



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDL-S MNRL-S

Introduction

This hearing dealt with an application by the landlords under the *Residential Tenancy Act* (“the Act”), for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement, pursuant to section 67;
- A monetary order to retain the security deposit pursuant to section 67 of the *Act*; and,
- Reimbursement of the filing fee pursuant to section 72.

PM appeared on behalf of both landlords. Tenant appeared and SS appeared for the tenant as an occupant of the property.

The tenant acknowledged receipt of the landlords’ Notice of Hearing and Application for Dispute Resolution and the landlords’ amendment of the Application for Dispute Resolution. The tenant did not raise any issues of service and the tenant did not object to landlords’ amendment. I find that the landlords served the tenant in accordance with section 89 of the *Act* and I heard the landlords’ application as amended.

Preliminary Matter: Service of Tenant’s Evidence

The tenant testified that he sent his package of evidence to the landlords on January 2, 2019 by a private courier service without delivery signature confirmation requested. The tenant provided the tracking number and he testified that the tracking information indicated that the documents were received by the landlords on January 4, 2019. The tenant provided the address of delivery and it matched the address provided by the landlords in this application.

The landlords testified that they did not receive any documents from the tenant and they have had no opportunity to review the tenant’s evidence.

Rule 3.17 of the Residential Tenancy Branch *Rules of Procedure* (the “*Rules*”) states that the respondent’s evidence must be received by the applicant at least seven days before the hearing. In this matter, the tenant stated that he sent his evidence seven days before the

hearing but he testified that the tracking information stated that the evidence was received only five days before the hearing. In addition, delivery by a private courier service without delivery signature confirmation is not a valid method of service pursuant to section 88 the *Act*.

As such, I find that the tenant did not properly serve his evidence package on the landlords and I find that the acceptance of this evidence would prejudice the landlords pursuant to Rule 3.12 of the *Rules*. Accordingly, I exclude the tenant's evidence from this hearing.

Issue(s) to be Decided

Are the landlords entitled to:

- A monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- A monetary order to retain the security deposit pursuant to section 67 of the *Act*; and
- Reimbursement of the filing fee pursuant to section 72.

Background and Evidence

The parties submitted considerable evidence and testimony. I reference only the facts relevant to my Decision herein. The parties agreed with the following facts:

This tenancy started on August 29, 2017 with a monthly rent of \$5,000.00 payable on the first of each month. The tenancy agreement included an addendum which stated that the tenant is responsible for the maintenance of the landscaping.

The landlords held a security deposit of \$2,500.00 with no pet damage deposit. The landlords still retain the security deposit. The tenants did not authorize the landlords to retain the security deposit.

The tenant testified that the landlord did not provide an opportunity to do a walk-through of the property when he signed the Condition Inspection Report on move-in. The tenant testified that he signed the Condition Inspection Report on move-in at the landlords' real estate agent's office, before having a walk-through. The tenant stated that the landlord's agent presented the tenant with a pre-filled copy of the move-in Condition Inspection Report, and the agent asked the tenant to sign it without conducting a walk through.

Further, the tenant testified that the landlords' agent did not provide the tenant with a copy of the move-in Condition Inspection Report, until after the tenant vacated the property. The landlords stated that they have no knowledge regarding the execution of the Condition Inspection Report for move-in, as this process was handled by landlords' agent.

The tenancy ended on August 31, 2018, and the tenant moved out on September 1, 2018. The landlords and tenant met at the property to complete the Condition Inspection Report on move-out.

The condition inspection report indicated the following damage on move-out:

- damaged entry wall;
- stains and dirty in kitchen;
- broken faucet;
- dent on living room wall;
- water damage on floor in living room;
- damaged window screens in living room;
- nail holes in dining room;
- damaged wall not repaired properly in dining room;
- dents and scratches on hallway walls;
- main bathroom was dirty;
- vanity knob missing from upstairs office living space;
- holes in wall in front right upstairs bedroom;
- floor damaged in front right upstairs bedroom;
- screw holes in wall of middle right upstairs bedroom;
- dirty and many nail holes in the walls of the master en suite bathroom;
- dents and scrapes on stairway walls;
- dirty and towel hanging rod missing in downstairs back left bathroom;
- holes in walls, transition strip missing and door damaged in downstairs left bedroom;
- nail holes and dirt in kitchen en suite;
- dirty in the en suite bathroom;
- dirty, water stain and wall damage in the en suite master bedroom;
- scuffs and broken closets in the downstairs back left bedroom; and.
- dirty utility room.

