



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on October 13, 2019, the Landlords requested monetary compensation from the Tenants for damage and losses incurred during the tenancy, authority to retain the Tenants' security deposit and to recover the filing fee.

The hearing was conducted by teleconference. on February 25, 2020 and May 11, 2020. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. Should the Landlords be authorized to retain the security deposit?
3. Should the Landlords recover the filing fee?

Background and Evidence

The Landlord C.F. testified that the tenancy began January 1, 2018. Monthly rent was \$1,500.00 per month and the Tenants paid a \$750.00 security deposit and a \$750.00 pet damage deposit. Documentary evidence submitted by the Landlords indicates the pet damage deposit of \$750.00 was returned by cheque in September of 2019 such that the Landlords continue to hold the Tenant's security deposit of \$750.00 only.

The tenancy ended pursuant to a 2 Month Notice to End Tenancy for Landlords' Use. C.F. testified that she and her husband "absorbed" the space into their home as her husband now uses the rental unit for a music room.

The Landlords sought monetary compensation from the Tenants in the amount of \$1,462.12 for the following:

Cleaning	\$835.40
Cost to repair damage and painting	\$562.72
Filing fee	\$100.00
TOTAL CLAIMED	\$1,462.12

A copy of the move out condition inspection report was provided in evidence. This document was not dated, although the C.F. testified it was completed on September 28, 2019. The Landlords also submitted photos of the rental unit taken when the tenancy ended; C.F. stated that they took photos of the rental unit on September 28, 29 and October 10, 2019 respectively.

C.F. confirmed that the master bedroom, the hallway, the kitchen backsplash and along the counter wall, and the large long wall in the living room were painted prior to the tenancy beginning.

C.F. further testified that they paid her husband, G.F.'s, carpet cleaning company \$250.00 to clean the carpets; a copy of the receipt was provided in evidence.

The Landlords claimed that the rental unit was not sufficiently cleaned by the Tenants and as such they hired their daughter to clean the unit. C.F. testified that they paid her \$475.00 to clean the unit. A typed document from their daughter was provided in evidence and which indicated she spent 15 hours at \$25.00 per hour cleaning the unit in addition to four hours cleaning the blinds for a total of \$475.00.

In terms of the cleaning required, C.F. testified as follows:

Kitchen

- there was hair and debris in the bottom of the fridge under the crispers;
- there was residue in the cupboards;
- there was debris in the kitchen cupboards;
- there was a stain above the hood range;
- the hood range was “layered with grease”;
- the filter was layered with grease;
- the backsplash was covered in grease;
- there was splatters of dirt where the light switch was;
- there was a film of grease above the cabinets;
- there was a grease splatter on the side of the fridge which has damaged the grey side;
- the light fixtures in the kitchen were not cleaned (dead flies);
- the oven door was full of grease;
- the oven was not cleaned adequately;
- the drawer underneath was not cleaned adequately;
- the stainless steel appliances were not cleaned and were not polished; and,
- the fridge was not cleaned on the back and the fridge was not pulled out.

bathrooms

- the cabinet doors were not properly wiped down;
- dog hair and debris behind the toilet and along the baseboard;
- the walls were not wiped and there were cobwebs;
- there were water streaks;
- the chrome had a soap scum on it;
- the lightbulb was on but was broken;
- the exhaust fan cover was not cleaned; and,
- the light fixtures in all the second bedroom were not cleaned.

C.F. confirmed that the total amount for which they were seeking compensation for cleaning is \$725.00, not the \$835.40 claimed on the application.

The Landlords also claimed compensation to repair and repaint the walls due to what they believe is an excessive number of nail holes. In support of this claim the Landlords provided photos of the second bedroom, bathroom and living room entrance. C.F. stated that they paid their daughter \$200.00 to repair and then repaint the walls.

The Landlords also sought compensation for \$35.00 they claim to have paid their daughter to repair and paint a windowsill which they claim was damaged by Tenants.

C.F. also stated that multiple blinds panels were either broken or bent. In support they provided photos of the damaged blinds.

C.f. also claimed that the Tenant purposely left a broken light bulb in a socket.

