Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-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 order for damage or compensation for damage under the Act, retaining the security deposit for this claim;
- a monetary order for rent and/or utilities for the Landlord, retaining the security deposit to apply to this claim; and
- to recover the cost of their filing fee.

In their Application, the Landlords claimed $849.76 in compensation.

The Tenant's father, B.S. ("Agent"), and the Landlords, P.C. and D.C., 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 Landlords and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

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 and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order, and if so, in what amount?
- Are the Landlords entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on March 1, 2019, with a monthly rent of $1,050.00, due on the first day of each month. However, the Parties agreed that the Tenant moved in on February 18, 2019. The Parties agreed that the Tenant paid a security deposit of $525.00 and no pet damage deposit. The Parties agreed that they did not sign the tenancy agreement and that the Landlords still hold the Tenant's security deposit.

In the hearing, the Landlord said they conducted a condition inspection of the rental unit at the start of the tenancy, although they did not complete a "formal document" or a condition inspection report ("CIR"). The Agent said that the condition inspection consisted of a brief discussion at the door to the rental unit.

The Landlords said that they completed a CIR at the end of the tenancy without the Tenant being present, because they did not know where she went when she moved out. The Agent said that the Tenant did not give the Landlords a forwarding address, although, the Landlords knew how to contact the Tenant through text messaging or calling her parents.

The Landlords submitted a monetary order worksheet ("MOW") that sets out their claims as follows:

	Receipt/Estimate From	For	Amount
1	Cleaner [W.F.]	Cleaning suite/oven/fridge/…	$126.00
2	Painter [K.P.]	Patching/painting bathroom near rod	$262.50
3	[online supplier]	Curtain rod	$26.24
4	[online supplier]	Carpet replacement	$50.00

5	[online supplier]	Air freshener per dog smell	$10.00
6	[internet listing]	Advertise the rental unit	$25.00
7		Unpaid rent Feb 18 – 28/19	$350.00
		Total monetary order claim	**$849.74**

#1 CLEANING - $126.00

The Landlords focused on specific items in the rental unit in terms of how well the Tenant cleaned before she moved out. They said it appeared the Tenant neglected to clean the oven altogether. They said that the refrigerator was “lightly gone through” and that the floors were dirty. They said the toilet rim was missed in the bathroom. The Landlords said that they had to hire a cleaner (“Cleaner”), and that the Cleaner’s minimum was “two or three hours”. They said the oven is not self-cleaning and that this, alone, could have taken an hour to clean. The Landlords submitted an invoice from the Cleaner charging $30.00 per hour for four hours or $120.00 plus $6.00 GST.

In the hearing, the Agent said: “I’ve attached pictures as well, which show that the cleaning was done appropriately for leaving. The stove is not nearly not as dirty as they’re indicating - not that it required a massive cleaning. The various rooms – we took pictures when we left; we left it in a very good condition. I don’t believe we should be responsible for paying for cleaning bills.”

The Landlord submitted a number of photographs of the rental unit prior to the tenancy starting. These are distance shots, compared to the close-up photographs they took of the oven, the refrigerator, the toilet, and the laminate. The Landlords submitted six photographs of the oven, indicating that a clean oven was important to them. The photographs of the refrigerator show a spot in the freezer and a spot in the bottom drawer.

The photographs of the flooring show three close-ups of what look to be dirt scuffs and a few crumbs or pieces of dirt on the floor. It is not clear where in the rental unit that these photographs were taken.

The Tenant submitted photographs of the refrigerator and the kitchen, which both look quite clean over all, although they were no pre-tenancy close-up shots like the Landlord took at the end of the tenancy. The Tenant also submitted overview shots of the bedroom, living room, and bathroom, like those of the Landlords.

Further, from a close up shot by the Tenant, it looks like the toilet bowl and sink/counter were reasonably clean.

#2 PATCHING/PAINTING - $262.50

The Landlords submitted an invoice from local painting company charging $250.00 plus $12.50 GST for: “Repair drywall & repaint two walls in bathroom – curtain rod ends damaged wall.” The Landlords said that the rental unit was previously painted “right before [the Tenant] moved in on all the walls.”

