



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S (Landlord)
 FFT, MNDCT, MNRT, MNSD (Tenants)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlord filed her application June 4, 2018 (the “Landlord’s Application”). The Landlord applied for compensation for damage to the unit. The Landlord sought to keep the security deposit and sought reimbursement for the filing fee.

The Tenants filed their application July 20, 2018 (the “Tenants’ Application”). The Tenants applied for compensation for monetary loss or other money owed, to be paid back for the cost of emergency repairs made during the tenancy, for the return of the security deposit and for reimbursement for the filing fee.

Tenant S.K. and T.K. appeared at the hearing and appeared for all Tenants. The Landlord appeared at the hearing with S.B. (the “Representative”) to assist.

The Tenants confirmed they were requesting double the security deposit back if I found the Landlord breached the *Residential Tenancy Act* (the “Act”).

The parties agreed all four Tenants should be named on the Landlord’s Application and I amended the Application accordingly.

I explained the hearing process to the parties who did not have questions when asked. The Tenants and the Representative provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence. The Representative confirmed she received the

Tenants' hearing package and evidence. She confirmed the Landlord viewed the digital evidence submitted. Tenant S.K. confirmed the Tenants received the Landlord's hearing package and evidence.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and 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 caused to the unit?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?
4. Are the Tenants entitled to compensation for monetary loss or other money owed?
5. Are the Tenants entitled to be paid back for the cost of emergency repairs made during the tenancy?
6. Are the Tenants entitled to the return of double the security deposit?
7. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

Both parties agreed on the following. There was a written tenancy agreement between the Landlord and Tenants in relation to the rental unit. The tenancy started December 15, 2015 and was a month-to-month tenancy. Rent was \$1,336.40 per month. A \$600.00 security deposit was paid by the Tenants.

Both parties agreed on the following. The Tenants vacated the rental unit May 31, 2018. The Landlord received the Tenants' forwarding address in writing June 2, 2018. The Landlord still holds the security deposit.

Both parties agreed the Landlord did not have an outstanding Monetary Order against the Tenants at the end of the tenancy and that the Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

The parties agreed on the following in relation to a move-in inspection. The Landlord and Tenant S.K. did the inspection December 13, 2015. The unit was empty at the time. A Condition Inspection Report was completed. The Landlord signed the report but the Tenants did not sign the report. The Tenants were given a copy of the report personally within a week of the inspection.

The parties agreed on the following in relation to a move-out inspection. Both parties did the inspection May 31, 2018. The unit was empty at the time. A Condition Inspection Report was completed. The report was signed on behalf of the Tenants but not by the Landlord.

Tenant S.K. testified that the Tenants received the Condition Inspection Report with the evidence for this hearing on June 15, 2018 in person. The Representative said the Tenants took a photo of the report and agreed the evidence was provided to the Tenants in person June 15, 2018.

The Condition Inspection Report was submitted as evidence.

The Landlord requested the following compensation:

1	Stove repair	\$144.00
2	Sink, kitchen cabinet	\$600.00
3	Paint	\$1,200.00
4	Cleaning	\$200.00
	TOTAL	\$2,144.00

I note that the Landlord sought less for the stove repair and painting at the hearing than on the Application.

Stove repair

The Representative testified as follows in relation to the stove repair. The stove was purchased January 26, 2016. The stove was new for the Tenants. The Tenants overcooked their food which caused food to get under the stove and ruin it. The Tenants were told to clean the food up when it boils over. The Landlord fixed the stove for the Tenants in October. The Tenants had changed the plates on the stove top. The person who fixed the stove said the Tenants had not used the correct plates and had

used a cheap version. The Tenants did not take proper care of the stove. The Landlord is only requesting \$144.00 for the stove tops.

Tenant S.K. testified as follows. The stove was not working when the Tenants moved in and they asked for a new one. The Landlord replaced the stove but with a used one, not a new one. The Tenants did not receive the new stove until April or May. Tenant S.K. said Tenant T.K. said the stove was in good condition when it was delivered to them. The stove started to have issues. It was difficult to tell the Landlord this because she would tell them that if they were not happy in the unit, they could move out. The Tenants went and bought new stove tops. They showed the person they bought them from the model number and photos of the stove. It is common to have stuff spill on the stove. The Tenants did clean from time to time.

