



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, 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 June 14, 2018 (the “Application”). The Landlords applied for compensation for damage to the unit, to keep the security and pet deposits and for reimbursement for the filing fee.

This matter came before me for a hearing September 11, 2018. An Interim Decision was issued September 13, 2018. This decision should be read in conjunction with the Interim Decision.

The Landlord appeared at the hearing. The Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. All parties provided affirmed testimony.

The Tenants had re-submitted audios. The Landlord did not take issue with admissibility of these. I have also admitted the remainder of the Tenants’ evidence as I am satisfied they complied with rule 3.10.5 of the Rules of Procedure (the “Rules”) in relation to digital evidence.

The parties were given an opportunity to present relevant 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. Are the Landlords entitled to compensation for damage to the rental unit?
2. Are the Landlords entitled to keep the security and pet deposit?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	Patching walls and trim	\$121.40
2	Light cover cracked	\$99.98
3	Cleaning	\$300.00
4	Relaying patio bricks	\$92.70
5	Removing garbage	\$168.00
6	Changing locks	\$120.00
7	Flooring in basement	\$1,900.00
8	Replacing broken tiles	\$230.00
9	Garage door remote	\$46.47
10	Broken exterior door frame	\$300.00
	TOTAL	\$3,378.55

A written tenancy agreement was submitted as evidence. The Tenants testified that a different tenancy agreement than that submitted was signed.

There was no issue that there was a tenancy agreement between Landlord C.M. and the Tenants in relation to the rental unit. There was no issue that the tenancy started November 1, 2016. There was no issue that the Tenants paid a \$1,100.00 security deposit and \$1,100.00 pet deposit.

Both parties agreed the Tenants vacated the rental unit May 31, 2018.

The Landlord testified that she received the Tenants' forwarding address June 4th or 5th of 2018. She advised that the address did not include a postal code. The Tenants testified that their forwarding address was provided on June 1st to an agent for the Landlords who was going to give it to the Landlords. The Landlord denied that this person was an agent for the Landlords.

The Landlord testified that a move-in inspection was done with the Tenants and Landlords' agent. The Landlord testified that she believed a Condition Inspection Report was completed. The Landlord testified that she was told by the agent that he gave a copy of the Condition Inspection Report to the Tenants but that she could not

say whether this occurred. She said the Tenants had been given a copy in previous arbitrations.

The Tenants denied that a move-in inspection was done and testified that there was no Condition Inspection Report done other than the one Tenant L.G. completed. The Tenants testified that they never received a copy of a Condition Inspection Report on move-in.

The Tenants submitted an audio of them speaking to the agent for the Landlords. The agent seems to suggest he did his own move-in inspection report, seems to acknowledge that it was not done with the Tenants and agrees the Tenants did not sign the report. The agent seems to indicate the intention was that issues would be fixed and then a proper move-in inspection would be done.

The Landlord was not sure if a move-out inspection was done. She said she believed the agent was at the rental unit twice on move out, but the Tenants were not ready. She said she believed the agent went through the proper process for offering the Tenants opportunities to do an inspection but was not sure. The Landlord testified that she believed the agent did a Condition Inspection Report and that the agent signed it, but the Tenants did not. She did not think the Condition Inspection Report was given to the Tenants on move-out. At the second hearing, the Landlord testified that she thinks a move-out inspection was done but no paperwork was signed.

I understood the Tenants to say that the agent came on the 30th and looked around for damage to the rental unit and that the unit was not empty and the Tenants were still cleaning. I understood the Tenants to say there was no Condition Inspection Report completed. At the second hearing, the Tenants confirmed no move-out inspection was done, no Condition Inspection Report was completed and they were never offered an opportunity to do a move-out inspection.

Patching walls and trim

The Landlord testified that the Tenants left a significant amount of damage to the walls and trim. She referred to photos submitted showing holes and anchor holes in the walls. She testified that a contractor attended to give an estimate of what it would cost to patch and paint the walls and trim and that it would be \$121.40 to patch and paint the damaged areas. The Landlord testified that the cost would be \$25.00 to \$45.00 per hour.

