



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNR, CNC, OLC, MNDCT, LRE, PSF (tenant)**
 MNRL-S, MNDL-S, FFL (landlord)

Introduction

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

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 62(3);
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

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

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Preliminary Matter

At the outset, the landlord testified the tenant moved out of the unit on December 4, 2020.

As the tenancy has ended, I dismiss the tenant's application without leave to reapply except for the claim under section 67 for a monetary award and section 72 for reimbursement of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Is the tenant entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under

the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;

- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agreed the tenancy began on September 1, 2018. Monthly rent was \$1,875.00. The tenant provided a security deposit of \$937.50 and a pet deposit in the same amount. The total of the two deposits is \$1,875.00 and is referred to in the Decision as the security deposit.

The landlord clarified the landlord’s claim as relating to outstanding rent, replacement of the front door, and cleaning/repairs/damage. Each is addressed below.

Condition of House

The landlord testified they purchased the unit, a house, in July 2018. In their written submissions, they stated as follows in part:

[we] wholly gutted, remodeled, and renovated the inside and outside of the property.

Renovations include new flooring, kitchen cabinets, kitchen island, kitchen faucets, appliances, interior and exterior paint, fixtures and lighting, hot water tank, heating, bathroom vanities, bathroom faucets, toilets, tiling, window coverings, and baseboards.

Shortly after the tenants moved into the property, the landlords also installed a new washer, new dryer, an efficient high heat electric fireplace insert, and replaced all the windows with new energy-efficient vinyl windows.

The landlord submitted a comprehensive evidence package which included videos and high-quality photographs of the unit. Photographs were submitted in support of their testimony that the house was in “like new” condition when the tenant moved in. Additional photos were submitted which the landlord testified reflected the condition of the house when the tenant moved out. All claims of damage were supported by photographs and/or videos.

As the landlord did not submit documentary evidence in support of the claims, the landlord relied on estimates. They explained that they are experienced in repairs and contracting for repair work. Their written submissions included estimates in a chart. To some extent, the written submissions varied from the testimony at the hearing. Where in conflict, the testimony given at the hearing is accepted as to the amount of the respective claimed items.

The landlord stated that they did not intend to replace the dented and damaged appliances and requested an award for the reduced value of the items which were new when the tenancy began.

One Month Notice

The landlord issued a One Month Notice to End Tenancy ("Notice") on September 28, 2020 requiring the tenant to vacate at the end of October 2020.

The Notice claimed as follows. The tenants kept the unit and yard in unsightly, cluttered conditions about which neighbours had complained. The tenant damaged the property in several ways, such as by replacing a front door highly valued by the landlord. The tenants were hostile to neighbours who had called the police. Warnings of breaches of the tenancy agreement by the landlord were ignored.

The landlord provided written submissions stating that the police came to the unit many times, estimated at 14 times in a one-year period, because of alleged domestic violence, behaviour toward neighbours, and alcohol abuse.

Condition Inspection

A condition inspection was conducted by the parties on moving in which indicated that the unit was in good condition in all material aspects. A copy of the condition inspection report was submitted on moving in.

The tenant cancelled the move out inspection scheduled for November 30, 2020. The landlord issued a Final Notice of Inspection and served the tenant scheduling the final opportunity for inspection on December 4, 2020.

The parties attended for the condition inspection on moving out at the scheduled time. The landlord testified the tenant would not let the landlord into the unit without the landlord promising to return the security deposit. The tenant appeared upset and angry.

The landlord stated that the tenant's father was present and was able to calm the tenant who then left.

Therefore, no inspection took place with the tenant present. However, the landlord completed the report in the tenant's absence which supports the landlord's claims for cleaning, repairs and damage.

The tenant filed an Application for Dispute Resolution on October 5, 2020. The landlord filed a cross application on November 3, 2020.

Outstanding rent

The tenant agreed he did not pay rent for the month of November 2020 or until he moved out. The landlord requested compensation for the time the tenant used the unit. The landlord's claim for outstanding rent is as follows:

ITEM	AMOUNT
Rent for November 2020	\$1,875.00
Pro-rated rent for occupancy in December 2020	\$250.00
TOTAL OUTSTANDING RENT CLAIMED	\$2,125.00

The tenant denied that the landlord had a valid claim for outstanding rent. The tenant asserted he was entitled to this period without paying rent because he had lived there so long.

