



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for \$3,202.25 for damages for the Landlord, holding the Tenants' security and pet damage deposits for the claim, and to recover their \$100.00 Application filing fee.

The Landlords, C.S. and J.S., the Tenants, E.A. and K.T., and an agent for the Tenants (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing, the Parties were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on September 15, 2018, and was to run to September 30, 2019, with a monthly rent of \$2,400.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of \$1,200.00, and a pet damage deposit of \$600.00. The Parties agreed that the rental unit is the upper suite of a four-year old house, and that the rental unit has three bedrooms and three bathrooms.

The Parties agreed that the tenancy ended on February 28, 2019, after the Tenants advised the Landlords that they could no longer afford the rent and would be moving out at the end of February. The Tenants said they were expecting to have another roommate who, it turned out, could not move in.

The Landlords submitted a monetary order worksheet ("MWS") setting out their claims, as follows:

	Receipt/Estimate From	For	Amount
1	Property Management	Re-renting of rental unit	\$1,625.45
2	Lost rental income	Four days lost rental income March/19	\$396.80
3	Landlord	Cleaning and garbage removal	\$200.00
4	Painter [C.K.]	Repairing and painting walls	\$630.00
5	Landlord	Dog waste clean up	\$25.00
6	Landlord	Repair electronic gate	\$125.00
7	Landlord	Repair broken garburator	\$100.00
8	Landlord	Replace lost gate FOB	\$100.00
		Total monetary order claim	\$3,202.25

#1 Re-Renting Rental Unit → \$1,625.45

The Tenants said they offered to help find new tenants for the Landlords, in order to help reduce the cost of ending the tenancy early. The Landlords said that the rental unit is a newer home worth over \$2 million. They said:

It can be a treacherous thing; you have to do credit checks. Do they smoke? Do they have dogs? [The Tenants] don't have enough experience to rent my property. What if they get the wrong renter? I am not going to put my home in others' hands. We don't

even do it, because we don't have experience. Some of these property managers have more experience.

The Tenant, K.T., said that he has worked as a property manager and has experience looking for tenants and doing credit checks. He said it was his job for over two years.

The Landlords submitted a statement from the property management company they hired to find new renters for them. This company charged the Landlords \$1,625.45. The Tenants did not comment on the cost, other than to say that they could have done it for the Landlords and, therefore, saved them this fee.

#2 Lost Rental Income → \$396.80

The Landlord said that when they released the Tenants from the contract, they did not have a renter. "We didn't get a renter until March 5, because they came in five days into March." The Landlord said they rented the residential property for the same amount of rent, but they pro-rated it for the new tenants, taking five days off the rent owing in March 2019. The Landlord said the new tenants paid \$2,003.20 for March, which resulted in lost rental income of \$396.80.

The Tenants said "Rentals are always fluctuating, whether we had finished our lease or not. They have incurred a loss. That is part of renting anywhere."

#3 Cleaning → \$200.00

The Landlords said they had to clean the rental unit, including getting rid of garbage the Tenants had left behind. The floors were vacuumed and swept by the Tenants, but not washed. The Landlord said: "The blinds were not cleaned, it took me eight hours. The stove was really dirty – not cleaned properly." The Landlord pointed to photos they took of how dirty the suite was and what the Tenants left behind.

The Tenants said that the Landlords' photos of the rental unit were taken before the tenancy ended. The Tenants said: "You can see our belongings that we have with us; this was before we finished cleaning. Also, you can see details of photos they've submitted with the date they were taken."

In terms of the garbage, the Tenants said that there were three households living in the same property. They said the garbage containers were always full. "We paid until the 28th; we had the right to use those containers, but we were forced to take some with us in the car. Even though we had paid, we couldn't use the garbage containers, because they were full. There were not enough garbage containers for three households."

#4 Repair and Painting → \$630.00

The Landlords said:

We have known the painter for many years; he is a professional painter. [The Tenant] said he wanted to patch up the walls. He put cement in it, but we had to cut it out. We had a professional painter to do this. With the high rent we're charging, it has to look good. He had to patch it up and paint it over. The colour would be off, otherwise. He worked for two days – fixing and patching, and one day painting.

The Landlords said prior to this, they last painted just before September 2018, when the Tenants moved in.

The Tenants said that they looked into the Landlords' painting receipt. They said the name is spelled wrong on the invoice, and it is dated February 27, the day before they moved out. The Tenants also said the address on the invoice does not exist. They said they called the telephone number listed several times, and noticed that the business address does not match that on the invoice.

