



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on May 7, 2018 (the “Application”). The Landlords sought compensation for damage caused by the Tenants to the rental unit, compensation for monetary loss or other money owed and reimbursement for the filing fee. The Landlords sought to keep the security deposit.

Both the Landlords 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 parties provided their full legal names and I amended the Application to reflect these where necessary. The full legal names are reflected in the style of cause.

Both the Landlords and Tenants had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Tenants confirmed they received the hearing package and Landlord’s evidence and raised no issues in this regard. The Landlords confirmed they received the Tenants’ evidence and raised no issues in this regard.

All parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence submitted 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. Are the Landlords entitled to compensation for damage caused to the rental unit?
2. Are the Landlords entitled to compensation for monetary loss or other money owed?
3. Are the Landlords entitled to keep the security deposit?
4. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords requested the following compensation:

Item	Description	Amount
1	Tea towels x 2	\$7.98
2	Hand towels x 2	\$15.61
3	Sheet set	\$52.63
4	Cooking pot	\$22.37
5	Sauce pan	\$14.53
6	Cheese grater	\$2.80
7	Clothing hamper	\$33.59
8	BBQ and cover	\$335.99
9	Move out cleaning (Molly Maid)	\$441.25
10	BC Hydro electrical overages during tenancy	\$404.03
11	Repair of doorframe	\$50.00
12	Carpet cleaning	\$100.00
13	Cleaning outside wall	\$50.00
14	Filing fee	\$100.00
	TOTAL	\$1,630.78

Two written tenancy agreements were submitted as evidence. The first agreement relates to a tenancy that started April 15, 2017 and was for a fixed term of 15 days ending April 30, 2017. The rent was \$1,250.00.

The Landlords testified that the Tenants paid \$2,500.00 at the start of the tenancy, \$1,250.00 as a security deposit and \$1,250.00 as a deposit because the rental unit was furnished. The Landlords said \$1,250.00 of this was returned to the Tenants during the tenancy. The Landlords said they still have \$1,250.00 of the security deposit. The Tenants did not dispute this.

The second agreement relates to a tenancy that started May 1, 2017 and was for a fixed term of 12 months ending April 30, 2018. Rent was \$2,500.00 per month. Both parties agreed the security deposit from the first tenancy agreement was applied to the second agreement.

I note that there are additional terms in the Addendums of the tenancy agreements relating to damage to the unit and consequences regarding the security deposit. I will not detail these here as the Landlords and Tenants are bound by the *Residential Tenancy Act* (the “Act”) in relation to cleaning the unit upon

move-out, damage to the unit and dealing with the security deposit at the end of the tenancy. Any terms in the Addendums that contradict the *Act* are unenforceable.

Both parties agreed the Tenants paid an additional \$150.00 cleaning fee at the start of the tenancy. Both parties agreed the Tenants moved out April 24, 2018.

Both parties agreed on the following. The Tenants provided their forwarding address on the Condition Inspection Report April 24, 2018. The Tenants did not agree in writing that the Landlords could keep some or all of the security deposit except in an email May 5, 2018. This email was submitted as evidence and states the Landlords can keep the \$150.00 cleaning fee for cleaning costs and \$20.14 for the October and April hydro bills. At the hearing, the Tenants confirmed they agreed to the Landlords keeping \$170.14.

Both parties agreed on the following. Both parties did a move-in inspection April 26, 2017. The unit was not empty because it was furnished. A Condition Inspection Report was completed and is accurate. Both parties signed the report. The Landlords provided a copy of the report to the Tenants around April 26, 2017 personally.

Both parties agreed on the following. Both parties did a move-out inspection April 24, 2018. The unit was not empty because it was furnished. A Condition Inspection Report was completed and both parties signed the report.

The Landlords testified that the Condition Inspection Report is accurate except for the comments written by the Tenants on move-out.

The Tenants said a copy of the Condition Inspection Report was emailed to them a week and a half after the inspection. The Landlords did not dispute this. An email was submitted as evidence showing the report was emailed to the Tenants May 5, 2018.

The Landlords confirmed they applied to keep the security deposit May 7, 2018.

The parties testified as follows in relation to the items outlined in the table above.

Tea towels, hand towels, sheet set, cheese grater

The Landlords testified that these items were new when the unit was rented to the Tenants and damaged at the end of the tenancy. I understood the position of the Landlords to be that the damage was beyond reasonable wear and tear.

The Tenants testified that they used the towels and sheets every day for a year and that the damage caused was reasonable wear and tear. In relation to the cheese grater, the Tenants said they put it in the dishwasher once and it rusted.

