Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDL-S, FFL
Tenant: MNSDS-DR, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Landlord filed a claim for:

- $1,939.34 compensation for damage caused by the tenant, their pets or guests to the unit, site, or property – holding the pet or security deposit; and
- recovery of the $100.00 application filing fee.

The Tenant filed a claim for:

- the return of the security deposit in the amount of $1,085.00; and
- recovery of the $100.00 application filing fee;

The Landlord and the Tenant appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the $100.00 Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on January 15, 2019, and ran to January 14, 2020, and then operated on a month-to-month basis. They agreed that the rental unit is a condominium built in 2014, which has one bedroom and one bathroom.

The Parties agreed that the Tenant paid the Landlord a monthly rent of $2,170.00, due on the 15th day of each month. They agreed that the Tenant paid the Landlord a security deposit of $1,085.00, and no pet damage deposit.

The Parties agreed that the tenancy ended on September 14, 2020, because the Tenant decided to pursue other accommodation more fitting with her budget. The Parties agreed that the Tenant gave the Landlord her forwarding address in writing on September 18, 2020 via email. They agreed that they conducted a condition inspection of the rental unit at the start of the tenancy, and that the Landlord gave the Tenant a copy of the condition inspection report ("CIR").

LANDLORD'S CLAIM

The Landlord submitted a monetary order worksheet with the following claims, which we reviewed in the hearing.

	Receipt/Estimate From	For	Amount
1	[Cleaning company]	Clean rental unit	$252.00
2	[Paint store]	Repair chip in hardwood	$8.28
3	[Appliance parts store]	[Rubber seal for oven]	$136.34
4	[Restoration company]	Damage to concrete balcony	$1,500.00
		Total monetary order claim	$1,896.62

#1 CLEANING RENTAL UNIT → $252.00

I asked the Landlord how she found the cleaning company she retained to clean the rental unit after the tenancy ended. The Landlord said:

> My current tenant googled it and preferred that and called for a quote, and I was okay with that quote. I said to book the cleaning and be present, so she'd be happy with the condition of the condominium. Then I paid the amount online.

In answer to how the Landlord knew that this quote was a reasonable amount to charge for this rental unit, the Landlord said: "It was typical for a move out clean – typically $300.00 to $600.00, so I thought $252.00 was reasonable.

The Tenant said:

> Okay, so typically they charge by the hour and $25.00 to $50.00, but I cleaned the unit, and the Landlord asked me to reclean specific areas. I did this, gave photographs to her, and returned the key. I didn't hear from her for four days after that and her new tenant was already in the apartment. I don't know if this cleaning was warranted by me. They had someone come in to repair baseboards, so I don't know if the cleaning was cleaning that up. I don't feel how I was responsible for cleaning after the new tenant has moved in.

The Landlord said:

> On the 14th, we had the first attempt at the condition inspection for her exiting the condominium. A lot of things were not done properly. The walls had scuff marks, the oven was not cleaned, windows. . . a lot, and I told her that if this is how she wants to end it, I would have to hire cleaners. I said I could take it from her security deposit, if she wanted to do that. She said, no, give her more time that day, and meet up the next day on the 15th. The new tenant was supposed to move in on the 18th.
>
> The next day . . . she told me she couldn't make it for the 15th, so later on when I came back the next day to let my tech in to fix baseboards in laundry room, there were things not clean – cupboards, toilet, windows. I listed it all on the CIR – lightbulbs burnt and didn't replace them, a lot of crumbs and grease on the fan. I found a hand towel in the garburator, so I knew I had to hire someone to get the place up to standard for my next tenant.

> I wanted to finish the CIR properly, and that she sign it, so I sent her the form telling her when to meet up again for the second attempt. We did it on the 21st. I told her my concerns, as well as the damage on the balcony, which is the highest cost of all. When I asked for a quote from the tech for my balcony, he quoted a lot more than the security deposit. I said I'd just take the security deposit, but she disagreed with my assessment and the way I said damages were performed.