As the Landlords were out of town, the Tenants said they asked the Landlords' daughter for paint, and offered to do the painting; however, they said they were told not to do it. The Tenants said this led them to believe that it did not need painting. They said that they would have had it painted professionally, but they were not given the opportunity to do this. They also said that they did not use cement to patch any holes, but Polyfilla, which they said is used by any painter. They also asked why the invoice does not set out the number of hours it took the painter to do the job. They said charging \$600.00 is expensive; they said they would have looked for someone to do the job at a reasonable rate, if they were not allowed to handle it themselves.

The Landlords said: "We have had this painter for six years or more. I prefer not by the hour. It's a personal thing, how we deal with the painter."

#5 Dog waste clean-up → \$25.00

The Landlord said that the Tenants' dog left feces all over the yard, which the Tenants should have cleaned up. The Landlords said they cleaned it up themselves, because a professional company would have charged \$80.00.

The Tenants said:

We have a miniature Doberman, when [The Landlord] came with a pre-made move out form and she quoted \$80.00, she was sure there was poo under the snow. Our dog is not the only dog on the property.

The Landlords said:

We were away for three months. The back area has grass. The bottom renter let their dog out, and would keep an eye on it. We told [the Tenants] to please keep your little gate closed. I asked the downstairs renter to clean up after their dog, but they said the gate was always open when they came home.

#6 Repair Electric Gate → \$125.00

The Landlords said that the Tenant told them he accidentally ran into the gate. The Landlord said he fixed the positioning of the gate, himself. He said he has a friend who is a garage door installer, who installed the gate originally. The Landlord said it took him ten minutes to put the gate back, but that he had to call his friend to reset the motherboard. He said everything was destroyed inside, "...so that's why we charged him \$25 per hour."

The Tenant noted that there was no receipt submitted for the friend's work on the gate.

The Landlord said that he told the Tenant not to fix the gate, that it needed a professional. "I am not doing this by myself. I had to give him \$100.00 for the service call. He charged me four hours and I paid him, plus one hour for my time."

The Tenant replied: "But you said it took you 15 minutes." The Landlord said: "It was my time and I charged one hour."

#7 Repair Garburator → \$100.00

The Landlord said that he installed the garburators in the house, himself. He said the Tenant told him that the garburator was not working. The Landlord said:

There is a relay switch, and when you overload it, it stops. You put something into the garburator that doesn't work.... I had to take it into my shop, take it apart, clean it, and a whole bunch of meat and bone came out – you don't put any meat and bone into the garburator.

The Tenant said that maybe the previous tenant did this, but the Landlord said the garburator was working fine when the Tenants moved in.

The Tenants said that they did not break it. He said they never put meat into the garburator. "We haven't put anything but chick peas. It only took him an hour and a half."

The Landlord said it was brand new when they finished the house in 2016, and that they never had problems with the garburator before this.

#8 Replace Lost Gate Fob → \$100.00

The Landlord said the Tenants lost the gate fob, because they left their car door unlocked. The Landlord said: "The fobs are \$50.00 a piece, but when stolen, they charge us \$100.00 to reconnect it to the motherboard. It's all the way out from Hope."

The Tenant said there is no receipt for that. The Landlords said they initially were not going to charge the Tenants for this cost, but when the Tenants came after their deposits, they decided to count everything. "I would have been happy letting bygones be bygones."

The Tenants said the fob was stolen, because their car was broken into inside the property. They said the door next to the gate was not locked.

The Landlord said that the Tenants left the fob in their car with the door unlocked. They said there are always other tenants coming and going, and that anyone can jump over a fence. "If you leave your car door open anything can happen."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Prior to hearing their testimony, I advised the Parties of how I would be analyzing the evidence presented to me. I said the party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenants violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlords to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlords did what was reasonable to minimize the damage or loss.

Section 45 of the Act sets out a tenant's responsibility in terms of ending a fixed term tenancy, as follows:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

...

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[emphasis added]

#1 Re-Renting Rental Unit → \$1,625.45

The Parties agreed that the Landlords needed to find new tenants for the rental unit. They agreed that the Tenants broke a fixed term tenancy agreement that was not scheduled to end until September 30, 2019.

I find that the Landlords have established that the Tenants violated the Act and tenancy agreement by ending the fixed term tenancy seven months early. I find that the Landlords incurred a cost to find new tenants to replace the rental income stream.