Cooking pot, sauce pan

The Landlords testified as follows. The pot and pan were new when the Tenants moved in. The Tenants scratched the Teflon on the pot and pan. This would not have happened if the pot and pan were used

properly. It looks like the Tenants used metal or abrasives on the pot and pan. The pot and pan are not safe to use once scratched and must be replaced.

The Landlords provided a receipt for the original pot and pan provided to the Tenants. The Landlords submitted photos of the scratches on the pot and pan.

The Tenants testified as follows. They used the pot and pan often and took good care of these. The scratches are reasonable wear and tear. They did not use metal on the pot or pan.

Clothing hamper

The Landlords testified as follows. The hamper was new when the Tenants moved in. There was mould damage to the hamper upon move-out. The hamper needs to be replaced as it is not safe to use if there is mould on it.

The Landlords submitted photos of the hamper showing discoloration and black spots. The Landlords did not submit a receipt for the hamper. They said they paid \$29.99 for it and that it cost more to replace as they purchased a more durable hamper.

The Tenants testified as follows. They used the hamper in a normal fashion. They put clothes that were wet from exercising in it but did not leave them in the hamper for long periods of time. They would have washed the hamper but it had a cardboard bottom so did not do so.

BBQ and cover

The Landlords testified as follows. The BBQ was new when the Tenants moved in. The BBQ was damaged by the Tenants. There was pitting in the BBQ surface. This would not have happened if the Tenants took reasonable care of the BBQ. There was rust on the outside and inside of the BBQ and therefore it was no longer safe to use. A BBQ can last a decade if cared for properly. The BBQ cover was also damaged.

The Landlords submitted a receipt for the BBQ showing it cost \$299.99. The Landlords have claimed \$335.99 which I expect is the cost including tax. The Landlords submitted photos of the BBQ upon move-out. The photos show the BBQ is rusted and show the pitting.

The Tenants testified as follows. The BBQ was working fine upon move-out. They did the best they could with the tools they had. They cleaned the BBQ regularly. They used the BBQ almost every day. The rust is reasonable wear and tear.

The Tenants also submitted photos of the BBQ which show rusting and pitting.

Move-out cleaning

The Landlords testified that they had Molly Maid do a move-out clean of the unit. They said inside cupboards and appliances had to be cleaned.

The Landlords submitted photos of the unit upon move-out. The Landlords also submitted the Molly Maid invoice. The invoice is for 4.25 hours of cleaning at \$119.047 [sic] plus a "move out fee" of \$57.14 plus GST for a total of \$591.25.

I raised concerns about the hours and cost of cleaning. In response, the Landlords pointed to the Molly Maid invoice which states the unit "had been allowed to deteriorate over time" and that the cleaning included inside cupboards, drawers and the oven.

The Landlords also testified as follows. The unit is just under 600 square feet. They called a few companies for cleaning quotes. There is no company that cleans for \$20.00 per hour. Molly Maid sent two people to clean. The grout had to be cleaned by hand. The stove and patio had to be cleaned. The cleaners tried to clean the BBQ but the Landlord told them to give up. The blinds had to be wiped down.

The Tenants testified as follows. The inside of the unit is 400 to 450 square feet. They take issue with the time it took to clean the unit. They cleaned the unit to a reasonably high standard. They had limited tools. The oven was filthy when they moved in.

The Tenants had submitted photos and videos of the state of the unit upon move-out.

Both parties provided testimony about the \$150.00 cleaning fee collected at the start of the tenancy. The Landlords said they were not part of the discussion between the Tenants and property management company about the fee. The Landlords said the fee goes towards cleaning but if further cleaning is required the Tenants are responsible to pay for it. The Tenants said they understood the fee to cover all cleaning costs upon move-out. Neither party pointed to documentation supporting their position.

The Condition Inspection Report submitted shows the following areas were dirty or stained upon move-out: stove; oven; carpet in master bedroom; and lighting fixture on patio. The Landlords signed the report on move-out. The Tenants signed the report stating they agree with the report. The Tenants also added a comment stating the stains on the carpet were "2 small dots (less than a quarter)".

BC Hydro electrical overages

The Landlords testified that there was an agreement that hydro would be included in the rent up to \$30.00 per month and that anything beyond that would be the responsibility of the Tenants. The Tenants agreed with this.

I understood the position of the parties about the hydro overages to be as follows. The Landlords thought the overages would be dealt with at the end of the tenancy. The Tenants thought they would be notified of any overages each month and that any overages would be dealt with then.