The Landlord testified that she is relying on the condition report completed by Tenant L.G. at the start of the tenancy to show the damage was caused by the Tenants. She testified that the report was thorough and submitted that damage not included on the list was done by the Tenants.

The Landlord submitted photos in relation to this issue.

The Tenants testified that there were patches and holes on the walls when they moved in. Tenant J.A. testified that the Tenants patched holes they did not create on move-out. Tenant J.A. submitted that the Tenants are not responsible for painting and said they did not have the paint for the house.

Tenant L.G. testified that she did not include all issues on her list.

The condition report created by Tenant L.G. indicates that some of the walls downstairs were puttied but not sanded or painted.

Light cover cracked

The Landlord testified that the ceiling light cover in the basement was cracked upon move out. She relied on the condition report of Tenant L.G. to show the Tenants caused this. The Landlord testified that the cover and trim around the light needs to be replaced.

The Landlord submitted photos in relation to this issue.

Tenant L.G. testified that the Tenants did not damage the light. She also questioned the amount claimed. Tenant J.A. testified that the Tenants let the agent know the light was broken upon move-in and that a message and email were sent about this.

Cleaning

The Landlord testified that there was still cleaning to be done after move-out. She testified that she hired a cleaner who charged \$300.00 for the cleaning. The Landlord said she believed the cleaner charged \$40.00 or \$50.00 per hour for two people. The Landlord relied on photos showing the state of the rental unit upon move out as well as a handwritten note from the cleaner about what needed to be cleaned.

The Tenants had not received the handwritten note from the cleaner. The Tenants had not received a copy of the money transfer sent to the cleaner either.

The Tenants testified that they cleaned the rental unit and took photos showing the state of the rental unit at move out. The Tenants referred to receipts submitted for the supplies.

The Tenants' photos show the rental unit was left clean.

Relaying patio bricks

The Landlord testified that the bricks were moved during the tenancy and had to be fixed. She testified that contractors saw kids moving the bricks during the tenancy. She said the Landlords are not requesting the full cost of this because the bricks probably were not perfect at the outset. She referred to a photo submitted of the bricks at the end of the tenancy. The Landlord had not submitted a photo of the bricks from the start of the tenancy. The Landlord relied on the condition report of Tenant L.G. to show the Tenants moved the bricks during the tenancy.

The Landlord submitted photos in relation to this issue.

Tenant L.G. testified that the bricks were falling apart and lumped on top of sand. She said she may have missed this issue in her list. She referred to a photo taken at the start of tenancy of the bricks which shows them placed on top of a pile of sand. Tenant J.A. testified that the issue with the bricks was mentioned to the Landlord, agent and handyman.

Removing garbage

The Landlord testified that the Tenants left garbage under the patio steps. She testified that the dryer was replaced and materials from this were left under the patio steps. She referred to photos of this as well as other garbage left on the property. The Landlord testified that she had to have a dump truck remove the garbage. She said the fee includes the cost of dump fees and gas. The Landlord relied on the condition report of Tenant L.G. to show the Tenants left the garbage.

The Landlord submitted photos in relation to this issue.

Tenant L.G. testified that her list shows there was garbage on the other side of the fence on move in. She denied that the Tenants left the garbage. She testified that the person the Landlords hired to replace the dryer left the materials there. She testified that the agent told them to leave the materials there.

The condition report created by Tenant L.G. indicates there was garbage on the other side of the fence upon move in.

Changing locks

The Landlord testified that the Tenants did not hand over keys to the rental unit on the 31st and that the Landlords could not enter the unit. She said the Landlords had to find accommodation and then called a locksmith who attended and charged \$120.00. The Landlord testified that the locksmith changed the locks so the Landlords could access the unit June 1st.