The Condition Inspection Report on move-out was signed by the landlords and tenant. The tenant provided his forwarding address in writing on the Condition Inspection Report.

The landlords testified that substantial work was needed to repair the damage to the property after the tenant vacated the property.

The landlords claimed that the laminate flooring in the living room and the bedroom needed to be replaced. The landlords testified that there was water damage on the living room floor and a large scrape on the bedroom laminate. The landlords presented an estimate from a contractor which indicated that the cost to replace this flooring was \$3,730.00. The landlords testified the entire floor would need to be replaced, even though only a small portion was damaged, because it was impossible to only replace a portion of the flooring.

The landlords also testified that the kitchen faucet was broken and that it would need to be replaced. The landlord supported this claim with the contractor's estimate stating a replacement cost of \$197.00.

The landlords testified that drywall repairs were needed because of multiple holes and dents. The contractor's estimate stated that the repairs would cost \$575.00.

The landlords also testified that the tenant damaged multiple doors and there were several missing transition strips. The contractor's quote stated that this would cost \$175.00 to repair.

In addition, the landlords testified that the tenant was responsible for repairing water damage to the ceiling. The landlord claimed that the garbage disposal unit in the upstairs kitchen leaked because the tenant failed to properly maintain it. The rental unit had a kitchen upstairs and a kitchen downstairs. As a result, the landlords claimed that the tenant was responsible for the resulting water damage.

The landlords also testified that the tenant left the property in a filthy condition. The landlords testified that they needed to hire a professional cleaning service which provided a quote of \$720.00. The cleaning quote was based on an estimate of six hours of cleaning for a two person crew charged at the rate of \$60.00 per hour per person.

Also, the landlords testified that the tenant left debris and personal items in the property when he vacated it; these items included a tv set, a mattress, cabinets and holiday decorations. The landlords claim \$100.00 for their labour in removing these items and the landlords presented a receipt for \$49.14 for waste disposal fees.

The landlords also claimed that the tenant was responsible for missing knobs on the vanity, a damaged window screen and missing bathroom towel rods. The tenant did not dispute this claim.

The landlords claimed that tenant was responsible for loss of rent of \$5,000.00 because the tenant overstayed by one day by remaining in the rental unit until September 1, 2018 after the tenancy had ended on August 31, 2018.

The landlords also testified that they were unable to rent the property while making the repairs to the damage caused by the tenant. The landlords testified that they needed to wait until almost the end of September to complete the repairs. The landlord testified that it took a long time to complete the repairs because they had to wait for their contractor to be available.

In addition, the landlords testified that it was more difficult to find an available contractor from Chilliwack who was willing to travel to Vancouver for the project. The landlords testified that they did not try to retain a Vancouver contractor because they would charge more.

The tenant acknowledged that there was water damage on the living room laminate floor from an accidental spill. The tenant testified that he attempted to immediately mop up the spill but the laminate floor warped in an area that the tenant estimated being approximately five feet by five feet. The tenant also admitted having accidentally scratched the laminate flooring in the bedroom while moving out.

The tenant disagreed with the landlords' testimony that the property was filthy on move-out. The tenant acknowledged that the house wasn't completely clean. However, the tenant testified any dirtiness was minimal and the house was reasonably clean.

The tenant testified that he was not responsible for the water damage on the ceiling, as the water leak came from the garbage disposal unit in the upstairs kitchen. The tenant stated that plumbing was the landlords' responsibility and he reported the leak and tried to mop up the water as quickly as possible. The tenant stated that the landlords repaired the water damage during the tenancy so the landlords should not be entitled to compensation again on move out. The landlords responded by stating that the garbage disposal unit failed, because of the tenant's lack of maintenance. Furthermore, the landlords testified that, although the ceiling was previously repaired, the previous repair was just a temporary patch and repairs were still needed.

The tenant admitted leaving some furniture and personal possessions in the rental unit when he left. The tenant said that he did not have time to remove the items at the end of the tenancy.

The tenant admitted that the kitchen faucet was broken during his tenancy. However, the tenant testified that he did not believe that a replacement faucet was needed. The tenant testified that the faucet could easily be repaired with a replacement part which costs \$30.00.

The tenant disputed the landlord's claim that repairs were needed to the drywall. The tenant stated that there were holes in the drywall but the drywall was completely repaired before he vacated the property.

