



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES
INC. and
[tenant name suppressed to protect privacy]

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 Landlord on December 16, 2019 (the “Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit;
- To keep the security deposit; and
- For reimbursement for the filing fee.

The Agent for the Landlord appeared at the hearing. The Tenant 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 Agent confirmed the correct Landlord name is as shown on the written tenancy agreement submitted. The correct Landlord name is reflected in the style of cause.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought \$661.56 on the Application but submitted a Monetary Order Worksheet for \$1,704.99. At the hearing, the Agent confirmed the Landlord is seeking \$1,704.99. The Tenant confirmed he understood the Landlord was seeking \$1,704.99.

As stated at the hearing, the Landlord should have filed an amendment changing the amount sought as required by rule 4.1 of the Rules of Procedure (the "Rules"). However, I have considered the \$1,704.99 because the Tenant acknowledged understanding that this is what the Landlord was seeking and therefore there is no prejudice to the Tenant in considering this amount.

The Monetary Order Worksheet includes the following items:

Item	Description	Amount
1	Cooktop replacement	\$1,173.74
2	Carpet cleaning	\$131.25
3	Potential bylaw fines	\$400.00
	TOTAL	\$1,704.99

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started August 01, 2018 and was for a fixed term ending July 31, 2019. The tenancy then became a month-to-month tenancy. Rent was \$1,700.00 per month due on the first day of each month. The Tenant paid a \$850.00 security deposit.

The parties agreed the tenancy ended December 03, 2019.

The parties agreed the Tenant provided the Landlord a forwarding address by email December 13, 2019.

The Agent confirmed the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy.

The Agent submitted that the Tenant did agree in writing that the Landlord could keep the security deposit and pointed to the Condition Inspection Report ("CIR").

Having reviewed the CIR, I asked the Agent where a tenant would sign if they did not agree to the Landlord keeping the security deposit. The Agent testified that the Tenant

could have signed the key deposit portion or should have indicated he did not agree with the CIR and not signed it.

The Tenant denied that he agreed the Landlord could keep the security deposit. He testified that he signed the CIR with the understanding that the \$50.00 for light bulbs would be removed. He pointed out that he indicated on the CIR that he did not agree with the \$1,000.00 for the cooktop replacement. The Tenant testified that he agreed to the remaining items noted, subject to the Landlord receiving a fine from strata. The Tenant testified that he agreed with the \$131.25 for carpet cleaning.

I asked the Tenant why he signed the CIR given the paragraphs that refer to the Landlord keeping the security deposit. The Tenant testified that there was no option but to sign it and that the space signed was the only place available to sign.

The parties agreed on the following. Both parties did a move-in inspection August 03, 2018. The unit was empty at the time. The CIR was completed and signed. The CIR was emailed to the Tenant.

The Tenant testified that the CIR was emailed the same day as the inspection.

The parties agreed on the following. Both parties did a move-out inspection December 03, 2019. The unit was empty at the time. The CIR was completed and signed. The CIR was emailed to the Tenant.

The Tenant testified that the CIR was emailed within a week of the inspection.

#1 Cooktop replacement

The Agent testified as follows. There was no damage to the cooktop on move-in as shown in the CIR. There were large white scratches and discoloration on the cooktop upon move-out. The Landlord had never seen damage like this on the cooktop before. The cooktop had to be replaced. An invoice for the replacement cost has been submitted.

The Agent confirmed the cooktop still worked at the end of the tenancy. I asked the Agent why the cooktop had to be replaced if it still worked. The Agent submitted that it had to be replaced because of the amount of damage including discoloration and scratches.

The Agent testified that the cooktop was seven years old.

The Tenant testified as follows. The cooktop had been used for a couple of years when he moved in. There were a few scratches on the cooktop on move-in. The scratches on the cooktop at the end of the tenancy were from normal use. The cooktop still worked, one burner was discolored because he only used that one burner. The cooktop could have been used for another ten years.

In reply, the Agent denied that the damage to the cooktop is normal wear and tear.

#2 Carpet cleaning

The Tenant agreed to pay the Landlord \$131.25 for the carpet cleaning.

#3 Potential bylaw fines

The Agent withdrew the request for \$400.00 for bylaw fines on the basis that strata only issued warnings.

Analysis

Security deposit

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.

Based on the testimony of both parties, I am satisfied the Tenant participated in the move-in and move-out inspections and therefore did not extinguish his rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlord did originally claim for potential bylaw fines.