The Tenant said:

> Again, like I said, I was told what areas to clean, and I did as instructed, and I sent proof. She thanked me for it, and we agreed again to do the move-out inspection, and we did that on September 21st, and her tenant had already moved in and had things on the balcony and throughout the home.

The Landlord submitted five photographs she said were from the rental unit, which she labelled "Poor_Cleaning". These photos reveal dirt on the floor behind an appliance, two photographs of dirty cupboards, and two photographs the subject of which I cannot determine.

Further, the CIR states that the following areas were dirty at the end of the tenancy:

- Stove/Stove top,
- Oven,
- Exhaust hood and fan,
- Bathroom tile crevice.
- Bathtub,
- Toilet has yellow staining,
- Windows and tracks of balcony door, and
- Garbage containers "full of dirt, dust and debris".

The Landlord submitted a copy of an invoice from a cleaning company that charged $240.00 for "move out cleaning", plus $12.00 GST.

#2 PAINT STORE → $8.28

The Landlord said:

> There was just two wood chips on the hardwood floor in the kitchen, so I

enquired about replacing that, and it would cost a ridiculous amount, so I bought wood putty and covered the chips, so the new tenant doesn't get hurt walking on it. My husband bought it and fixed the issue.

The Tenant said:

Yes, she brought it to my attention during the move out inspection on the 14th that there were chips, but she only showed me one. I didn't notice it. I didn't know I did it. Then I had measured it when I came back to clean. It was 33mm x 5 mm - more just wear and tear.

#3 RUBBER SEAL FOR OVEN → $136.34

The Landlord said that this claim was for the oven door gasket. She said:

It's the rubber seal that prevents the heat from coming out of the oven. The gasket was still in place a week or two before when showing. When I came back in a week or two later, I noticed the gasket was broken. Maybe she cleaned too hard and it ripped. I said I'd have to replace this part and get a quote and deduct it from security deposit. This isn't wear and tear - it's broken by force; it was perfectly fine a week or two before.

The Tenant said:

I don't know . . .she said it was fine a few weeks before. I wasn't present when bringing people in the home, so I wasn't aware that she was opening different things. I didn't deliberately ruin the seal. I noticed it when she opened the oven and said it was broken. It was still in tact, but part of it had ripped. I've included a photo of the oven, and one after she had pulled the entire thing out. My photos have dates. Maintenance is under a landlord's responsibility. Also, she removed the entire thing from the oven before we had anybody take a look at it.

The Landlord said: "I removed the part to bring it to a hardware store to get a quote and get exact measurements. I had to show the person what part I was looking for."

The Tenant said:

Again, to get the exact measurement or what type of rubber, there's a manual for

> the oven. You can measure it using a ruler or an iPhone or take a photo to the hardware store. It doesn't have to be removed. I didn't remove the gasket; she removed it.
>
> When I saw it, it was ripped, but the seal was all one piece and there was a rip in it, but about 70% of the seal was still in the door.

The Tenant submitted photographs of the rubber seal broken in the oven, and a second photograph with the broken seal removed from the oven.

The CIR submitted by the Tenant indicates that the oven was in good condition at the start of the tenancy, but the comments at the end of the CIR state: "Oven door gasket seal broken by force." Another comment written onto the CIR was: "Maintenance to appliances are the responsibility of landlord. Gasket was removed by landlord."

#4 RESTORATION COMPANY → $1,500.00

➔ Re damage to concrete balcony

The Landlord said that the residential property was built in 2014, so it (and the balcony) were approximately six years old at the end of the tenancy.

