Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDL-S, FFL
For the Tenant: MNDS, MNDCT, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlords, C.S., and A.S. filed a claim for:

- a monetary order in the amount of $1,079.00 for damages for the Landlord, retaining the security deposit to apply to the claim; and
- recovery of the $100.00 Application filing fee.

The Tenants A.F. and Y.H.B. filed a claim for:

- a monetary order for the return of double the $850.00 security deposit and the $850.00 pet damage deposit for a total amount of $3,400.00, and
- recovery of the $100.00 Application filing fee.

The Tenants and the Landlord, C.S., 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 Tenants and the Landlord were given the opportunity to provide their evidence orally and 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 ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Early in the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they directed me in the hearing.

Neither Party raised any concerns regarding the service of the respective Applications for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and 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 Tenants entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on June 1, 2018, with a monthly rent of $1,700.00, due on the last day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of $850.00, and a pet damage deposit of $850.00. The Parties agreed that the Tenants gave the Landlord their forwarding address in writing within their notice to end the tenancy dated September 28, 2019.

The Landlord said that the rental unit is a suite in a house and that the house was built in 1973. He said he moved into the residential property in March 2016 and that the last renovation was done in May 2016, two years prior to the Tenants moving in. He said that there had been a fire in the rental unit, but he did not say when this happened.

The Tenants said that “Further to the fire comments, the flooring in the kitchen and bathroom is about the vintage of the toilet – green faux marble, faux granite. He couldn‘t have bought that in the last decade, so I don’t know when the fire happened. It’s the same with state of cabinetry in kitchen and bathroom – it’s hard to install new old-style cabinets.

The Parties agreed that they inspected the condition of the rental unit before or at the start of the tenancy; however, the Landlord did not provide the Tenants with a copy of the condition inspection report (“CIR”) at the start of the tenancy, nor did he provide a

copy after completing the move-out inspection at the end of the tenancy. The Tenants said they took a photograph of the CIR after the Parties had completed the move-out inspection, because they did not believe that the Landlord would send a copy to them.

In the hearing, the Parties agreed that the Tenants vacated the rental unit on October 25, 2019. They agreed that the Tenants provided the Landlords with a written forwarding address in a letter to the Landlords dated September 28, 2019, which was also the Tenants' one month notice to end the tenancy.

The Parties agreed that the tenancy ended when they signed a Mutual Agreement to End the Tenancy dated October 25, 2019, with an effective vacancy date of October 25, 2019 at midnight.

LANDLORDS' CLAIMS

The Landlords claimed compensation from the Tenants for damage that C.S. said occurred at the rental unit during their tenancy. He explained that the claim for $1,079.00 in compensation from the Tenants is based on the following estimates of the labour and materials costs of work that needs to be done, as a result of this tenancy. The Landlord said he has not had the repairs made, "…because of money issues."

The Landlord said that the estimates were provided by a company that is going to do the work to repair or replace the damaged items. The Tenants said that this business is owned by the Landlord's father, the other Landlord named in their claim. They suggested that the business card submitted by the Landlord for this business does not necessarily mean that it is a valid business, and they questioned the validity of the Landlords' estimates.

Further, the Tenants said that the Landlord had asked them for $300.00 to take care of three concerns he had on the CIR. They also said that some of the items on the CIR were surprises to them when they received this copy of the document in the Landlords' submissions for this hearing. The Tenants said there were items noted in the CIR that were added after the Parties had completed the move-out inspection and signed the CIR. Even at that, the Tenants pointed out that they had signed the CIR, but had indicated that they "…do not agree to any deductions from my security and/or pet damage deposit.

The Landlords' claims are set out in the following monetary order worksheet:

	Estimate From	For	Amount
1	Low Cost Electric	Replace toilet - cracked bowl	$155.00
2	Low Cost Electric	Cracked stove part	$220.00
3	Low Cost Electric	Dishwasher track	$120.00
4	Low Cost Electric	Refrigerator shelf and floor	$150.00
5	Low Cost Electric	Washing machine	$324.00
6	Self	Refuse dumped in creek	$60.00
7	Self	Picking up dog feces	$50.00
		Total monetary order claim	$1,079.00

1. TOILET → $155.00

The Landlord submitted a photograph with a note written on it stating: "Exhibit A: Chip in bottom of toilet bowl." The photograph shows a person's finger pointing to what looks like a slight discolouration, less than half the size of the person's fingernail, in the bowl of a toilet. The move-in portion of the CIR has no notes written other than a "G" for "good condition". The move-out side of the CIR has a note: "chip in bowl" and a "D" for "damaged condition". The Landlord did not know how old the toilet was.