In the written submissions, the Tenants state that the Landlords did not schedule a time to meet up to exchange the keys and garage opener. The Tenants state that they originally told the agent they would not return the keys until the deposits were returned but they changed their mind June 1st and told the agent they could meet. The Tenants state that the decision to change the locks was made before the Tenants were able to view and respond to the text about this.

Tenant J.A. testified that the keys and garage door opener were returned June 1st. Tenant J.A. confirmed the Landlords did not know as of May 31st that the Tenants were giving the keys back and that they knew this June 1st.

Flooring in basement

The Landlord testified that there was a strong odour of cat urine in one of the bedrooms and that the flooring lifted from the wetness. She said the \$1,900.00 requested is only to fix the flooring in the one bedroom. The Landlord testified that the flooring had to be replaced because of the smell and lifting. The Landlord relied on the condition report of Tenant L.G. to show the Tenants caused this. She said the floor was five years old but that there was an issue with how it was installed.

Tenant L.G. testified that the flooring was in bad shape upon move in and that this was brought to the attention of the agent. She said this issue was raised in emails and the condition report. Tenant L.G. denied that there was an odour in the bedroom from cat

urine. Tenant J.A. testified that the flooring was already damaged on move in and that the baseboard was bubbling from water damage.

Emails submitted by the Tenants indicate the flooring was an issue before and during the tenancy.

The condition report created by Tenant L.G. indicates the flooring was an issue at move in.

Replacing broken tiles

The Landlord testified that the broken tiles had to be removed and replaced. She said the requested amount is the contractor's estimate. The Landlord testified that the tiles were less than five years old. The Landlord relied on the condition report of Tenant L.G. to show the Tenants caused this.

The Landlord submitted a photo of chipped tiles.

In the written submissions, the Tenants state that there is no evidence the tiles were not damaged prior to the tenancy.

Garage door remote

The Landlord testified that the garage door remote was faulty upon move out and that it looked like it had been chewed on. She said the garage door would open when the remote was just sitting on the counter.

The Landlord submitted photos in relation to this issue.

Tenant L.G. denied that the Tenants broke the garage door remote. In the written submissions, the Tenants state that the garage door opener worked when they used it last.

Broken exterior door frame

The Landlord testified that the door had been kicked in during the tenancy. She said the trim must be replaced because the door does not close properly. The Landlord testified that the \$300.00 is the quote from the contractor. The Landlord relied on the condition report of Tenant L.G. to show the Tenants caused this.

The Landlord submitted photos in relation to this issue.

Tenant L.G. testified that the door was locked when they first moved in because Landlord C.M. had items in the storage area. I understood Tenant L.G. to testify that Landlord C.M. removed the items during the tenancy and then the door was left unlocked. She said the Tenants did not use the area for storage.

The Tenants submitted a text from the Landlords' agent on July 12, 2018 that states "We provided the move out report and made no indication that deductions to the deposit seemed warranted".

The Landlord sought to call a witness at the second hearing. The Tenants submitted that the Landlord should not be permitted to do so. I heard from each party and determined that I would not allow the Landlord to call the witness given she did not seek to at the first hearing.

Analysis

Pursuant to rule 6.6 of the Rules, the Landlords, as applicants, have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 7 of the *Residential Tenancy Act* (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.

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* addresses 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, and

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

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security and pet deposits 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.

The parties disagreed about whether a move-in inspection was done. Regardless of which version I accept, I find the Tenants did not extinguish their rights in relation to the security and pet deposit under section 24 of the *Act*.

I am not satisfied based on the evidence or testimony of the Landlord that the Tenants were provided two opportunities to do a move-out inspection in accordance with the *Act* and *Regulations*. I find the Tenants did not extinguish their rights in relation to the security and pet deposit under section 36 of the *Act*.

I do not find it necessary to determine whether the Landlords extinguished their rights in relation to the security and pet deposit under sections 24 or 36 of the *Act* given the Tenants waived their right to double the deposits.

I accept the Landlords received the Tenants' forwarding address on June 4th or 5th. I acknowledge the address did not include a postal code but do not find this to be an issue given postal codes can be easily obtained.