The Landlord said:

> You can see the black patches which are mould on the concrete balcony. In the center there is a tear of the urethane waterproofing cover of the balcony. From my understanding and what I read, it was because of the artificial grass my Tenant put on the balcony. See evidence from [IID] showing problems with artificial grass on concrete or asphalt . . . inadequate drainage – water from rain, melting snow, it will sit between your concrete and the backing material of your grass. It may lead to standing water and large puddles, . . . there's also a second note from [IID] for artificial grass. It means less control over drainage – moisture pools between the concrete and the grass. You can install tiles under the grass to avoid this.
>
> Because [the Tenant] installed artificial grass improperly, it caused mould, and when she lifted it, she caused the membrane to tear off along with it. The waterproofing membrane of the balcony is damaged. To fix that area, he told me that you can't just fix one area of the membrane, and there are multiple steps.

The Landlord referred me to another quote she received for this work. She said that John at MVR, advised her to: "…budget around $1,200.00 to $1,500.00 and that it would require four separate visits."

The Landlord said her second quote was from Keri at [NDD]. The Landlord said this quote included a minimum charge is $2,500.00 plus GST. "So, of course I'm going with the lower quote," she said. The Landlord also said:

> That's a lot more than her security deposit. When I showed her these texts and why I wanted to keep her security deposit, she didn't agree – she said mould is common in the city and not due to her grass.

The Tenant said:

> I did place down some tile – separate tiled AstroTurf and they had drain holes in them. You could lay them down and pick them up. It was only there in the summer months.
>
> I put them down because where the Landlord had her barbeque, there were charcoal marks, so I wanted to spruce it up a bit.
>
> [The Landlord] came down once and her husband one time. They needed to take photos.… Her husband commented on how nice I had made the apartment, and they both saw the Astro Turf. I wasn't aware that if Astro Turf was installed incorrectly that it could do damage. Where the mould is concentrated is where their old barbeque things were. Whether it was the Astro Turf or pots or . . .anything laid down there, we can't tell.
>
> I also submitted a photo of an adjacent apartment. There's a condo a few doors down on the same side, and in those photos, you'll see they have mould everywhere all over their balcony. Mould will and can develop anywhere, because Vancouver is a rain forest.
>
> Lastly, patios are listed by the Strata as a common area and not the responsibility of a tenant either. Even if [the Landlord] wants to make changes to the patio, she'll have to go to the Strata first. As far as I can see, there's no urgency, but something that happens in all Vancouver outdoor patios.
>
> Also, it doesn't state in our tenancy agreement that nothing should be placed on

> the patio. It should be stated in the tenancy agreement.

The Landlord said:

> I don't remember there being mould present when we did the first CIR – nothing is listed under balcony for damage. I only noticed it once she moved out. Yes, it's common for mould here, but if her grass and chair wasn't there, it wouldn't have pulled off the membrane. That is the reason that it's costing that much to repair it. When she pulled off her rug, she took the membrane with it.

The Tenant said:

> Again, I know mould grows everywhere. The damage she's claiming I caused, I don't know if it's from removing the Astro Turf tiles. The burden is on the claimant. You are entitled to walk through at any time, with notice. The burden is on them. I didn't maliciously try to cause any damage to the patio, and it's not part of the actual rental unit - it is within Strata's jurisdiction.

When I asked the Tenant for her source of this information, she said it was "common knowledge", and, "Most will deem an outdoor patio or the exterior of the building as a common area."

The CIR submitted by the Tenant indicates that the balcony was in good condition at the start of the tenancy. On the move-out report side of the CIR, it states: "Large black mold/stain and damage to urethane waterproofing membrane of balcony floor." In addition, the Tenant wrote the following at the end of the CIR: "Artificial grass is not cause for mould as the climate in [the City] is [undecipherable word] to mould – its everywhere."

The Tenant checked a box at the end of the CIR which states: "do not agree that this report fairly represents the condition of the rental unit for the following reasons" (handwritten comments noted above written below this statement).

TENANTS' CLAIMS

The Tenant has applied for the return of the security deposit that the Landlord is holding without cause in the amount of $1,085.00.