The Tenant, A.F., said he is a journeyman plumber and that the toilet is a low efficiency model that is at least 35 years old. "It's the original toilet, I'm sure."

2. STOVE → $220.00

The Landlord submitted photographs with notes written on them stating: "Exhibit B: Cracked Panel Board on Stove", and "Exhibit C: Cracked Cancel Button on Stove Panel", "Exhibit D: Cracked Increase Button on Stove Panel", and "Exhibit E: Crack on Stove Control Panel Housing". The move-in CIR has no notes other than a "G" for the stove being in good condition. The move-out portion of the CIR states: "Damaged temp button & cancel button".

In the hearing, the Tenants said:

> If something was damaged, these are cosmetic blemishes of normal wear and tear.

The current tenants are okay to use it, as everything is working. It was a well-worn old suite when we took over. Those appliances were not new. There are scratches, nicks, but no real damage. It says something that he would wait for six months without doing repairs. These items are not damaged, because we broke it, but they are all in working order. These show normal wear and tear.

3. DISHWASHER → $120.00

The Landlord said that the dishwasher is a "newer European dishwasher; it was there when I moved in." He said there is a broken track. In the move-in CIR, it states that the racks were rusted. On the move-out portion of the CIR, it states that the racks are rusted and that "track & wheel missing". In both portions of the CIR, the condition of the dishwasher is identified "G" for good. The Landlord said that the dishwasher has been replaced. "The claim will go toward the cost of a new one. The old one was not usable."

The Tenants said: "The Landlord mentions a broken track and that the wheel is missing. The dishwasher was critically rusted and in disrepair. He omitted to include any photos of that dishwasher showing the deterioration of a rusted appliance. This is not here because of damage, but because he never bothered to replace a rusting appliance." The Tenants asked for a receipt for the new dishwasher. They said the Landlord did not provide any estimates or receipts to support his claims.

4. REFRIGERATOR → $150.00

The Landlord said that he does not know the age of the refrigerator, but he said that "it is a newer style fridge, not from the 80s or 90s." The Landlord submitted three photographs relating to the refrigerator that are labelled as follows:

Exhibit G: Broken Track on Vegetable Crisper Drawer
Exhibit H: Close up of Broken Vegetable Crisper Drawer Track
Exhibit I: Cracks on Bottom of Fridge Floor.

On the move-in CIR, the refrigerator is identified as "G" or in good condition. In the move-out portion of the CIR it states: "Mold on side wall D, DT ["dirty"]. Shelve Brackets Broken B, Damage on fridge floor D."

The Tenants said that they searched the model numbers of the appliances online and they discovered that they are at least a decade old. They said: They reuse the serial

numbers each decade. The appliances are either from 2001 or 2011. They were overly worn when we moved in; they were not new appliances."

5. WASHING MACHINE → $324.00

On the move-in CIR, the washer/dryer is identified as "G" or in good condition; however, it is also written that the dryer instrument panel is cracked. Nothing is written in the move-out portion of the CIR and the condition of the appliance is identified as "G" or good.

In the hearing, the Landlord said:

> During condition inspection, I ran the washing machine and [A.F.] had shut it off mid-cycle. I thought that was a little bit funny. I put it in drain mode. I ran the cycle again. The timer mechanism didn't work. After the fill cycle, you have to manually turn the dial past a certain point and drain cycle will kick on.

6. REFUSE IN CREEK → $60.00

The Landlord submitted two photographs labelled:

> Exhibit J: Refuse Dumped in Fish Bearing Riparian Area.
> Exhibit K: Close up of Refuse Dumped in Riparian Area

The photographs look to be filled garbage bags and other plastic debris in a bushy environment. The Landlord said it took him about an hour to clean this up and that he charged $60.00 per hour for his time.