The Landlord submitted an invoice for the stove repair. The Landlord also submitted photos of the stove top. The Condition Inspection Report states that the stove needs to be checked and that the stove tops are burned.

The Tenants submitted a video of a conversation between representatives for the Landlord and the Tenants upon move out. The video shows there was a discussion about deducting from the security deposit and that the representatives for the Landlord mentioned the stove issue.

Sink, kitchen cabinet

The Representative testified as follows in relation to the sink and kitchen cabinet. When her and her cousin did the move-out inspection, they did not look in the cabinets. When they did look in the cabinets, they discovered the cupboard under the sink was torn apart from water damage. She assumes this happened from the Tenants washing dishes. This is not noted on the Condition Inspection Report.

The Representative further testified as follows. The Tenants broke the sink which was cracked on move-out. The sink had to be replaced. It is my understanding from the evidence that this was the bathroom sink.

Tenant S.K. said the Tenants did not cause damage to the cupboards which is why this is not noted on the Condition Inspection Report.

Tenant S.K. agreed the sink was damaged. He disputed the cost of replacing the sink.

The Tenants submitted a witness statement saying there was a discussion about the broken sink upon move-out. This is also apparent from the video submitted as evidence by the Tenants.

The Condition Inspection Report indicates the bathroom sink was cracked on move-out. It does not show the sink was cracked on move-in.

Paint

The Representative testified as follows in relation to painting. When the Tenants moved out of the rental unit there were nail marks, lines and stains on the walls. There were also hooks taped on the walls and when they were taken off the paint came off. There were dents and nail marks on the walls on move-in but not to that extent. The rental unit was painted a couple months before the Tenants moved in.

Tenant S.K. testified as follows. The cost of the painting is unreasonable. The walls were not in good condition when the Tenants moved into the rental unit. He does not agree it was a lot worse on move-out.

The Condition Inspection Report indicates there were lines on the walls in the entry, living room, dining room and hall and nails on the wall in the bedroom upon move-out.

The Landlord submitted photos of the walls in the unit upon move-out. The Landlord also submitted a painting receipt for \$1,500.00.

Cleaning

The Representative testified as follows in relation to cleaning. The cleaning of the rental unit cost \$437.00. The stove, oven, exhaust fan, cupboards, fridge and carpet were dirty upon move-out. The Tenants were told the carpet had to be shampooed and they agreed to this. Nothing had been cleaned. The cleaning took three people four hours at \$125.00 per hour.

Tenant S.K. testified as follows. The Tenants cleaned everything. The Tenants did not shampoo the carpets but do not think \$200.00 for this is reasonable.

I do not see notations on the Condition Inspection Report indicating areas of the rental unit were dirty upon move out.

The Tenants submitted a witness statement indicating the rental unit was cleaned with the assistance of the witness.

The Tenants submitted a letter from the Landlord stating \$100.00 would be deducted from the security deposit if the Tenants did not shampoo the carpets.

It is clear from the video submitted that shampooing the carpets was discussed upon move-out.

The Condition Inspection Report shows there were stains on the carpet in the living room upon move-out.

The Landlord submitted a receipt for \$437.50 for the cleaning which included “oven cleaning, shampooing, kitchen, bathroom”.

The Landlord submitted photos of the carpet upon move-out.

The Tenants requested the following compensation:

1	Notary Public – witness declaration	\$40.00
2	Labour to shrink videos	\$50.00
3	USB for video evidence	\$10.07
4	Stove chrome ring and bowl	\$31.77
5	Security deposit	\$600.00
6	Reimbursement for rent paid for May	\$1,336.40
7	Disturbance in sleep	\$2,000.00
8	Stress	\$2,000.00
9	Gas for trips for gathering evidence	\$100.00
	TOTAL	\$6,168.24

I told Tenant S.K. at the outset that I would not consider items 1, 2, 3 or 9 as these were costs associated with preparing for the hearing which cannot be claimed by the Tenants.

Tenant S.K. said item 6 is no longer an issue.