Replacement Front Door

The landlord testified as follows. They had renovated the unit before the tenancy started. The front door, unique and in good condition, was retained from the original building. A picture of the door was submitted as evidence. While the landlord did not know the value of the door, the landlord attested to its aesthetic and heritage value as supported by the photograph.

Without authorization or explanation, the tenant removed the front door, discarded it, and replaced it with a used door. At the move-out inspection, the landlord observed damage and breakage to the door and vertical window or "side lite". Pictures of the damage were submitted. The landlord testified the door is completely unsuited for the house, in poor condition, and must be replaced.

The landlord disagreed that the replacement door is better and intends to purchase a new door or comparable quality to the original door. The estimated purchase price of a new door was \$1,700.00 for which the landlord requested compensation. The landlord submitted evidence of the likely replacement cost of the door.

The tenant testified that he discarded and replaced the front door with a better functioning door of increased value that he obtained at no cost. The tenant said he improved the front door and the landlord is not entitled to any compensation.

Cleaning/Repairs/Damage

The landlord stated the unit required cleaning when the tenant vacated. The landlord testified the landlord cleaned the unit themselves for 5 hours for a total reimbursable claim of \$125.00. As well, the landlord testified they took a truckload of garbage left by the tenant for which the landlord requested reimbursement of \$40.00. The total cleaning claim, including both these amounts, is \$165.00.

The tenant denied the landlord was entitled to any cleaning or debris removal as he left the unit "spic and span".

The landlord described in detail the damage the tenant did to the unit. The landlord submitted no receipts in support of the claims. All claims are based on their best estimate of the time and expense involved to repair the unit. The exception is the purchase and installation of new locks for which the landlord testified they paid \$300.00.

ITEM	AMOUNT
Grout in bathroom – 2 holes requiring repair	\$100.00
Refrigerator – many dents, depreciation	\$200.00
Dishwasher – dents, depreciation	\$50.00
Island countertop kitchen – damaged by 12" knife cut - repairs	\$150.00
Flooring – damage repairs	\$350.00
Countertop kitchen – damage, pulled from wall	\$100.00
Walls – repair, drywall and paint	\$350.00
Faucet repair/replacement	\$150.00
Locks – replacement and installation	\$300.00
Landscaping – reseeding burned areas	\$150.00
Garage concrete floor – repair damage	\$150.00
TOTAL CLAIM –REPAIRS/DAMAGE	\$2,050.00

The tenant denied responsibility for all the landlord's claims. The key aspects of his testimony are as follows:

1. The tenant acknowledged that he drilled two holes in the grout in the bathroom – they are “pin pricks”, he repaired them before he left, and the landlord's claim for compensation should not succeed;
2. The tenant is responsible for small dents in the refrigerator – they are insignificant and do not affect the value of the appliance;
3. The tenant is not responsible for the dents in dishwasher;
4. The tenant acknowledged responsibility for a small, insignificant cut in the island in the kitchen which should not be the subject of any award;
5. The flooring was improperly installed, and the tenant is not responsible for any damage which was either insignificant or non-existent;
6. The countertop that was pulled away from the wall in the kitchen is an insignificant, minor repair caused by poor construction/installation that characterized the unit;
7. The tenant is not responsible for the rest of the claimed items (drywall, faucet, locks, landscaping damage, and dents to garage floor).

Summary of landlord's claim

The summary of the landlord's claim is as follows:

ITEM	AMOUNT
Rent outstanding	\$2,125.00
Front door – replacement	\$1,700.00
Cleaning	\$165.00
Repairs/Damage	\$2,050.00
TOTAL CLAIM - DAMAGES	\$6,040.00

Filing fee and security deposit

The landlord requested reimbursement for the filing fee of \$100.00 and authorization to apply the security deposit to the award.

Tenant's Claim

The tenant acknowledged putting “a few little dents” in the fridge. Otherwise, the tenant denied all the landlord's claims or stated that any damage was insignificant.

While acknowledging that he replaced the front door without authorization and discarded the original, the tenant claimed that he improved the front entrance by the door. He requested an award of \$200.00 for the work he had done to the unit.

The tenant claimed that any damage he did was normal wear and tear or involved improvements, not damage, to the property. The tenant testified that in his opinion, the unit was poorly constructed.

