



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

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

The Tenant filed a claim for:

- the return of the security deposit that the Landlord is holding without cause; and
- recovery of the \$100.00 application filing fee;

The Landlords filed a claim for:

- a monetary order for damages, retaining the security deposit to apply to the claim; and
- recovery of the \$100.00 application filing fee.

The Tenant and the Landlords 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 Landlords 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 ("Rules"); 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.

### Preliminary and Procedural Matters

The Parties provided their email addresses in their applications, and they confirmed them in the hearing; they also confirmed their understanding that the Decision would be

emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

#### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order, and if so, in what amount?
- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of their Application filing fee?

#### Background and Evidence

The Landlords advised that the rental unit is a basement suite in a single-family dwelling, and that the rental unit had three bedrooms and one bathroom. They agreed that the fixed-term tenancy began on August 1, 2017, running to July 31, 2018, and it then operated on a month-to-month basis. They agreed that the Tenants paid the Landlord a monthly rent of \$1,200.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$600.00, and no pet damage deposit. They agreed that they did not do an inspection of the condition of the rental unit at the start of the tenancy, nor produce a condition inspection report ("CIR").

They agreed that the tenancy ended on October 31, 2020 when the Tenant moved into her own home. The Parties agreed that the Tenant gave the Landlords her forwarding address by registered mail on December 10, 2020. The Landlords confirmed that they still hold the security deposit in full, and that they attempted to refund \$10.00 of it to the Tenant, but that they would not accept this amount.

#### **TENANT'S CLAIM → \$1,200.00 + \$100.00 Filing fee**

In the hearing, the Tenant said:

So, at the time when I made the filing, I hadn't received anything from the Landlords for them to request to keep. 15 days from the receipt of my forwarding address, I filed the dispute, not aware they made a claim.

They have no right to keep it, because any damage is just wear and tear – it was 21 years old, no renovations had been done.

The Landlords said:

We filed our claim on November 14<sup>th</sup>, because she had refused to sign the condition inspection report, and he did not provide authorization to withhold any of the security deposit, so we proceeded with the claim based on that information.

### **LANDLORDS' CLAIMS**

#### **#1    CLEANING → 11 hours @ \$25.00/hr → \$275.00**

The Landlords said:

The itemized list is in our evidence to mitigate damage. We elected not to hire professional cleaners and do it ourselves. See the number of minutes to clean each area. The most extensive were the walls – they had not been cleaned.

The Tenant said:

I do have a couple comments According section 32 of the Act, a tenant has to leave a unit reasonably clean and undamaged. We spent at least ten hours cleaning. My mother and two children and I did last minute cleaning in the suite – each of us at least three hours on October 31. We went over and above in cleaning tops of cabinets and pulling out all appliances – cleaning there. We left it better than reasonably clean according to Act.

The Landlords said:

I would like to acknowledge that I do believe that [the Tenant] did spend time cleaning the unit; however, there is a difference between wiping surfaces and cleaning. There was mould and mildew in the bathtub. You can see the differences between the walls as left and once cleaned. Also, with the kitchen floor, notice now that the cleaning of the kitchen floor isn't even included in the time we claimed. That floor was cleaned after this filing was made, and therefore it wasn't even included in the claim. That would have added at least another three hours to scrub the floor on hands and knees.

We took pictures of behind appliances – something was spilled on the floor. To climb up on the counter to clean the tops of the cabinet? They were not left clean.

Regarding the walls - it was obvious during the [move-out] CIR that they had not been wiped, and in questioning the Tenant at that point, she said 'that's not my responsibility.' We knew that there was deficiencies at that point.

The Tenant said:

As submitted in my evidence, the floor was thoroughly cleaned with vinegar and soap and water. And the counter tops were cleaned by me with Lysol wipes and left completely smooth.

They never completed a move-in report – so they don't know if they were . . .the obvious dirty walls did get wiped down. And there were photos submitted – the morning before the condition inspection - showing the floor being cleaned. Their photo was somehow doctored, and it did not look like that. I don't know if they rubbed dirt on it, or what they did. It was not left as their pictures depict.

The Landlords said:

Under the pose of truth, I vow that those pictures have not been altered. The floor was cleaned by myself with soap water and a scrubby. And the difference is shown in those issues was the 100% whole truth of the cleaning.

