



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding golden Goals Services LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, FF

Introduction

This matter convened by teleconference on February 9, 2021, to deal with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenants; and
- recovery of the filing fee.

The landlord/owner and tenants attended the original and reconvened hearings. Due to length of time issues, the matter was adjourned.

An Interim Decision was issued on February 9, 2021, in which I ordered the hearing be adjourned and reconvened on the date and time contained in the attached Notice of Adjourned Hearing. That Decision is incorporated by reference and should be read in conjunction with this Decision.

At the original hearing, the landlord had presented their evidence in full. The reconvened hearing began with the testimony and evidence of the tenants.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants and to recover the cost of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of July 1, 2019, a fixed term through June 30, 2020, monthly rent of \$2,599, due on the 1st day of the month, and a security deposit of \$1,299.50 being paid by the tenants to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The landlord's monetary claim is:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Microwave replacement	\$550.00
2. Oil based stains and scratches on flooring	\$475.00
3. Kitchen sink discoloration	\$575.00
4. Stove glass burner replacement	\$430.00
5. 2 blinds replacement	\$155.00
6. Utility bill not paid	\$72.98
7. Cleaning	\$88.00
8. Damage to laminate flooring	\$2,691.35
TOTAL	\$5,037.34

Microwave replacement –

The landlord said that the microwave was brand new at the start of the tenancy and during the tenancy, the microwave stopped working. The landlord said that the tenants failed to notify him at the time, resulting in a lost warranty.

The landlord said the microwave has not been replaced.

The landlord submitted that there was not a move-out inspection, as the tenants failed to let him know when they moved out. Further, the tenants did not provide a forwarding address and he received the keys in the boiler room. The tenants did not respond to his text messages, according to the landlord.

Oil based stains and scratches on flooring –

The landlord said that the rental unit was left in an unsanitary condition and was not cleaned.

The landlord submitted that he had not ever seen a tenancy like this and also the landlord confirmed that no repairs had been made to the floors. The landlord said he had to have this hearing first.

Kitchen sink discoloration –

The landlord said that the sink was in perfect condition when the tenants moved in and they put something in the sink which caused a discoloration. The landlord submitted that the substance must have been a bleach and the sink became rusty.

Stove glass burner replacement –

The landlord said the photographs show that the stove top was completely damaged and could not be cleaned. The landlord said that the tenants did not maintain the stove top properly.

2 blinds replacement –

The landlord said that the blinds were brand new when the tenants moved in and when they moved out, they were not in good condition. The landlord said that two of the blinds were not useable and they have been replaced.

Utility bill not paid –

The tenants agreed to this claim.

Cleaning –

The landlord said that the stove was dirty, the drawers were left messy, the bathroom sinks were not draining, and the floor and showers were not cleaned. The landlord said that they could not get new tenants with the condition of the rental unit.

Damage to laminate flooring –

The landlord said that the tenants damaged the floor by pulling furniture over the floor. The landlord said the floor was damaged and stained and that he will repair the floor when he gets the money from the tenants.

The landlord said the tenants smoked marijuana in the rental unit and had a marijuana business.

Relevant evidence filed by the landlord included a 1 page document listing estimates for repair/replacement of building items, undated photographs, move-in condition inspection report (Report), and text message communication between the parties.

Tenants' response –

Microwave replacement –

The tenants submitted that the height of the microwave was too high and not user friendly and they only used it during the first few months. The tenant said that they had their own microwave. The tenant submitted that the microwave did not need replacing, as only two numbers on the microwave keypad did not work.

Oil based stains and scratches on flooring –

The tenants denied damaging the floor. The tenants submitted that the photographs submitted by the landlord were zoomed in and showed only minor scuff marks and no stains. The tenants asserted that the landlord's black and white photographs show no reference to date and time and could be from anywhere on any date.

The tenant said that they left the rental unit extremely clean, as shown by their photographs.

Kitchen sink discoloration –

The tenants submitted that the sink was thoroughly cleaned with hot water and soap, and an anti-scratch pad.