Stove chrome ring and bowl

Tenant S.K. testified as follows in relation to the stove ring and bowl. The Tenants had to replace the ring and bowl on the stove because of wear and tear. The metal had burned out. It cost \$31.77 to replace these. The stove was one year old at the time.

The Representative testified as follows. The Tenants should have told the Landlord the stove parts needed to be replaced. The parts did not need to be changed. The stove was only nine months old when the parts were changed.

The Tenants submitted a receipt in relation to this item; however, it does not actually show what was purchased.

Disturbance in sleep

Tenant S.K. testified as follows in relation to this issue. During the two-year tenancy, once or twice a month the Tenants were disturbed at night around 10:00 or 11:00 p.m. The Landlord's son's room was on the same level as the rental unit and a lot of noise came from it due to domestic violence and fights late at night.

I asked if the Tenants let the Landlord know this was an issue. Tenant S.K. said the Landlord was hard to approach and there was no room for conversation with the Landlord. He said his sister told the Landlord one time that this was an issue. I asked Tenant S.K. why this was being brought up now rather than when it was happening. He said the Tenants wanted to stay on good terms with the Landlord.

The Representative testified as follows. Her and her brother did fight. The one time this issue was raised by the Tenants, Tenant S.K.'s sister was taunting the Landlord about it. If the Tenants felt this was a problem, they should have told the Landlord.

Stress

Tenant S.K. testified as follows in relation to stress. The Tenants experienced a lot of stress after getting an eviction notice from the Landlord because they had to find a new place which was difficult. The Tenants had to take time off work. The Tenants also experienced stress due to this hearing. The Landlord said upon move-out that there were no damages and that the Tenants would get the security deposit back less deductions and the Landlord has breached the *Act* by filing the Landlord's Application.

The Representative testified that the Landlord served the Tenants with a Two Month Notice to End Tenancy and the Tenants then gave 10 days notice that they were moving out.

Analysis

Section 7 of the *Act* states:

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

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

Section 37 of the *Act* sets out the obligations of tenants 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...

Section 21 of the *Residential Tenancy Regulation* (the "*Regulations*") states:

21 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.

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 *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 neither the Tenants nor the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

Based on the testimony of the parties, I find the Landlord complied with section 38(1) of the *Act* as she applied for dispute resolution claiming against the security deposit within 15 days of receiving the Tenants' forwarding address on June 2, 2018.

Landlord's Application

Stove repair

I accept that the stove tops were damaged on move-out. This is noted on the Condition Inspection Report. Tenant S.K. signed the report. The video shows this was discussed between the representatives for the Landlord and the Tenants upon move out. The photos support this.

I accept that the Tenants are responsible for the damage as both parties agreed the stove was new to the Tenants and Tenant T.K. testified that the stove was in good condition when it was delivered to them.

I accept that the damage was beyond reasonable wear and tear given the age of the stove and plates. I accept that the stove tops had to be repaired. Based on the invoice, I accept that the repair cost \$144.00 and I find this to be reasonable. I award the Landlord the \$144.00 requested.

Sink, kitchen cabinet

I do not accept that the kitchen cabinet was damaged beyond reasonable wear and tear by the Tenants given this is not noted on the Condition Inspection Report and was not discussed during the move-out inspection as shown on the video.

I accept that the bathroom sink was damaged by the Tenants. This is noted on the Condition Inspection Report and was discussed upon move-out as shown on the video. I did not understand Tenant S.K. to dispute this.

I accept that the cracked sink is beyond reasonable wear and tear. I accept that the sink had to be replaced. The Landlord did not submit a receipt or invoice showing the cost of the sink repair. The Tenants submitted a photo showing a sink for \$34.98. The Representative pointed out that the sink repair includes labour as well and I accept this. Given the Landlord did not provide a receipt showing the cost of the sink repair, I can only be satisfied that \$150.00 for the sink repair is reasonable.

Paint

I am not satisfied that the Tenants caused damage to the walls of the unit that is beyond reasonable wear and tear given this issue was not discussed during the move-out inspection as an issue or possible deduction. The photos do not satisfy me that the Tenants caused damage beyond reasonable wear and tear. I acknowledge the notations on the Condition Inspection Report; however, I am not satisfied based on these notations that the unit needed to be repainted at a cost of \$1,200.00.