7. DOG SCAT IN YARD → $50.00

The Landlord submitted four photographs of dog feces in grass that he said relate to three instances of the feces found in the yard after the tenancy ended. He said: "The dog scat was found within the second week of November. My father found them. I was trying to compromise, so didn't bring it up in the CIR; let bygones be bygones. I thought I would just let it go at that time. Some of is incidental. The addendum says that they have to pick up all dog scat in the yard. There's no dog scat around the yard now. There are very few people in the neighbourhood who don't monitor their dog. They make an effort; if they go in someone's yard, they clean it up."

The Tenants said:

> Where he said there was dog scat, we had already done patrol. That he was able to find 1 or 2 piles of dirt or whatever, could have been an oversight. I can tell you we cleaned up after our 16-pound dog. That property is not fenced, and there are racoons and wild life and other dogs that walk off leash. I think it ‘s hardly a certainty that he can claim it’s dog poo from our dog, since we weren’t occupying it for 2 to 3 weeks.

TENANTS’ CLAIM

The Tenants seek the return of double their security and pet damage deposits. In the hearing, they said:

> Today is March 31, [2020]. We left the suite on October 25, [2019], and the Landlord fraudulently held our deposits, which is illegal, based on his frivolous claims.
>
> We were supposed to be given copies of the CIR at the beginning and the end of the tenancy. Our photos [of the CIR] at the end do not make up for the fact that he is responsible by statute to provide us with a copy. I asked him and reminded him of the responsibility. He said he would provide us with a paper copy to our forwarding address; we took the photos because we didn’t expect him to do that. It was never provided. Ultimately, that is a flaw; until we received his submission, we had never seen the entire completed form. What did we say on June 6 in 2018? We could only make those comparisons and look at claims - and the bogus nature of his claims - when he provided that in full.
>
> I would like to also stress that it wasn’t that inspection report; we didn’t consent to him withholding our money. It was at my request - if you are to take any money, you have to legally take us to arbitration. He was the first to apply, yes, as documented, but I wrote clearly that we didn’t consent to his deducting anything from the deposits.

In terms of the CIR, the Landlord said:

> It was my understanding that they take photos of everything, and they had even done so with the copies of the move out notice. It was understood that because

> they take photos of everything, including the move-out notice, that they don't have a copy of it, but a photo of it.

Analysis

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

Pursuant to sections 23, and 35 of the Act, a landlord must complete a CIR at both the beginning and the end of a tenancy, in order to establish that any damage that is claimed actually occurred as a result of the tenancy. Landlords who fail to complete move-in or move-out inspections and CIRs extinguish their right to claim against the security and/or pet damage deposits for damage to the rental unit, pursuant to sections 24 and 36. Further, landlords are required by section 24(2)(c) to complete and give tenants copies CIRs in accordance with the regulations.

Section 32 of the Act requires a tenant to make repairs for damage that is 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 a tenant to leave the rental unit undamaged and reasonably clean. However, sections 32 and 37 also provide that reasonable wear and tear is not damage, and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections 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.

Policy Guideline #16 ("PG #16") states: "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."

The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Further, an applicant must prove the following, pursuant to PG #16, which I read to the Parties prior to their providing testimony in the hearing:

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

[the "Test"]

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. According to PG #16:

> A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

LANDLORDS' CLAIMS

1. TOILET → $155.00

Based on the evidence before me, overall, I find that there is insufficient evidence before me of the age of the toilet or of when this mar was incurred.

Further, I find that the Landlords provided not a replacement cost that they incurred, but

an estimate that is unclear as to how it will address the apparent chip in the toilet.

The Tenant, A.F., said he is a journeyman plumber and that the toilet is a low efficiency model that is at least 35 years old. “It’s the original toilet, I’m sure.” Given his credentials, I find that the Tenant’s analysis of the age of the toilet is more likely than not a reasonable estimate. I also find I agree with the Tenants’ statement that this damage falls into the category of “cosmetic blemishes of normal wear and tear.”