The Landlords also claimed recovery of the cost to clean the carpets. C.F. stated that the carpets were significantly stained, despite the fact the Tenants used a carpet cleaner; she stated that the traffic stains were eventually removed by her husband's professional carpet cleaning company.

The other Landlord, G.F., was cautioned during the hearing due to his frequent interruptions and inappropriate language. At one point during the hearing on May 11, 2020 I asked him to leave the room as he continued to interrupt C.F. while she was attempting to testify.

Near the conclusion of the hearing, G.F. insisted that he also be given an opportunity to testify. When given this opportunity, he chose to express his frustrations with respect to tenancies in general and tenants who do not clean their rental unit to a reasonable standard. After being directed to provide testimony which was relevant to this tenancy, G.F. stated that he built the suite for his mom who lived in the suite until she passed away. He also stated that they used it as an AirBnB for about year, but that it was largely left empty for 7 years and was essentially new. G.F. also stated that shortly after the Tenants moved into the rental unit they had a grease fire. He stated that the Tenants then unhooked the smoke detector which put everyone's life at risk and confirmed that they will not rent to others as they do not want their lives to be put at risk.

In response to the Landlords' claims, the Tenant, S.M. testified as follows. The Tenant stated that she believes that the amounts claimed by the Landlord are excessive. She further stated that she and her mother spent several hours cleaning the rental unit. In

support the Tenant also submitted numerous photos of the condition of the rental unit at the time she moved out. The Tenant also submitted a video which was taken at the time of the move out inspection.

S.M. stated that she rented a carpet cleaner and cleaned the carpets as best she could considering their age. S.M. also disputed the Landlords' claim that they paid a carpet cleaning company to clean the carpets and alleged that the company did not in fact exist anymore.

S.M. confirmed that they did not replace some burnt out light bulbs and agreed to reimburse the Landlords for this cost.

S.M. stated that they pulled out the fridge, but not the oven as the oven was not on wheels.

S.M. also noted that the patio door is the main entrance to the suite and therefore gets a lot of use. She stated that as a result the blinds bang around and get bent, which she described as that is "normal wear and tear". S.M. also noted that one of the blinds has a pulley which broke in a normal way.

S.M. further noted that even though some of the photos taken by the Landlord were taken up to 10 days after the inspection, these photos show the rental unit was cleaned to a reasonable standard.

In reply, the Landlord, C.F., stated as follows. She confirmed that the rental unit was built in 2009. She also stated that the carpets have never been replaced but are in good shape as they regularly clean them. She also confirmed that the blinds were from 2009.

C.F. also stated that the Tenant only "spot cleaned" the walls and did wash all the walls and the ceiling which she believes was required as per the tenancy agreement.

In terms of the timing of the photos, C.F. noted that one photo was 10 days old but that is because it was the carpet cleaning, and was taken after they had dried.

C.F. confirmed that she pulled out the fridge during the inspection, but agreed that the Tenant did not have to clean out behind or under the stove because it was not on wheels.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The Landlords seek monetary compensation for the cost to clean the rental unit. As noted in section 37 above, a tenant must leave the rental unit *reasonably clean* and undamaged except for reasonable wear and tear. The standard is that of a *reasonable* person; it is not the Landlord's standards of cleanliness and it is not the Tenant's.

In this case, I find the Tenant cleaned the rental unit to the standard required by section 37 of the *Act*. The photos submitted by the Landlord show minor dust and debris in the rental unit and some finger prints on stainless steel, but otherwise the rental unit is reasonably clean.

There is no requirement that the Tenants leave the unit spotless and polished, which appears to be the Landlords' expectations in this case. During her testimony, C.F. described the rental unit as being left in an unsatisfactory condition. Even though her photos were taken very close up, they failed to show dirt and debris to the extent she described when testifying. Further, and as shown in the video submitted by the Tenant, C.F. used a white paper towel to wipe down surfaces looking for dust and debris which were not readily visible. While this standard of cleanliness may be expected by the Landlords, it is not the reasonable standard contemplated by section 37 of the *Act*. Although a landlord may decide to do additional cleaning after a tenancy ends, particularly in circumstances where the landlord takes over use of the rental unit following the end of the tenancy (as was in the case before me), that does not make this additional cleaning the responsibility of the tenant.