Cleaning

I do not accept that the Tenants left the unit in a state that was not reasonably clean. The Condition Inspection Report does not support that the unit was dirty. The representatives for the Landlord did not raise this issue during the move-out inspection as shown on the video. Tenant S.K. testified that the Tenants cleaned the unit and a witness submitted a statement supporting this. Although the photos show areas of the unit that were dirty, I cannot find that the Tenants did not meet the standard required in the *Act* given the lack of support for this in the Condition Inspection Report and absence of any conversation about this upon move-out.

I do accept that the Tenants are responsible for reimbursing the Landlord for shampooing the carpet. The Condition Inspection Report shows the carpet was stained. The state of the carpet was discussed during the move-out inspection. The photos show the carpet was not reasonably clean. I accept that the carpets had to be shampooed. I did not understand Tenant S.K. to dispute this. The cost of shampooing the carpet is included in the cleaning receipt. I find that \$100.00 is reasonable given the letter from the Landlord to the Tenants about this and given the discussion between the parties during move-out.

In summary, the Landlord is entitled to the following compensation:

1	Stove repair	\$144.00
2	Sink, kitchen cabinet	\$150.00
3	Paint	\$0.00
4	Cleaning	\$100.00
	TOTAL	\$394.00

Tenants' Application

Stove chrome ring and bowl

Policy Guideline 1 at page three states:

The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant. (emphasis added)

I find the damage to the stove was caused by the Tenants and that it was not reasonable given the age of the stove. I find the Tenants were responsible for the repair of the stove top during the tenancy and I decline to award them reimbursement for this cost.

Disturbance in sleep

Section 28 of the *Act* states that tenants are entitled to quiet enjoyment. I accept that the Tenants were disturbed at night once or twice a month by the Landlord's family. I did not understand the Representative to dispute that the disturbances occurred.

Assuming these disturbances amounted to a breach of section 28 of the *Act*, I am not satisfied the Tenants did anything to minimize the resulting loss alleged. Tenant S.K. acknowledged that the Tenants never told the Landlord this was an issue except one time. The Representative said this discussion occurred in the form of one of the Tenants taunting the Landlord. I have no evidence that this was not the case.

I also note the timing of this claim which was only made after the Landlord filed the Landlord's Application. In the circumstances, I am not satisfied the Tenants suffered loss or damage, or that the Tenants minimized any loss or damage, given the Tenants remained silent about this issue throughout the tenancy.

Stress

I am not satisfied the Landlord breached the *Act*, *Regulations* or tenancy agreement by serving a Two Month Notice to End Tenancy for Landlord's Use of Property on the Tenants. The Tenants pointed to no evidence to support the position that this amounted to a breach of the *Act*, *Regulations* or tenancy agreement. Nor am I satisfied the Landlord breached the *Act*, *Regulations* or tenancy agreement by filing the Landlord's Application.

I also note that the Tenants provided no evidence to support the position that they suffered stress or other loss or damage as a result of being served with the Two Month Notice to End Tenancy for Landlord's Use of Property or the Landlord filing the Landlord's Application.

In summary, I find the Tenants are not entitled to any of the compensation claimed.

Summary

I find the Landlord is entitled to \$394.00 compensation.

I find the Tenants are not entitled to any of the compensation claimed.

I decline to award either party the filing fee.

The Landlord is entitled to keep \$394.00 of the security deposit pursuant to section 72(2) of the *Act*. The Landlord is to return the remaining \$206.00 to the Tenants. I issue the Tenants a Monetary Order in the amount of \$206.00 for the return of this portion of the security deposit.

Conclusion

The Landlord is entitled to \$394.00 compensation.

The Tenants are not entitled to any of the compensation claimed.

I decline to award either party the filing fee.

The Landlord is entitled to keep \$394.00 of the security deposit and must return the remaining \$206.00 to the Tenants. The Tenants are issued a Monetary Order in the amount of \$206.00. If the Landlord does not return the \$206.00, 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: September 14, 2018

Residential Tenancy Branch