Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL, MNDCL, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on October 15, 2020 (the "Application"). The Landlord applied as follows:

- For compensation for damage to the rental unit;
- To recover unpaid rent;
- For compensation for monetary loss or other money owed;
- To keep the security deposit; and
- For reimbursement for the filing fee.

The Landlord appeared at the hearing. The Tenant appeared at the hearing with J.B (the "Tenants"). I explained the hearing process to the parties. The parties provided affirmed testimony.

The Tenants sought an adjournment at the outset of the hearing based on there being a death in their family and requiring more time to prepare for the hearing and submit evidence. J.B. made submissions about not yet having certain evidence.

The Landlord did not agree to an adjournment.

I considered rule 7.9 of the Rules of Procedure (the "Rules") which states:

> 7.9 Criteria for granting an adjournment
>
> Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I did not allow an adjournment for the following reasons. The Tenants did not provide evidence to support their stated basis for an adjournment. The Tenants acknowledged receiving the hearing package and Landlord's evidence in October of 2020. The Tenants had more than three months to submit evidence and prepare for the hearing which I found to be more than sufficient time. The Landlord did not submit a large amount of evidence such that three months was not sufficient time to review and respond to the Application. The tenancy ended March 31, 2020 and therefore the issues relating to it should be resolved sooner rather than later. It was not clear how the evidence the Tenants said they did not yet have was relevant to the issues before me on the Application. I proceeded with the hearing.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence. The Tenant acknowledged receiving the hearing package and Landlord's evidence in October of 2020.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all 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 recover unpaid rent?
3. Is the Landlord entitled to compensation for monetary loss or other money owed?
4. Is the Landlord entitled to keep the security deposit?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Cleaning	$480.00
2	Carpet damage	$800.00
3	Painting	$2,500.00
4	Garbage disposal	$200.00
5	Broken patio door handle	$175.00
6	April and May rent	$2,990.00
7	BC Hydro for April and May	$51.00
8	Vacancy insurance	$94.00
9	Filing fee	$100.00
	TOTAL	**$7,390.00**

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The agreement started August 01, 2019 and was for a fixed term ending July 31, 2021. Rent was $1,495.00 per month due on the first day of each month. The Tenants paid a $747.50 security deposit.

The parties agreed there was a prior tenancy agreement between them from 2017 to 2019.

The parties agreed the tenancy ended March 31, 2020.

The parties agreed the Tenants did not provide the Landlord with a forwarding address in writing.

The Landlord acknowledged he did not have an outstanding monetary order against the Tenants at the end of the tenancy and the Tenants did not agree to him keeping the security deposit.

A Condition Inspection Report (the "CIR") was submitted and the parties agreed it is accurate in relation to a move-in inspection.

The Landlord testified as follows in relation to a move-out inspection. The Tenants sent the Landlord an email on March 31, 2020 advising that they were moving out that day. The Tenants did move out March 31, 2020. The Landlord was not able to attend the

rental unit until April. He completed the CIR April 07 or 08, 2020. He could not meet with the Tenants because he was not in contact with the Tenants. He did not provide the Tenants an opportunity to do a move-out inspection on the RTB form.

The Tenant testified that the Tenants could not do a move-out inspection with the Landlord because the Landlord was in quarantine.

#1 Cleaning

The Landlord sought cleaning costs and testified that the Tenants did not meet the cleaning requirements at the end of the tenancy. The Landlord relied on photos in evidence. The Landlord testified that he and his daughter cleaned the rental unit.

The Tenants testified as follows. The rental unit was not as dirty as the Landlord claims. The rental unit sustained severe water damage and required restoration or renovations. A cleaning crew was supposed to attend the rental unit to clean it from the restoration or renovations done. The workers who did the restoration or renovations walked through the rental unit with their work boots on and cut tiles on the balcony. Perhaps the Tenants missed some spots under the fridge and stove.

In reply, the Landlord testified as follows. There was a leak in December of 2019; however, this was addressed by strata and the insurance company. In March, the Landlord emailed the Tenants about whether there was anything outstanding to be done in relation to the leak and the Tenants said there was not except for a small issue with bathroom tiles.

#2 Carpet damage

The Landlord testified as follows. The photos in evidence show the carpet on move-in. The carpet was not new and was mid-range. There were a few small stains on the carpet as noted in the CIR. The carpet was generally fine. The photos show the carpet at move-out. There were huge bleached patches on the carpet at the end of the tenancy. He had to remove the carpet. He had wood floor installed for $5,000.00. He is asking for $800.00 for the carpet damage which represents the useful life remaining for the carpet.

