



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 05, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit
- To keep the security deposit

The Agent for the Landlord appeared at the hearing. The Tenants did not appear at the hearing. I explained the hearing process to the Agent who did not have questions when asked. I told the Agent they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agent provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Agent testified that the hearing package and evidence were sent by registered mail to the Tenants’ forwarding address on March 13, 2021. The Agent testified that the Tenants provided their forwarding address on the Condition Inspection Report (the “CIR”) which was in evidence. The Landlord had submitted registered mail receipts with Tracking Numbers 1 and 2 on them and the Agent confirmed these relate to the packages sent March 13, 2021.

I looked Tracking Numbers 1 and 2 up on the Canada Post website which shows that notice cards were left in relation to the packages on March 16 and 22, 2021. The website shows the packages were unclaimed and returned.

The Agent testified that further evidence was sent by registered mail to the Tenants' forwarding address on May 25, 2021. The Agent provided Tracking Numbers 3 and 4 for these packages.

I looked Tracking Numbers 3 and 4 up on the Canada Post website which shows the packages were delivered May 27, 2021.

Based on the undisputed testimony of the Agent, customer receipts and Canada Post website information, I find the Tenants were served with the hearing package and first package of evidence in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the "*Act*"). The Tenants cannot avoid service by failing to pick up registered mail packages. Pursuant to section 90(a) of the *Act*, the Tenants are deemed to have received the packages March 18, 2021. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Based on the undisputed testimony of the Agent and Canada Post website information, I find the Tenants were served with the second package of evidence in accordance with section 88(d) of the *Act*. I find based on the Canada Post website information that the Tenants received the second package of evidence May 27, 2021. I find the Landlord complied with rule 3.14 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agent was 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 keep the security deposit?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Replace stove glass cook top	\$681.66
2	Replace missing crisper	\$56.23
	TOTAL	\$737.89

A written tenancy agreement was submitted as evidence. The tenancy started January 01, 2020 and was for a fixed term ending February 28, 2021. Rent was \$2,195.00 per month due on or before the first day of each month. The Tenants paid a \$1,097.50 security deposit.

The Agent testified as follows.

The tenancy ended February 28, 2021.

The Landlord kept \$737.89 of the security deposit and returned the remainder to the Tenants within five days of the end of the tenancy.

The Tenants' forwarding address was provided on the CIR on February 27, 2021.

The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy.

The Tenants did not agree to the Landlord keeping the security deposit at the end of the tenancy.

A move-in inspection was done December 31, 2019. Both parties participated in the inspection. Both parties signed the CIR. A copy of the CIR was provided to the Tenants by email within a few days of the inspection.

A move-out inspection was done February 27, 2021. Both parties participated in the inspection. A copy of the CIR was provided to the Tenants by email within a few days of the inspection.

In relation to the stove glass cook top, this was in good condition at move in. The Tenants chipped the cook top and it was damaged at move out. The cook top had to be replaced which cost \$665.95 as shown in the invoice submitted.

In relation to the crisper, the lid was present at move in and missing at move out. The crisper lid had to be replaced. The cost to replace the crisper lid is noted in an email submitted; however, the lid ended up costing more.

The Landlord submitted photos, the CIR, quotes for the repairs and an invoice. An email in evidence states that the crisper lid will cost \$56.23.

Analysis

Security deposit

Pursuant to 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 accept the undisputed testimony of the Agent and based on it, as well as the documentary evidence submitted, I find as follows.

The Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

I find the Landlord complied with their obligations set out in sections 24 and 36 of the *Act* in relation to the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*

The tenancy ended February 28, 2021.

The Tenants provided their forwarding address to the Landlord on February 27, 2021.

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. Here, the Landlord had 15 days from February 28, 2021 to repay the security deposit or claim against it. The

Application was filed March 05, 2021, within time. I find the Landlord complied with section 38(1) of the *Act*.

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.

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...

I accept the undisputed testimony of the Agent and based on it, as well as the documentary evidence submitted, I find as follows.

The Tenants damaged the stove glass cook top. The damage is beyond reasonable wear and tear. The Tenants breached section 37 of the *Act*. The Landlord had to replace the cook top which cost \$665.95. I find the amount of \$665.95 reasonable and note that the Tenants did not attend the hearing to dispute the amount. I award the Landlord the \$665.95 sought.

The crisper lid was present at the start of the tenancy and missing at the end of the tenancy. The Tenants are responsible for the missing crisper lid. The Tenants breached section 37 of the *Act*. The Landlord had to replace the crisper lid.

Based on the email in evidence, I find the cost of replacing the crisper lid was \$56.23. Further, the Landlord is limited to seeking what is stated in the Application and the Landlord has sought \$56.23 for the crisper lid. I find the amount of \$56.23 reasonable and note that the Tenants did not attend the hearing to dispute the amount. I award the Landlord the \$56.23 sought.

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Replace stove glass cook top	\$665.95
2	Replace missing crisper	\$56.23
	TOTAL	\$722.18

The Landlord can keep \$722.18 of the \$737.89 currently held from the security deposit pursuant to section 72(2) of the *Act*. The Landlord must return \$15.71 to the Tenants. The Tenants are issued a Monetary Order for \$15.71.

Conclusion

The Landlord is entitled to \$722.18 and can keep this from the security deposit. The Landlord must return \$15.71 to the Tenants. The Tenants are issued a Monetary Order for \$15.71. If the Landlord does not return \$15.71 to the Tenants, this Order must be

served on the Landlord. If the Landlord 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: August 11, 2021

Residential Tenancy Branch