The Tenant said:

> I'd like the monetary order for the security deposit returned, because I don't believe I have caused any intentional damage or anything that warrants the lack of return of the security deposit. We started with the cleaning, and I was asked to reclean. I returned the keys, and they didn't respond to me until four days later after her tenant was in. I don't know if I'm responsible for the cleaning that the Tenant specifically requested. The Tenant googled this cleaner.
>
> As for the wood chip, given the size of the chip in the kitchen – that's normal wear and tear. This doesn't warrant a bill of $8.28
>
> I also think that the oven gasket; I agree that the seal had been split. I don't know when it happened. An appliance falls under a landlord's responsibility. When she showed me it was ripped, I took a photo and then she ripped the rest out.
>
> Finally, I did not cause a natural process here in [the City] – the mould on the balcony. There is mould there and no Astro turf, so mould can grow anywhere.

The Landlord said she had no comments about the Tenant's testimony in this regard.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I advised them of how I would analyze the evidence presented to me. I said a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, each Party, as applicant, must prove:

1. That the Other Party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the you to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the you did what was reasonable to minimize the damage or loss.

("Test")

Section 32 of the Act states that tenants "…must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." Section 37 states that tenants must leave the rental unit "reasonably clean and undamaged".

RTB Policy Guideline #1 ("PG #1"), "Landlord & Tenant – Responsibility for Residential Premises" is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property, and obligations with respect to services and facilities. PG #1 also helps interpret sections 32 and 37 of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
>
> Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.
>
> [emphasis added]

LANDLORD'S CLAIM

#1 CLEANING RENTAL UNIT → $252.00

I find that the Landlord demonstrated that the Tenant had neglected to clean behind at least one appliance and inside two cupboards. However, there were no photographs of dirty floors, uncleaned bathroom, scuff marks on walls that the Landlord mentioned, but did not photograph. The CIR noted dirty areas in the kitchen, the bathroom, and a few other specific spots.

The Parties advised me that the rental unit has one bedroom and one bathroom. This would mean that it has approximately five rooms, with a bathroom, bedroom, kitchen, living room/dining room, and halls. If the cleaners charged a standard hourly rate of $30.00 per hour, this would have taken approximately eight and a half hours to clean a fairly small apartment. The Landlord's evidence is that "move out cleans" cost between $300.00 and $600.00, therefore, this price was reasonable; however, the Landlord did not provide any documentary evidence of other quotes to substantiate this claim.

Based on the testimony and documentary evidence before me, I find that there is evidence that the Tenant did not clean all areas of the rental unit very well; therefore, I find it more likely than not that the entire rental unit needed a secondary clean to that which the Tenant said she conducted.

However, I find that it should not take professional cleaners over eight hours to clean a one-bedroom, one-bathroom apartment. I find that five hours is a more reasonable amount of time to clean a dirty apartment of this size; therefore, I find that the Landlord was overcharged for this service, which I find the Tenant should not have to pay for. However, I find that there was some evidence that a cleaning needed to be done at the end of the tenancy, therefore, I award the Landlord $30.00 per hour for five and a half hours for a total award of **$165.00**.

#2 PAINT STORE → $8.28

Based on the Parties' testimony, I find that the chip in the kitchen floor may have been caused by the Tenant; however, given the size, as measured by the Tenant and undisputed by the Landlord, I find that this amounts to normal wear and tear in a residence. While I applaud the Landlord for finding an inexpensive solution, I find that there is insufficient evidence that this is more than mere wear and tear, and I dismiss this claim without leave to reapply.

#3 RUBBER SEAL FOR OVEN → $136.34

In PG #1, ovens are addressed in a section entitled "Major Appliances":

> **MAJOR APPLIANCES**
>
> 1. At the end of the tenancy the tenant must clean the stove top, elements, and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.

2. If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.

3. The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

   [emphasis added]

The Tenant acknowledged that the seal was not ripped apart at the start of the tenancy; therefore, I find it more likely than not that the Tenant was responsible for the seal breaking during the tenancy. I agree that the Landlord removed the seal from the oven in order to replace it. I find this did not worsen the situation, because the oven could not have been used when the seal was still attached, but ripped.

