



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on February 12, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit
- For reimbursement for the filing fee

The Landlord appeared at the hearing with B.M. S.K., a co-tenant, appeared at the hearing for the Tenant. The Tenant appeared at the hearing near the end of the hearing.

I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord, B.M. and S.K. provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. S.K. confirmed receipt of the hearing package and Landlord’s evidence. The Landlord confirmed receipt of the Tenant’s evidence.

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 reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Broken toilet replacement	\$349.65
2	Broken fob	\$60.00
3	Miscellaneous damages	\$997.50
4	Move-out fee	\$200.00
5	Broken microwave	\$447.99
6	Rental loss	\$1,196.00
7	Filing fee	\$100.00
	TOTAL	\$3,351.14
	Minus security deposit	- \$550.00
	TOTAL	\$2,801.14

Two written tenancy agreements were submitted as evidence and the parties agreed they are accurate. The tenancy started March 15, 2015. Rent in the most current tenancy agreement was \$2,392.00 per month due on the 15th day of each month. The Tenant paid a \$1,150.00 security deposit.

The parties agreed the Tenant moved out of the rental unit November 13, 2020.

The parties agreed that, at the end of the tenancy, the Tenant agreed to the Landlord keeping \$550.00 of the security deposit and the Landlord returned \$600.00 of the security deposit to the Tenant.

S.K. testified that the parties had a discussion and negotiation at the end of the tenancy to arrive at the agreement that the Landlord would keep \$550.00 of the security deposit and return the remainder and that the parties agreed this would be the end of the matter in relation to compensation for damages. S.K. relied on a notation at the bottom of the Condition Inspection Report (the "CIR") which states, "Tenant agrees to a refund of \$600 of damage deposit" for their position about the agreement between the parties.

B.M. testified that the agreement that the Landlord would keep \$550.00 of the security deposit was based on an initial estimate of the damages and that the Landlord then discovered that the damages were much more.

The Landlord testified that the \$550.00 agreed upon was an initial estimation and that they then found out the cost was more than this. The Landlord denied that the parties agreed the \$550.00 would cover the damages and be the end of the matter.

S.K. testified that the \$550.00 agreed upon was not an initial estimate because many of the amounts sought were already known, such as the drywall costs. S.K. testified that everything was already repaired when the parties agreed the Landlord could keep \$550.00.

I asked the parties what the \$550.00 of the security deposit should be deducted from given the Tenant agreed to the Landlord keeping this amount. The Landlord asked that the \$550.00 be deducted from item #3 for miscellaneous damages. S.K. said it does not matter to the Tenant what the \$550.00 is attributed to. In the circumstances, I will consider the \$550.00 security deposit to be attributed to item #3 for miscellaneous damages and will only consider whether the Landlord is entitled to a further \$447.50 for item #3 for miscellaneous damages.

The CIR had been submitted and the parties agreed it is accurate.

#1 Broken toilet replacement \$349.65

The Landlord submitted as follows. The move-in CIR shows the toilet was not broken. The toilet lid was broken at the end of the tenancy as shown in the photos. The Tenant agreed they broke the toilet lid in the move-out CIR. The Landlord tried to replace the lid but could not find a replacement due to the model. The Landlord purchased the least expensive toilet from Home Depot to replace the toilet. The invoice submitted includes the cost of the toilet and labour to install the toilet.

S.K. testified that the toilet lid was broken at the start of the tenancy and was overlooked on the move-in CIR. S.K. testified that the toilet worked fine during the tenancy. S.K. submitted that it is not reasonable that the Landlord replaced the entire toilet due to the damaged lid.

#2 Broken fob \$60.00

The Landlord submitted as follows. The move-in CIR shows the fob was not broken at the start of the tenancy. The photos show the fob was broken at the end of the tenancy. The statement shows it cost \$60.00 to replace the fob. S.K. agreed the fob was broken at the end of the tenancy.

S.K. agreed the fob was as shown in the photos submitted at the end of the 5 ½ year tenancy. S.K. submitted that the damage to the fob was normal wear and tear.

#3 Miscellaneous damages \$997.50

The Landlord relied on an invoice in evidence which outlines maintenance done and the associated cost of \$997.50. The Landlord relied on the photos and CIR for this item. The Landlord submitted that S.K. agreed with the noted damages on the CIR.