The Landlord did not know how old the carpet was and testified that it was probably replaced around 2005 to 2007.

The Tenants testified as follows. The Landlord told the Tenants the carpet in the rental unit was the original carpet and the rental unit was built in 1993. In relation to the stains on the carpet, the renovation company spilled paint on the carpet. The Tenants tried to clean the paint up and let the Landlord know about the paint at the time. The restoration company was supposed to attend and clean the rental unit. The Tenants did not cause staining beyond reasonable wear and tear. The carpet was not stained as shown in the photos at the end of the tenancy.

In reply, the Landlord stated that the Tenants are fabricating evidence and that the Tenants confirmed there was nothing outstanding in relation to the leak except the bathroom tiles. The Landlord denied that the Tenants ever told him the painters ruined the carpet.

#3 Painting

The Landlord testified as follows. The paint in the rental unit was new in 2017 when the Tenants moved in. The Tenants re-painted the rental unit without permission. The Tenants said they would re-paint the rental unit the original colors. The photos show the Tenants did not re-paint the rental unit. He obtained quotes for the painting but did the painting himself. There are invoices in evidence for the cost of materials.

The Tenants testified as follows. The Tenants re-painted in 2017. They asked the Landlord if it was okay to re-paint and “were not told no”. The Landlord said he liked the painting done. The Landlord never told the Tenants to re-paint the rental unit back to the original colors. The walls were re-painted due to the leak and damage, the Landlord could have said something about the color at that time.

In reply, the Landlord raised concerns about the Tenants’ testimony about what occurred in relation to the leak. The Landlord testified that the area affected by the leak was very small and that the restoration company did not re-paint the rental unit.

#4 Garbage disposal

The Landlord testified as follows. The garbage disposal was broken at the end of the tenancy and there was a bent spoon in it. He purchased a new garbage disposal for $95.00 as shown in the receipt in evidence. The Landlord is seeking $95.00 for the garburator, $80.00 for labour and $15.00 for materials to install the garburator. The Landlord installed the garburator himself.

The Landlord testified that the garbage disposal was replaced around 2005 to 2007 but also stated that he is not sure about this.

The Tenants testified as follows. The Tenants never used the garbage disposal. The Tenants did not break the garbage disposal and do not know about the spoon in it.

#5 Broken patio door handle

The Landlord testified as follows. The patio door handle was broken at the end of the tenancy as shown in the photos. The cost to replace the handle is shown in the receipts submitted. The amount sought is for materials and labour.

The Tenants testified as follows. The patio door handle broke on move-out. The handle was old and faded from the sun. The door was hard to open and close and the handle started to crack over time.

#6 April and May rent

The Landlord testified as follows. He received an email from the Tenants March 31, 2020 saying they were moving out that day. The Tenants moved out with two months left on their lease. The Landlord could not attend the rental unit until April. The Landlord had to paint and install new floors and so could not re-rent the unit for April or May. The Landlord did not try to re-rent the unit because of the damage and condition of the rental unit.

The Tenants testified as follows. They communicated with the Landlord at the start of March about moving out because they were not happy in the rental unit. The Landlord listed the rental unit for sale and sold it in May.

The Tenants raised issues about the tenancy. I asked the Tenants if they provided a breach letter to the Landlord as set out in Policy Guideline 08. J.B. testified that the Tenants provided a breach letter but that it did not include a deadline for the Landlord to address the issues.

In reply, the Landlord denied receiving a breach letter from the Tenants. The Landlord acknowledged selling the rental unit in May.

#7 BC Hydro for April and May

The Landlord sought BC Hydro costs for April and May.

The Tenants disputed having to pay BC Hydro costs for April and May.

#8 Vacancy insurance

The Landlord sought compensation for having to pay an extra insurance charge due to the rental unit being vacant for April and May.

The Tenants disputed having to pay compensation for the Landlord having to pay an extra insurance charge for April and May.

The Landlord submitted the following documentary evidence:

- Photos of the rental unit at move-in and move-out
- The CIR
- A painting quote
- A Home Depot receipt
- A receipt for the garbage disposal
- Rent cheques for April and May
- BC Hydro invoices
- Emails with the strata president
- An insurance receipt

Analysis

Security deposit

Under sections 24 and 36 of 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.

I find based on the testimony of the parties and CIR that the Tenants participated in a move-in inspection. I find based on the testimony of the Landlord that the Landlord did not provide the Tenants an opportunity to do a move-out inspection on the RTB form. In

the circumstances, I am not satisfied the Tenants extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished his rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlord has claimed for cleaning, loss of rent, utilities and insurance costs.