The Landlords submitted photographs showing that the bathtub had not been cleaned, as there was mould and dirt on the edges of the bathtub and the bath plug. The Landlord submitted photographs of the kitchen floor before they cleaned and after they cleaned. The floor had not been reasonably clean at the end of the tenancy.

However, the Landlords submitted photographs of the kitchen cabinets before, and the only dirt I noticed was dust on the top of the cabinet door. The Landlords submitted a photograph of the "kitchen corner wall before" they cleaned, but it is difficult to see what the Landlords are displaying, as there are shadows in the photograph.

The Landlords also submitted before and after photographs of the oven dials, which do not look overly dirty in the before photograph. I find that this complaint is unreasonable.

There was some dirt behind the stove, and one drop of coloured liquid behind the refrigerator, however, it was not especially dirty behind either appliance.

The Landlords submitted before and after photographs of the bathroom wall above the shower. The “before” photograph was very close to the wall/ceiling, whereas the “after” photograph is much farther away, and any dirt in the before photograph looks the same in the after photograph.

## **#2 OTHER CLAIMS → \$265.00**

### **A. 3 x 50lb. garbage bags at \$5.00 each for \$15.00**

The Landlords said they did not have a receipt for this claim. They said the minimum fee at the dump is \$15.00 – flat rate at the dump.

The Tenant said: “I had a right to leave garbage there, because I still resided there until October 31<sup>st</sup>. I do the garbage and recycling there. All of that was left beside the garbage bin or the kitchen scrap bin.”

The Landlords said:

There were a few bags left beside the bin, as well as the food waste bin, plus the contents of the freezer had to be emptied. But there were also larger items left in the shed and in our garage, and a piece of furniture in one of the bedrooms that need to be disposed of.

The Tenant said:

In my evidence about those items, they never provided me with any notice that there was anything left behind. Instead they disposed of it without advising me. That furniture was not my property. That belonged to the previous owner of the suite. They bought the house and that piece was part of the house. I didn’t take it with me.

The Landlord said:

Re the furniture – that was part of the sale of the house? I would dispute that. Everything to every single appliance was listed on the purchase and sale agreement and no furniture was listed on the sale of the house.

Other items left behind? It is my understanding that when the move out is complete at noon it is no longer their responsibility.

**B. Painting Kitchen Wall and Bathroom Wall → \$55.00 + \$85.00**

I asked the Landlord how she calculated these claims, as she did not indicate how long it took. The Landlord said:

In the end, it was actually not painting, that was extra cleaning time. We were able to rub away the damage that was done by the candle fire in the bathroom, as well and the kitchen wall stuff. Scrubbed with [well-known] scrubbers, so that was strictly labour and some incidental cleaning supplies.

The Tenant said: "My only comment is that I tried to clean with soap and water and with PSP, but I couldn't get it off, so I did attempt to clean it."

**C. Missing Kitchen & Living Room Window Screens → \$30.00 x 2 = \$60.00**

The Landlord said that she did not have a receipt for these screens. She said:

No. This is the cost to replace them; they haven't yet been purchased. We looked it up online at [international hardware chain].

The Tenant said:

The window screens were missing when I took possession of the suite. One was found in the move-out inspection – it was found in the furnace room. I don't know what window it went in. They were already missing before I moved in. The damaged one in the living room was damaged by the previous owner's dog that scratched the screen.

**D. Window Screen above Fireplace Scratched/Damaged → \$10.00**

The Landlords said:

Again, in an attempt to mitigate the cost, rather than replacing the entire screen, we changed the wire mesh within the aluminum frame and it cost \$15.00 a roll. Again, we went to [international hardware chain]. We didn't do this, either, as we have not had a chance.

The Tenant said:

That's the one that was scratched by the dog. My parents had previously owned the house and they had my sister's dog, and she scratched the screen. It was scratched when I moved in.

**E. Enzyme Cleaner to Neutralize Cat Urine Odour in Window Sill → \$10.00**

The Landlord said: "There was obviously a foul odour coming from one of the bedroom window sills; I assumed it to be from cat urine. And we used the enzyme from [a pet store] to fix the issue. But no, we don't have a receipt."

The Tenant said: "That's not possible, because my mother and I both cleaned all the window sills inside the suite a week before I moved out. And it would not have been my cat. He had never peed inside my house, and he is an outdoor cat and uses the outdoors and not his window sills."

