



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$4,030.12 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:05 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord's property manager ("**KD**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that KD and I were the only ones who had called into this teleconference.

KD testified he served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on March 31, 2020 to a PO Box provided to the landlord by the tenant for service of documents. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on April 5, 2020, five days after KD mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$4,030.12;
- 2) recover their filing fee;
- 3) retain the security deposit in satisfaction/partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting August 1, 2017. Monthly rent was \$540. The rental unit was provided to the tenant in a fully furnished state. The tenant paid the landlord a security deposit of \$270 and a "key deposit" of \$100, both of which the landlord continues to hold in trust for the tenant. The parties conducted a move-in condition inspection report on August 1, 2020

KD testified that the landlord obtained an order of possession against the tenant on March 3, 2020. This order of possession was effective two days after its service on the tenant. He testified that he personally served the tenant with the order of possession on March 10, 2020. KD testified that he told the tenant they would need to conduct a move-out inspection once the tenant moved out. The tenant refused to move out and refused to conduct any inspection.

KD testified that the landlord obtained a writ of possession from the BC Supreme Court on March 13, 2020 and engaged a bailiff to enforce the writ. The bailiff attended the rental unit on March 16, 2020, enforced the writ, and removed the tenant and his possessions. After the tenant was removed, KD attended the rental unit, conducted a move-out inspection report without the tenant, and took photographs of the condition of the rental unit (which were submitted into evidence).

KD testified that the rental unit and its contents were damaged by the tenant, and that the rental unit was very dirty at the end of the tenancy. There was food and garbage everywhere. He testified that the rental unit smelled bad when the windows were closed, and when he opened up the refrigerator the smell would "send you flying backward".

The landlord claims damages as follows:

Balcony door repairs	\$140.00
Replacement furniture	\$480.00
Replacement refrigerator	\$210.00
Replacement pots and pans	\$26.25
Landfill fees	\$56.00
Labour to remove damaged items to landfill	\$115.00
Carpet cleaning supplies	\$26.87
Labour for cleaning (\$15/hour)	\$172.50
Labour of KD (\$20/hour)	\$180.00
Laundry fee (drapes)	\$3.50

Cost of filing writ of possession	\$120.00
Bailiff fees	\$2,500.00
Total	\$4,030.12

“Repair” Sheet

The landlord submitted a document entitled “repairs”, which lists the work undertaken by KD in remediating the rental unit. Despite its name, not all work listed on the documents are repairs. In brief, the document lists 9 hours of work done by KD, in the following categories:

- 1) Disposing of garbage – 2 hours
- 2) Cleaning – 2.25 hours
- 3) Repair walls – 4 hours
- 4) Pre-treat carpets – 0.5 hours
- 5) Repair broken tap handle – 0.25 hours

The landlord billed KD’s work at \$20 per hour. In total, the landlord claims \$180 for this work. I will address each category of work listed on the “repair” document in the appropriate category below.

Balcony Door

KD testified that the tenant caused the balcony door and screen door to come off their tracks, making it difficult to open properly. He submitted photographs of this damage. The landlord hired a contractor to repair this damage. The landlord submitted a receipt for \$140 for the repair of these doors, the replacement parts (rollers), and labour.

Replacement Furniture

KD testified that the mattress was badly stained and had what appears to be a long cut on it. He testified that the couch and the armchair were similarly stained, and that the fabric of the armchair was ripped. He testified that these items were purchased used three years prior, but that they were in “very good condition” at the start of the tenancy.

The landlord submitted a handwritten list (initialed by the tenant) of the furniture that was in the rental unit at the start of the tenancy. It does not record the condition of any of the furniture.

KD testified that the couch, armchair, and mattress were not in a condition that would allow them to be rented to the next tenant. He testified that these items were taken to the landfill to be discarded.

KD testified that the landlord purchased a replacement mattress, armchair, and couch for \$430, plus \$50 for delivery. He submitted a copy of a receipt for this purchase into evidence.

Replacement Refrigerator

KD testified that the refrigerator was “filthy”. It was full of rotten food. Dried “meat juice” was leaking from the freezer. The smell was overpowering. The landlord submitted photos corroborating this. KD testified that the tenant had damaged the internal temperature control of the freezer, which likely caused the food to spoil. No documentary evidence of this damage was entered into evidence.