The tenant acknowledged that some of the doors were damaged, but the tenant described the damage as minor scratches not requiring replacement.

The tenant disagreed with the landlords' testimony that he was responsible for the plants. The tenant testified that he was not aware that landscaping was included in the tenancy agreement until this application for dispute resolution was filed. The tenant testified that it was not his fault that the plants died that the plants were worth much less than the landlords are claiming.

The tenant testified that any loss of rent sustained by the landlords was the result of the landlords demanding too high of a rental price for new tenants. The tenant testified that, even if the property was move in ready at the end of his tenancy, the landlords still would not have

rented the property to another tenant in September 2018, because the rent that the landlords were demanding was too high.

Analysis

The parties agree that the landlords are entitled to compensation for the following items:

Item	Cost
Replacement of vanity knobs	\$10.50
Replacement of bathroom towel rod	\$35.50
Replacement of window screen	\$30.00
Total	\$76.00

Accordingly, I will allow landlords' claim for \$76.00 for these items. The remaining claims for damages are disputed.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlords to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Each of the landlords' claims is addressed:

Flooring

The landlords made a claim of \$3,370.00 for the damaged laminate flooring. The landlords submitted only one quotation for replacement of the laminate flooring. Although the landlords claimed that the flooring needed to be completely replaced, they did not provide any evidence to establish that the laminate flooring could not be repaired instead of replaced.

In the absence of such evidence, I am not satisfied that the landlords have made an adequate effort to mitigate this loss as required by section 7(2) of the Act. On this basis I find that the landlords are not entitled to the monetary claim requested for damage to the laminate flooring, as the landlords did not establish that there was sufficient damage to justify replacing the entire laminate flooring. I therefor allow a nominal award of \$300.00 for damage caused by the tenant to the flooring.

Cleaning

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The Condition Inspection Report for move-out indicates that many parts of the property, including the kitchen, multiple bathrooms and the utility room were dirty. *Regulation* section 21 provides that “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.” I therefore find that the property needed to be cleaned.

However, I do not believe the estimate of \$720.00 for cleaning is a reasonable mitigation of the landlords’ damages. The cleaning estimate was based on two persons cleaning for six hours each at the rate of \$60.00 per hour. The landlords have not produced sufficient evidence to establish that a two person cleaning crew was required. In addition, I find that the hourly rates charged by the landlords’ cleaning contractor is excessive. I find that an appropriate amount for these cleaning services would be one full day (eight hours) of cleaning at the rate of \$20.00 per hour. Accordingly, I will allow the landlords \$160.00 for cleaning costs.

Ceiling

The landlords did not provide any evidence of damage to the ceiling other than an entry on the Condition Inspection Report for move-out. In response, the tenant testified that the ceiling damage was caused by a water leak from the garbage disposal unit under the kitchen sink. The landlords have not provided any evidence the water leak was the fault of the tenant. Section 32(1) of the *Act* provides that the tenant “...must repair damage to the rental unit or common areas caused by the actions or neglect of the tenant.” However, in this matter there is no evidence that the damage was caused by the tenant’s actions or neglect. As such, I do not find that the landlords have established their claim against the tenant for ceiling damage.

Debris removal

The landlords claimed \$100.00 for the removal of debris including a tv set, mattress and furniture. The landlords also claimed \$49.14 for reimbursement of the disposal fee incurred from a waste and recycling centre. The tenant did not dispute that debris was left. I find that \$149.14

is a reasonable charge for debris removal and I allow landlords' claim of \$149.14 for their claim of debris removal.

Kitchen faucet

The landlords did not produce any evidence to establish that the kitchen faucet needed to be replaced rather than just repaired. The tenant provided uncontroverted evidence that the kitchen faucet could have been repaired with the purchase of a part costing \$30.00. I do not find that the landlords have established that they have adequately mitigated this loss. I therefore only allow an amount of \$30.00 for the landlords' kitchen faucet claim.

Drywall

The agreed Condition Inspection Report for move-out stated extensive damage to the walls throughout the property. I find the landlords' quote of \$575.00 reasonable for such extensive damage. Accordingly, I grant landlords' claim for \$575.00 for wall repair.

Doors

The Condition Inspection Report stated that multiple doors were damaged and several transition strips were missing. I find the claimed amount of \$175.00 is reasonable and I grant landlords' claim of \$175.00 for door repairs and missing transition strips.