**F. Broken Remote Control – Held with Rubber Bands → \$30.00**

The Landlord said: "The suite included utilities, internet, and cable and this is the TV or cable remote that came with the cable box when we moved in and provided to the Tenant. We sent it back to Telus, and they sent a new one and charged us \$30.00. There's no receipt."

The Tenant said: "Only thing, yes, it was damaged somehow. I think normal wear and tear. I dropped it at some point, and so I was holding it together with an elastic band to make it work. There was no malicious damage to the remote control."

**G. Reduction in Rent Due to Laundry Being Unavailable → (\$50.00)**

The Landlords explained this item as being a credit for the Tenant for having restricted or eliminated the Tenant's access to the residential property's laundry facilities in the last two to six months of the tenancy. The Parties debated the extent of the Tenant's access to the laundry and the reason(s) why. Regardless, this is a credit, rather than a claim, and is for the benefit of the Tenant.

That is a credit to the Tenant because laundry hadn't been available for the latter months of the tenancy. This is a reduction in our claim to refund that value, because the rent also included access to laundry facilities.

## Analysis

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

### **TENANT'S CLAIMS**

The Tenant provided her forwarding address to the Landlord on December 10, 2020 by registered mail. However, section 90 of the Act states that documents that are mailed are deemed received five days after they are mailed. Therefore, I find that the Landlords were served with the Tenant's forwarding address on December 15, 2020. Further, the tenancy ended on October 31, 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 Landlords were required to return the \$600.00 security deposit within fifteen days after December 15, 2020, namely by December 30, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlords have not returned any amount of the security deposit, however, they applied to the RTB to claim against the security deposit on November 13, 2020. Therefore, I find the Landlords complied with their obligations under section 38(1).

Since the Landlords complied with the requirements of section 38(1), I find there is no requirement for them to double the return of the Tenant's security deposit. However, I find that the Landlords are required to return the Tenant's \$600.00, as soon as possible. There is no interest payable on the security deposit.



## **LANDLORDS' CLAIMS**

Before the Parties testified about the Landlords' claims, I let the Parties know how I would analyze the evidence presented to me. I advised that a party who applies for compensation for damages 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, the Landlords must prove:

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

("Test")

I note that the Parties did not complete a condition inspection report at the start of the tenancy, with which they could compare the condition at the end of the tenancy. As such, I find that the Landlords have limited bases to find that the condition of the rental unit was worse at the end of the tenancy.

### **#1    CLEANING → 11 hours @ \$25.00/hr → \$275.00**

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".

Policy Guideline #1 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]

Having reviewed most, if not all of the Landlords photographs of the cleanliness of the rental unit at the end of the tenancy, I find that they are mostly close up of minor spots or dirt in a drive for perfection. Further, I find from the “before” photographs that the rental unit was not in a condition that would required 11 hours of cleaning. Rather, I find that to bring the rental unit to a “reasonable” level of cleanliness should require approximately half this amount of time. As a result, and pursuant to sections 32 and 67 of the Act, I award the Landlord with **\$137.50** for 5½ hours of cleaning at \$25.00 an hour, which I find to be a reasonable hourly rate in the circumstances.

## **#2 OTHER CLAIMS → \$265.00**

### **A. 3 x 50lb. Garbage Bags at \$5.00 each for \$15.00**

The Landlord did not explain why the items left by the garbage and kitchen recycling bins were not left there appropriately. As far as other items left by a tenant at the end of a tenancy, *Residential Tenancy Act* Residential Tenancy Regulation (“Regulation”) states:

## **Part 5 — Abandonment of Personal Property**

### **Abandonment of personal property**

- 24** (1) A landlord may consider that a tenant has abandoned personal property if
- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
  - (b) subject to subsection (2), the tenant leaves the personal property on residential property
    - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

### **Landlord's obligations**

**25** (1) The landlord must

(a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,

(b) keep a written inventory of the property,

(c) keep particulars of the disposition of the property for 2 years following the date of disposition, and

(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

(a) the property has a total market value of less than \$500,

(b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or

(c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2). .

[emphasis added]

When I consider these sections of the Regulation in terms of this tenancy, I find that the personal property was not abandoned, as the Landlord did not have the Tenant's express oral or written notice that she would not return to the residential property for anything left behind.