Further, the Landlord has not had the toilet repaired or replaced, and the current tenants are able to use it; therefore, given these factors, I find it is not appropriate to compensate him for this claimed loss. I dismiss the Landlords’ claim for compensation for the toilet without leave to reapply.

2. STOVE → $220.00

In their application, the Landlords claimed that the Tenants damaged the stove by cracking: the panel board, the cancel button, the increase button, and the stove control panel housing. However, in the move-out CIR, they claimed that the Tenants damaged only the temperature and cancel buttons.

As to the age of the appliances, I find that the Landlord was vague and uncertain about how he knew when the appliances were purchased. In contrast, the Tenants said they researched the age of the appliances and determined that they are “either from 2001 or 2011”. I find this is more persuasive evidence than that of the Landlord in terms of the age of the appliances. I find that the appliances were not new when the Tenants moved in to the suite. Further, the inconsistency between the Landlords’ evidence in their claim and in the CIR raises questions in my mind about the reliability of their claim in this regard.

Further, without any explanation of what the $220.00 claim entails, other than a ballpark estimate, I find the Landlords have not provided sufficient evidence to support their claim in this regard. I, therefore, dismiss the Landlords’ claim for compensation for the stove without leave to reapply.

3. DISHWASHER → $120.00

I find the Landlord’s statements about the dishwasher to be internally inconsistent. He first said that the dishwasher was a “newer European” model which was there when he moved in to the residential property in 2016. However, in the move-in CIR, it states that

the racks were rusted, which is consistent with the Tenants' evidence in this regard. Further, both portions of the CIR indicate that the dishwasher is in "G" or good condition. The Landlord said he has since replaced the dishwasher and that this claim would contribute to that cost. However, I find that the Landlords have not established on a balance of probabilities that the Tenants played a role in the deterioration of the dishwasher, when I consider the evidence before me in this matter overall. I, therefore, dismiss this claim without leave to reapply.

4. REFRIGERATOR → $150.00

I find the Landlords' evidence of the damage to the refrigerator is consistent between the move-out CIR and his evidence in this hearing. Further, the Landlord did not have these items repaired, nor did he provide a breakdown explaining the basis for the amount claimed. I find that the Landlord has not met his burden of proof under the Test for establishing the value of the damage he incurred in this regard. Accordingly, I dismiss this claim without leave to reapply.

5. WASHING MACHINE → $324.00

The evidence before me is that washer was in good condition at the beginning of the tenancy, although, on the move-in CIR, the instrument panel is noted as being cracked. Nothing is written in the move-out CIR, other than the condition of the appliance is "good". This is inconsistent with the Landlord's testimony in the hearing, in which he said that the timer mechanism does not work, that "you have to manually turn the dial past a certain point and the drain cycle will kick on".

Given this inconsistency and the fact that the Landlord has not had it repaired, yet presumably the new tenants are using the appliance, I find that the Landlord has not provided sufficient evidence to meet his burden of proof in this regard. I, therefore, dismiss this claim without leave to reapply.

6. REFUSE IN CREEK → $60.00

The Landlord did not direct me to any evidence, which establishes that there is a Riparian Area on the residential property. The Landlord did not indicate how he knew that it was the Tenants who left these materials where the Landlord found them. I find it consistent with common sense and ordinary human experience that some members of the public dump their garbage in odd places. I find there is insufficient evidence before me that ties the refuse to the Tenants. Further, I find that the Landlord's rate of $60.00

per hour is unusually high for this type of work. Based on the evidence before me, I find that the Landlords have not provided sufficient evidence to meet their burden of proof in this matter; therefore, I dismiss this claim without leave to reapply.

7. DOG SCAT IN YARD → $50.00

The Addendum to the tenancy agreement requires the Tenants to pick up their dog's feces in the yard, which the Tenants said they did. However, the Landlord said he found three incidents of animal feces in the yard in the weeks following the end of the tenancy.

In the hearing, the Parties agreed that the property is not fenced off and that there are racoons, other wildlife, and other dogs that walk off-leash in the neighbourhood. I find that if the Tenants had not been conscientious in picking up their dog's and other animals' feces throughout the tenancy, there would have been a lot more than three incidents in the yard at the end of the tenancy. Further, I agree with the Tenants that "…it 's hardly a certainty that he can claim it's dog poo from our dog, since we weren't occupying it for 2 to 3 weeks."

