpets and the lamps, because [the Agent] said not to do them. The Representative said "the photos clearly show the stove, closets, windows, etc. were left in a condition better that he was stating."

The Representative also said that the Agent "...sent us documents that are from a different apartment. He had four other people moving out and he has mixed them up with the different apartments." She said he used the wrong apartment number on the invoices he submitted, therefore, "...I'm wondering if the photos are of the wrong apartment, too." The Agent did not comment on this.

The Agent said they used their own in-house people to do the repair and cleaning work on the rental unit and this is why he said some of the work was done late. The Landlord said the rental unit was "unrentable for eight days". However, the Tenant's undisputed evidence is that she moved out on December 17, 2018, or 14 days before the end of the month in which the Landlord's staff could have been doing any necessary repairing or cleaning.

Item 3 - Water Damage - Rental Unit

The Agent submitted an in-house invoice dated January 6, 2019, stating:

Investigate Apt [rental unit] kitchen sink May 2, 2018, water overflow for any signs of mould & mildew under hallway, living room & 2 closet carpeted floor areas that are situated above [office address] water damaged areas.

Materials	39.58
Labour	244.50
Total	244.50

It is unclear what materials would be required for this investigation, but the materials were not added to the total amount of the invoice, so I disregard this material cost.

The Agent uploaded photographs showing peeling paint inside a cupboard that he attributed to the water spill in May 2018.

He also submitted a photograph labelled “investigation for any mold or mildew”, which shows carpeting having been removed from a floor.

The Agent uploaded a picture of a kitchen sink and counter with cabinets entitled “water damage photo actual kitchen counter & sink”; however, there is no indication of any damage in the photograph.

Item 4 – Repair Damage in the Rental Unit

The Landlord submitted an in-house invoice dated January 14, 2019, which includes the following items:

Replace bent door stop, bath sink rim gasket (stained red);
Remove & reinstall bath towel bar (upside down installed);
Repair kitchen sink lower cabinet floor base & divider wall (paint blistering & peeling away) from kitchen sink water overflow;
Repair numerous nail holes throughout kitchen, dining rm, living rm, bed rm & hallway walls;
Repair & repaint Tenant’s paint repairs on dining rm & bedroom wall;
Repair numerous scratch marks on exterior entrance door to unit.

Materials	\$ 69.78
Labour	\$289.10
Total	\$358.88

The Agent also uploaded a photo of the bathroom sink, which he labelled: repair damage photo bathroom sink rim gasket stained. This shows that there is red marking of some kind on the edge of the sink at counter level.

The Agent said that as noted in the move-out CIR, the entry door had a large scratch, and the door stopper was damaged. In the hearing, the Tenant said that the door was scratched to begin with and that she has a witness to this, although she did not provide any evidence from a witness. However, the move-in CIR lists the "entrance door" as being in "good" condition, but it also says: "Exterior side/Right upper edge side/5 inch long white scratch mark."

Item 5 – Carpet Cleaning

The Agent submitted an invoice for this item for which he said the actual cost of it was \$215.70. The Agent submitted an invoice from a carpet cleaning company that is dated April 13, 2019 for \$215.70. The Landlord did not explain why it took four months from when the Tenant moved out to have the carpets cleaned.

The Tenant said in the hearing and in her written submissions that the Agent billed her for the carpet cleaning and repair for a different apartment. "The bill says paid June 2018 for #212". The Tenant said that the people in unit 212 moved out the day before she did. She said there was a moving truck there that day and the place was empty.

The Agent said the Tenant was the only one to move out of the building in December 2018, but the Tenant insisted that there was a moving truck outside the building on the day before she moved out and that she even talked to the truck driver. The Representative pointed out the "big discrepancy" between the Tenant's apartment number, versus that of unit 212 quoted in the invoice.

The Agent's estimate is dated June 12, 2018, lists the size carpets in the rental unit and gives the location as unit #212 - not the Tenant's rental unit number. This other unit number is repeated on the invoice.