Accordingly, a landlord is not allowed to dispose of a tenant's personal property that was left behind, if the premises were not abandoned. I find that the Landlords should have contacted the Tenant for guidance on what to do with the remaining items left behind. If the Landlords had obtained the Tenant's permission to dispose of these items, then their claim would have more footing. As such, I dismiss this claim without leave to reapply.

**B. Painting Kitchen Wall and Bathroom Wall → \$55.00 + \$85.00**

The Landlords acknowledged that this claim was for additional cleaning. As I have already addressed the Landlord's cleaning above, I dismiss this claim without leave to reapply.

**C. Missing Kitchen & Living Room Window Screens → \$30.00 x 2 = \$60.00**

Without having done a move-in inspection and CIR, I find that the Landlord has no proof that these items were there to from the start of the tenancy. Further, the Landlords said they have not spent any money on new screens, nor did they comment on the Tenant's testimony that one of the screens was found during the move-out inspection. I find that the Landlords have not provided sufficient evidence to prove this claim on a balance of probabilities, and therefore, I dismiss this claim without leave to reapply.

**D. Window Screen above Fireplace Scratched/Damaged → \$10.00**

The Tenant's evidence that the residential property used to be owned by her family, gives credibility and reliability to her explanation of how the damage was made. Given this and the absence of a move-in CIR, and the fact that the Landlords said they have not incurred this repair cost, I find I prefer the Tenant's version of events in this regard. As such, I dismiss this claim without leave to reapply.

**E. Enzyme Cleaner to Neutralize Cat Urine Odour in Window Sill → \$10.00**

Again, without a receipt for this expense, and given the Tenant's evidence of her cat being an outdoor cat who never peed inside, as well as her evidence that she and her

mother cleaned the window sills, I find that the Landlord has not provided sufficient evidence to prove this claim on a balance of probabilities. I, therefore, dismiss this claim without leave to reapply.

#### **F. Broken Remote Control – Held with Rubber Bands → \$30.00**

The Tenant acknowledged that she dropped and broke the remote control. I find that it is more likely than not that this is the amount that Telus would charge for a remote replacement. I, therefore, find that the Landlords have proven this claim on a balance of probabilities. Accordingly, I award the Landlord with \$30.00 for this claim, pursuant to section 67 of the Act.

#### **G. Reduction in Rent Due to Laundry Being Unavailable → (\$50.00)**

This is an unusual item to add to their claims; however, I give the Landlords full credit for offering this compensation to reflect their having cut off a service that was included as part of the rent paid. I, therefore, grant the Landlord's wishes and award the Tenant with recovery of \$50.00 for having had restricted access to the laundry facilities.

#### **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 \$600.00 in partial satisfaction of the Landlord's monetary claim.

For	Amount
Return of security deposit	(\$600.00)
Cleaning	\$137.50
Garbage Bags	\$0.00
Painting walls (more cleaning)	\$0.00
Window screens	\$0.00
Damaged window screen	\$0.00
Cat odour in window sill	\$0.00
Broken remote	\$30.00
Laundry credit	(\$50.00)

<b>Total Monetary Award</b>	(\$482.50)
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When I calculate the Parties' claims, I find that the Tenant is more successful than are the Landlords. As such, I award the Tenant with recovery of her \$100.00 Application filing fee, as well, pursuant to section 72 of the Act. The Landlords' claim for recovery of the filing fee is dismissed without leave to reapply.

Accordingly, I find that the Tenant is successful in the return of her \$600.00 security deposit, less the Landlords' award for cleaning and the broken remote, plus the \$100.00 filing fee for a total award of **\$582.50**. I grant the Tenant a Monetary Order of \$582.50 from the Landlords, pursuant to section 67 of the Act.

### Conclusion

The Tenant is successful in her claim for the return of the security deposit, although she did not provide sufficient evidence to establish a claim for double the security deposit requested. The Tenant is awarded recovery of the \$100.00 Application filing fee, less the awards the Landlords were granted for their claims.

The Tenant is granted a Monetary Order from the Landlords of \$582.50. This Order must be served on the Landlords by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Although this Decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the Act states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a Decision affected, if a Decision is given after the 30-day period set out in subsection (1)(d).

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: June 09, 2021

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Residential Tenancy Branch