The invoice for the miscellaneous damages includes the following maintenance:

- remove and install the sinks in bathroom
- remove and install the drain for sinks
- replace the fan motor in guest bathroom
- fix the loose faucet in kitchen
- replace the light bulbs in kitchen
- fix the window blinds in bedroom
- disposal the unused materials and garbage
- patch and paint the wall in living room & bathroom

S.K. testified as follows. There were cracks in the bathroom sink at the start of the tenancy which were not noted on the move-in CIR. The fan in the bathroom stopped working after five years of use which is normal wear and tear. The loose faucet in the kitchen is normal wear and tear. The light bulbs in the kitchen did stop working. The blinds in the bedroom were difficult to put down at the start of the tenancy and it is normal wear and tear that they were more difficult to put down at the end of the tenancy. The rental unit was not painted during the tenancy and the holes were patched at the end of the tenancy as shown in the photos. The paint chipped off the main step that goes out to the balcony over the course of the tenancy. There was drywall damage by the bathtub due to an issue with the caulking which the Tenant told the Landlord about and the Landlord did not address. In general, the Tenant's position is that the damage noted is reasonable wear and tear.

In reply, the Landlord testified that the Tenant never told the Landlord that the caulking issue was causing damage to the bathroom wall. The Landlord testified that only one blind was difficult to put down at the start of the tenancy and all the blinds were broken at the end of the tenancy. The Landlord did not know how old the blinds were.

#4 Move-out fee \$200.00

The Landlord testified that the Tenant did not pay the move-out fee to the strata as required. The Landlord testified that a Form K was signed by the Tenant at the start of the tenancy.

The Tenant testified that they were unaware there was a move-out fee and do not recall signing a Form K.

#5 Broken microwave \$447.99

The Landlord testified that the move-in CIR shows the microwave was fine at move-in and the move-out CIR shows the microwave was broken at move-out. The Landlord pointed to an invoice in evidence for replacement of the microwave. The Landlord testified that the microwave was five or six years old.

The Tenant and S.K. testified that the microwave did break during the tenancy but that this was normal wear and tear and they did not intentionally damage the microwave.

#6 Rental loss \$1,196.00

The Landlord sought loss of rent due to the damage in the rental unit and time it took to fix the damage.

The Tenant testified that the Landlord was told prior to the end of the tenancy about any major damage to the rental unit and therefore had plenty of time to fix the damage.

Both parties submitted documentary evidence which I have reviewed.

Analysis

The parties disagreed about whether they agreed at the end of the tenancy that the Landlord keeping \$550.00 of the security deposit was the end of the matter between the parties and no further monies would be sought or owed. S.K. relied on a notation on the CIR which states, "Tenant agrees to a refund of \$600 of damage deposit" for their position.

Parties have a right to seek compensation through the RTB in relation to tenancies. Here, the Landlord had a right to seek compensation from the Tenant for damage to the

rental unit, fees and rental loss. I would expect any agreement to give up this right to be clear and in writing. I do not find the notation on the CIR clear that the Landlord is giving up their right to seek further compensation from the Tenant because the notation does not state this or state anything that could be construed as this. The notation simply states that the Tenant agrees to a refund of \$600.00 of the security deposit. The notation does not say anything about what the Landlord will or will not do in relation to further monies owing. If the notation was meant to be an agreement between the parties that no further monies would be sought or owed, the notation should have stated this. In the circumstances, I am satisfied the Landlord is permitted to seek further compensation from the Tenant.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, 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.

When 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.

#1 Broken toilet replacement \$349.65

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...

Section 21 of the *Residential Tenancy Regulation* (the “*Regulations*”) states:

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I accept based on the move-in CIR that the toilet lid was good at move-in as this is what the CIR states. The Tenant agreed with the move-in CIR on the CIR. The Tenant has not provided any documentary evidence to show that the move-in CIR is wrong and therefore has not submitted a “preponderance of evidence to the contrary.”

I accept based on the move-out CIR and photo that the toilet lid was broken at the end of the tenancy. Based on the photo, I accept that the damage was beyond reasonable wear and tear because normal use of the toilet would not have resulted in the broken lid as shown in the photo. I am satisfied the Tenant breached section 37 of the *Act*.