The Tenants said they were first advised of the overages April 2, 2018. I did not understand the Landlords to dispute this. The Landlords said there was no discussion at the start of the tenancy about how the overages would be collected.

Repair to doorframe

The Landlords testified as follows. The top of the doorframe in the bathroom was in good condition at the start of the tenancy. The Tenants purchased a towel hanger that sat on top of the door and caused damage to the wood. The Landlords fixed the doorframe themselves.

The Landlords provided photos of the doorframe showing the damage.

The Tenants agreed the damage to the doorframe was their fault. They were agreeable to the Landlords keeping some money for fixing the damage. They thought \$25.00 was a reasonable amount.

In response, the Landlords testified as follows. They looked into the cost of a handyman to fix the doorframe which was a minimum of \$100.00 for the handyman to attend the unit. It took one hour over a few days to sand and paint the doorframe.

Carpet cleaning

The Landlords testified as follows. The carpets were new at the start of the tenancy. The carpets were left with stains, ground in hair and dirt on them. The Tenants said they did not need to clean the carpets because the tenancy was only 363 days. The Landlords own the chemicals and steam cleaner needed to clean the carpets and did this themselves. The cost claimed is half of what a professional would charge.

The Landlords submitted photos of the carpet upon move-out. These show two very small stains but also hair and dirt on the carpet.

The Tenants testified as follows. The stains are two small dots and are reasonable wear and tear. They vacuumed and swept before they left. They would have steam cleaned the carpets if the Landlord provided them with tools to do so. The carpets are two small area rugs.

Cleaning outside wall

The Landlords testified as follows. The Tenants had the BBQ close to the patio wall. There was a fire or smoke problem. There is smoke damage to the wall. The Landlords cleaned this themselves with a rented pressure washer. It took one hour to clean. A professional cleaner would have charged \$100 an hour so they have asked for half of this amount for their time. I understood the Landlords to say the \$50.00 requested was for the chemicals required and manual labour.

The Landlords submitted photos of the wall showing the black staining.

The Tenants testified as follows. They put the BBQ under the overhang to protect it. The Landlords sent an email saying that if the staining could be removed it would not affect the security deposit. The Tenants took the position that the Landlord's email meant they did not have to clean the staining.

The Tenants had uploaded a video of Tenant J.S. scrubbing the staining with a sponge to show it could be removed. The Tenants then left the staining for the Landlords to clean.

Analysis

Section 7 of the *Act* states:

(1) If a...tenant does not comply with this Act...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...must do whatever is reasonable to minimize the damage or loss.

Section 37 of the *Act* sets out tenants' obligations upon vacating a rental unit and 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...

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.

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.

Section 21 of the *Regulations* 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.

Based on the testimony of the parties, I find neither party extinguished their rights regarding the security deposit under section 24 of the *Act*.

Based on the testimony of the parties, I find the Tenants did not extinguish their rights regarding the security deposit under section 36 of the *Act*.

Based on the testimony of the Tenants and evidence submitted, I find the Landlords emailed a copy of the move-out Condition Inspection Report to the Tenants May 5, 2018. The Landlords did not dispute this. Providing the report to the Tenants by email is not in accordance with section 18(2) of the

Regulations and section 36(2)(c) of the *Act* as email is not an acceptable form of service under section 88 of the *Act*. However, the Tenants appeared at the hearing and acknowledged receipt of the report. In these circumstances, I deem the report sufficiently served pursuant to section 71(2)(c) of the *Act*. Therefore, I find the Landlords did not extinguish their rights regarding the security deposit under section 36 of the *Act*.

I note the Landlords complied with section 38(1) of the *Act* by applying for dispute resolution to keep the security deposit within 15 days of receiving the Tenants' forwarding address in writing.

Tea towels, hand towels, sheet set, cheese grater, cooking pot, sauce pan

I decline to award the Landlords compensation for these items.

I accept the Tenants' testimony that they used the towels and sheets every day for one year. I accept that these items could last more than one year. However, I find one year of use for these items to be reasonable.

Further, I find one year of use for a cheese grater worth \$2.80 to be reasonable. I acknowledge that the Tenants said they did not actually use this for one year as it rusted after the first time they put it in the dishwasher. Regardless of whether the Tenants used the cheese grater, I do not find it unreasonable that the Landlords need to replace such an inexpensive kitchen item after one year.

I find the same in relation to the pot and pan. These items were worth \$22.37 and \$14.53 respectively. I accept the Tenants' testimony that they used these often. I do not find it unreasonable that the Landlords would need to replace the pot and pan after one year of use given the cost of the pot and pan.