Pursuant to section 38(1) of the *Act*, the Landlords were required to repay the security and pet deposits or claim against them within 15 days of June 4th or 5th. The Landlords filed the Application June 14, 2018, within the 15-day time limit. I note that whether the Landlords received the forwarding address on June 1st, 4th or 5th is irrelevant as they applied within 15 days of all of these dates.

Patching walls and trim

I do not accept the submission that damage not included on Tenant L.G.'s list is likely damage caused by the Tenants. I am not satisfied based on the evidence or testimony of the parties that Tenant L.G. did a thorough inspection or documented all issues on the list. I do not find Tenant L.G.'s list to be the equivalent of a Condition Inspection Report.

Whether a Condition Inspection Report was completed on move-in or not, there is no Condition Inspection Report admissible in evidence before me. Therefore, I do not have this report to rely on to determine whether damage was caused by the Tenants.

None of the evidence submitted satisfies me of the condition of the walls on move-in. Therefore, I cannot be satisfied that the damage shown in the Landlords' photos is damage caused by the Tenants. Some of the evidence submitted by the Tenants supports that there was damage to the walls on move-in.

I am not satisfied the Tenants damaged the walls beyond reasonable wear and tear and am not satisfied the Tenants breached the *Act*. This is the first step of the four-part test that the Landlords must prove. In the absence of a breach, I decline to award the Landlords the compensation sought.

Light cover cracked

I do not accept the submission that damage not included on Tenant L.G.'s list is likely damage caused by the Tenants. The Tenants denied that they cracked the light cover. None of the evidence submitted satisfies me that the light cover was cracked by the Tenants.

I am not satisfied the Tenants breached the *Act*. In the absence of a breach, I decline to award the Landlords the compensation sought.

Cleaning

I am not satisfied based on the evidence of the Landlords that the Tenants failed to leave the rental unit reasonably clean. The Landlords' photos do not support that the rental unit was left dirty. I have not considered the cleaning list by the cleaner given the Tenants did not receive a copy of it. There is no Condition Inspection Report in evidence before me to rely on in this regard. Further, the photos submitted by the Tenants support their testimony that the rental unit was left reasonably clean.

I am not satisfied the Tenants breached the *Act*. In the absence of a breach, I decline to award the Landlords the compensation sought.

Relaying patio bricks

I accept that the Tenants moved the bricks on the back lower patio during the tenancy as their own photos support this. However, their photos show that the bricks were simply sitting on a pile of what appears to be sand at the start of the tenancy. I do not accept that moving the bricks constitutes damage. Even if it did, I would not have accepted that the Tenants should compensate the Landlords \$92.70 for this as it appears the bricks just needed to be moved back to where they originally were sitting on the pile of sand.

I am not satisfied the Tenants breached the *Act*. In the absence of a breach, I decline to award the Landlords the compensation sought.

Removing garbage

The garbage left appears to include the dryer materials, a box and other building materials and garbage in the bushes.

I do not accept that the material and garbage in the bushes was left by the Tenants given it is noted on Tenant L.G.'s list of issues.

In relation to the dryer materials, I am not satisfied the Tenants are responsible for this given their testimony that the person who fixed the dryer left the materials there and that this person was hired by the Landlords. If this is the case, the person hired by the

Landlords should have removed these items and I do not accept that the Tenants are responsible for this.

In relation to the remaining items, I am not satisfied the Tenants left these on the property in the absence of stronger evidence to support this. I am satisfied by the evidence of the Tenants that a number of things were left on the rental unit property by previous tenants or occupants of the house. These are items the Landlords should have cleaned up and removed prior to the tenancy. I am not satisfied that the remaining items were not also left by prior tenants or occupants of the house.

I am not satisfied the Tenants breached the *Act*. In the absence of a breach, I decline to award the Landlords the compensation sought.

Changing locks

I accept that the Landlords changed the locks to the rental unit on June 1, 2018. The issue was whether this was necessary for the Landlords to do.