I am satisfied the Landlord had to replace the broken toilet lid; however, I am not satisfied based on the evidence provided that the Landlord had to replace the entire toilet. The Landlord was required to mitigate their loss. I would expect to see some documentary evidence to support that the Landlord could not have simply replaced the

toilet lid. The Landlord has not submitted such evidence. In the circumstances, I am not satisfied the Landlord is entitled to the full \$349.65 sought.

Policy Guideline 16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or **no significant loss has been proven**, but it has been proven that there has been an infraction of a legal right. (emphasis added)

As stated, I am satisfied the Tenant breached section 37 of the *Act* and that the Landlord experienced some loss in relation to this. However, I am not satisfied the Landlord mitigated their loss or that the loss in relation to the broken toilet lid alone was \$349.65. I award the Landlord **\$25.00** as nominal damages for the broken toilet lid.

#2 Broken fob \$60.00

S.K. acknowledged the fob was broken at the end of the tenancy as shown in the photo. I do not accept that a broken fob is normal wear and tear after only 5 ½ years of use as I do not find this to be a lengthy period. Further, the normal use of a fob would not result in it breaking. I am satisfied the Tenant breached section 37 of the *Act*. I am satisfied the Landlord had to replace the fob. I am satisfied based on the building rules submitted that a replacement fob cost **\$60.00** and I am satisfied the Landlord is entitled to this amount.

#3 Miscellaneous damages \$997.50

The invoice for the miscellaneous damages includes the following maintenance:

- remove and install the sinks in bathroom
- remove and install the drain for sinks
- replace the fan motor in guest bathroom
- fix the loose faucet in kitchen
- replace the light bulbs in kitchen
- fix the window blinds in bedroom
- disposal the unused materials and garbage

- patch and paint the wall in living room & bathroom

I am satisfied based on the CIR that the bathroom sink was good at move-in. I am satisfied based on the CIR and photos that the bathroom sink was damaged at move-out. Based on the photos, I accept that the damage is beyond reasonable wear and tear as the sink has three large cracks in the base of it which would not occur with the normal use of the sink. I am satisfied the Tenant breached section 37 of the *Act*. I am satisfied the Landlord had to replace the sink. I cannot tell from the invoice how much this specific issue cost as the invoice only has one total amount and is not broken down by issues.

I accept that the fan in the bathroom stopped working during the tenancy as S.K. acknowledged this. I agree that bathroom fans will and do stop working over time. There is no evidence submitted to show that the Tenant did something to cause the bathroom fan to stop working. In the absence of further evidence, I am not satisfied the Tenant breached section 37 of the *Act* in relation to the bathroom fan and decline to award the Landlord compensation for this.

I accept that the faucet in the kitchen was loose at the end of the tenancy as S.K. acknowledged this. I agree that loose faucets could simply be normal wear and tear. There is no documentary evidence before me to support that the Tenant did something to cause the loose faucet. In the absence of further evidence, I am not satisfied the Tenant breached section 37 of the *Act* in relation to the loose faucet and decline to award the Landlord compensation for this.

S.K. acknowledged that lights in the kitchen were burnt out at the end of the tenancy. Pursuant to Policy Guideline 1, page 5, the Tenant was responsible for replacing burnt out light bulbs. I am satisfied the Tenant breached section 37 of the *Act*. I am satisfied the Landlord had to replace the burnt out light bulbs. I am satisfied the Landlord is entitled to some compensation for this. I cannot tell from the invoice how much this specific issue cost as the invoice only has one total amount and is not broken down by issues.

I accept based on the CIR that two blinds were good at move-in and broken at move-out. I accept based on the CIR and photos that the blind strings were the issue. I am satisfied that the normal use of blinds would not result in the strings breaking over 5 ½ years. I am satisfied the Tenant breached section 37 of the *Act*. I am satisfied the Landlord had to have the blinds fixed. I am satisfied the Landlord is entitled to some

compensation for this. I cannot tell from the invoice how much this specific issue cost as the invoice only has one total amount and is not broken down by issues.

I am satisfied based on the photos that there was damage to the drywall in the bathroom, damage to the wall in the living room and that paint had chipped off the stair to the balcony at the end of the tenancy. I did not understand S.K. to dispute these points.

