



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Corporation and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 22, 2020 (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 Agents for the Landlord appeared at the hearing. The Tenants appeared at the hearing. I explained the hearing process to the parties. The parties provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not. I addressed service of the hearing package and Landlord’s evidence and the Tenants confirmed receipt of these.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the 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 the following compensation:

Item	Description	Amount
1	Replacement cabinet	\$445.00
2	Drywall repair and paint	\$1,064.80
3	Carpet cleaning	\$180.00
4	Filing fee	\$100.00
	TOTAL	\$1,789.80

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started October 01, 2003. The Tenants paid a \$522.50 security deposit.

The parties agreed the tenancy ended July 31, 2020.

Agent J.H. testified that the Landlord received the Tenants' forwarding address in writing July 31, 2020. J.H. testified that the Tenants left the forwarding address in an envelope with keys in the rental unit.

Tenant J.D. testified that the Tenants left their forwarding address with the keys and fobs for the rental unit in the mail slot for the Landlord July 31, 2020.

The Agents for the Landlord did not submit that the Landlord had an outstanding monetary order against the Tenants at the end of the tenancy.

The parties agreed the Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

J.H. testified that there was no move-in inspection done and that the rental unit building was new at the start of the tenancy. J.H. did not know if the Tenants were offered two opportunities to do a move-in inspection.

Tenant J.D. testified that a move-in inspection was not done, and the Tenants were not offered two opportunities to do a move-in inspection.

J.H. testified as follows in relation to a move-out inspection. The Landlord did a move-out inspection July 31, 2020. The Tenants did not participate. The Tenants were offered two opportunities to do a move-out inspection; however, not on the RTB form. The Landlord completed the Condition Inspection Report (the "CIR"). The CIR was sent to the Tenants by registered mail September 25, 2020.

Tenant J.D. testified as follows. The Tenants did not participate in a move-out inspection. Tenant J.D. was at the rental unit all day and nobody for the Landlord attended. Tenant J.D. does not recall receiving an RTB form about a move-out inspection. The Tenants agree the CIR was sent to them by registered mail September 25, 2020.

The Tenants submitted that the Landlord extinguished their right to the security deposit pursuant to section 24 of the *Act*.

1 Replacement cabinet \$445.00

J.H. testified as follows. The Tenants removed a cabinet in the kitchen and it was not left in the rental unit at move-out. The Landlord had to replace the cabinet which cost \$445.00. The Landlord is relying on the photos, invoice and CIR in evidence.

Tenant J.D. testified as follows. Tenant J.D. removed a cabinet to install a dishwasher. The cabinet was left in the storage unit of the rental unit. The cost of \$445.00 seems high given the quality of the cabinets. The cabinets were almost 20 years old.

In reply, J.H. agreed the cabinets are likely almost 20 years old.

2 Drywall repair and paint \$1,064.80

J.H. testified as follows. The walls of the rental unit were painted a dark color at the end of the tenancy. The tenancy agreement says tenants can paint but they must return the rental unit to the original color. The Landlord is asking that the Tenants pay for the second coat of paint which was required due to the dark color of the paint in the rental unit. The Tenants also cut a hole in the drywall as shown in the photos submitted. The Landlord had to repair the hole. The Landlord is relying on the photos, invoice and CIR in evidence.

Tenant J.D. testified as follows. The Tenants had verbal permission to paint the rental unit. The Landlord never painted the rental unit throughout the tenancy. Two of the

rooms were a dark color; however, the rest of the rental unit was a neutral grey. The Tenants cut a hole under the stairs. There was a strong chemical smell in the rental unit at move-in and the Tenants found paint thinner and construction materials under the stairs when they cut a panel out.

In reply, J.H. agreed the rental unit was last painted by the Landlord prior to the tenancy.

3 Carpet cleaning \$180.00

J.H. testified as follows. The Tenants were asked to have the carpet professionally cleaned at move-out or to sign over part of the security deposit for the Landlord to have the carpets cleaned as part of the move-out package. The tenancy agreement also addresses carpet cleaning. The Tenants did not provide the necessary paperwork. The carpet needed to be cleaned at move-out. The Landlord received a quote for \$180.00 plus GST. The Landlord is relying on the photos, invoice and CIR in evidence.