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

Based on the testimony of both parties, I accept that the Tenants did not provide the Landlord with a forwarding address in writing.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit or claim against it. Given the Tenants did not provide the Landlord with a forwarding address in writing, section 38(1) of the *Act* has not been triggered and the Landlord was entitled to claim against the security deposit at the time the Application was filed.

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.

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…

Pursuant to rule 6.6 of the Rules, 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.

I note at the outset that I do not accept the Tenants' testimony about the restorations or renovations generally. The parties gave conflicting testimony about the nature and extent of the leak, restorations or renovations. I would expect there to be documentary evidence about these issues if the leak, restorations or renovations were as described by the Tenants. However, there is no documentary evidence before me about the leak, restorations or renovations.

I acknowledge that the Landlord bears the onus to prove the claim and I am satisfied the Landlord has done so where outlined below because the Landlord submitted documentary evidence to support his position. The Tenants did not submit any documentary evidence to support their position.

I acknowledge that the Landlord did not submit documentary evidence about the leak, restorations or renovations; however, I do not find this problematic for two reasons. First, it is not the Landlord's position that the leak, restorations or renovations are relevant to the claims being made. Second, the Tenants did not submit anything that would have alerted the Landlord to their argument that the leak, restorations or renovations are relevant to the claims being made such that I would find the Landlord should have submitted documentary evidence about these issues.

#1 Cleaning

I am satisfied based on the testimony of the Landlord, photos and CIR that the balcony, under the stove, under the fridge, inside the oven and the shower were dirty at the end of the tenancy.

I do not accept the Tenants' testimony about the restorations or renovations generally as explained above.

Further, in relation to cleaning, it is unreasonable to suggest that a restoration or renovation company was going to attend the rental unit to clean the balcony, under the stove, under the fridge, inside the oven and the shower due to a water leak in the rental unit. I do not see how the restoration or renovation company could have caused the listed areas to be dirty or why they would be responsible for cleaning the listed areas.

I am satisfied the Tenants breached section 37 of the *Act* by not leaving the listed areas reasonably clean.

I am satisfied the Landlord had to clean the listed areas. The usual rate for cleaning is $20.00 to $25.00 per hour. I am not satisfied that cleaning the listed areas would reasonably have taken more than three hours as the evidence provided does not support this. Therefore, I award the Landlord $75.00 for cleaning.

#2 Carpet damage

I am satisfied based on the testimony of the Landlord, photos and CIR that the carpet was in fair condition at move-in and bleached, stained and damaged at move-out. Bleach stains on carpet are not reasonable wear and tear. The stains shown in the photo of the master bedroom hall are beyond reasonable wear and tear given the number and extent of the staining.

I do not accept that the renovation company spilled paint on the carpet as the parties gave conflicting testimony about this and I would expect to see some documentary evidence to support that this occurred. I again note that I do not accept the Tenants' testimony about the restorations or renovations generally for the reasons stated above.

I am satisfied the Tenants breached section 37 of the *Act* by leaving the carpet stained and damaged beyond reasonable wear and tear.

Based on the photos, I am satisfied large portions of the carpet had to be replaced.

The parties disagreed about how old the carpets were. Based on the CIR and photos, I am satisfied the carpets were in fair condition on move-in and that they had many years of use left. I am satisfied the Landlord is entitled to $800.00 as sought given the condition of the carpet at move-in versus move-out and given I am satisfied large portions of the carpet had to be replaced. I find the $800.00 balances the age of the carpet, the damage to the carpet and the need to replace the carpet.

#3 Painting

I am satisfied the Tenants painted the rental unit different colors during the tenancy based on the testimony of the parties and the photos. I do not accept that the Tenants had permission to re-paint as I would expect permission to be in writing and there is no documentary evidence of this before me. Nor do I accept that the restoration or renovation company re-painted the rental unit for the same reasons already outlined above.

I am satisfied the Tenants breached section 37 of the *Act* by painting the rental unit without permission and not returning it to the original color at the end of the tenancy.

I am satisfied the Landlord was entitled to re-paint the rental unit to return it to its original color. However, I am not satisfied the Landlord is entitled to $2,500.00 for painting because the paint was approximately two years and eight months old at the end of the tenancy. Pursuant to Policy Guideline 40, interior paint has a useful life of four years. Considering the age of the paint, I award the Landlord $625.00.

#4 Garbage disposal

I am not satisfied based on the evidence provided that the garbage disposal was broken at the end of the tenancy as this is not reflected on the CIR and there is no other documentary evidence to support this. I am not satisfied the Tenants broke the garbage disposal or breached section 37 of the *Act* in this regard.