The Representative said she did spot cleaning if she saw anything, and she said she thinks the Agent is mixing up the Tenant's rental unit with #212 again.

Item 6 – Carpet Repair

In the hearing, the Agent said there was a small bleach spot in the bedroom, which was an inch by an inch and a half. He said this is listed in the move-out CIR. He said there were two other red spots – one in the living room and one in the dining room.

The Agent said there is only one company that can remove spots like this in carpeting, and that the proprietor specializes in this, so the Landlord could not have mitigated or minimized the cost

by using someone else who was cheaper. However, the Agent submitted an invoice for a carpet dyeing company dated June 20, 2018, for "Apt. #212 -bleach spot repairs" for 2.5 hours at \$90.00 per hour plus \$150.00 service call for a total of \$375.00.

The Agent said the carpets were last replaced before the Tenant's tenancy in 2012, although I note there are comments on the move-in CIR that indicates stains on the carpets in the living room and dining room and a cigarette burn in the bedroom carpet. This indicates that the carpets were not new when the Tenant moved in. I find it reasonable to infer that the carpets were at least eight years old at the end of the tenancy, and possibly older.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Before the Parties presented their evidence, I let them know how I would be analyzing the evidence presented to me. I advised that the Landlord, as the party who applied for compensation from the Tenant, has the burden of proving his claim. Policy Guideline 16 sets out a four part test that an applicant must prove on a balance of probabilities in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant breached the Act, regulations, or tenancy agreement;
2. That this breach caused the Landlord to incur damages or loss;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

[the "Test"]

Condition Inspection

Pursuant to section 35 of the Act, a landlord and tenant must inspect the condition of the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed upon day. Subsection 35(2) requires a landlord to offer a tenant "at least 2 opportunities, as prescribed, for the inspection."

"As prescribed" means as prescribed by regulation. Section 17(1) of the Residential Tenancy Regulation (the "Regulation") states that a landlord must offer a tenant an opportunity to schedule the condition inspection by proposing one or more dates and times for it. Section 17(2) of the Regulation states that if the tenant is not available at the time first offered, then the landlord must propose a second opportunity to the tenant "by providing the tenant with a notice in the approved form."

The “approved form” is #RTB-22 “Notice of Final Opportunity to Schedule a Condition Inspection”. A landlord is required to use this form or the equivalent written contents to give the tenant a second opportunity to participate in the move-out condition inspection.

If a landlord does not provide the tenant with this written notice of the second opportunity in the prescribed form, the landlord’s right to claim against deposit(s) for damage to the rental unit is extinguished pursuant to section 36(2)(a).

Based on the evidence before me, I find that the Agent relied on the Tenant to adapt to the Agent’s schedule and only offered the Tenant one opportunity for the move-out condition inspection. I accept the Tenant’s evidence that she advised the Agent that she was moving well before December 31, 2018, and that she would not be in the city to participate on December 31, 2018. The Tenant and the Representative said they tried to contact the Agent up to the time that they had to leave in order to conduct move-out condition inspection, but that he did not reply to their texts, emails or telephone calls to even say he could not attend.

I find that the Landlord did not offer the Tenant two opportunities to schedule a move-out condition inspection. Further, I find that the Agent did not allow the Tenant to participate in the move-out condition inspection. As a result, and pursuant to section 36(2) of the Act, I find that the Landlord has extinguished his right to claim against the security deposit.

I find that the Tenant sent the Landlord her forwarding address by courier on December 27, 2018, and pursuant to section 90 of the Act, this is deemed to have arrived five days later on January 2, 2019.

Section 38 of the Act requires a Landlord to repay the deposit or apply for dispute resolution within 15 days of the later of the end of the tenancy and the date on which he receives the Tenant’s forwarding address. The Agent applied for dispute resolution on January 15, 2019, and therefore, I find he complied with section 38 of the Act and the Landlord is not liable to return double the Tenant’s security deposit.