Plants

The landlords did not produce any evidence establishing that their plants were damaged and, if so, that the damage was caused by the tenant. The damage to the plants was not noted in the Condition Inspection Report.

The landlords also failed to provide any evidence of the actual monetary value of the the damage to the plants. I find that the landlords evidence has not met the burden of proof to establish this claim. Accordingly, I deny landlords' claim relating to plant damage.

Loss of Rent

The tenancy ended on August 31, 2018 and the tenant did not vacate the property until September 1, 2018. This constitutes a holdover of one day. In addition, section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. As the tenant left the property in a condition that was not reasonably clean or damaged, the landlords were further

damaged by loss of rent while the property was not rentable while the landlords cleaned the property and made repairs.

However, even if the landlords' rental unit was damaged, they must still mitigate their loss. Residential Tenancy Branch Policy Guideline No. 5 states:

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act ..., the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

In this matter, the landlords have not produced adequate evidence to establish on the balance of probabilities that they adequately mitigated their losses by taking most of September to complete the remediation process.

The landlords' testimony that work was delayed because of the difficulty in retaining contractors to timely complete the work, is not convincing since the landlords' only obtained a quote from one contractor. The landlords provided no evidence that they attempted to retain an alternative contractor after becoming aware that landlords' selected contractor was not readily available to perform repairs. Furthermore, the landlords' testimony that it took longer to find contractor willing to travel from Chilliwack to Vancouver to perform the repairs is evidence of lack of mitigation; the landlords did not provide any evidence of repair quotes from contractors in the Vancouver area.

The quote provided by the landlords' contractor stated that the work could be completed by September 15, 2018. For the forgoing reasons, I find that the landlords have presented inadequate evidence to establish that on the balance of probabilities they adequately mitigated their losses by promptly attempting to complete the repairs.

Based upon the scope of the damage claimed by the landlords, I find that a reasonable amount of time to complete the repairs would be one week. As the tenant overheld the property for one day and I find that a reasonable repair time would have been one week, I award the landlord compensation for a total of eight days of lost rent at the per diem rate of \$166.67; the tenant shall be liable to the landlord for \$1,333.36 for loss of rent.

I find that the landlords are entitled to an award of \$2,798.50 from tenant for damages to the property as summarized below:

<u>Item</u>	<u>Amount</u>
Uncontested claim for knobs, towel rod and window screen	\$76.00

Laminate flooring	\$300.00
Cleaning	\$160.00
Ceiling	\$0.00
Debris removal	\$149.14
Kitchen faucet	\$30.00
Drywall	\$575.00
Door	\$175.00
Plants	\$0.00
Loss of rent	\$1,333.36
Total	\$2,798.50

Security Deposit

Section 24 of the *Act* provides that the right to claim against a security deposit for damage to residential property is extinguished if the landlord did not properly conduct a move-in inspection. Based on the tenant's evidence that no move-in inspection was conducted or offered and on tenant's evidence that a copy of the Condition Inspection Report for move-in was not provided to tenant, I find that the landlords' right to claim against the security deposit for damages, was extinguished at move-in. The landlords were required to return the security deposit to the tenant after the end of the tenancy.

However, even though the security deposit is extinguished, I find that the amount of the deposit held by the landlord can be deducted from the amount owed to the landlord pursuant or section 72(2)(b) of the *Act*.

In addition, since the landlord has been partly successful this matter, I award the landlord \$50.00 for partial recovery of the filing fee.

The net award to landlords is accordingly \$348.50 as set forth below:

Item	Amount
Damages Payable to landlord	\$2,798.50
Filing recovered by landlord	\$50.00
Less: deposit held by landlords	(\$2,500.00)
Net Award to landlords	\$348.50

Accordingly, I order the tenant to pay the landlords the sum of \$348.50.

Conclusion

I find that the landlords are entitled to a monetary award of \$2,798.50 for damage to the property.

I find that the landlords are entitled to recover \$50.00 as partial reimbursement of their filing fee.

I find that the landlords right to hold the tenant's security deposit is extinguished.

I find that the deposit of \$2,500.00 should be deducted from the amount owed to landlords.

The net award is the sum of \$348.50 payable by the tenant to the landlord.

The landlords are granted a monetary order in the amount of **\$348.50**. This order must be served on the tenant. If the tenant does not comply with this order, the landlords may enforce this order in the Small Claims Division of the British Columbia court

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

Dated: January 22, 2019

Residential Tenancy Branch