#5 Broken patio door handle

I am satisfied the Tenants broke the patio door handle as they acknowledged this. The photos do not support that the handle was particularly old or in bad shape at the start of the tenancy. The CIR indicates that the patio/balcony doors were good on move-in. In

the circumstances, I am satisfied that breaking the handle was beyond reasonable wear and tear. I am satisfied the Tenants breached section 37 of the *Act* in this regard.

I am satisfied the Landlord had to replace the handle to reasonably use the patio door. I am satisfied a new handle cost $102.62 based on the receipt submitted. I am satisfied the Landlord had to spend time purchasing and installing the new handle. I am satisfied the Landlord is entitled to $175.00 for materials and labour relating to the broken handle.

#6 April and May rent

I am satisfied the parties entered into a fixed term tenancy ending July 31, 2021 based on the written tenancy agreement.

I am satisfied the Tenants ended the tenancy and moved out of the rental unit March 31, 2020 as the parties agreed on this.

Section 45 of the *Act* states:

> (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> > (a) is not earlier than one month after the date the landlord receives the notice,
> >
> > (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
> >
> > (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
>
> (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Policy Guideline 08 states:

> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:
>
> - that there is a problem;
> - that they believe the problem is a breach of a material term of the tenancy agreement;
> - that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
> - that if the problem is not fixed by the deadline, the party will end the tenancy.
>
> Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

J.B. testified that the Tenants provided a breach letter but that it did not include a deadline for the Landlord to address the issues. I find on J.B.'s own testimony that the Tenants did not comply with Policy Guideline 08 in relation to ending the tenancy for breach of a material term.

Further, I do not accept that the Tenants provided the Landlord a breach letter. The parties gave conflicting testimony on this point. I would expect to see a copy of the breach letter and evidence that it was provided to the Landlord when tenants are taking the position that they ended the tenancy in accordance with section 45(3) of the *Act*. There is no breach letter in evidence before me.

In the circumstances, I am not satisfied the Tenants complied with section 45(3) of the *Act*.

Given the above, I am satisfied the Tenants breached the tenancy agreement and section 45(2) of the *Act* by ending the fixed term tenancy early.

I am satisfied the Landlord suffered loss as a result of the breach as I am satisfied the rental unit was not re-rented for April or May. I did not understand the Tenants to dispute this.

The Landlord was required to mitigate his loss by attempting to re-rent the unit. The Landlord did not do so. However, I am satisfied the Landlord is entitled to loss of rent for April for two reasons. First, I accept that the Tenants only provided the Landlord written notice that they were vacating March 31, 2020 as I did not understand the Tenants to state that they provided written notice in accordance with section 45(4) and 52 of the *Act* prior to this date. I am satisfied the Landlord could not have re-rented the unit for April when he learned of the Tenants vacating March 31, 2020. Further, I accept that some cleaning had to be done and that the carpet had to be replaced at the end of the tenancy and therefore am satisfied the Landlord could not have re-rented the unit for April in the circumstances.

I note Policy Guideline 03 which states at page two:

> Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

I do not accept based on the evidence provided that the rental unit was left in such a state that it could not have been re-rented for May and therefore do not award the Landlord loss of rent for May. The Landlord is awarded $1,495.00 for loss of rent for April.

#7 BC Hydro for April and May

The Tenants are not responsible for paying for utilities after the end of the tenancy on March 31, 2020 as the Tenants were not in the rental unit using utilities.

#8 Vacancy insurance

I am not satisfied as to what the Landlord's insurance company required as the Landlord did not submit documentary evidence showing that he was required to pay an extra insurance charge due to the rental unit being vacant for April and May. Nor does the receipt in evidence show what it was for or what the insurance requirements were. I am not satisfied the Landlord is entitled to compensation for insurance charges in the absence of further evidence.

#9 Filing fee

Given the Landlord was mostly 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	Cleaning	$75.00
2	Carpet damage	$800.00
3	Painting	$625.00
4	Garbage disposal	-
5	Broken patio door handle	$175.00
6	April and May rent	$1,495.00
7	BC Hydro for April and May	-
8	Vacancy insurance	-
9	Filing fee	$100.00
	TOTAL	**$3,270.00**

The Landlord can keep the $747.50 security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining $2,522.50 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to $3,270.00. The Landlord can keep the security deposit. The Landlord is issued a monetary order for the remaining $2,522.50. This Order must be served on the Tenant. If the Tenant fails 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: March 11, 2021

Residential Tenancy Branch