



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-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 April 20, 2018 (the "Application"). The Landlord sought compensation for damage caused by the Tenants to the rental unit and reimbursement for the filing fee. The Landlord sought to keep the security deposit.

The Landlord and Tenants appeared at the hearing. I explained the hearing process to the parties and nobody had questions when asked. All parties provided affirmed testimony.

The Tenants confirmed their correct legal names and I amended the Application to reflect these. These are reflected in the style of cause.

The Landlord had not submitted a Monetary Order Worksheet as required by rule 2.5 of the Rules of Procedure (the "Rules"). The Application listed the items the Landlord sought compensation for. The Tenants were content with proceeding.

Both parties had submitted evidence prior to the hearing. The Tenants confirmed they received the hearing package and Landlord's evidence.

The Tenants had not served their evidence on the Landlord. Rule 3.15 of the Rules requires respondents to serve their evidence on the applicant. Rule 3.17 of the Rules allows me to admit evidence not served in accordance with the Rules if doing so would not prejudice the other party. I allowed each party to make submissions regarding admission of the evidence. I excluded the Tenants' evidence as admitting it would have prejudiced the Landlord given the Landlord had not seen the evidence and therefore would not be able to make submissions regarding the evidence.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and all oral testimony of the parties. 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 keep the security deposit?

Background and Evidence

The Landlord had submitted a written tenancy agreement between the Landlord and Tenants regarding the rental unit. The agreement submitted started January 1, 2016. However, the parties agreed the tenancy for Tenant T.R. started in January of 2014. The Landlord testified that an agreement was signed each year. An \$850.00 security deposit was paid December 13, 2013. A \$200.00 "key fob deposit" was also paid for two key fobs. The parties agreed the security deposit applied to each agreement signed throughout the tenancy. The parties agreed the Tenants moved out March 31, 2018.

The parties agreed the Tenants provided their forwarding address on the Condition Inspection Report completed on move-out April 5, 2018. The Landlord confirmed she filed the Application April 20, 2018.

The parties agreed a move-in inspection was done December 30, 2013 by Tenant T.R. and M.B., an agent for the Landlord. A Condition Inspection Report was submitted as evidence. Tenant T.R. confirmed her and M.B. signed the report. Tenant T.R. testified the unit was empty. Tenant T.R. said she received a copy of the report personally the day it was completed. The Landlord did not dispute the testimony of Tenant T.R.

The parties agreed on the following. The Tenants and M.B. did a move-out inspection April 5, 2018. The unit was empty. M.B. and the Tenants signed the Condition Inspection Report on move-out. The Tenants were given a copy of the report personally on the day it was completed.

The Landlord sought compensation for the following:

Item	Description	Amount
1	Hardwood floor damage	\$360.00
2	Key fob returned broken	\$100.00
3	Dent in lower fridge door	\$243.23 + tax
4	Glass shade of dining area removed and not replaced, cannot be reinstalled	\$204.11
5	Staining on patio balcony due to grease/oil or paint not removed/cleaned	\$116.00
	TOTAL	\$1,052.52

I note that the total of the above amounts exceeds the amount of \$821.00 requested in the Application. I would not have awarded the Landlord more than the \$821.00 requested in the Application given it was not clear she was requesting \$1,052.52 until the hearing.

Hardwood floor damage

The Landlord testified as follows regarding the hardwood floor damage. The property was new when Tenant T.R. moved in. There was no damage to the floor. Damage to the floor on move-out was beyond reasonable wear and tear. There were scratches and high heel marks on the floor. The Tenants did not take proper care of the floor.

The Landlord further testified as follows. She contacted a woman about sanding and buffing the floor. The original quote for fixing the floor was \$360.00. The woman came and looked at the floor and said the damage is a lot deeper than expected. The woman is still going to fix the floor but it will cost more than \$360.00. The woman has started the work. The floor needs to be sanded, filled and stained.

The Landlord said she knew the state of the floor upon move-in and move-out based on the Condition Inspection Report, her own visit to the unit May 5, 2018, the fact that the unit was one year old and the photos submitted. She said the unit was still vacant on May 5, 2018. She said the photos submitted were taken by her daughter at the move-out inspection. She also testified that she had been in the unit prior to Tenant T.R. moving in.