In addition, I find that charging $50.00 for picking up this amount of animal feces is unreasonably high. Based on all the evidence before me in this matter, I find the Landlords have not provided sufficient evidence to meet their burden of proof on a balance of probabilities. I, therefore, dismiss this claim without leave to reapply.

The onus is on the Landlords to prove on a balance of probabilities that any damage was caused by the Tenants, and that this damage is beyond reasonable wear and tear. The Landlords are also responsible for proving the value of the repairing the damage. Based on the evidence before me, overall, I find that the Landlords provided insufficient evidence that the Tenants are responsible for the damages to the rental unit claimed by the Landlords. I dismiss the Landlords' claim wholly without leave to reapply.

TENANTS' CLAIMS

The Landlord's evidence in the hearing was that the Tenants took a photograph of the CIR at the end of the tenancy; therefore, he said he did not have to provide them with a copy of it. However, section 23(4) of the Act requires landlords to "complete a condition inspection report in accordance with the regulations. Further, subsection (5) states that landlords must "…give the tenant a copy of that report in accordance with the regulations."

Sections 18 and 19 of the Residential Tenancy Regulation (“Regulation”) states:

> **Condition inspection report**
>
> **18** (1) The landlord must give the tenant a copy of the signed condition inspection report
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> (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and
>
> (b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of
>
> (i) the date the condition inspection is completed, and
>
> (ii) the date the landlord receives the tenant's forwarding address in writing.
>
> (2) The landlord must use a service method described in section 88 of the Act *[service of documents]*.
>
> **Disclosure and form of the condition inspection report**
>
> **19** A condition inspection report must be
>
> (a) in writing,
>
> (b) in type no smaller than 8 point, and
>
> (c) written so as to be easily read and understood by a reasonable person.

I find that the Landlords breached their obligations under section 23 and 35 of the Act and sections 18 and 19 of the Regulation by not providing the Tenants with a copy of the CIR as required by Regulation.

The Tenants’ claim was for recovery of double the return of the security and pet damage deposits. Section 38 of the Act states:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:

> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the Tenants provided their forwarding address to the Landlord on September 28, 2019, and that the tenancy ended on October 25, 2019. Therefore, pursuant to section 38(1), the Landlords were required to return the $1,700.00 deposits within fifteen days of October 25, 2019, namely by November 9, 2019, or apply for dispute resolution to claim against the deposits by that date. The Landlord provided no evidence that he returned any of the deposits; however, the Landlords submitted their application for dispute resolution on November 8, 2019. Therefore, I find the Landlords complied with their obligations under section 38(1). Accordingly, I find the Tenants are not entitled to receive the return of double the security deposit back, pursuant to section 38(6) of the Act.

I find the Landlord must return the Tenants' security and pet damage deposits in the amount of $1,700.00. There is no interest payable on the deposits. I award the Tenants **$1,700.00** for the return of the security and pet damage deposits.

Set-Off of Claims

I have not granted the Landlord any monetary award for his claim; but I have awarded the Tenants a monetary order of $1,700.00 for return of the security and pet damage deposits pursuant to sections 38. Given the Tenants' success in their application, I also award them recovery of the $100.00 Application filing fee for a total monetary order of **$1,800.00** from the Landlord, pursuant to section 67 of the Act.

Conclusion

The Landlords applied for a remedy under the Act for damage they said they sustained in the rental unit by the Tenants. However, I found that they did not provide sufficient evidence to support their claims. I dismiss the Landlords' application wholly without leave to reapply.

In a cross-application, the Tenants applied for compensation under the Act in the form of double the return of their security and pet damage deposits. However, I found that the Landlords were not responsible for the return of double the deposits, but for only for the

return of the original amount of the deposits under section 38 of the Act. I also awarded the Tenants with recovery of their $100.00 application filing fee.

I grant the Tenants a Monetary Order under section 67 of the Act from the Landlords in the amount of **$1,800.00**.

This Order must be served on the Landlords by the Tenants 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: April 20, 2020

Residential Tenancy Branch