The Landlords said that the bathroom shower curtain rod was removed. They said a person usually threads it in to tighten from wall to wall, but that this was not untightened before removing it, and therefore, it damaged the walls at both ends. They also said that the curtain rod was gone when the Tenant left. They said that the new rod would not cover the damage that was created. The Landlord said: “I private messaged [the Tenant] on [social media] and she said she gave [D.C.] a silver rod. She never gave it to him.”

The Landlords pointed to the photographs they submitted, saying they show damage on either side of the bathtub. They said: “It took patching, and everything has to be cut in and around. I have to concentrate on my work: “I’m not going in there to fix this.”

The Landlords said that in their location, contractors have a minimum they charge to come out and do things. “They have to charge a minimum. He had to come back twice, because he had to patch and let it dry. There was nothing wrong with the chrome rod up there. Even the shower curtain was gone, but it was old. The curtain itself was old and it was gone.”

The Landlords’ photographs of the bathroom walls where the curtain rod had been were two close-up pictures. The Landlord said: “We have pride in our home. It doesn’t make sense to me.”

The Agent said that the photographs of the walls showed “…small chips in the paint, not requiring a carpenter or wall repair guy to come in and fix. [D.C.] does all his repairs, normally. These were one inch by one inch – they are normal wear and tear. This is not misuse or intentional damage.”

#3 CURTAIN ROD - $26.24

The Landlords said there was a curtain rod in the bathroom at the start of the tenancy and none there at the end of the tenancy. They submitted a receipt for the purchase of a new curtain rod in this amount. The Agent did not dispute this item.

#4 CARPET REPLACEMENT - $50.00

The carpet to which the Landlords referred were, essentially, new door mats. The Landlords said:

> That was brand new. They were placed right at the door inside, when you walk in you are in the kitchen. It's laminate. In our past with other rentals, if we have an indoor/outdoor rug with rubber backing, we don't have to worry about our floors – wetness or scratching it with rocks.
>
> The Tenant's photo shows both carpets thrown outside and covered in leaves - a little doggy mat that [the Tenant] decided would be left out there with the doggy bags, the poop bags. I had to replace those. They were for the inside use of the suite.

The Landlord said they did not try to clean the carpets, because, "When I lifted them up there were worms. It was then an outdoor carpet."

The Agent noted that the Landlord "…mentioned that they bought 'indoor/outdoor' carpets. We thought they were better placed out front where we could clean boots outside without dragging in the dirt and wet."

The Landlord said that the carpet was inside when the Tenant moved in and, "It is proper etiquette when you have nice flooring that you're going to have a carpet to put your shoes on to come into the house. If it's raining outside, you're not going to leave your shoes outside."

The Landlord said that they purchased new carpets from an international online retailer; however, they did not direct my attention to a receipt in this regard.

#5 AIR FRESHENER - $10.00

The Landlords said that the Tenant acquired a dog during the tenancy, despite this not

having been allowed by the Landlords. The Landlord said: “She got that dog and it did smell of urine, so I got the bottle of Lysol to get rid of some of the smell.”

The Agent said: “She never had a dog there permanently. We asked them if they could have a dog – we brought our dog. She didn’t have a dog there for more than a week before she moved. It was not there permanently.”

The Landlord said that the dog was there “about three weeks.” They said they had been clear that a dog was not allowed, but the Tenant texted them to say that she and her boyfriend had a dog, which was why the Tenant moved. The Landlord said that the Tenant told them: “We can’t give up the dog, so I’ll have to look for a new place then.” The Landlord said: “I did allow the mother to bring her elderly dog for visits when she saw [the Tenant]. But her dog was trained – it would hold it before going to the bathroom. We have two dogs and if there are any more dogs. . . they start peeing and barking.”

#6 ADVERTISE RENTAL UNIT - $25.00

The Tenant advised the Landlords that she would be ending the tenancy in an undated text, as follows:

> I’m giving you my notice that I am leaving end of May and I will pay my June rent of 1050 and as per our discussions please refund the damage deposit of 525 before June 1 as I will be gone.
>
> [reproduced as written]

The Landlords said that this claim is because they had to relist the rental unit to find a new tenant. They said: “I thought she was going to stay for a year. That’s why we dropped the rent for her. She moved out because of the dog.”