The Condition Inspection Report shows the floors were "satisfactory" upon move-in. Tenant T.R. and M.B. signed the report on move-in. The report shows there was a scratch on the floor in the "Entry, Halls, Stairs" upon move-out. It also shows there was a scratch and stain on the floor in the "Living Rooms, Family Rooms". Tenant T.R. indicated she did not agree with the report on move-out as the marks noted are reasonable wear and tear. M.B. signed the report on move-out.

The Landlord submitted photos of the floor. It appears there are four areas where the floor has been damaged. The damage includes small round dents, scratches and what looks like a stain.

The Landlord submitted an email from the woman repairing the floor stating she would fix the three damaged areas for \$360.00.

Tenant T.R. testified as follows. The unit was not new when she moved in. There was a tenant in the unit before her. The scratches are small. The photos of the floor do not show that the scratches need to be sanded down. She lived there for four years. She put carpets over the floors. The scratches are from four years of reasonable wear and tear. The photos submitted must have been taken after the move-out inspection because she did not see M.B. take photos. The photos look like they were taken at night and are saturated.

Tenant T.R. did not take the position that the photos are false. She said she does not believe the scratches require the amount of work to fix that the Landlord is saying they do. She submitted it is expected businesses will quote more than necessary for repairs to profit.

Broken key fob

The Landlord testified as follows. The key fob was returned broken. It has not yet been fixed. The fob cannot be fixed, it must be replaced.

The Landlord said she is aware of the above based on the Condition Inspection Report and discussions with M.B.

The Condition Inspection Report indicates a fob was broken on move-out.

The Landlord submitted a photo of the broken key fob. It appears the two halves are being held together by an elastic.

Tenant T.R. testified as follows. The button on the fob stopped working. The Tenants unscrewed the fob and replaced the battery. The screws could not be put back in because they were stripped. The fob still works. The fob does not need to be replaced, it can be fixed with new screws. The Tenants fixed the fob on their own accord originally and should not now have to compensate the Landlord for it.

Dent in fridge

The Landlord testified as follows. There was no dent in the fridge upon move-in. There is now a dent in the lower fridge door. She is looking to replace the door. She did not look into repairing the door instead of replacing it.

The Landlord said she knew about the condition of the fridge through the Condition Inspection Report, the move-out Condition Inspection Report from the previous tenant and personal knowledge from her May visit to the unit.

The Condition Inspection Report shows the appliances were “satisfactory” on move-in and “damaged” on move-out. There is a note saying there is a small dent in the fridge door.

The Landlord had submitted a quote for the door but it is simply her own writing based on what she received verbally.

The Landlord submitted a photo of the dented fridge door. It shows a very small dent in the middle of the door.

Tenant T.R. testified as follows. The dent was there when she moved in. The unit was not new when she moved in, there was a previous tenant in it for a year. She had taken photos of the unit upon move-in. She looked at the photos and saw the dent in the fridge. The Tenants spoke to a friend who fixes cars who said the dent could be popped out from the inside. The door does not need to be replaced. The dent is tiny. It is reasonable wear and tear. She lived there for four years.

I asked Tenant T.R. why she signed the Condition Inspection Report on move-in saying the appliances were “satisfactory” and she said this was an oversight. She said she was not looking at every detail. She said the Condition Inspection Report is not accurate and that there was a dent in the fridge upon move-in.

Glass shade in dining area

The Landlord testified as follows. The shade for the light in the dining area was removed. The shade cannot be put back on because there is a pin missing. She must purchase a new fixture because the shade and pin cannot be replaced. The shade takes two screws that are specific to the light fixture. I understood the Landlord to say she contacted Robinson Lighting and was told the screw cannot be replaced.

The Landlord said she knew the state of the light fixture upon move-in and move-out based on the Condition Inspection Report, move-out Condition Inspection Report of the previous tenant and personal knowledge from her visit in May.

The Condition Inspection Report shows the light fixtures in the living and family room were “satisfactory” upon move-in. There is a note stating, “fixture glass to be put back on” upon move-out. Tenant T.R. pointed to this to support her position. The Landlord testified that it was determined after further investigation that the shade could not be put back on.