The tenant claimed he had skills in construction and repairs. He stated he improved the unit, such as by replacing the front door, and he requested reimbursement for his labour in the amount of \$200.00.

The tenant requested reimbursement of the filing fee.

Analysis

I have considered all the submissions and refer only to key, admissible facts. Substantial evidence and conflicting testimony were submitted in an 80-minute hearing. Only relevant findings are referenced.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

The landlord must meet the burden of proof with respect to each claim.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award

Credibility

I have considered all the evidence submitted by the landlord, including the condition inspection report on moving in and the unsigned report on moving out, the photographs and videos, their written statements, and their testimony.

I find the landlord's submissions to be persuasive, professional and forthright. Their evidence package was well-organized and complete. Their testimony was credible, forthright, calm and convincing.

The photographs were of high quality and clearly showed the condition of the unit when the tenant moved in, and the damaged/dirty condition when they moved out. While the landlord submitted only estimates with respect to the damages, I find the estimates were based on research, practical evaluation of the time/expenses involved, and are reasonable, trustworthy and reliable.

I prefer the version of events to which the landlord testified as supported by photographs and substantial documentary evidence. I give greater weight to the landlord's evidence. Where the evidence of the parties differs, I prefer the landlord's account in all respects.

Tenant's Claim

I have considered that the tenant denied responsibility for any breach and that his actions were insignificant or amounted to improvements. I have considered his claim for a monetary award for the work he did to the unit. I do not accept the tenant's account as credible or reliable. I prefer the landlord's version supported by documentary evidence that the tenant caused damage to the unit in many aspects as detailed by the landlord in their submissions.

I find the tenant's claims do not meet any of the above four tests and I dismiss the tenant's claim without leave to reapply.

Outstanding Rent

The tenant acknowledged owing the landlord outstanding rent. I find the tenant owed the rent under the agreement. to the landlord and has not paid it without reasonable excuse. I find the tenant cancelled the scheduled move out inspection on November 30, 2020 and attended on December 4, 2020 after the landlord issued a Final Notice. I accordingly grant the landlord a monetary award in the amount requested which includes occupancy as claimed until December 4, 2020.

Cleaning/Repairs/Damage

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities with respect to all other claims for cleaning, repairs, and compensation for damage. I find the tenant left the unit dirty and damaged as the landlord's testified. I find the tenant removed and discarded the front door without authorization and replaced it with an unsuitable and unacceptable door. I find the tenant damaged all items claimed by the landlord as testified by them and supported in all aspects by documentary evidence. I find the tenant is responsible for the lack of cleanliness, the damage and the need for repairs.

I find the landlord's estimates with respect to all claims are reasonable given the damage evidenced in the photographs and other documentary evidence. I find the landlord took all reasonable steps to mitigate expenses and I accept the landlord's testimony that the repairs will be carried out when time and money permit. I find the landlord's estimates are reasonable and reflect efforts to mitigate and reduce costs.

I find the landlord has met the burden of proof on a balance of probabilities that unit needed the described repairs when the tenant vacated, the tenant is responsible for the damage. I find the damage is more than 'reasonable wear and tear'. I find the landlord is entitled to a monetary award in the amounts requested for this aspect of the claim.

I find the landlord is entitled to a monetary award in the amount requested under all headings.

Summary of Award

I award the landlord the following:

ITEM	AMOUNT
Rent outstanding	\$2,125.00
Front door – replacement	\$1,700.00
Cleaning	\$165.00
Repairs/Damage (above table)	\$2,050.00
TOTAL AWARD	\$6,040.00

Further to the provisions of section 72, I award the landlord reimbursement of the filing fee. I grant the landlord authorization to apply the security deposit to the award.

The Monetary Order of **\$6,040.00** is summarized as follows:

ITEM	AMOUNT
Award (above)	\$6,040.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$1,875.00)
MONETARY ORDER LANDLORD	\$4,265.00

Conclusion

The tenant's Application is dismissed without leave to reapply.

The landlord is entitled to a Monetary Order in the amount of **\$4,265.00**.

This Order must be served on the tenant. If the tenant fails to comply with this Order the landlord may file the order in the Provincial Court (Small Claims) to be enforced as an Order of that Court.

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 19, 2020

Residential Tenancy Branch