



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on November 08, 2020 (the "Application"). The Landlord applied as follows:

- For compensation for damage to the rental unit
- To recover unpaid rent
- For compensation for monetary loss or other money owed
- To keep the security deposit
- For reimbursement for the filing fee.

The Landlord appeared at the hearing. The Tenant appeared at the hearing. I explained the hearing process to the parties. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to compensation for monetary loss or other money owed?
4. Is the Landlord entitled to keep the security deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	September rent	\$1,100.00
2	October rent	\$1,100.00
3	Garbage	\$210.00
4	Paint & drywall repair	\$630.00
5	Cabinet	\$500.00
6	Changing locks & baseboard fix	\$290.00
7	10-Day Notice filing fee	\$100.00
8	Cross-application filing fee	\$100.00
9	Anticipated rent November 1-15	\$850.00
10	Stress & time off work	\$1,200.00
	TOTAL	\$6,080.00

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started January 01, 2016 and was a month-to-month tenancy. Rent was due on the first day of each month. The Tenants paid a \$600.00 security deposit.

The Tenant testified that the Tenants vacated the rental unit October 24, 2020. The Landlord testified that the Tenants vacated the rental unit October 25, 2020.

The parties agreed the Tenants did not provide the Landlord a forwarding address.

The Landlord acknowledged they did not have an outstanding monetary order against the Tenants at the end of the tenancy and the Tenants did not agree to the Landlord keeping the security deposit.

The Landlord testified that they did a move-in inspection by themselves, the rental unit was freshly renovated at the time and they did not have a chance to do a move-in inspection with the Tenants. The Landlord testified that no Condition Inspection Report was done. The Landlord testified that they did not give the Tenants two opportunities to do a move-in inspection, one on the RTB form.

The Tenant testified that the Tenants did not do a move-in inspection with the Landlord and were not offered two opportunities to do a move-in inspection, one on the RTB form.

The Landlord testified that a move-out inspection was not done with the Tenants and the Tenants were not offered two opportunities to do a move-out inspection because the Tenants moved out without letting the Landlord know. The Landlord testified that no Condition Inspection Report was done.

The Tenant testified that the Tenants did not do a move-out inspection with the Landlord and were not offered two opportunities to do a move-out inspection, one on the RTB form.

The Landlord testified that the tenancy ended pursuant to an Order of Possession which was served on the Tenants October 14 or 15, 2020.

#1 September rent \$1,100.00

The Landlord testified as follows. The Tenants never paid September rent. The Tenants were served with a 10 Day Notice and did not dispute the Notice. The text messages in evidence show the Tenants did not pay September rent.

The Tenant testified as follows. The Tenants paid September rent in cash. The Tenants received the 10 Day Notice and did not dispute it. The Tenants did not receive a receipt for September rent.

#2 October rent \$1,100.00

The Landlord testified as follows. The Tenants stopped paying rent in September. Page six and seven of the evidence submitted shows the Tenants intended to live in the rental unit for free.

The Tenant testified as follows. The Tenants did not pay October rent. The Tenants moved out of the rental unit for two months and paid an increased rent amount which was an illegal rent increase.

In reply, the Landlord submitted that the rent paid while the Tenants lived at another location was not a rent increase because it was for a different rental unit.

#3 Garbage \$210.00

The Landlord testified as follows. The Tenants left garbage behind when they moved out of the rental unit. The garbage receipt is in evidence. The photos in evidence show the garbage left behind.

The Tenant testified as follows. The Landlord asked the Tenants to clean up the neighbour's garbage. The Tenants did not leave garbage in the rental unit at the end of the tenancy.

The Tenant referred to photos and text messages in evidence from June of 2020 to support their position.

#4 Paint & drywall repair \$630.00

The Landlord testified as follows. The Tenants damaged the rental unit and scraped paint off the walls. The Landlord had to hire a tradesperson to come in and fix the damage and paint.

The Tenant testified that the Tenants did not damage the rental unit as alleged.

#5 Cabinet \$500.00

The Landlord sought compensation for the Tenants taking a cabinet from the kitchen at the end of the tenancy. The Landlord acknowledged the cabinet was the Tenants' cabinet. The Landlord testified that the cabinet had been affixed to the wall during renovations with the Tenants' permission and therefore the Tenants were not permitted to remove it. The Landlord advised that the \$500.00 sought is to replace the cabinet. The Landlord said there is no documentation for the cost for the cabinet and the \$500.00 is a verbal estimate. The Landlord submitted that the loss experienced was the cost of installing the cabinet and the cost of fixing the wall given the Tenants removed the cabinet.

The Tenant acknowledged taking the cabinet at the end of the tenancy and submitted that it was the Tenants' cabinet and they were permitted to take it.