Based on the evidence before me, I find the Landlords have failed to prove the Tenants breached section 37 and I therefore dismiss their claim for compensation for cleaning costs.

The Landlords also seek the cost to professionally clean the carpets. The Tenant testified that she rented a carpet cleaner and cleaned the carpets as best as she could. In support she provided a copy of the receipt for the carpet cleaner.

In this case the Landlord, G.F., owned a professional carpet cleaning business. Understandably he has a higher standard for carpet cleaning than may be expected by most as he is a professional.

Residential Tenancy Branch Policy Guideline 1—Landlord & Tenant Responsibility for Residential Premises provides in part as follows:

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

In this case, I accept the Tenant's evidence that she rented a carpet cleaner and cleaned the carpets. The photos submitted in evidence show the carpets in a reasonable state of cleanliness. Again, although it may be the case that the Landlords have higher standards in this respect, I find the Tenant has fulfilled her obligations to clean the carpet.

Further, *Residential Tenancy Branch Policy Guideline 40--Useful Life of Building Elements* provides that carpets have a useful life of 10 years. While I accept the Landlord's evidence that these carpets have been cared for, they are 11 years old such that some wear and tear is expected due to their age.

For these reasons I dismiss the Landlords' claim for the cost to professionally clean the carpets as I find the Tenants cleaned the carpets as required by the *Act* and *Policy Guideline 1*.

The Landlord also seeks the replacement cost for the patio door blinds. The Landlord stated that blinds were original having been in the rental unit since 2009. *Residential Tenancy Branch Policy Guideline 40--Useful Life of Building Elements* provides that blinds have a useful life of 10 years. As these blinds were 11 years old when the tenancy ended, I find it likely they had also reached their useful life in any case of the tenancy. I also accept the Tenant's testimony that the blinds are on the main entrance to the rental unit such that they are subjected to more wear and tear. For these reasons I dismiss the Landlords' claim for the cost to replace the blinds.

The Landlords also claim the cost to paint the rental unit alleging the Tenants put an excessive number of nail holes in the walls. The photos submitted by the Landlords do not show an excessive number of nail holes; rather they show some nail holes. As provided for in *Policy Guideline 1*, a tenant is permitted to hang up pictures and art in the rental unit, provided they do not make an excessive number of holes or otherwise damage the walls. In this case I find the Landlords have failed to prove the Tenants damaged the walls. I therefore dismiss the Landlords' claim for the cost to repair and paint the walls.

The photos submitted by the Landlord confirm that a door stopper and patio chair were damaged. The Landlords also provided copies of receipts for those items. The Tenant did not dispute this claim during her testimony before me. I therefore award the Landlords \$3.05 for the door stopper and \$16.78 for the chair. The Tenants agreed to compensate the Landlord for the lightbulbs in the amount of \$10.40; accordingly, I award the Landlords recovery of this amount.

Having been largely unsuccessful in their claim, I decline the Landlords' request for recovery of the filing fee.

The Landlords are therefore entitled to compensation in the amount of **\$30.23**.

Door stopper replacement cost	\$3.05
Patio chair replacement cost	\$16.78
Light bulbs	\$10.40
Total awarded	\$30.23

I authorize the Landlords to retain \$30.23 from the Tenants security ~~and pet damage~~ deposit in the amount of ~~\$1,500.00~~ \$750.00. The balance, ~~\$1,469.77~~ \$719.77, shall be returned to the Tenants. In furtherance of this I grant the Tenants a Monetary Order in the amount of ~~\$1,469.77~~ \$719.77. This Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlords claim for monetary compensation from the Tenants is granted in part. The Landlords are entitled to the sum of \$30.23 for the cost of replacing a door stopper, patio chair and light bulbs. They may withhold this sum from the Tenants' ~~\$1,500.00~~

~~\$750.00~~ in security and pet damage deposits. The balance of the Landlords' claim is dismissed without leave to reapply.

The Tenants are entitled to return of their security deposit (less the amount awarded to the Landlords) in the amount of **\$1,469.77** and are granted a Monetary Order in this amount.

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: June 3, 2020

Corrected: June 10, 2020

Residential Tenancy Branch