



Dispute Resolution Services

Page: 1

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 20, 2018 (the “Application”). The Landlords applied for compensation for damage to the rental unit, to keep the security deposit and for reimbursement for the filing fee.

The Landlords had filed an amendment to the Application on September 29, 2018 (the “Amendment”). The Amendment changed the monetary claim to \$12,329.00.

This matter came before me for a hearing October 09, 2018 and in Interim Decision was issued that date. This decision should be read with the Interim Decision.

The Tenant and Co-tenant (the “Tenants”) appeared at the hearing. The Agents for the Landlords appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

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

Background and Evidence

The Landlords sought the following:

Item	Description	Amount
1	Filing fee	\$100.00
2	Canada Post registered mail for dispute package	\$11.90
3	Canada Post registered mail for dispute package	\$11.90
4	Removal of broken wardrobe	\$157.50
5	Patch and paint dining room ceiling	\$630.00
6	Missing chandelier	\$67.20
7	Broken wardrobe and delivery	\$290.00
8	Cleaning gas fireplace	\$141.75
9	Replacement and restoration of flooring	\$10,179.75
10	Chandelier installation	\$189.00
11	Utilities	\$550.00

The Landlords are not entitled to recover the costs associated with preparing for this hearing and therefore I will not consider item #2 or #3. This request is dismissed without leave to re-apply.

The Tenants agreed to compensate the Landlords for items #6, #10 and #11 and therefore I will not outline evidence in relation to these.

The Landlords withdrew the claim for item #9 and so I will not consider it here.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It is between an agent for the Landlords who own the rental unit and the Tenants in relation to the rental unit. The tenancy started January 02, 2017 and was for a fixed term ending December 31, 2017. Rent was \$3,195.00 due on or before the first day of each month. The Landlords collected \$395.00 as a one-time fee for cleaning at the end of the tenancy. The Tenants paid a \$1,597.50 security deposit.

Both parties agreed the tenancy ended May 30, 2018.

The Agent testified that the Landlords still hold the \$1,597.50 security deposit. He advised that the \$395.00 cleaning fee was already used towards cleaning the rental unit. The Agent testified that the purpose of the cleaning fee is so the Tenants do not

have to clean the rental unit upon move-out. He said the Tenants were not required to clean the rental unit upon move-out. I asked the Agent where in the *Residential Tenancy Act* (the “Act”) he said the Landlords were permitted to charge a cleaning fee. The Agent did not point to a section that permits this.

Both parties agreed the Tenants provided their forwarding address on the Condition Inspection Report on May 30, 2018. The Agent testified that the Landlords received the forwarding address June 03, 2018. The Tenant testified that he could not remember when the Landlords received the forwarding address but thought it was a day or two after May 30th.

The parties agreed the Landlords did not have an outstanding monetary order against the Tenants at the end of the tenancy.

The Agent took the position that the Tenants agreed in writing at the end of the tenancy that the Landlords could keep some or all of the security deposit. He pointed to section 2 of the Condition Inspection Report under “End of Tenancy”. The Co-tenant testified that the Tenants agreed because they thought this was for utilities and chandelier replacement.

The parties agreed on the following. A move-in inspection was done January 18, 2017. The rental unit was empty of the Tenants’ possessions at the time. A Condition Inspection Report was completed and signed by both parties.

The Tenant testified that he believes the Tenants received a copy of the move-in Condition Inspection Report but could not say when or how. The Agent testified that he would say a copy of the move-in Condition Inspection Report was provided to the Tenants and that this would usually be done by email as far as he knows.

The parties agreed on the following. A move-out inspection was done May 30, 2018. The Tenants were in the process of moving but the parties were fine with this. A Condition Inspection Report was completed and signed by both parties.

The Co-tenant testified that the Tenants received a copy of the move-out Condition Inspection Report as part of the evidence for this hearing in mid September by registered mail. The Agent testified that a copy was provided electronically June 3rd which is why it is signed by the Tenants. The Agent testified that it was sent again as evidence on June 22nd by registered mail. The Co-tenant then acknowledged receiving

the move-out Condition Inspection Report June 22nd. The Tenant acknowledged that the Tenants must have received a copy of the move-out Condition Inspection Report by email because they did sign it.