#6 Changing locks & baseboard fix \$290.00

The Landlord testified as follows. The Tenants refused to return the keys to the rental unit so the Landlord had to change the locks. The invoice for changing the locks is in evidence. The Landlord also purchased a lock for \$27.50 from Home Depot. The Tenants damaged the baseboards in the rental unit and this damage had to be fixed. The invoice for the baseboards is in evidence.

The Tenant testified that the Tenants did not return the keys to the rental unit because they asked for their security deposit back. The Tenant denied that the Tenants damaged the baseboards in the rental unit.

#7 10-Day Notice filing fee \$100.00

The Landlord sought the filing fee for a previous Application for Dispute Resolution.

#9 Anticipated rent November 1-15 \$850.00

The Landlord testified as follows. The Tenants moved out of the rental unit October 24 or 25, 2020 and left the unit damaged. It took 15 days to find a new tenant because of the damage to the rental unit left by the Tenants. The rental unit was posted for rent right away after the Tenants moved out.

The Tenant disputed this claim on the basis that the delay in finding a new tenant was not due to damage caused by the Tenants.

#10 Stress & time off work \$1,200.00

The Landlord testified as follows. The Landlord has had three RTB hearings due to the Tenants. The Tenants' previous Application for Dispute Resolution was dismissed. The Landlord is seeking compensation for three days of stress and time off work. The Tenant has threatened the Landlord. The Landlord was concerned the Tenant could turn violent because the Tenant said things such as "claim it" when the Landlord spoke to him about removing garbage from the rental unit. Dealing with the Tenants was stressful. The Landlord is claiming for time lost dealing with the Tenants.

The Tenant disputed this request and submitted that it was the Landlord who caused the Tenants stress.

Documentary Evidence

The Landlord submitted the following documentary evidence:

- Invoices
- Text messages
- Written submissions
- Photos
- A 10 Day Notice
- A prior RTB decision between the parties in relation to the 10 Day Notice
- The tenancy agreement
- Registered mail photos

The Tenants submitted the following documentary evidence:

- Registered mail receipt
- Monetary Order Worksheet
- Written submissions about claims by the Tenants
- A receipt for \$600.00
- An account summary
- Documents related to a college
- Transaction records
- An invoice for a TV
- Shaw invoices
- Photos
- Text messages
- Written submissions about this matter
- The tenancy agreement
- Renovation drawings

Analysis

Security deposit

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of the parties, I find the Tenants were not offered two opportunities, one on the RTB form, to do a move-in or move-out inspection. Given this, I find the Tenants did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlord has claimed for unpaid rent, garbage removal, changing locks as well as stress and time off work.

Based on the testimony of the parties, I accept that the tenancy ended October 24 or 25, 2020.

Based on the testimony of the parties, I accept that the Tenants did not provide the Landlord a forwarding address.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit or file a claim against it. Given the Landlord did not receive a forwarding address from the Tenants, section 38(1) of the *Act* has not been triggered and the Landlord was entitled to claim against the security deposit on November 08, 2020 when the Application was filed.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

#1 September rent \$1,100.00

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied the Tenants did not pay September rent based on the 10 Day Notice which was served on the Tenants for September rent and not disputed as required. I am satisfied the Landlord has met their onus to prove September rent was not paid based on their testimony, the 10 Day Notice and the prior RTB decision which resulted in an Order of Possession based on the 10 Day Notice.

I award the Landlord September rent.

#2 October rent \$1,100.00

Section 57 of the *Act* states:

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Pursuant to section 26 and 57 of the *Act*, the Tenants were required to pay rent for October. The parties agreed the Tenants did not pay rent for October. The Tenant submitted that the Tenants should not have to pay October rent because the Landlord charged them higher rent at another rental unit for two months which was an illegal rent increase. I do not accept that this was an illegal rent increase because it was rent for a different rental unit. I find the Tenant did not point to any authority under the *Act* to withhold rent for October and therefore award the Landlord October rent.

I acknowledge that the Tenants moved out of the rental unit October 24 or 25, 2020. I award the Landlord full rent for October despite this given rent was due on the first day of each month and given the Landlord could not have reasonably re-rented the unit prior to November given how late in the month the Tenants moved out.

#3 Garbage \$210.00

Section 37 of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear...

I am satisfied based on the text messages and photos submitted by the Landlord that the Tenants left belongings and garbage at the rental unit at the end of the tenancy. I do not accept the Tenant's position as the Tenant relied on text messages and photos from June of 2020 when the issue is garbage left in October of 2020 when the Tenants moved out of the rental unit.

I am satisfied the Tenants breached section 37 of the *Act* by leaving belongings and garbage at the rental unit in October of 2020.

I am satisfied the Landlord had to have the Tenants' belongings and garbage removed and am satisfied based on the invoice that this cost \$210.00. I find this amount reasonable given the belongings and garbage left behind and award the Landlord this amount.