Clothing hamper

I accept the testimony of the Landlords that the hamper had discoloration and possibly mould on it at the end of the tenancy. I accept the Tenants caused this. I did not understand the Tenants to dispute either of these points. Further, the photos show the discoloration and possible mould.

I accept that the discoloration and possible mould is beyond reasonable wear and tear. I do not agree that the normal use of a clothes hamper would result in discoloration or mould. I accept that the Landlords had to replace the hamper.

I accept the testimony of the Landlords that the hamper cost \$29.99. The Tenants did not dispute or question this. I find this to be a reasonable amount for a hamper. However, I find the Landlords are only entitled to partial compensation for the hamper given they got one year of use out of it. I award the Landlords \$20.00 for the hamper.

BBQ and cover

I accept that there was pitting and rust on the BBQ at the end of the tenancy. I accept that the Tenants caused this. I did not understand the Tenants to dispute that the BBQ was new when they moved in. The photos submitted by both the Landlords and Tenants show pitting and rust on the BBQ upon move-out.

I accept that the rusting on the grates of the BBQ is beyond reasonable wear and tear. I accept that this would not have happened if the Tenants took proper care of the BBQ after each use. The Tenants said they cleaned the BBQ regularly; however, some of the photos submitted show build up on the grates of the BBQ during the tenancy.

I accept that the Landlords must replace the BBQ grates due to the rust. I do not accept that the Landlords must replace the entire BBQ. I found the Landlords' submissions throughout the hearing to be focused on the appearance of items for the next tenant of the rental unit. In my view, this is not the issue. Here, the main issues are whether the Tenants breached the *Act*, whether the Landlords suffered loss or damage and whether the Landlords minimized their loss. I do not accept that purchasing a new BBQ in the circumstances is minimizing the loss.

I have no evidence before me as to the cost of replacing BBQ grates. I award the Landlords \$100.00 as, in my view, this is a reasonable amount in the circumstances.

I decline to award the Landlords anything for the BBQ cover as I am not satisfied based on the testimony and evidence submitted that it needs to be replaced.

Move-out cleaning

Based on the testimony of the parties and evidence submitted, I am unable to make a finding regarding the agreement about the \$150.00 cleaning fee. The parties had different understandings of the nature of this fee. Neither party provided documentation or evidence to support their position.

I do note that the *Act* does not allow Landlords to collect a "cleaning fee" over and above the security deposit. Therefore, I consider the \$150.00 to be part of the security deposit and consider the Landlords to be holding \$1,400.00 as a security deposit. I acknowledge that the Landlords deducted the \$150.00 from the Molly Maid invoice; however, the Landlords were not permitted to simply use the \$150.00. They were required to deal with the \$150.00 as if it was part of the security deposit under the *Act*.

I have reviewed the photos and videos of the unit upon move-out submitted by the Landlords and Tenants. I accept based on the photos and videos that the unit required some cleaning upon move-out. However, I find the unit required minimal cleaning to meet the standard of "reasonably clean" required by section 37(2) of the *Act*. The Tenants are not required to leave the unit in a state of perfection. I also note that the Condition Inspection Report indicates that very few areas required cleaning. In my view, the Landlords are bound by the Condition Inspection Report pursuant to section 21 of the *Regulations*.

As I have accepted that some cleaning was required, I accept that the Landlords had to hire someone to clean the unit upon move-out. However, I do not accept that the unit required two people to clean it for 4.25 hours in order to meet the standard of "reasonably clean". This is particularly so given the size of the unit and the minimal cleaning required.

Nor do I accept that approximately \$59.00 an hour is a reasonable rate for cleaning services. In these matters, Landlords are required to minimize their loss. The average rate for cleaners is \$20.00 to \$25.00. The Landlords disagreed with this; however, this is based on the experience of the Branch in these matters which is extensive. It was open to the Landlords to hire Molly Maid at \$119.00 per hour to clean the unit for 4.25 hours; however, the Tenants should not be responsible for this choice. I find that hiring one cleaner for 4.25 hours at \$25.00 per hour would have been reasonable and I award the Landlords \$107.00 for cleaning costs.

BC Hydro electrical overages

There is no issue that the parties agreed the Tenants would be responsible for hydro costs that exceeded \$30.00 per month. The issue is that the Landlords thought the overages would be collected at the end of the tenancy and the Tenants thought the overages would be sent to them each month. The Landlords testified that there was no discussion at the start of the tenancy about how the overages would be collected.