#4 Removal of broken wardrobe \$157.50

The Agent testified as follows. There was a wardrobe in the rental unit at the time of move-in. At the end of the tenancy, the wardrobe had been disassembled and left in the rental unit. The Landlords had to replace the wardrobe which is outlined in item #7. This item relates to the cost of removing the disassembled wardrobe. The wardrobe could not be reassembled.

The Agent said he did not believe the wardrobe was noted on the Condition Inspection Report.

The Tenant and Co-tenant testified as follows. They were told the wardrobe was left by previous tenants. It was cheap, broken in places and not functional. The Tenants were asked at the start of the tenancy if they wanted to keep it or have it thrown out and they said they would keep it. The Tenants took it apart during the tenancy and left it there for the Landlords.

In reply, the Agent testified that the person who showed the Tenants the house at the start of the tenancy was not a property manager and had no authority to provide permission to throw the wardrobe out.

The Agent called the Witness who testified that she did not discuss the existing furniture in the rental unit with the Tenants at the start of the tenancy when she showed them the rental unit.

The Landlord submitted photos in relation to this item.

The Landlord submitted a text showing disposing of the wardrobe would cost \$150.00.

In their written submissions, the Tenants point out that the tenancy agreement does not show the rental unit was furnished.

#5 Patch and paint dining room ceiling \$630.00

The Agent testified as follows. There was damage to the ceiling in the dining room area at the end of the tenancy. The amount claimed is the estimated cost to repair, patch and paint the ceiling.

The Co-tenant testified that the damage to the ceiling resulted from a problem with the roof. She said the Landlords knew this was an issue because they had done the same repair on move-in due to an issue with the roof.

The Co-tenant testified that the Tenants called the person who did the painting and they said the damage was from rain and the leak in the roof.

The Tenant testified that there is a leak in the roof that caused the damage. He said this has been an ongoing problem. The Tenant testified that the Landlords did not fix the problem but did repaint previously.

The Agent testified that there is no evidence to suggest the damage was caused by a leak in the roof. I understood him to say there was a previous repair. He said the damage was discovered at the time of move-out and that the Tenants did not report the damage earlier. The Agent said there has been no assessment done as to the cause of the damage. He said the painter was not qualified to assess the cause of the damage.

Agent V.S. submitted that the Tenants were negligent in not reporting the issue in a timely manner. She acknowledged that a repair had been done in 2017.

In reply to V.S., the Tenants testified that the property management company was hard to work with and difficult to contact.

The Condition Inspection Report shows the ceiling was fine on move-in and water damaged on move-out.

The Landlord submitted photos in relation to this item.

The Landlord submitted an estimate showing the ceiling repair would be \$600.00 plus GST. In the email about this issue the Agent states "There maybe an issue with the roof system in that area".

#7 Broken wardrobe and delivery \$290.00

The Agent testified that this was the cost of replacing the wardrobe and having it delivered. The parties did not make further submissions on this issue.

The Landlord submitted information from a website showing the cost of replacing the wardrobe as \$199.00.

#8 Cleaning gas fireplace \$141.75

The Agent testified that the fireplace required cleaning at the end of the tenancy given the condition of it.

Agent V.S. testified as follows. The fireplace is gas. The Tenants burned wood in it. It was full of soot. The chimney and fireplace had to be professionally cleaned on move-out.

The Tenant testified as follows. The Tenants never used the fireplace as it looked unsafe to use. The fireplace was the same on move-out as it was on move-in.

The Condition Inspection Report has no marking in relation to the fireplace on move-in and shows it was dirty on move-out.

The Landlord submitted photos in relation to this item.