I understand from the testimony and written submissions that the Tenants originally told the agent they would not return the keys until the deposits were returned and that the Landlords did not know the Tenants were going to return the keys until June 1, 2018. The parties agreed the tenancy ended May 31, 2018. The Tenants were not permitted to withhold the keys as stated in section 37 of the *Act*. The Tenants should have returned the keys May 31, 2018. I do not accept that the Landlords changed the locks unnecessarily given the Tenants originally told the Agent they would not return them as required and given the Tenants did not change their mind about this until June 1, 2018, the same date the locks were changed.

I accept the Tenants breached section 37 of the *Act* by failing to provide the Landlords the keys on May 31, 2018. I accept the Landlords had to change the locks so they could access the unit on June 1, 2018. I accept this cost \$120.00 and find this to be a reasonable amount. I award the Landlords the \$120.00 requested.

Flooring in basement

The parties disagreed about whether there was an odour of cat urine in the bedroom where the flooring was replaced. The parties disagreed about whether the Tenants caused damage to the flooring.

In relation to the smell and wetness, there is no admissible evidence before me that supports the Landlord's position such as a Condition Inspection Report or documentation from someone qualified to assess damage to the flooring.

There is no evidence before me showing the damage to the flooring. The Landlords submitted one photo of a small section of the floor somewhere in the rental unit showing it was scratched.

Further, the Tenants' evidence indicates that the flooring was an issue on move-in.

Given the conflicting testimony, and absence of evidence to support the Landlord's position, I am not satisfied the Tenants damaged the flooring such that it needed to be replaced.

I am not satisfied the Tenants breached the *Act*. In the absence of a breach, I decline to award the Landlords the compensation sought.

Replacing broken tiles

I do not accept the submission that damage not included on Tenant L.G.'s list is likely damage caused by the Tenants. There is no admissible evidence before me showing the condition of the tiles upon move-in. I am not satisfied the Tenants broke the tiles. I also note that the Landlords' photos appear to only show very small chips in the tiles. Even if I accepted that the Tenants caused these, I would not find them to be beyond reasonable wear and tear.

I am not satisfied the Tenants breached the *Act*. In the absence of a breach, I decline to award the Landlords the compensation sought.

Garage door remote

The only evidence submitted by the Landlords showing the garage door opener was faulty was a photo. I do not find this assists with this issue. The Tenants denied that the garage door opener was faulty when they last used it and denied breaking it. In the absence of stronger evidence in support of the Landlord's position, I do not accept that the garage door opener was faulty upon move-out or that the Tenants caused this.

I am not satisfied the Tenants breached the *Act*. In the absence of a breach, I decline to award the Landlords the compensation sought.

Broken exterior door frame

I do not accept the submission that damage not included on Tenant L.G.'s list is likely damage caused by the Tenants. There is no other evidence before me that the Tenants kicked in the door and damaged it. I am not satisfied this is damage caused by the Tenants.

I am not satisfied the Tenants breached the *Act*. In the absence of a breach, I decline to award the Landlords the compensation sought.

In summary, I award the Landlords the following compensation:

Item	Description	Amount
1	Patching walls and trim	-
2	Light cover cracked	-
3	Cleaning	-
4	Relaying patio bricks	-
5	Removing garbage	-
6	Changing locks	\$120.00
7	Flooring in basement	-
8	Replacing broken tiles	-
9	Garage door remote	-
10	Broken exterior door frame	-
	TOTAL	\$120.00

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

In total, the Landlords are entitled to \$220.00. The Landlords are permitted to retain this from the deposits. The Landlords must return the remaining \$1,980.00. The Tenants are issued a Monetary Order in this amount.

Conclusion

The Application is granted in part. The Landlords are entitled to \$220.00. The Landlords are permitted to retain this from the deposits. The Landlords must return the remaining \$1,980.00. The Tenants are issued a Monetary Order in this amount. If the Landlords do not return \$1,980.00 to the Tenants, this Order must be served on the

Landlords. 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: February 15, 2019

Residential Tenancy Branch