The Agent said that the Landlords would have to re-list the unit ultimately, and that this is normally done through an online listing organization in the city. The Agent said: “Re-listing is part of general renting costs, so it shouldn’t be part of our cost.”

The tenancy agreement states that the tenancy started on March 1, 2019 “and continues on a month-to-month basis until ended in accordance with the Act.” This was a periodic tenancy, not a fixed term tenancy.

#7 UNPAID RENT – FEB 18 – 28, 2019 - $350.00

The Landlords said that according to the tenancy agreement, the tenancy started on March 1, 2019; however, they said that the Tenant could move in as early as February 18, 2019.

As their proof of money owing for this time period, the Landlords submitted an email dated Feb 10/19 from P.C. to the Tenant enclosing documents and saying that the Tenant can move in on February 18th, Family Day, if she wanted to.

The Landlord said that the only reference to their expectation of receiving rent for the last two weeks of February 2019 was, "…a verbal mention to the Mom that it would be half a month's rent. I felt bad for what they were going through. But I let it slide, because they had some kind of difficulty."

The Agent said: "We moved in on the 18th; they had said that it wouldn't be a problem and not to worry about it for payment. After [the Tenant] moved out that's when it became a problem and that's when it had to be paid. Again, there's no tenancy agreement signed, and second, it was $1050.00 per month."

Analysis

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

In the hearing, I explained to the Parties how I would be analyzing the evidence presented to me. I said that the party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

"Test"

As set out in Policy Guideline #16 ("PG #16"), "the purpose of compensation is to put

the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

Pursuant to sections 23 and 35 of the Act, a landlord must complete a CIR at both the start and the end of a tenancy, in order to establish that the damage occurred as a result of the tenancy. If the landlord fails to complete a move-in or move-out inspection and CIR, they extinguish their right to claim against either the security or pet damage deposit for damage to the rental unit, in accordance with sections 24 and 36 of the Act. Further, a landlord is required by section 24(2)(c) to complete a CIR and give the tenant a copy in accordance with the regulations.

#1 CLEANING - $126.00

Section 32 of the Act states that tenants "…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." Section 37 of the Act states that tenants must leave the rental unit "reasonably clean and undamaged".

Policy Guideline #1 helps interpret sections 32 and 37 of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are **not necessarily the standards** of the arbitrator, the landlord or the tenant.
>
> [emphasis added]

The Landlords acknowledged that they did not complete a CIR at the beginning of the tenancy; rather they used photographs of the rental unit to demonstrate the condition at

the start of the tenancy or “room shots”. However, the Landlords used close-up photographs of specific items they focused on at the end of the tenancy to argue that the rental unit was not in the same condition as it was at the start of the tenancy. There are no photographs of the oven or the refrigerator or close-ups of the bathroom walls from the start of the tenancy.

The Tenant also submitted “room shots” of the rental unit at the end of the tenancy, much like the Landlords’ pre-tenancy photographs. I find that the two sets of “room shots” are comparable in terms of the overall cleanliness and condition of the unit at the end of the tenancy. As such, I find that taking four hours to clean this rental unit was excessive and unreasonable, even if it took the Cleaner an hour to clean the oven. The Landlords said that the Cleaner’s minimum was “two or three hours”, which I find would have been more reasonable in the circumstances. I award the Landlords two and a half hours of cleaning time at $30.00 per hour for a total of $75.00 plus $3.75 GST for a total of **$78.75**.

#2 PATCHING/PAINTING - $262.50

After considering all the evidence before me in this category, I find the Tenant’s position to be more reasonable than that of the Landlords. I find there is insufficient evidence before me to conclude that a new curtain rod would not cover the damage to the paint on the walls. Further, the Landlords did not provide sufficient evidence as to how they minimized their costs in this regard, pursuant to step four of the Test.

The undisputed evidence before me is that D.C. is able to do this type of work. I find on a balance of probabilities that it would have been more reasonable for the Landlords to have touched up the spots to conceal the damage, the bulk of which I find would have been covered by a new curtain rod. As noted above, the Act does not require that a rental unit be cleaned or repaired to a standard of perfection that I find the Landlords seek from the Tenant. Accordingly, I find that the Landlords’ claim is inconsistent with PG #1 and with meeting all of the steps of the Test. Therefore, I grant the Landlords a nominal award of **$50.00** for this claim, pursuant to Policy Guideline #16.