Analysis

Policy Guideline 29 deals with security deposits and states in part:

As a result of the definition of a security deposit in the Residential Tenancy Act and the regulations, the following payments by a tenant, or monies received by a landlord, irrespective of any agreement between a landlord or a tenant would be, or form part of, a security deposit:

- The last month's rent;
- A fee for a credit report or to search the records of a credit bureau;
- A deposit for an access device, where it is the only means of access;
- Development fees in respect of a manufactured home site;

- A move-in fee in respect of a manufactured home;
- Carpet cleaning deposit or other monies paid to secure possible future expenses;
- Blank signed cheques provided as security, where the amount could exceed one-half of one month's rent;
- A furniture deposit in respect of furnished premises.

[emphasis added]

Here, the Landlords charged the Tenants a cleaning fee at the outset of the tenancy. I find this to be other monies paid to secure possible future expenses and find it is part of the security deposit. Therefore, I consider the Landlords to hold a \$1,992.50 security deposit. The Landlords were not permitted to collect this given the amount exceeds half a month's rent in breach of section 19(1) of the *Act*. Further, the Landlords were required to deal with the entire amount in accordance with the *Act* at the end of the tenancy.

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.

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.

Pursuant to rule 6.6 of the Rules of Procedure, 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.

There is no issue that the Tenants participated in the move-in and move-out inspections and therefore I find the Tenants did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

Based on the testimony of the parties in relation to the move-in and move-out inspections, I do not find that the Landlords extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

There is no issue the tenancy ended May 30, 2018. I accept that the Landlords received the Tenants’ forwarding address on June 03, 2018 given the testimony of the parties on this point. Therefore, I find June 03, 2018 to be the relevant date for the purposes of section 38(1) of the *Act*.

Pursuant to section 38(1) of the *Act*, the Landlords were required to repay the security deposit or claim against it within 15 days of June 03, 2018. The Application was filed June 20, 2018, outside of the time limit for doing so.

The Agent testified that the Tenants agreed in writing that the Landlords could keep the security deposit. The Co-tenant testified that the Tenants agreed because they thought this was for utilities and the chandelier replacement.

The Condition Inspection Report states:

I (Tenant H.N.) agree to the following deductions from my security and/or pet damage deposit:

Security Deposit: utilities bill from Jan 1 to May 31 other damages cost TBA

...

I do not find the notation on the Condition Inspection Report to be specific enough in relation to what the Tenants were agreeing to. However, the Co-tenant testified that the Tenants were agreeing to the utilities and chandelier replacement. The Landlord has claimed a total of \$806.20 for these items. Therefore, I find the Tenants only agreed to the Landlord keeping \$806.20 of the \$1,992.50 security deposit. The Landlords were required to return \$1,186.30 of the security deposit to the Tenants or claim against the security deposit within 15 days of June 03, 2018. The Landlords failed to do either and therefore did not comply with section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlords cannot claim against the security deposit and must pay the Tenants double the amount of the deposit.

Policy Guideline 17 deals with doubling of security deposits and provides the following example:

Example A: A tenant paid \$400 as a security deposit. At the end of the tenancy, the landlord held back \$125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.

The arbitrator doubles the amount paid as a security deposit ($\$400 \times 2 = \800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is \$525.00 ($\$800 - \$275 = \525).

This example applies here. The Landlords must return \$3,985.00 to the Tenants less the amounts discussed below.

The Landlord is still entitled to claim for compensation and I consider that now.

#4 Removal of broken wardrobe \$157.50 and #7 Broken wardrobe and delivery \$290.00

I am not satisfied the person who showed the Tenants the rental unit told them they could throw the wardrobe out as this was the Witness and she testified that she did not tell the Tenants this.

There is no issue that the wardrobe was assembled at the start of the tenancy and disassembled at the end of the tenancy. The Agent testified that the wardrobe could not be reassembled given the quality of it and I accept this. I accept that the Tenants breached section 37(2)(a) of the *Act* by taking apart the wardrobe such that it could not be used or reassembled.

The Tenants testified that the wardrobe was broken and not functional when they moved-in. The Agent said the wardrobe is not on the Condition Inspection Report and so I cannot rely on this document to show the state of the wardrobe at the start of the tenancy. The Landlords submitted a photo that includes the wardrobe; however, it does not show the whole wardrobe and I cannot tell from the photo whether it is broken or not. Both parties acknowledged the poor quality of the wardrobe which I find relevant to the amount or value of the damage.

