



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damages of \$1,950.00, retaining the security and pet damage deposits to apply to the claim.

The Tenants and the Landlord appeared at the first teleconference hearing; however, both Parties denied having received evidence from the other Party. The Tenants said they only received the Notice of Hearing and the Application, but no evidence. The Landlord said she did not receive anything from the Tenants. I said I would adjourn the hearing, so that they could re-send the evidence – everything they had uploaded to the RTB to that date only. I said I would not allow any additional evidence to be uploaded or served to the other Party or any cross-applications applied for - only what was before me for the initial hearing.

The Landlord appeared at the reconvened teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The RTB provided the Tenants with a copy of the Notice of a Reconvened Dispute Resolution Hearing on May 20, 2021; however, the Tenants did not attend the reconvened teleconference hearing scheduled for September 17, 2021 at 1:30 p.m. (Pacific Time). The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the hearing process. During the hearing, the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. 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.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the first hearing. In the reconvened hearing, the Landlord confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the reconvened hearing, I advised the Landlord that pursuant to Rule 7.4, I would only consider her written or documentary evidence to which she pointed or directed me in the hearing. I also advised her that she is not allowed to record the hearing, and she confirmed that she was not doing so.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Landlord confirmed that the periodic tenancy began on January 1, 2020, with a monthly rent of \$1,950.00, due on the first day of each month. The Landlord confirmed that the Tenants paid her a \$975.00 security deposit, and a \$975.00 pet damage deposit. She confirmed that she still holds the deposits. The Landlord explained that she evicted the Tenants, because she was selling the residential property.

The Parties agreed in the first hearing, that they did not inspect the condition of the rental unit at the start of the tenancy; however, the Landlord submitted a letter from the tenant who lived there just prior to the tenancy before me. This letter is set out later in the Landlord's evidence presented below.

In the hearing, the Landlord explained the situation she faced after the Tenants had moved out, as follows:

It was such a disaster. We had gotten word from the buyer that the Tenants had already left the Province before the move out date. They weren't even there. They didn't call me to come check the house. I had given a notice of entry the day before possession – December 30th - to get an idea of what I was going to have to deal with. There was still so much stuff left to move out. There were gigantic holes in doors and walls. I've left this 24 hours before the buyer takes possession.

The end of tenancy was supposed to be at December 30 at 1:00 pm. She messaged me that the house was clean, and everything was done. When I got there at 1:00 pm, their family was still there and everything was a disaster. I had already recruited an army to fix and clean. They all showed up at one o'clock; we just got to work. [The Tenant's] mother-in-law and others were there for the duration. She was there with her sister and a friend who was a housekeeper. They said that this is the fourth time they had to clean up after [the Tenants]. They didn't know when possession was.

The Landlord set out her claims in a monetary order worksheet, which we reviewed respectively in the reconvened hearing.

	Receipt/Estimate From	For	Amount
1	[Local] Hardware	Fridge/stove/microwave	\$2,516.47
2	[Nat'l furniture/appliance store]	Washing machine	\$589.61
3	[hired cleaner]	House cleaning	\$320.00
4	[local electrician]	Electrician	\$262.50
5	[Rubbish remover]	Rubbish removal/repair	\$343.60
		Total monetary order claim	\$4,032.18

#1 FRIDGE/STOVE/MICROWAVE → \$2,516.47

The Landlord said that the appliances were all five years old at the end of the tenancy. I asked the Landlord what the Tenants did to the appliances during the tenancy, and she said:

The damage was done so close to the date of the house being transferred to the new owner - it was on New Year's Eve – and I was left with little option, but to replace them, as the new owner was taking possession that evening at 5 p.m. There was no time to shop for deals to get the best price.

There was a lot of back-and-forth conversation about the stove. [The Tenant] said she was going to replace it, but they weren't even in the Province at the end. It was 1:00 p.m. in the afternoon. I'm not seeking compensation for the appliances. I'm not trying to recoup my losses. But there was [an RTB] document that asked what I had spent on this day before possession, so I included all of

those. I just really do not feel that they are entitled to their deposits back, because of the extensive damage. I know they are not a well-off family . . . I just do not want to repay their deposits.

I asked the Landlord for more specifics about the damage to the appliances. She said:

All of them were damaged significantly. The microwave and the fridge had no handles. There were no drawers or shelves or anything in the fridge. The stove – only 5 years old – had a glass top and there was a major hole in the top of the stovetop – you could see the wiring. It was a large hole - you could put your whole hand in it.

I asked the Landlord if she had receipts for the appliances she bought, but she said: “No, they may have been attached – warranties and booklets were in the house – so I don’t have access to them anymore.” The Landlord said that she hired someone to remove and recycle the old appliances.