Item 1 Water Damage Landlord’s Office

The Tenant did not dispute the Landlord’s claim that she caused water damage to the Landlord’s office in May 2018. Based on the evidence before me, overall, I find the Agent has met the burden of proof in this regard and I award the Landlord **\$122.02** for this damage to the Landlord’s office.

Item 2 – Cleaning Costs

Section 32 of the Act states:

(3) A tenant of a rental unit 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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

Section 37(2)(a) of the Act requires tenants to leave rental units “reasonably clean, and undamaged except for reasonable wear and tear”.

The Agent uploaded a photograph of the entry hallway carpet that showed what looks to be very small spots on the carpet. There was nothing in the photograph to give context to the size of the spots, so I find that this is nothing more than normal wear and tear.

The Agent uploaded a photograph of a wall that he labelled “living room wall dirty”. However, I cannot see any dirt on the wall, so I disregard this as evidence of dirt in the unit.

The Agent uploaded a close up photograph of lightbulbs he labelled “bathroom light dirty”. I agree that there is dust on the lightbulbs and some dust on what looks to be the top of the bathroom cupboards. However, I do not find this to be indicative of having left the bathroom unreasonably unclear.

The Agent uploaded a photograph of a stove element pan that he has labelled dirty. The pan is black and it look shiny and clean, other than what looks to be bits that typically build up in element pans over time. I find this is no more than normal wear and tear and it indicates that the Tenant or her Representative cleaned the pan to the point of it being shiny.

In contrast to the Landlord’s photos, the Tenant submitted a number of photographs that were not labelled, although I viewed some of the relevant photographs. The first photograph I opened is of the open refrigerator, which looks very clean throughout. The second photograph is a little blurry, but it shows that the refrigerator has been moved forward and the floor behind the appliance cleaned.

Another photograph shows cupboard doors open and the inside of the cupboard looking shiny and clean. This is opposed to a picture the Landlord submitted that shows a close up of a cupboard door with a couple of dirt spots on it.

Both the Agent and the Tenant uploaded photographs of the oven that show a fair amount of dirt on the oven door. I find this is something that the Tenant could have done a better job at cleaning.

The Tenant uploaded a photograph of the bathtub and walls around it that appears to look very clean. The Tenant also uploaded a photograph of the bathroom fan that looks very clean.

When I consider the evidence before me in this matter, I find on a balance of probabilities that the Tenant left the rental unit in reasonably clean condition. I find Landlord’s charges for cleaning are to take the rental unit to a higher standard than is required by the Act, regulation and Policy Guidelines. There were some items like the stove that would have been cleaner, so I award the Landlord a nominal cleaning cost of **\$50.00**.

Item 3 - Water Damage - Rental Unit

It seems odd that the Landlord would wait until the end of the tenancy to investigate the rental unit for signs of mould and mildew – eight months after the water spill occurred. Policy Guideline #1 states:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet 'health, safety and housing standards' established by law, and are reasonably suitable for occupation given the nature and location of the property.

This is consistent with section 32 of the Act, which states:

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Accordingly, if there was a risk of mould or mildew in the rental unit, it is reasonable to expect that the Landlord would have investigated this matter sooner than the Agent says he did in this case. Further, the Agent did not explain the result of this investigation. This raises questions in my mind about the legitimacy of the Agent's in-house invoice for investigating the rental unit for mould or mildew.

The Agent uploaded photographs showing peeling paint inside a cupboard that he attributes to the water spill in May 2018. I find it consistent with common knowledge that such peeling or bubbling of paint could also be related to the quality of paint used. Further, since the Tenant was not present during the move-out condition inspection, she did not have an opportunity to view this damage in her own rental unit and offer an explanation for it.

I find on a balance of probabilities that the Agent did not meet the burden of proof in establishing the first two steps of the Test in this matter. Therefore, I dismiss this claim without leave to reapply.

Item 4 – Repair Damage in the Rental Unit

I find it inconsistent with common sense that a tenant would uninstall a towel rack and re-install it upside down. Accordingly, I find it more likely than not that the towel rack was in the same position as it had been since the start of the tenancy.