Section 6(3)(c) of the *Act* states, “[a] term of a tenancy agreement is not enforceable if...the term is not expressed in a manner that clearly communicates the rights and obligations under it”.

In my view, the agreement that the Tenants would pay hydro overages without any discussion about how and when those overages would be collected is not enforceable pursuant to section 6(3)(c) of the *Act*. The agreement is too vague to allow the Tenants to know their rights and obligations under it. I decline to award the Landlords reimbursement for the overages.

Repair to doorframe

There is no issue that the Tenants caused damage to the door frame in the bathroom. The Tenants agreed the Landlords could keep some money for fixing the damage.

I find the \$50.00 requested to be more than reasonable. I accept the testimony of the Landlords that hiring a handyman to fix the damage would have cost at least \$100.00. This seems reasonable. I accept the Landlords’ testimony that it took one hour over a few days to fix the damage. This also seems reasonable. The Landlords are only requesting half of what a handyman would have cost and I find they are entitled to compensation in this amount for their time and the materials.

Carpet cleaning

There is no issue that there were two small stains on the carpets in the unit upon move-out or that the Tenants caused these. I accept based on the photos submitted that the carpets also had dirt and hair on them. The photos of the Tenants show this.

Policy Guideline 1 states that Tenants are generally responsible for steam cleaning carpets at the end of a one-year tenancy. The Tenants provided emails showing they moved into the unit April 26, 2017 and moved out April 24, 2018. I find the Tenants were responsible for steam cleaning the carpets upon move out. I do not accept that the Tenants were relieved of their responsibility under Policy Guideline 1 because they lived in the unit for 363 days rather than 365 days. This is not logical.

Further, I find the Tenants failed to leave the carpets reasonably clean. The Tenants were responsible for cleaning the carpets and obtaining the proper equipment to do so or hiring a company to do so.

I accept the testimony of the Landlords that hiring a professional to clean the carpets would have cost around \$200.00. I find the \$100.00 claimed for their own time, chemicals and tools is reasonable. The Landlords minimized their loss by cleaning the carpets themselves. They are entitled to compensation.

Cleaning outside wall

There is no issue that the Tenants caused black staining on the patio wall from the use of the BBQ during the tenancy. The Tenants submitted a video showing the staining could be removed with a sponge. In my view, the Tenants were required under section 37(2)(a) of the *Act* to clean this upon move-out. I do not accept that the Landlords' email in this regard relieved them of their responsibility.

I have some concerns about the \$50.00 requested for the chemicals required and time it took to clean the stain; however, the Tenants did not provide any evidence or make any submissions about the amount or cost and therefore I accept that this is reasonable.

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

In summary, the Landlords are entitled to the following compensation:

Item	Description	Amount
1	Tea towels x 2	\$0
2	Hand towels x 2	\$0
3	Sheet set	\$0
4	Cooking pot	\$0
5	Sauce pan	\$0
6	Cheese grater	\$0
7	Clothing hamper	\$20.00
8	BBQ and cover	\$100.00
9	Move out cleaning (Molly Maid)	\$107.00
10	BC Hydro electrical overages during tenancy	\$0
11	Repair of doorframe	\$50.00
12	Carpet cleaning	\$100.00
13	Cleaning outside wall	\$50.00
14	Filing fee	\$100.00
	TOTAL	\$527.00

I note that I understand the rental unit was provided to the Tenants with much, if not all, of the contents brand new. In my view, the Landlords cannot expect tenants to live in a rental unit for one year and return it in the same brand-new condition. This is particularly so when the rental unit is furnished. I also note that this is not what the *Act* requires.

The Tenants agreed at the hearing that the Landlords could keep \$170.14 for cleaning costs and hydro overages for October and April. Pursuant to section 72(2)(b) of the *Act*, I authorize the Landlords to keep a further \$356.86 of the security deposit.

The Landlords must return \$873.00 of the security deposit to the Tenants. The Tenants are granted a Monetary Order in the amount of \$873.00 which may be served on the Landlords and enforced in the Provincial Court (Small Claims) if the Landlords do not comply with it.

Conclusion

The Application is granted in part. The Landlords are entitled to compensation in the amount of \$527.00 and are authorized to keep this amount from the security deposit. The Landlords must return \$873.00 of the security deposit to the Tenants.

The Tenants are granted a Monetary Order in the amount of \$873.00. If the Landlords do not return the \$873.00, this Order may be served on them. If the Landlords do 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 16, 2018

Residential Tenancy Branch