Based on the evidence before me, overall, and pursuant to sections 32 and 37 of the Act and PG #1, I find it more likely than not that the Tenant is responsible for the replacement of the rubber seal for the oven. I, therefore, award the Landlord with **$136.34** from the Tenant for this claim.

#4 RESTORATION COMPANY → $1,500.00

➔ Re damage to concrete balcony

The Tenant's evidence focused on mould being common in this geographic location. However, the Landlord's claim was for a tear to the urethane waterproofing membrane on the balcony, rather than solely the Tenant's failure to clean the mouldy patches. I infer that the Landlord is suggesting that but for the artificial grass the Tenant placed on the balcony, that the urethane waterproofing cover would not have ripped.

However, the Tenant said that she only placed it on the balcony in the summer months. Further, the balcony and its urethane cover are as old as the residential property, which the Landlord said was built in 2014. Therefore, at the end of the tenancy, the urethane cover was approximately six years old.

Policy Guideline #40 (“PG #40”) is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an 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 of the replacement.

Another consideration is whether the claim is for actual damage or normal wear and tear to the unit. Section 32 of the Act requires tenants to make repairs for damage caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant’s pets. Section 37 requires tenants to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

In PG #40, the useful life of a waterproofing sealer is five years. The evidence before me is that the urethane waterproofing cover was new in 2014, so it was approximately six years old at the end of the tenancy and had no years of its useful life left. The CIR indicates that the balcony cover in good condition at the start of the tenancy, but the Landlord said in the hearing that it was ripped at the end, due to the artificial grass the Tenant placed on it.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear. I find that the useful life of the urethane waterproofing cover had ended, and therefore, the Tenant is not responsible for replacing it.

Further, and based on the evidence before me overall, I find that the Landlord has not provided sufficient evidence to find the Tenant responsible for the urethane waterproofing cover ripping on the balcony. Therefore, I dismiss this claim without leave to reapply.

TENANT’S CLAIM

The Parties agreed that the tenancy ended on September 14, 2020, and that the Tenant

provided the Landlord with her forwarding address in writing on September 18, 2020.

Section 38(1) of the Act states the following about the connection between these dates:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the $1,085.00 security deposit within fifteen days after September 18, 2020, namely by October 1, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlord has provided no evidence that she returned any amount of the security deposit; however, I find that she applied to the RTB to claim against the deposit on September 30, 2020. Therefore, I find the Landlord complied with her obligations under section 38(1).

I find it appropriate in this set of circumstances to administer the security deposit as set off from the Landlord's monetary awards below, pursuant to section 72(2)(b) of the Act.

Summary and Set Off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of $1,085.00 in partial satisfaction of the Landlord's monetary claim.

Given that the Parties are partially successful in their applications, I decline to award the $100.00 Application filing fee to either Party.

	Receipt/Estimate From	For	Amount Awarded
1	[Cleaning company]	Clean rental unit	$165.00
2	[Paint store]	Repair chip in hardwood	$0.00
3	[Appliance parts store]	[Rubber seal for oven]	$136.34
4	[Restoration company]	Damage to concrete balcony	$0.00
		Total monetary order claim	$301.34

The Landlord is awarded $301.34 for this Application. I authorize the Landlord to deduct this amount from the Tenant's security deposit before returning the remaining amount of $783.66. I, therefore, award the Tenant with a Monetary Order from the Landlord in the amount of **$783.66**.

Conclusion

The Parties are both partially successful in their claims. I found that the Landlord submitted sufficient evidence to justify an award of $301.34, which the Landlord is authorized to deduct from the Tenant's $1,085.00 security deposit. The Tenant is awarded the remaining $783.66 of her security deposit back from the Landlord.

I grant the Tenant a Monetary Order under section 67 from the Landlord in the amount of **$783.66**. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: February 2, 2021

Residential Tenancy Branch