In the circumstances, I am not satisfied the Landlords are entitled to compensation for the entire cost of obtaining a new wardrobe and having it delivered. I am satisfied the Landlords should be compensated for having the wardrobe removed from the rental unit.

I award the Landlords the \$157.50 requested for removal of the wardrobe. I award the Landlords half of the amount requested for replacing the wardrobe as I am not satisfied based on the information and evidence presented that the Landlords are entitled to more than this.

#5 Patch and paint dining room ceiling \$630.00

The Agent seemed to take the position that the damage to the ceiling was or could have been caused by the Tenants. Agent V.S. took the position that the Tenants were negligent in failing to report the issue to the Landlords sooner. The Tenants disputed that they caused the damage. There was no issue that this issue had been addressed previously in 2017.

I am not satisfied the Tenants caused the damage. The Tenants said this was an ongoing issue and caused by a leak in the roof. The evidence seems to support this given the Agents acknowledged this issue was previously addressed and given the comment in the Agent's email that there may be an issue with the roof system around the damage. The Landlords have the onus to prove the claim. The Landlords submitted no evidence in support of the position this damage was caused by the Tenants versus a leak in the roof. It is not obvious from the damage itself that it was caused by the Tenants versus a leak in the roof. If the issue is a roof leak, I find this to be an issue the Landlords are responsible for.

I do not accept that the damage caused was due to the negligence of the Tenants in not reporting the issue sooner as the Landlords have submitted no evidence showing the cause of the damage or that there would have been less damage if it had been reported earlier. Again, this is the Landlords application and they have the onus to prove their claim. Further, I accept the Landlords were already aware of the issue given the same issue had been addressed but not fixed in 2017.

I am not satisfied the Landlords are entitled to compensation for damage to the ceiling.

#8 Cleaning gas fireplace \$141.75

Policy Guideline 1 outlines the responsibilities of landlords and tenants in relation to fireplaces and chimneys and states:

FIREPLACE, CHIMNEY, VENTS AND FANS

1. The landlord is responsible for cleaning and maintaining the fireplace chimney at appropriate intervals.
2. The tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it.

...

The Tenants testified that the fireplace was the same on move-in as it was on move-out. There is no clear marking about the state of the fireplace at the start of the tenancy on the move-in Condition Inspection Report. The Landlords did not submit any further evidence showing the state of the fireplace on move-in. The Tenants testified that they never used the fireplace. The Landlords submitted no evidence that they did. I do not find the photos useful to determine this issue as I do not have evidence of the state of the fireplace on move-in to compare with the state on move-out. I am not satisfied the

Tenants used the fireplace and am not satisfied they were required to clean it. Therefore, I am not satisfied the Landlords are entitled to compensation for cleaning the fireplace.

Nor are the Tenants responsible for cleaning costs for the chimney as this is the Landlords' responsibility.

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 summary, the Landlords are entitled to the following:

Item	Description	Amount
1	Filing fee	\$100.00
2	Canada Post registered mail for dispute package	-
3	Canada Post registered mail for dispute package	-
4	Removal of broken wardrobe	\$157.50
5	Patch and paint dining room ceiling	-
6	Missing chandelier	\$67.20
7	Broken wardrobe and delivery	\$145.00
8	Cleaning gas fireplace	-
9	Replacement and restoration of flooring	Withdrawn
10	Chandelier installation	\$189.00
11	Utilities	\$550.00
	TOTAL	\$1,208.70

In summary, the Landlords must return \$3,985.00 to the Tenants. However, the Landlords are entitled to retain \$1,208.70 of this as set out above. Therefore, the Landlords are only required to return \$2,776.30 to the Tenants. The Tenants are issued a Monetary Order in this amount.

Conclusion

The Landlords must return \$3,985.00 to the Tenants. However, the Landlords are entitled to retain \$1,208.70. Therefore, the Landlords are only required to return \$2,776.30 to the Tenants. The Tenants are issued a Monetary Order in this amount. If the Landlords do not return \$2,776.30 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: March 21, 2019

Residential Tenancy Branch