Tenant J.D. testified as follows. The carpets were very old and pretty much worn out. The Tenants cleaned the carpets throughout the tenancy. The Tenants were not responsible for cleaning the carpet at the end of the tenancy. The *Act* does not require tenants to clean the carpets. The Tenants vacuumed the carpet at move-out.

Analysis

Security deposit

Pursuant to sections 24 and 36 of the *Residential Tenancy Act* (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. However, given the tenancy started in 2003, the following sections of the *Act* apply:

Transitional: start of tenancy condition

100 (1) Sections 23 [condition inspection: start of tenancy] and 24 [consequences if report requirements not met] of this Act do not apply to a landlord or tenant in respect of a tenancy that started before January 1, 2004, except as provided in subsection (2).

(2) If, after January 1, 2004, a landlord referred to in subsection (1) allows a tenant referred to in that subsection to keep a pet on the residential property for the first time, sections 23 (2) to (6) and 24 apply to the landlord and tenant but only in respect of any pet damage deposit the landlord requires from the tenant.

Transitional: security deposits

103 If a landlord holds a security deposit in accordance with the former Act, the security deposit is deemed to be held in accordance with this Act and the provisions of this Act respecting security deposits apply.

Pursuant to section 100 of the *Act*, neither party extinguished their right to the security deposit pursuant to section 24 of the *Act* because this section does not apply to this tenancy.

Pursuant to section 103 of the *Act*, the remaining sections of the *Act* relating to security deposits do apply.

Based on the testimony of the parties, I find the Landlord did not provide the Tenants an opportunity to do a move-out inspection on the RTB form as required by section 35(2) of the *Act* and section 17(2) of the *Regulations*. Therefore, I find the Tenants could not have extinguished their right to the security deposit pursuant to section 36(1) of the *Act*.

I do not find it necessary to decide whether the Landlord extinguished their right to the security deposit pursuant to section 36(2) of the *Act* as extinguishment only relates to claims for damage and the Landlord has claimed for carpet cleaning, which is not damage.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or claim against it within 15 days of the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing.

Based on the testimony of the parties, I accept that the tenancy ended July 31, 2020.

Based on the testimony of the parties, I accept that the Landlord received the Tenants' forwarding address in writing July 31, 2020.

The Landlord had 15 days from July 31, 2020 to repay the security deposit or claim against it. The Landlord did not repay the security deposit. The Application was filed

September 22, 2020, well past the 15-day deadline. I find the Landlord failed to comply with section 38(1) of the *Act*.

There are exceptions to section 38(1) of the *Act* set out in sections 38(2) to (4) of the *Act* as follows:

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(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...

Given the testimony of the parties and my findings above, I find none of the exceptions apply.

Given the above, section 38(6) of the *Act* applies:

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The Landlord therefore owes the Tenants \$1,045.00 as double the security deposit. The Landlord also owes the Tenants interest in the amount of \$18.50 as calculated by the RTB calculator available here:

<http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>

The Landlord is still entitled to seek compensation from the Tenants, and I consider that now.

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 of Procedure, 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.

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...

1 Replacement cabinet \$445.00

There is no issue that the Tenants removed a cabinet in the kitchen of the rental unit as the parties agreed on this.

I am satisfied the cabinet was not replaced at the end of the tenancy based on the testimony of J.H. which is supported by the photos and CIR. Further, Tenant J.D. did not testify that the cabinet was replaced at the end of the tenancy. Tenant J.D. testified that the cabinet was left in the storage unit of the rental unit.

The disagreement between the parties is over whether the cabinet was left in the rental unit or not. I find it more likely than not that the cabinet was not left in the rental unit for the following reasons. The photos and CIR support that the cabinet was missing. I find it unlikely that the Tenants would not have put the cabinet back where it belonged at the end of the tenancy if the cabinet was still in the rental unit. The Tenants submitted no documentary evidence to support that the cabinet was left in the storage unit of the rental unit. In the circumstances, I am satisfied it is more likely than not that the Tenants did not leave the cabinet in the rental unit and that the cabinet was missing at the end of the tenancy. I am satisfied the Tenants breached section 37 of the *Act*.