I find it reasonable that the Landlords would hire a professional property management company to handle this, rather than doing it themselves or relying on the Tenants, despite one of them having worked in property management for two years.

The Landlords submitted a receipt of the cost they incurred in this regard. They were able to find new tenants with only four days of lost rent. As such, I find that the Landlords mitigated the potential cost of the Tenants' having breached a fixed term tenancy agreement. While I find the cost of the property management company rather expensive, I find overall, going this route possibly saved the Parties from incurring months without a new tenant to cover the rent.

When I consider the evidence overall, I find the Landlords acted reasonably in this matter. I award the Landlords recovery of the **\$1,625.45** cost they incurred.

#2 Lost Rental Income → \$396.80

If the Tenants had not ended the tenancy early, the Landlords would have received the full rent paid for March 2019. As such, I find that they have established that they incurred a loss of rental income based on the new tenants not being able to move in on March 1, 2019.

In terms of the value of the loss, the Landlords would have received \$2,400.00 from the Tenants or \$77.42 per day in March. When multiplied by 5 days, this comes to \$387.10; I, therefore, find that the value the Landlords claimed for the loss of rental income is marginally more than my calculation indicates. When I pointed this out in the hearing, the Landlords said they were not concerned about small differences such as this. I, therefore, I prefer the lesser figure I calculated.

I find that the Landlords were able to obtain new tenants reasonably quickly after the end of the Tenants' tenancy, which goes to their having mitigated the loss in this regard.

I award the Landlords **\$387.10** in recovery of lost rental income in March 2019.

#3 Cleaning → \$200.00

Section 32 of the Act states that tenants "...must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." Section 37 states that tenants must leave the rental unit "reasonably clean and undamaged".

Policy Guideline #1 helps interpret sections 32 and 37 of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

[emphasis added]

The Landlord said it took her eight hours to clean the rental unit at \$25.00 per hour. I find \$25.00 to be a reasonable rate to charge for cleaning. I note this unit has three bedrooms and three bathrooms, in addition to a living room and kitchen. As such, it is a sizeable area to clean.

Based on the documentary evidence and testimony before me, I find that the Tenants did some cleaning themselves. The Landlords' photos of areas of the rental unit that were not clean support their contention that the Tenants did not fulfill their obligation to leave the rental unit reasonably clean. However, in the hearing, the Landlords did not dispute the Tenants' testimony that the photographs were taken prior to the end of the tenancy; the Tenants said the Landlords did not give them an opportunity to clean the rental unit prior to the condition inspection photos at the end of February 2019. For this reason, I discount the Landlord's cleaning claim somewhat, as set out below.

Further, the Tenants said they took some garbage with them in their vehicle, because the garbage containers of the residential property were not sufficient for three rental units. The Landlords denied that this was the case, but they did not explain why the Tenants would have

transported garbage elsewhere, if there were sufficient garbage facilities on the residential property.

I also note that the Act and Policy Guidelines require that the standard of cleanliness be “reasonable” and “not necessarily the standards of the arbitrator, the landlord or the tenant.” In the hearing, the Landlords stressed the value of their property and indicated that they expected their tenants to meet the Landlords’ standards. I find that this standard may be above “reasonably clean”.

Based on all the evidence before me in this regard, I find that eight hours of cleaning is greater than cleaning to a “reasonable” level. I award the Landlord six hours of cleaning time in this matter for a total of **\$150.00**.

#4 Repair and Painting → \$630.00

I reviewed the photos that the Landlords submitted illustrating the damage left behind by the Tenants. I find that some holes are larger than others and go beyond “reasonable wear and tear”; however, I find that most of the holes indicate that the Tenants hung pictures and other items, as is to be expected. I find that the holes set out in the Landlords’ photographs reflected predominantly normal wear and tear, for which the Tenants are not responsible. Therefore, I reduce the amount the Landlords have claimed in this regard by 30%.

Policy Guideline #40 (“PG #40”) is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and its useful life when calculating the tenant’s responsibility for the cost of the replacement.

In PG #40, the useful life of interior painting is four years. The evidence before me is that the painting was last done in September 2018, therefore, it had approximately 3½ years or 87.5% of its useful life left. The CIR indicates that the walls were in good condition at the start of the tenancy.