KD testified that the refrigerator was seven or eight years old at the end of the tenancy.

KD testified that the refrigerator was too dirty to clean properly, and after seeing the rot in it, he could not, in good conscience, allow another tenant to use it. He testified that he purchased a used replacement refrigerator for \$210. He submitted a receipt to corroborate this.

Replacement pots and pans

KD testified that the pots and pans left in the rental unit were so dirty that it would have been “more trouble than it was worth” to clean them. He submitted photos of the several dirty pots and pans, with what appears to be dried food stuck to them.

The landlord purchased three replacement pots for \$26.25. It submitted a receipt into evidence corroborating this amount.

Landfill – Fees and Labour

KS testified that the landlord had to dispose of the items damaged beyond repair by the tenant as well as the garbage (which can be seen in the photos submitted into evidence) and food left in the rental unit.

The landlord hired two laborer’s (at \$20/hour each) to haul the damaged furniture to the landfill. They had to make two trips, which took them two and a half hours (\$100) plus \$15 in expenses (mileage and gas). The landfill charged the landlord \$30 in disposal fees for the furniture.

As documented on the “repair” sheet, KD spent two hours (at \$20/hour) bagging and collecting garbage from the rental unit and taking the garbage to the landfill. The landfill charged \$26 total for the disposal of the garbage.

The landlord submitted receipts and “landfill tags” corroborating all amounts claimed, except for KD’s two hours of work (which were recorded on the “repair” sheet submitted into evidence).

Cleaning

KD testified that the entire rental unit required extensive cleaning once the tenant was removed. The landlord submitted photos showing the condition of the rental unit. In particular, the kitchen and bathroom do not appear to have been cleaned at all. Additionally, multiple stains on the carpet can be seen in the photos.

The landlord hired a cleaner (at \$15/hour) to clean the rental unit. Between March 17 and March 25, 2020, the cleaner spent 11.5 hours cleaning the rental unit. The cleaner provided a breakdown of the cleaning done, which includes cleaning:

- stovetop and oven
- refrigerator (prior to its disposal)
- oven racks
- bathroom sink, toilet, bathtub, tiles, mirror
- walls of the rental unit
- light fixtures
- vacuuming the entire suite
- kitchen floor under the appliances
- cupboards (interior and exterior)
- carpets (vacuuming and steam cleaning)
- kitchen floor
- windows and window frames

The landlord submitted a receipt for \$26.75 for carpet cleaning formula.

As documented on the “repair” sheet, KD spent two hours and fifteen minutes (at \$20/hour) cleaning the rental unit. He cleaned the balcony, under the refrigerator, and removed a stain from the bathtub.

KD also spent 30 minutes pre-treating the carpets, using the cleaning formula purchased, to prepare it for cleaning by the cleaner.

KD testified that he washed the rental unit drapes in the building’s laundry machine because they were dirty. No documentary evidence was submitted in support of their condition. He testified the machine are coin operated, so he did not get a receipt, but that it cost \$3.50.

Repairs

KD testified that the tenant dented, scratched, and put holes in the bedroom walls. The landlord submitted photos of this damage. He testified that he spent four hours (at \$20/hour) sanding, filling, and painting the bedroom walls to repair the damage caused by the tenant.

KD also testified that he spent 15 minutes repairing a broken tap handle. The landlord did not submit any documentary evidence showing damage to this item.

Enforcing the Writ of Possession

KD testified that it cost \$120 to file the order of possession (obtained from the RTB on March 3, 2020) at the BC Supreme Court. This was necessary in order to obtain a writ of possession that would allow the bailiff to remove the tenant from the rental unit. The landlord submitted a copy of the receipt from the BC Supreme Court registry corroborating this amount.

The landlord hired a bailiff to enforce the writ of possession and remove the tenant from the rental unit. The bailiff charged \$2,500 for this service. The landlord submitted into evidence a copy of a cheque made out to the bailiff's company for this amount as corroboration.

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

(the “**Four-Part Test**”)

1. Cleaning, Repairs, and Replacement Costs

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37(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.