In relation to the bathroom, the parties disagreed about whether the Tenant let the Landlord know that the wall was being damaged during the tenancy. I have reviewed the correspondence between the parties and agree that the Tenant did not tell the Landlord that the wall was being damaged by the caulking issue. In the circumstances, I am satisfied the Tenant is responsible for the damage as I am not satisfied the Tenant notified the Landlord of this problem so that the Landlord could address it before it got worse. I am satisfied the Tenant breached section 37 of the *Act*. I am satisfied the Landlord had to have the wall fixed. I am satisfied the Landlord is entitled to some compensation for this. I cannot tell from the invoice how much this specific issue cost as the invoice only has one total amount and is not broken down by issues.

In relation to the damage to the wall in the living room, Policy Guideline 1 at page 4 states:

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

Based on the photos, I am satisfied there were large holes in the wall and further patches of damage to the wall. Based on the photos, I am satisfied the damage was beyond reasonable wear and tear. I am satisfied the Tenant breached section 37 of the *Act*. I am satisfied the Tenant is responsible for the repair to the living room wall pursuant to Policy Guideline 1 and given the breach of section 37 of the *Act*. I am satisfied the Landlord had to have the wall damage fixed. I am satisfied the Landlord is entitled to some compensation for this. I cannot tell from the invoice how much this specific issue cost as the invoice only has one total amount and is not broken down by issues.

In relation to the stair to the balcony, I accept that the damage shown in the photos falls under reasonable wear and tear to paint in this location over a 5 ½ year tenancy. In

coming to this decision, I consider Policy Guideline 40 and the useful life of interior paint which is 4 years. I am not satisfied the Tenant breached section 37 of the *Act* in relation to this issue and am not satisfied the Landlord is entitled to compensation for this issue.

I am not satisfied the Landlord is entitled to the total cost of \$997.50 as shown in the invoice because the invoice includes items that I am not satisfied the Tenant is responsible for. I am not able to tell from the invoice how much the items the Tenant is responsible for cost because the invoice only has one total amount. The parties agreed to the **\$550.00** of the security deposit being kept for this item. In the circumstances, I decline to award the Landlord more than this \$550.00 given the lack of detail in the invoice and inability to determine how much specific items cost. I also find that \$550.00 accounts for the age and useful life of items that the Tenant is responsible for.

#4 Move-out fee \$200.00

The parties disagreed about whether the Tenant was made aware that there was a move-out fee. There is no documentary evidence before me showing the Tenant was made aware that there was a move-out fee. A move-out fee is not noted in the tenancy agreements. There is no Form K before me. In the circumstances, I am not satisfied the Tenant was aware there was a move-out fee and am not satisfied the Tenant should be responsible to pay for this in the circumstances.

#5 Broken microwave \$447.99

I accept based on the CIR that the microwave was good at move-in and that the door was broken at move-out. I agree that appliances can and do stop working over time. The photo of the microwave in evidence does not show any physical damage to the microwave. There is no documentary evidence before me about how or why the microwave broke, such as an assessment from a technician. In the absence of further evidence, I am not satisfied the Tenant misused the microwave or broke the microwave and am not satisfied the Tenant breached section 37 of the *Act* in this regard. Therefore, I am not satisfied the Landlord is entitled to compensation for this issue.

#6 Rental loss \$1,196.00

I am not satisfied based on the evidence provided that the damage to the rental unit at the end of the tenancy was so extensive that the Landlord could not have had it fixed within a short period of time. Nor am I satisfied the damage to the rental unit was so extensive that the Landlord could not have re-rented the unit prior to the damage being

fixed. I decline to award the Landlord the compensation sought as I am not satisfied the Landlord lost rent due to the breaches of the Tenant noted above.

#7 Filing fee \$100.00

Given the Landlord was partially successful in the Application, I award the Landlord reimbursement for the **\$100.00** filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Broken toilet replacement	\$25.00
2	Broken fob	\$60.00
3	Miscellaneous damages	\$550.00
4	Move-out fee	-
5	Broken microwave	-
6	Rental loss	-
7	Filing fee	\$100.00
	TOTAL	\$735.00
	Minus security deposit	- \$550.00
	TOTAL	\$185.00

The Landlord is issued a Monetary Order for **\$185.00** pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to **\$185.00** and is issued a Monetary Order for this amount. 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: July 28, 2021

Residential Tenancy Branch