



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

This matter commenced on April 16, 2020 and was adjourned. The interim decision issued on April 17, 2020, should be read in conjunction with this decision.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed that the Order made in the interim decision was complied with

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### **Issue to be Decided**

Are the landlords entitled to a monetary order for damages?

Are either party entitled to the security deposit?

### **Background and Evidence**

The tenancy began on May 1, 2016. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$750.00 was paid by the tenants. The tenancy ended on February 28, 2020.

The parties agreed a move-in condition inspection report was completed. The parties agreed that the move-out condition inspection commenced on March 2, 2020, and it was rescheduled to be completed on March 6, 2020.

The landlord's agent stated that the tenants did not participate in the move out inspection as they got upset and left. The male tenant testified that they landlord was yelling at them and they decided to leave. The landlord denied yelling at the tenants.

#### Landlord's application

The landlords claim follows:

a.	Cracked bathroom sink and labour	\$749.19
b.	Replace bathroom vanity	\$599.00
c.	Carpet cleaning	\$173.78
d.	Replace garburator and labour	\$330.00
e.	Jammed hood fan cleaning	\$135.00
f.	Filing fee	\$100.00
	<b>Total claimed</b>	<b>\$2,086.97</b>

#### Cracked bathroom sink and labour

The landlord's agent testified that they had to replace the bathroom sink because there were three small cracks in the basin. The agent stated they are unsure on how it was damaged. The landlord's agent stated that the installation was very weird because the pipes were glue and they had to hire a plumber which the actual cost of labour was \$370.00. The landlord seeks to recover the cost of \$749.19.

The landlords confirmed the age of the item was approximately 11 years old at the time of replacement.

The tenants testified they did not cause damage to the sink. The tenants stated that the landlords had put some type of black ink in the sink to show the minor cracks. The tenants stated that they had nothing to do with the pipes being glue as this was done when they were originally installed. The tenants stated it is common practice that plumbers use glue to hold the pipes.

The landlord's agent stated that they did not use a dye in the sink. The agent stated that they had wiped their eye getting makeup on their hand and when washed it put the black into the cracks.

#### Replace bathroom vanity

The landlord's agent testified that the vanity was damaged as there were cracks in the lower portion of the cabinet and by the inside of the mirror. The agent stated that they have not replaced the cabinet; however, the estimated cost is \$599.00.

The tenant's testified that they caused no damage to the vanity and it has not been replaced. The tenant stated that the damage could have been caused when they had the pipes changed.

#### Carpet cleaning

The landlord's agent testified that there was a stain on the carpet. The agent stated that they did not have the carpets cleaned as they were replaced. The agent stated that they should be entitled to the estimate cost of having the carpets cleaned in the amount of \$173.78.

No evidence was required from the tenants.

#### Replace garburator and labour

The landlord's agent testified that the garburator was not working, and they were told it was jammed from pins. The agent stated they have not replaced the garburator; however, they seek to recover the estimate cost of \$285.00 and labour of \$45.00 for a total amount of \$330.00.

The tenants testified that there were issues with the garburator during the tenancy and it would jam. The tenant stated they are not responsible for the appliance.

#### Jammed hood fan cleaning

The landlord's agent testified that the hood fan is jammed and needed cleaning. The agent stated that they did not pay to have the cleaning done, they did that work themselves; however, the fan still does not work.

The tenants testified that the hood fan was not working during the tenancy. The tenants stated that they notified the landlord that it was broken, which was never fixed during their tenancy. The tenant stated that it was not an issue for them as they mostly ate their meals outside of the residence.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

### Landlord's application

To prove a loss and have one party pay for the loss requires the other 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 Respondent 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

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

### **Leaving the rental unit at the end of a tenancy**

*37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Cracked bathroom sink and labour

In this case, I am not satisfied that the tenants caused damage to the sink. The cracks were only discovered when a black substance was placed on them, this leads to me that this is due to the aging process. Further, although the landlord submitted a document labelled "Bathroom sink" that document was not provided as the folder is empty and I was unable to consider this evidence. I find the landlord has failed to prove a violation of the Act, by the tenants. Therefore, I dismiss this portion of their claim.

Replace bathroom vanity

In this case, I am not satisfied that the damage to the vanity was caused by the neglect of the tenants. The photographs the landlord has provided as evidence show that there is water sitting in the cabinet when the repairs were being made. This could be the cause of the damage.

Further, even if I was satisfied that the damage was caused by the tenants, which I am not. The landlord would only be entitled to the depreciated value at the time the item is replaced. The landlords have not replaced the item and has installed a new sink on the existing cabinet. This leads me to believe the item will not be replaced. I find the landlords have failed to prove the damage was caused by the tenants or that they have suffered a loss. Therefore, I dismiss this portion of the landlord's claim.

Carpet cleaning

The landlords are claiming for the cost of carpeting cleaning; however, the landlords did not have the carpets cleaned. The carpets were replaced, and they were past their useful life span at the time of replacement.

I find the landlords' claim is unreasonable as they did not incur this cost. Therefore, Therefore, I dismiss this portion of the claim.

Replace garburator and labour

In this case, I am not satisfied that the tenant's caused damage to the garburator. While I accept it may have been jammed, when tested by the landlord; however, there was evidence to support the garburator had the same problem prior. This simply could be from normal use and the aging process. I find the landlords have failed to prove a violation of the Act, by the tenants. Therefore, I dismiss this portion of the landlord's claim.

### Jammed hood fan cleaning

In this case the landlord is claiming an estimate for cleaning; however, the landlord did not use the company that provided the estimate. While the landlord submitted a document labelled "Average Hood Fan Cleaned" that document was not provided as the folder is empty. Further, the landlord submitted not photographic evidence to support the fan was left dirty.

Further, the evidence of the landlord's agent was the hood fan did not work after it was cleaned. However, there was no evidence to support that at the hood fan stopped working do to the actions of the tenants. It is the landlord's responsibility to maintain and repair the hood fan. I find the landlord has failed to prove a breach of the Act by the tenants. Therefore, I dismiss this portion of the landlord's claim.

As the landlord has not be successful with any portion of their claim, I decline to award the cost of the filing fee.

### Tenants' application

#### **Condition inspection: end of tenancy**

**35** (1)The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a)on or after the day the tenant ceases to occupy the rental unit, or

(b)on another mutually agreed day.

(2)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3)The landlord must complete a condition inspection report in accordance with the regulations.

(4)**Both the landlord and tenant must sign the condition inspection report** and the landlord must give the tenant a copy of that report in accordance with the regulations.

#### **Consequences for tenant and landlord if report requirements not met**

**36** (1)The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a)the landlord complied with section 35 (2) [*2 opportunities for inspection*], and

**(b)the tenant has not participated on either occasion.**

In this case the tenants were at the move-out condition inspection. The tenants left without completed the report or signing the required document. Simply because there may have been a disagreement on the state of the rental units does not release a party from their requirement under the Act.

The tenants could have simply completed the inspection and indicated on the report that they disagreed with the report. I find the tenants failed to meet the requirements of section 35(4) of the Act and have extinguished their right for the return of their deposit. Therefore, the landlord is entitled to keep it.

Based, on the above, I dismiss the tenants' application. As the tenants were not successful with their claim, I decline to award the cost of the filing fee

### Conclusion

The both parties' respective applications are dismissed. The landlords are entitled to keep the tenants security deposit.

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 10, 2020

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Residential Tenancy Branch