The tenants submitted that minerals leeching from old pipes and hard water can cause discoloration. The tenants submitted that the discoloration does not change the use of the sink.

Stove glass burner replacement –

The tenants submitted that their photographs show the stove top was cleaned and that normal wear and tear caused any marks around the burner. The tenant submitted that they wiped the stove after each use and there are no other marks outside the burner rings.

2 blinds replacement –

The tenants submitted that they saw no damage from the landlord's undated photographs, which showed only one blind. The tenants submitted that the blind in question only missed a rod to open and close the slats. The tenants submitted that when they were shown the rental unit on January 23, 2019, that rod was already missing. Further, a rod on another window sill that was too long was just there and never installed.

The tenant said that a rod replacement is only about \$20 and the landlord's agent said they were terrible blinds to start.

Cleaning –

The tenants submitted that their photographs taken on July 31, 2020 shows the rental unit left in immaculate condition.

Damage to laminate flooring –

The tenants submitted that the landlord provided no photographs of floor damage and no proof of floor damage. The tenant submitted that all the landlord submitted as proof of this claim was the invoice from the floor installation in March 2019. The tenants submitted that if the floor was damaged by 30%, that damage would be seen by their photographs.

The tenants argued that the restoration company used by the landlord for this application for estimates has a conflict of interest because the manager works for the landlord full time as the building maintenance manager.

The tenants submitted that the estimates supplied by the restoration company is not on a proper invoice, but rather typed word document with no dates, no signature and no company logos or information.

The tenants submitted that on the final day of the tenancy, they text messaged the landlord, who was on site, to take the keys; however, the landlord refused to wait for the tenants. They were instructed by the building manager to return the keys by slipping them under the boiler room door. According to the tenants, they waited an hour to see if anyone would come pick up the keys and do an inspection. The tenant submitted that the landlord never text messaged or emailed them about any damage to the rental unit and they only found out about claimed damages when receiving the application for dispute resolution.

Relevant evidence filed by the tenants included move-in and move-out photographs of the rental unit, text message communication between the parties, and a rental listing they described as showing the rental unit was advertised using the same appliances the tenants used.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or

tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

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

Under the Act, tenants are required to leave the rental unit reasonably clean when they vacate. The tenants are responsible for paying cleaning costs where the property is left at the end of the tenancy that does not comply with the Act. Tenants are not responsible for cleaning of the rental unit to bring the premises to a higher standard.

Microwave replacement –

The landlord has claimed that the tenants are responsible for replacement of a microwave as they were not notified of the microwave not working and that they lost the opportunity to use the warranty.

In this case, I find the landlord submitted insufficient evidence that they were unable to use the warranty or that the tenants damaged the microwave. The landlord had the right during the tenancy to make periodic inspections, which would have indicated to the landlord that the microwave was not working.

Further, I accept the tenants' evidence, after viewing the high placement of the installed microwave and the tenants' microwave being on the kitchen counter, that they did not use the landlord's microwave past the beginning of the tenancy.

Further, the microwave has not been replaced and substantiates that the landlord has not suffered a loss. For the above reasons, I find the landlord submitted insufficient evidence that the tenants damaged the microwave and dismiss this claim, without leave to reapply.

Oil based stains and scratches on flooring –

I have reviewed the landlord's photographs, which were taken at an extremely up close range. At most, I saw very minor and small scuff marks which I find do not show damage to the floor. The photographs were undated and due to the extreme, close-up nature of shot, I could not determine whether the marks were from the rental unit. I do not find it would be possible to see the marks absent the camera being very close to the mark.

The landlord's half-page typed document, said to be from a restoration company, mentions in two sentences that the flooring requires a deep cleaning. The document is unsigned and undated and does not provide any detail of the proposed work. I find this document to be self-serving and find no evidence to support that any restoration company prepared this statement.

I give this document no weight.

I find that if there were any small marks caused by the tenants to be reasonable wear and tear and also, find the landlord's claim to be unsupported by evidence and frivolous.