I have addressed the Agent's evidence of peeling paint in one cupboard in the previous section of this decision, so I disregard it in this section.

The Representative stated in the hearing that she had repaired the holes in the wall; however, she did not direct me to photographs of this work. I find it more likely than not that the walls would still need a coat of paint to eliminate evidence of the repairs.

The Landlord claimed compensation from the Tenant for scratches on the front door of the rental unit. However, as the move-in CIR documented the same type of damage the Landlord now claims, I find the Landlord has not established that it is more likely than not that the scratches resulted from the tenancy.

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

Another consideration is whether the claim is for actual damage or normal wear and tear to the unit. Section 32 of the Act requires tenants to make repairs for damage caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires tenants to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

In PG #40, the useful life of interior paint is four years. The evidence before me is that the rental unit had not been painted since before the start of the tenancy, so it was at least seven years old at the end of the tenancy and had none of its useful life left. Accordingly, the Landlord would be required to repaint the rental unit, anyway.

Overall, I find the items listed by the Agent in this section are not supported by the move-out CIR, because that was not completed with the participation of the Tenant.

Further, I find that the items listed are no more than wear and tear established in a seven year tenancy. As such, I dismiss this claim without leave to reapply.

Item 5 – Carpet Cleaning

The move-in CIR states that there were stains on the carpets at the beginning of the tenancy, so I find that the Agent has not satisfied the first two steps of the Test in establishing this damage resulted from the Tenant's violation of the Act, regulation or tenancy agreement.

Further, the Agent uploaded an invoice that identifies the carpet cleaning as having been done in a different rental unit. As such, I find he has not satisfied the burden of proof in the Test to establish the value of the loss or damage to the rental unit in this regard. I, therefore, dismiss this claim without leave to reapply.

Item 6 – Carpet Repair

In the hearing, the Agent said there was a small bleach spot in the bedroom, which was an inch by an inch and a half. He said this is listed in the move-out CIR. He said there were two other red spots – one in the living room and one in the dining room.

The Agent said the carpets were last replaced before the Tenant's tenancy in 2012, although I note there are comments on the move-in CIR that indicates stains on the carpets in the living room and dining room and a cigarette burn in the bedroom carpet. This indicates that the carpets were not new when the Tenant moved in. I find it reasonable to infer that the carpets were at least eight years old at the end of the tenancy, and possibly older.

I find the Agent's evidence about the stains on the carpets to be internally inconsistent. Further, the invoice submitted is for a different rental unit. Based on this evidence, I find that the Agent has not satisfied the steps of the Test and I dismiss this claim without leave to reapply.

Summary

I dismissed the Landlord's claim against the security deposit, pursuant to section 36(2) of the Act, because the Agent did not offer the Tenant two opportunities to schedule an inspection, pursuant to section 35(2) of the Act.

I have awarded the Landlord \$122.02 for water damage to the office and \$50.00 as a nominal amount toward cleaning the rental unit after the tenancy ended. This total of \$172.02 is to be set off against the Tenant's security deposit pursuant to Policy Guideline #17. Further, since the Agent was mainly unsuccessful in this Application, I do not award the Landlord recovery of the \$100.00 filing fee.

Conclusion

The Landlord's Application for a monetary order for damage or compensation under the Act is dismissed without leave to reapply, except for \$122.02 for water damage and a nominal award of \$50.00 for cleaning costs. Since the Landlord was predominantly unsuccessful in the Application, I dismiss the Landlord's Application for recovering of the filing fee without leave to reapply.

Further, in not conducting the move-out condition inspection pursuant to the Act, the Landlord extinguished their right to claim against the security deposit they retained.

Pursuant to section 67 of the Act, I grant the Landlord a monetary award of \$172.02 to be set off against the Tenant's \$367.50 security deposit in satisfaction of the claim, and I direct them to return the remaining amount of **\$195.48** to the Tenant, as soon as possible.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the Act states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period set out in subsection (1)(d).

This decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 12, 2019

Residential Tenancy Branch