I am satisfied the Landlord had to replace the cabinet given I am satisfied the cabinet was missing at the end of the tenancy.

I am satisfied based on the quote in evidence that replacing the cabinet cost \$467.25. The Tenants submitted that this cost is not reasonable; however, the Tenants provided no documentary evidence to support their position. Given this, I find the quote reliable and am satisfied based on it that replacing the cabinet cost \$467.25. In the absence of further evidence, I do not find this amount unreasonable.

I accept that the cabinets in the rental unit were almost 20 years old at the end of the tenancy given the length of the tenancy and the testimony of the parties. However, I do not find it appropriate to reduce the compensation awarded based on the age of the

cabinets because the issue is not reasonable wear and tear on the cabinet over almost 20 years. The issue is that the cabinet was missing at the end of the tenancy. Given this, I am satisfied the Landlord is entitled to the cost of replacing the cabinet. I award the Landlord \$445.00.

2 Drywall repair and paint \$1,064.80

In relation to the hole cut in the drywall, I am satisfied the Tenants did this given the testimony of the parties. The reason for doing so provided by Tenant J.D. does not justify the damage. The Tenants should have had the Landlord deal with the chemical smell. I am satisfied the Tenants breached section 37 of the *Act*.

I am satisfied the Landlord had to repair the hole in the drywall given the nature of the damage. Based on the invoice, I am satisfied this cost \$630.00 plus GST for a total of \$661.50. I am satisfied this amount is reasonable as there is insufficient evidence before me to suggest otherwise. I award the Landlord \$661.50.

In relation to the painting, the useful life of indoor paint is four years (see Policy Guideline 40, page 5). I am satisfied the rental unit had not been painted since 2003 given the testimony of the parties. I am not satisfied the Tenants are required to compensate the Landlord for repainting the rental unit when the paint was more than 16 years old.

3 Carpet cleaning \$180.00

I am satisfied based on the CIR and photos that the carpet was dirty at the end of the tenancy. I am also satisfied the Tenants did not clean the carpet as Tenant J.D. acknowledged the carpets were only vacuumed at move out. I do not find the wear and tear on the carpet relevant. Pursuant to section 37 of the *Act*, the Tenants were required to leave the rental unit reasonably clean. Policy Guideline 01 states at page 2:

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.

(emphasis added)

Pursuant to Policy Guideline 01, I find steam cleaning or shampooing the carpet part of leaving the rental unit reasonably clean in accordance with section 37 of the *Act*. Further, it is not accurate that the *Act* does not require the Tenants to clean the carpet at the end of the tenancy.

I am satisfied the Tenants breached section 37 of the *Act* by not cleaning the carpet and leaving the carpet dirty at move-out.

I am satisfied the Landlord had to have the carpet cleaned given I am satisfied it was dirty. I am satisfied based on the quote that the carpet cleaning cost \$189.00. I find this amount reasonable and note that there is insufficient evidence before me suggesting otherwise. I award the Landlord \$180.00.

4 Filing fee \$100.00

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	Replacement cabinet	\$445.00
2	Drywall repair and paint	\$661.50
3	Carpet cleaning	\$180.00
4	Filing fee	\$100.00
	TOTAL	\$1,386.50

The Landlord owes the Tenants \$1,063.50. However, the Tenants owe the Landlord \$1,386.50. Therefore, pursuant to section 72(2) of the *Act*, the Landlord can keep the security deposit and is considered to hold \$1,063.50. The Landlord is issued a Monetary Order pursuant to section 67 of the *Act* for the remaining \$323.00.

Conclusion

The Landlord owes the Tenants \$1,063.50. However, the Tenants owe the Landlord \$1,386.50. Therefore, the Landlord can keep the security deposit and is considered to hold \$1,063.50. The Landlord is issued a Monetary Order for the remaining \$323.00.

This Order must be served on the Tenants. If the Tenants fail 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: February 10, 2021

Residential Tenancy Branch