The landlord's claim for stains and scratches are dismissed, without leave to reapply.

Kitchen sink discoloration –

I have reviewed the photograph of the landlord showing a part of the sink. I find that there appear to be small water marks and that these marks do not impact the functionality of the sink.

I find the landlord has submitted insufficient evidence of a loss, as the sink has not been replaced and is still being used by subsequent tenants.

I find the landlord submitted insufficient evidence of a violation of the Act by the tenants and his claim for a sink replacement is dismissed, without leave to reapply.

Stove glass burner replacement –

I have reviewed the photographs submitted by both parties. I find that the marks left on the glass stove top show that the tenants used the stove top for cooking, and therefore, any marks are reasonable wear and tear. I find the landlord submitted insufficient evidence that the marks impacted the functionality of the stove top or that the stove top has been replaced. Additionally, the landlord has relied on a document, which simply states, without support, that the cost, parts and labour will be \$430. I have placed no weight on this unsigned and undated half-page document, as previously explained.

For these reasons, I find the landlord has not met his burden of proof and dismiss this claim, without leave to reapply.

2 blinds replacement –

I find the tenants provided a reasonable explanation that the only issue with the blinds were rods and that one rod had been uninstalled since the beginning of the tenancy.

Additionally, the landlord has relied on a document, which simply states, without support, that the blinds need to be replaced. I have placed no weight on this unsigned and undated half-page document, as previously explained.

Additionally, as the landlord has not submitted evidence that the blinds have been replaced in their entirety, I find the landlord has not met his burden of proof and dismiss this claim, without leave to reapply.

Utility bill –

As the tenants agreed to this claim, I grant the landlord a monetary award of \$72.98.

Cleaning –

I have reviewed the photographs submitted by the respective parties. The tenants' photographs were dated and showed the entire rental premises, including open drawers and cabinets. The photographs showed the rental unit thoroughly cleaned.

The landlord's photographs, other than the up-close shots, appeared to be from sometime during the tenancy, as there were boxes and items left on the counters. I find the photographs of no value to show what the rental unit looked like at the end of the tenancy.

The small amount claimed verifies that very little cleaning was required. The invoiced provided by the landlord did not breakdown what was cleaned.

I find the landlord submitted insufficient evidence to support that the tenants did not reasonably and properly clean the rental unit at the end of the tenancy.

I therefore dismiss the landlord's claim for cleaning, without leave to reapply.

Damage to laminate flooring –

I find it was unclear why the landlord made an additional claim for floor damage. I also find the landlord has submitted insufficient evidence to support a claim of 30% of the installation costs.

Nonetheless, for the reasons given above when assessing the landlord's claim for stains and scratches, I find the landlord submitted insufficient evidence that the tenants damaged the flooring, and as a result, I dismiss this claim, without leave to reapply.

As I have dismissed most of the landlord's claim and found at least one claim to be frivolous, I dismiss the landlord's request to recover the filing fee. In dismissing this request, I have also considered the landlord submitted insufficient evidence that he notified the tenants of an outstanding utilities bill, and that issue may have been resolved without having to make a claim through dispute resolution.

Based on the above, I find the landlord has established a total monetary claim of \$72.98, as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Microwave replacement	Dismissed
2. Oil based stains and scratches on flooring	Dismissed
3. Kitchen sink discoloration	Dismissed
4. Stove glass burner replacement	Dismissed
5. 2 blinds replacement	Dismissed
6. Utility bill not paid	\$72.98
7. Cleaning	Dismissed
8. Damage to laminate flooring	Dismissed
9. Filing fee	Dismissed
TOTAL	\$72.98

I grant the landlord a monetary order in the amount of \$72.98, pursuant to section 67 of the Act.

Conclusion

The landlord's application has been largely unsuccessful.

The landlord has been granted a monetary order in the amount of \$72.98. Should the tenants fail to pay the landlord this amount without delay, the monetary order must be served upon the tenants for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The tenants are advised that costs of such enforcement are recoverable from the tenants.

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: May 24, 2021

Residential Tenancy Branch