The Landlord submitted a photo of the light without the shade on it. The Landlord submitted a picture of the light fixture showing the cost of it.

Tenant T.R. testified as follows. The shade was removed. The Tenants kept the shade and two screws. The shade can easily be put back on. The Landlord does not need to get a new fixture.

Staining on patio

The Landlord submitted photos of stains on the patio. It appears there are six areas of staining.

The Landlord testified as follows. The stains are grease and require a specific cleaner. It will cost \$28.00 per hour to have a company come clean the stains. The company will not attend for less than two hours. The cleaning has not yet been done. The Tenants should have cleaned the patio.

The Landlord submitted an ad from Home & Hearth, the cleaning company, showing their rate of \$28.00 per hour with a minimum of two hours.

I understood the Landlord to request \$28.00 for two hours of cleaning (\$56.00) plus \$60.00 for cleaner to clean the grease stains.

The Landlord said she is aware of the state of the patio on move-in and move-out from the Condition Inspection Report and move-out Condition Inspection Report of the previous tenant. She said the photos of the stains were taken by her daughter the day of, or the day after, the move-out inspection.

The Condition Inspection Report shows the "Patio, Deck, Balcony" was "satisfactory" on move-in and "needs cleaning" upon move-out. The report shows there was some staining on the patio.

Tenant T.R. testified as follows. She agrees there was staining on the patio and agrees the Tenants caused this. It is reasonable wear and tear. The photos could be saturated because she does not remember the stains being so significant.

Analysis

Based on the testimony of the parties, and the evidence submitted, regarding the move-in and move-out inspections, I find the Landlord has not extinguished her right to claim against the security deposit under section 24(2) or 36(2) of the *Residential Tenancy Act* (the "*Act*"). Nor have the Tenants extinguished their right to the return of the security deposit under section 24(1) or 36(1) of the *Act*.

Based on the testimony of both parties, I find the Tenants provided their forwarding address to the Landlord in writing on April 5, 2018. I accept the testimony of the Landlord that she filed the Application April 20, 2018. Therefore, I find the Landlord filed the Application within the 15-day time limit for making a claim against the security deposit set out in section 38(1) of the *Act*.

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.

Section 37 of the *Act* requires tenants to leave a rental unit “reasonably clean, and undamaged except for reasonable wear and tear” at the end of the tenancy.

Section 21 of the *Residential Tenancy Regulation* states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Hardwood floor damage

I accept the photos submitted accurately show the extent of the damage to the floor. Tenant T.R. did not submit these photos were false. I find the Tenants caused this damage based on the Condition Inspection Report stating the floors were “satisfactory” upon move-in. I did not understand Tenant T.R. to dispute that the damage was caused by the Tenants. I understood her to say it is reasonable wear and tear.

In relation to the scratches, I am not satisfied these are beyond reasonable wear and tear. There is no issue that Tenant T.R. lived in the unit for four years. Tenant T.R. said she put carpets on the floor. The Landlord did not dispute this. Tenant T.R. submitted that the scratches are small and do not require the type of repair the Landlord is claiming for. I am unable to determine whether the scratches are anything more than small scratches or surface scratches based on the photos submitted. The Landlord did not provide evidence to support her position that the scratches are beyond reasonable wear and tear. Although the Landlord submitted an email from the woman fixing the floors with the cost, the email does not include details about the state of the floor or what is required to repair the scratches. It is the Landlord that must prove the claim. I am not satisfied the Landlord has proved the claim in relation to the scratches.

I do find the heel marks and stain to be beyond reasonable wear and tear based on the photos. Damage to a floor from shoes is not reasonable wear and tear. The stain appears quite large and therefore outside of what I view to be reasonable wear and tear. I accept the position of the Landlord that these areas need to be repaired. I accept that the Landlord has hired a woman to repair these based on the testimony of the Landlord and the email from the woman which supports this. I accept the cost of repairing all the damage will be \$360.00 based on the email. I acknowledge that the Landlord testified it

is going to cost more to repair the floor; however, the Landlord did not submit documentation to support this. Given I have accepted that two of the four areas require repair, I find the Landlord is entitled to half of the requested cost which is \$180.00. I find this to be a reasonable amount given the damage.