Based on the documentary evidence provided to me, and on KD's testimony, I find that the tenant has breached this section of the Act. The rental unit required extensive cleaning after the tenant was removed by the bailiff, a large amount of garbage had to be removed, and the rental unit and its contents were damaged as follows:

- 1) the balcony and screen doors were off their tracks and required repairs;
- 2) the mattress and armchair were stained and torn;
- 3) the couch was stained; and
- 4) the bedroom walls were dented, scratched, and required patching and repainting of the damaged areas.

I find the cost of repairing the balcony doors and the bedroom walls to be reasonable and necessary.

I find that all cleaning costs incurred by the landlord were both reasonable and necessary to remedy the tenant's breach.

There is no documentary evidence to support KD's testimony that sink's tap handle was damaged. As such, the landlord has failed to discharge its evidentiary burden to prove such damage existed.

I accept KD's testimony that the damage to mattress, couch, and armchair was such that it necessitated their replacement. I find the cost of the replacement furniture to be reasonable. I also find that the cost to have these items removed from the rental unit and brought to the landfill to be reasonable and necessary.

Based on the documentary evidence and KD's testimony, I find that refrigerator was significantly unclear at the end of the tenancy. Despite not having any photographic evidence supporting KD's testimony that the internal temperature control of the freezer was damaged by the tenant, as damage to this item accounts for the leakage coming from the freezer. Based on this damage, and the replacement cost of the refrigerator, I find that it was reasonable for the landlord to have replaced the refrigerator, rather than repair it.

I accept KD's testimony that the pots and pans were very dirty. However, I do not find it reasonable for the landlord to discard the dirty pots and pans, rather than clean them. I have no evidence to suggest that a throughout cleaning could not have returned the pots and pans to a useable state.

Policy Guideline 40 address the issue of the replacement of parts of a rental unit or a rental unit's furnishings that are not new. It states:

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Used items

If the item being replaced was used when first installed, then the useful life will be determined by taking into account the length of time of that previous use.

Policy Guideline 40 sets the “useful life” of furniture as 10 years and of a refrigerator as 15 years. Accordingly, the amount of these items’ replacement cost that the landlord is entitled to recover must reflect the age of the replaced items.

I do not have any evidence as to how old the damaged mattress, couch or armchair were when the landlord purchased them three years ago. As KD characterized their condition as “very good” when they were purchased, I will, for the purpose of calculating the appropriate deduction, deem that these items were one year old at the time of purchase by the landlord. Accordingly, the amount the landlord is entitled to recover must be reduced by 40% (as the furniture was 40% through its useful life). The landlord is entitled to recover the entirety of the replacement furniture’s shipping cost (\$50)

KD was unsure if the refrigerator was seven or eight years old. I will use the midpoint (seven and a half years) for the purposes of calculating the appropriate deduction. As the refrigerator was halfway through its useful life, the landlord is entitled to recover 50% of the cost of the replacement refrigerator.

2. Removal of the Tenant

As the tenant failed to comply with the order of possession issued on March 3, 2020 and indicated he refusal to leave, I find that the landlord had little recourse other than to obtain a writ of possession from the BC Supreme Court and engage the services of a court bailiff.

I find that the costs incurred were both reasonable and necessary, and that the landlord is entitled to recover them, in their entirety.

3. Filing Fee and Security Deposit

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover their filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit and key deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$3,455.37, representing the following:

Balcony door repairs	\$140.00
Replacement furniture	\$308.00
Replacement refrigerator	\$105.00
Landfill fees	\$56.00
Labour to remove damaged items and garbage to landfill	\$155.00
Carpet cleaning supplies	\$26.87
Labour for cleaning	\$231.00
Labour for wall repairs	\$80.00
Laundry fee (drapes)	\$3.50
Cost of writ of possession	\$120.00
Bailiff fees	\$2,500.00
Filing fee	\$100.00
Security and key deposit credit	-\$370.00
Total	\$3,455.37

The landlord must serve the tenant with a copy of this decision and attached monetary order as soon as possible upon its receipt.

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: August 5, 2020

Residential Tenancy Branch