#4 Paint & drywall repair \$630.00

I accept that the rental unit was renovated during the tenancy as I did not understand the parties to disagree about this and this is evident from the documentary evidence. The Landlord submitted photos of the renovated rental unit showing the walls and paint were in good condition. The Landlord submitted photos showing damage and drawings on the walls at the end of the tenancy. I am satisfied based on the photos submitted that the walls were in good condition after the renovation and were scratched and had drawings on them at the end of the tenancy. I am satisfied the Tenants caused this damage and that the damage is beyond reasonable wear and tear given the nature of the damage. I am satisfied the Tenants breached section 37 of the *Act*.

I am satisfied the Landlord had to have the damage to the walls fixed and am satisfied based on the invoice that this cost \$630.00. I find this amount reasonable and award the Landlord this amount.

#5 Cabinet \$500.00

I decline to award the Landlord compensation for the cabinet. The cabinet belonged to the Tenants and therefore the Landlord did not experience loss when the Tenants took the cabinet with them. The Landlord submitted that the loss was the cost of installing the cabinet and the cost of fixing the wall where the cabinet was. It is my understanding that the cabinet was installed with the remainder of the kitchen and I am not satisfied in the absence of further evidence that the installation of the cabinet added to this cost. I do not find it clear from the evidence that the cost for fixing the wall was not included in the invoice for drywall repairs and painting and it is not clear to me why it would not be included in this cost. Further, I am not satisfied that the amount of the loss claimed is \$500.00 given the absence of evidence showing the cost of installation of the cabinet and cost of fixing the wall.

#6 Changing locks & baseboard fix \$290.00

Section 37(2)(b) of the *Act* states:

(2) When a tenant vacates a rental unit, the tenant must...

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I accept that the Tenants did not return their keys as the Tenant acknowledged this. I find the Tenants breached section 37(2)(b) of the *Act*. I accept that the Landlord had to change the locks due to the Tenants' breach. I am satisfied based on the invoice in evidence that the Landlord paid \$262.50 for baseboard installation and lock change. The invoice does not state how much each item cost. The Landlord also testified that they purchased a new lock for \$27.50; however, a receipt for this is not in evidence. In the circumstances, I award the Landlord \$75.00 for the lock change as I am satisfied it would have cost this amount but cannot be satisfied it cost more than this amount given the lack of evidence on this point.

In relation to the baseboards, I do not accept that the Tenants damaged baseboards as the photos in evidence do not support this. I do accept that baseboard was missing where the Tenants' cabinet was and accept that the Landlord had to have baseboard installed at this location. However, I am not satisfied the Tenants are responsible for this cost. The lack of baseboard is due to the Tenants taking their cabinet at the end of the tenancy. I am not satisfied based on the evidence provided that the Tenants were not entitled to take their cabinet at the end of the tenancy given it was their property. I decline to award the Landlord compensation for baseboards.

#7 10-Day Notice filing fee \$100.00

The Landlord cannot claim for filing fees for other RTB matters. The Landlord should have claimed for the filing fee in the Application for Dispute Resolution in relation to the 10 Day Notice if the Landlord wished to be reimbursed for it.

#8 Cross-application filing fee \$100.00

Given the Landlord was partially successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

#9 Anticipated rent November 1-15 \$850.00

I decline to award the Landlord November rent. Although the photos show some damage to the rental unit as well as belongings and garbage left behind, I do not accept that these issues could not be addressed in the remaining six days of October. I do not find the damage or belongings and garbage left was to such an extent that the rental unit could not be re-rented for November.

#10 Stress & time off work \$1,200.00

I decline to award the Landlord this amount. I do not accept that parties are entitled to compensation for the usual stress or time it takes to deal with tenancy matters. I am not satisfied based on the evidence provided that this matter is extraordinary or egregious. I am not satisfied the Landlord has provided sufficient evidence of stress such as medical evidence of increased stress due to this tenancy. Nor has the Landlord provided documentary evidence that they lost income due to this matter.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	September rent	\$1,100.00
2	October rent	\$1,100.00
3	Garbage	\$210.00
4	Paint & drywall repair	\$630.00
5	Cabinet	-
6	Changing locks & baseboard fix	\$75.00
7	10-Day Notice filing fee	-
8	Cross-application filing fee	\$100.00
9	Anticipated rent November 1-15	-
10	Stress & time off work	-
	TOTAL	\$3,215.00

The Landlord can keep the \$600.00 security deposit pursuant to section 72(2) of the Act. The Landlord is issued a Monetary Order for the remaining \$2,615.00 pursuant to section 67 of the Act.

Conclusion

The Landlord is entitled to \$3,215.00. The Landlord can keep the \$600.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$2,615.00. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 26, 2020

Residential Tenancy Branch