Broken key fob

Based on the photos submitted, and the testimony of Tenant T.R., I accept that the key fob was returned with the two halves unscrewed. Based on the testimony of Tenant T.R., I accept that the Tenants caused this damage. The Landlord testified the fob is broken and must be replaced; however, Tenant T.R. disputed this. The Landlord did not provide evidence to support her position that the fob needs to be replaced rather than repaired. It is the Landlord that must prove the claim. I am not satisfied the fob needs to be replaced. I have no evidence before me about the cost of replacing the screws. In these circumstances, I decline to award the Landlord compensation for the fob.

Dent in fridge

Based on the Condition Inspection Report, I find the fridge was “satisfactory” on move-in and had a small dent in it on move-out. Tenant T.R. testified that the dent was in the fridge at the start of the tenancy; however, Tenant T.R. indicated she agreed with the Condition Inspection Report and signed it on move-in. I do not find that Tenant T.R.’s testimony alone amounts to a “preponderance of evidence to the contrary”. I therefore find the Tenants responsible for the dent.

However, based on the photos submitted, I do not find this dent to be beyond reasonable wear and tear. From the photos, the dent appears to be very small. Tenant T.R. lived in the unit for four years. A landlord cannot expect an apartment to be like new after a four-year tenancy. I find the Tenants have not breached section 37 of the *Act* and therefore the Landlord is not entitled to compensation.

I note that the Landlord did not satisfy me that the door must be replaced and therefore I would not have awarded the amount requested even if satisfied the dent was beyond reasonable wear and tear.

Glass shade in dining area

Based on the testimony of both parties, I accept the shade was removed from the light fixture in the dining area. Based on the Condition Inspection Report, I find the shade simply needs to be put back on. M.B. signed the Condition Inspection Report stating this. It is not open to a landlord to complete a Condition Inspection Report incorrectly and then take a position at a hearing that contradicts the report in the same way it is not open to a tenant to do so. I am not satisfied that any part of the light fixture needs to be replaced and therefore I find the Landlord is not entitled to compensation in relation to the light fixture.

Staining on patio

Based on the testimony of both parties, I find the Tenants left grease stains on the patio. In my view, the Tenants should have cleaned these stains upon vacating the unit and therefore breached section 37 of the *Act* by not doing so. I accept the position of the Landlord that these stains need to be cleaned. I accept the testimony of the Landlord that the cleaning company she has looked into charges \$28.00 per hour for a minimum of two hours. This is supported by the ad submitted. I find this to be a reasonable cost. I find the Landlord is entitled to compensation in the amount of \$56.00.

I am not satisfied the Landlord is entitled to \$60.00 for a grease cleaner. There is no evidence before me to support the position that the stains require a specific cleaner or the cost of the cleaner. The Landlord has only submitted her own handwritten note regarding the cost of the cleaner. The Landlord has the onus to prove the claim. I find the Landlord has failed to prove the claim for \$60.00 for grease cleaner.

In summary, I award the Landlord the following:

Item	Description	Amount
1	Hardwood floor damage	\$180.00
5	Staining on patio balcony due to grease/oil or paint not removed/cleaned	\$56.00
	TOTAL	\$236.00

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

The Landlord is therefore entitled to \$336.00 compensation. Pursuant to section 72(2) of the *Act*, the Landlord is entitled to keep \$336.00 of the security deposit. The Landlord must return \$714.00 being the "key fob deposit" and remainder of the security deposit.

I have issued the Tenants a Monetary Order in the amount of \$714.00. If the Landlord does not return the \$714.00, the Tenants must serve this Order on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Application is granted in part. The Landlord is entitled to \$236.00 compensation for damage caused by the Tenants to the unit. The Landlord is entitled to reimbursement for the \$100.00 filing fee. The Landlord is authorized to keep \$336.00 of the security deposit. The Landlord must return \$714.00 being the "key fob deposit" and remainder of the security deposit.

The Tenants are granted a Monetary Order in the amount of \$714.00. If the Landlord does not return the \$714.00, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: July 05, 2018

Residential Tenancy Branch