#3 CURTAIN ROD - $26.24

I find that the Landlord has provided sufficient evidence for this claim and I award the Landlord **$26.24** for the replacement bathroom curtain rod.

#4 CARPET REPLACEMENT - $50.00

I find that the tenancy lasted approximately four months; that is the greatest amount of time that the carpets would have been outside. The Landlord said that they discovered worms under the carpets; however, I find it consistent with common sense and more likely than not that worms would not damage a rubber-backed carpet.

I find that the Landlords have provided insufficient evidence that the carpets were damaged to the point of being unusable. I find that the Landlords did not minimize the damage in this regard by attempting to clean the carpets, so that they may be used again with another tenant in another tenancy. Further, I find there is insufficient evidence before me that the Landlords price-shopped to minimize the cost of replacing the carpets. Accordingly, based on having failed the fourth step of the Test, I dismiss this claim without leave to reapply.

#5 AIR FRESHENER - $10.00

I find that the evidence and disagreement in this claim centered more on the Tenant having obtained a dog than on the need to purchase the cleaner to “freshen the air”. I find it inconsistent with common sense that the Landlord would need to hire someone to clean the rental unit, buy new carpets, as well as using an entire can of air freshener to clean up after a dog that was present for one to three weeks of the tenancy.

I find that the Landlords have not established the steps of the Test or provided sufficient evidence to establish their claim in this category. Therefore, I dismiss this claim without leave to reapply.

#6 ADVERTISE RENTAL UNIT - $25.00

The evidence before me is that this was a periodic tenancy, not a fixed term tenancy, as the Landlords have implied. The Landlords did not point me to a section of the tenancy agreement or the Act, which states that the Tenant must pay the cost of re-listing the rental unit.

I find that re-listing a rental unit is part of the cost of doing business. The Landlords did not dispute the form of the Tenant’s notice to end the tenancy. The Tenant paid rent for the month of June 2019. I find in the circumstances that the Tenant complied with her obligations overall. I dismiss this claim without leave to reapply.

#7 UNPAID RENT – FEB 18 – 28, 2019 - $350.00

Although the tenancy agreement was not signed by the Parties, I find that they entered into an agreement that the Tenant would live in the rental unit in exchange for paying rent to the Landlords.

Section 16 of the Act states: "The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit." I find it more likely than not that the Landlord would not agree to let the Tenant live in the rental unit for free. Therefore, I find that the Tenant owes the Landlord rent for February 18, 2019 to February 28, 2019, in the amount claimed by the Landlord of $350.00. As such, I award the Landlord **$350.00** for unpaid rent owing for ten days in February 2019.

Summary/Off Set

	For	Amount
1	Cleaning suite/oven/fridge/…	$78.75
2	Patching/painting bathroom near rod	$50.00
3	Curtain rod	$26.24
4	Carpet replacement	$0.00
5	Air freshener per dog smell	$0.00
6	Advertise the rental unit	$0.00
7	Unpaid rent Feb 18 – 28/19	$350.00
	Total monetary order claim	**$504.99**

The Landlords' claim for a monetary order for damages incurred as a result of this tenancy are partially successful in the amount of $504.99, pursuant to section 67 of the Act. I also award the Landlord with recovery of the $100.00 Application filing fee pursuant to section 72 of the Act, for a total award of $604.99.

I find that this claim meets the criteria under section 72(b) of the Act to be offset against the Tenant's security deposit of $525.00 in partial satisfaction of the Landlord's monetary claim. I authorize the Landlord to retain the Tenant's security deposit in partial

satisfaction of the Landlord's monetary claim. I award the Landlord with a Monetary Order for the balance owing of **$79.99**.

Conclusion

The Landlord's claim for compensation for damage or loss against the Tenant is partially successful. The Landlord has established a monetary claim of $604.99, including recovery of the $100.00 Application filing fee. I authorize the Landlord to retain the Tenant's security deposit of $525.00 in partial satisfaction of this award. The Landlord has been granted a Monetary Order under section 67 for the balance due from the Tenant to the Landlord in the amount of **$79.99**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: November 28, 2019

Residential Tenancy Branch