I have already reduced the Landlords’ claim by 30% to \$441.00. I award the Landlords the amount of life there was left in the wall finishing or 87.5% of \$441.00 for a total award of **\$385.88**.

#5 Dog waste clean-up → \$25.00

I find that the Landlords have demonstrated that the Tenants failed to clean up after their dog in the residential property. The Landlord minimized the cost of cleaning up the dog feces by doing it themselves, rather than hiring someone to do it. As such, I award the Landlords with their claim for **\$25.00** in this regard.

#6 Repair Electric Gate → \$125.00

The Tenants acknowledged having been responsible for damaging the gate. I find the Landlords were reasonable in having a friend with professional experience assist them in resetting the motherboard. However, as the Tenants noted, the Landlord said it only took him ten minutes to do his part of the repair, yet the Landlord billed for a full hour's time. As a result, I reduce the Landlord's claim for his own efforts from \$25.00 to \$5.00. Further, this raises questions in my mind about the reliability of the rest of the Landlord's claim for this item.

The Landlord did not submit a receipt for the friend's time, despite saying that the friend is a professional in this regard. As noted above, a party claiming compensation from another party has the burden of proving their claim on a balance of probabilities.

Based on the evidence and testimony before me on this matter, I award the Landlord a total of **\$80.00** for this claim.

#7 Repair Garburator → \$100.00

Based on the evidence before me in this matter, I find that the Tenants' actions or inactions, whether intentional or not, contributed to the garburator malfunctioning. The Landlord repaired the appliance himself, which I find helps minimize the impact of this damage overall. However, the Landlord did not indicate how he arrived at \$100.00 for this item; the Tenant said it took the Landlord an hour and a half to repair the garburator, although, he did not indicate how he kept track of the Landlord's activities in this regard, either.

Given the Landlord's inclination noted above to round up in his billing practises, I find that it is more likely than not that the described actions required to complete this repair were closer to two than four hours. Accordingly, I award the Landlords **\$50.00** for this claim.

#8 Replace Lost Gate Fob → \$100.00

The Parties agreed that the gate fob was stolen from the Tenants' unlocked vehicle. As such, I find they are responsible for the cost of replacing this item. However, again, the Landlords did not provide a receipt of any kind to establish the value of the replacement. They said they were not going to charge the Tenants for this cost, until the Tenants requested their deposits back. As such, I find it more likely than not that the Landlords may not have requested or retained an invoice for this item.

I also find it reasonable that a company supplying the fobs would have extra work to avoid the stolen fob remaining functional. As the Landlords said, the supplier had to reconnect it to the motherboard, and second, the supplier is located in Hope, B.C.

Based on the evidence before me in this matter overall, I award the Landlords **\$100.00** for the replacement of the stolen gate fob.

Summary and Set-Off

I find that this Application meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security and pet damage deposits of \$1,800.00, in partial satisfaction of the Landlords' monetary award.

	Receipt/Estimate From	For	Amount Awarded
1	Property Management	Re-renting of rental unit	\$1,625.45
2	Lost rental income	Four days lost rental income	\$387.10
3	Landlord	Cleaning and garbage removal	\$150.00
4	Painter [C.K.]	Repairing and painting walls	\$385.88
5	Landlord	Dog waste clean up	\$25.00
6	Landlord	Repair electronic gate	\$80.00
7	Landlord	Repair broken garburator	\$50.00
8	Landlord	Replace lost gate FOB	\$100.00
		Sub-total	\$2,803.43
		Minus Security and Pet Damage Deposits Set Off	(\$1,800.00)
		Total monetary award	\$1,003.43

I grant the Landlords a monetary award of \$2,803.43, and I authorize them to retain the Tenants' security and pet damage deposits totalling \$1,800.00, as partial satisfaction of this award.

Given that the Landlords were predominantly successful in their Application, I also award them recovery of their \$100.00 Application filing fee. I award the Landlords a total monetary order of **\$1,103.43**.

Conclusion

The Landlords' Application for a monetary order for damage or compensation under the Act against the Tenants is largely successful in the amount of \$2,803.43. The Landlords are also awarded recovery of the \$100.00 filing fee for this Application from the Tenants.

The Landlords are authorized to retain the Tenants' security and pet damage deposits of \$1,800.00, in partial satisfaction of the amount awarded., I grant the Landlord a Monetary Order for the remaining amount from the Tenants, pursuant to section 67 of the Act in the amount of **\$1,103.43.**

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: October 24, 2019

Residential Tenancy Branch