Based on the testimony of both parties, I accept that the tenancy ended December 03, 2019.

Based on the testimony of both parties, I accept that the Tenant provided the Landlord a forwarding address by email December 13, 2019.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing to repay the security deposit or claim against it. The Application was filed December 16, 2019, within 15 days of the Tenant providing a forwarding address. I am satisfied the Landlord complied with section 38(1) of the *Act*.

Section 38(4) of the *Act* states:

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...

I have reviewed the CIR. The Tenant indicated on the CIR that he did not agree with the \$50.00 for light bulbs or \$1,000.00 for the cooktop replacement. The Tenant testified that he did agree with the \$200.00 for bylaw fines, which were noted as "pending", and the \$131.25 for carpet cleaning. I do not find the CIR clear enough to conclude that the Tenant agreed the Landlord could keep the security deposit for the light bulbs or cooktop.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations 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 with this Act, the regulations or their tenancy agreement 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.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has 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.

#1 Cooktop replacement

Section 37 of the *Act* 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...

I am satisfied based on the photos submitted that the cooktop was damaged beyond reasonable wear and tear at the end of the tenancy. I find this given the extent of the scratches and discoloration shown in the photos. I accept that this cooktop was seven years old and that it had been used for years prior to the tenancy based on the testimony of both parties. The scratches and discoloration on three of the burners is not the same as on the fourth burner. I would expect the wear and tear to be the same on all burners if normal use of the cooktop resulted in the scratches and discoloration shown on the fourth burner.

I am satisfied the Tenant caused the scratches and discoloration given there is no damage to the cooktop shown on the move-in CIR. I am satisfied the Tenant breached section 37 of the *Act*.

I am satisfied the Landlord experienced some loss in relation to the cooktop given it was scratched and discolored. However, the Agent and Tenant testified that the cooktop worked fine at the end of the tenancy. Therefore, I am only satisfied that the loss experienced was in relation to the appearance of the cooktop and not the functionality or use of the cooktop.

The Landlord submitted an invoice showing that it cost \$1,173.74 to replace the cooktop and I accept that it did. However, I am not satisfied the Tenant is responsible to pay for replacement of the cooktop when the cooktop still worked. I am not satisfied the Landlord needed to replace the cooktop. I accept that it was open to the Landlord to replace the cooktop due to the appearance of it. However, I am not satisfied the Tenant is responsible to pay for this choice.

Policy Guideline 16 deals with damages and states (page 2):

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. (emphasis added)

Given I am satisfied the Tenant breached section 37 of the *Act* and that the Landlord experienced some loss in relation to the appearance of the cooktop, I am satisfied the Landlord is entitled to some compensation for this loss. However, as stated, I am not satisfied the Landlord is entitled to the replacement cost and the Landlord has not provided an alternate basis to determine the value of the loss in relation to the appearance of the cooktop. Given this, I award the Landlord \$150.00 as nominal damages.

I also find the amount of \$150.00 reasonable given the following. The useful life of a stove according to Policy Guideline 40 is 15 years and the Landlord got seven years of use out of the cooktop. The loss is in relation to the appearance of one burner on the cooktop and not the use or functionality of the cooktop.

I award the Landlord \$150.00 for the cooktop.

#2 Carpet cleaning

The Tenant agreed to pay the Landlord \$131.25 for the carpet cleaning and therefore the Landlord is entitled to this amount.

#3 Potential bylaw fines

The Agent withdrew this request and therefore the Landlord is not entitled to this amount.

Filing fee

Given the Landlord was partially successful in the Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Cooktop replacement	\$150.00
2	Carpet cleaning	\$131.25
3	Potential bylaw fines	-
4	Filing fee	\$100.00
	TOTAL	\$381.25

The Landlord is entitled to \$381.25 pursuant to section 67 of the *Act*. The Landlord can keep \$381.25 of the security deposit pursuant to section 72(2) of the *Act*. The Landlord must return the remainder of the security deposit to the Tenant. The Tenant is issued a monetary order for the remaining \$468.75.

Conclusion

The Landlord is entitled to \$381.25. The Landlord can keep \$381.25 of the security deposit. The Landlord must return the remaining \$468.75 to the Tenant. The Tenant is issued a monetary order for this. If the Landlord does not return the \$468.75, this Order must be served on the Landlord. If the Landlord fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court 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: May 20, 2020

Residential Tenancy Branch