The Landlord submitted photographs of these appliances at the end of the tenancy, which I find support her claims.

#2 WASHING MACHINE → 589.61

The Landlord described the washing machine at the end of the tenancy, as follows:

The washing machine was non-functional. I got that a day or two before possession date. A lot of this I was finding out from the new buyer, not even from [the Tenants]. All of the damage to the appliances I didn’t know about, until I found out from the buyer’s real estate agent.

#3 HOUSE CLEANING → 320.00

The Landlord described the state of cleanliness in the residential property, as follows:

It wasn’t cleaned, so I had to hire people to do it. And I hired people to remove the garbage, the rubbish, the appliances, to fix and patch walls - which we all did. We were patching walls, and painting.

#4 ELECTRICIAN → 262.50

The Landlord said:

I hired an electrician, because there were smashed light switches. The bathrooms both toilets didn't flush. [The Tenant] was very comfortable that she was not at fault, because I had not done a walk-through. The walk-through was done with the previous tenant, but [the Tenant] had not signed it. That's why it didn't get it signed in the beginning.

I included this claim on the same form that the appliances were on. Even my real estate agent was there patching holes, and my daughter, my friends were there to help me. I tried to save as much money as I could this way.

#5 RUBBISH REMOVAL/REPAIR → \$343.60

The Landlord submitted an invoice from a maintenance company dated January 3, 2021, which set out the details of the work they did at the rental unit address. This invoice said:

Removed damaged appliances (fridge, stove and overhead microwave), filled numerous holes in unit (upper and lower), repaired faucets throughout home that were vandalised during occupancy as well as toilets. Removed garbage and disposed of appliances.

The invoice set out the rate of \$343.60, all inclusive, and that it was paid by the Landlord in full.

Letters in Support of the Landlord

The Landlord submitted a letter from the tenant, J.M., who lived in the residential property just prior to the tenancy in question. J.M. said:

January 14/2021
To whom it may concern,

It has come to my attention that there was damage to the property belonging to [the Landlord] at [the rental unit].

My husband, children, and I lived at this property from April.1/2019 to December.15th/2019, just prior to Symphony and her family moving in. Just before our tenancy, our landlord, Rachelle, had freshly painted the entire home, and it was in "like-new" condition. Our tenancy was relatively short, and we left it in the same condition as we found it.

During our move out process, we touched up a small ding in the stairwell with the matching paint that Rachelle had left behind in the garage. We replaced the burnt out lightbulbs, washed out the windowsills and washer/dryer set. We hired a professional cleaning company for the final thorough move out clean, (for which I can provide a receipt, if necessary) and had the carpets steam cleaned on the entire upstairs floor. The home was immaculate, and move in ready for the next tenants, [the Tenant] and her family.

It disheartened me to hear that [the Landlord] was left with broken appliances, and property damage that has effected her sale and her investment. As a landlord, [the Landlord] was easy to communicate with, quick to respond to any needs or requests (needing a plumber etc) and accommodating. If I can be of any more assistance, or if you have any further questions about our tenancy or the property, please do not hesitate to reach out to me personally, or my husband [J.].

Warm regards,

[J.M.]
[email]
[telephone]
[signature]

The Landlord submitted a letter written by her realtor, who had communicated with the Tenants as the sale of the property approached. This realtor wrote the following statement:

Dear Sir or Madam,

I'm the listing realtor who represented [the Landlord] in the sale of her townhouse.

When selling a property, my goal is to always work cooperatively with tenants

and aim for a positive experience for all. My approach is to come from a place of understanding as I know this is the tenant's home. I want tenants to feel comfortable and to reduce the amount of disruption to their lives. I state this in my initial meeting with any tenants including [S. and O.] in hopes to put their mind at ease.

At the initial meeting which took place in August 2020, at the subject property, I explain my intentions as above and highlight the process.

I asked the tenants if they could tidy up the house and put some toys away specifically the ones that could be potential tripping hazards. I/we did say the tidying up is not a requirement, but appreciated. We did ask for the garbage strewn about the yard and in garage to be disposed of, though. [The Landlord] said she would hire a cleaner and pay for the initial cleaning to get the home into showing condition.

I also stated that when we get closer to being ready to list that I would be asking them to look at their schedules and to choose some 2-3 hour windows that would work for them to show the property to prospective buyers. I explained that by having a schedule in place that there will be no scattered showings and ultimately less disruption to them.

This took weeks of the tenants dragging their feet, not communicating, and avoiding us all together. We were trying to be understanding as possible however [the Landlord] had given them beyond ample notice of the upcoming sale of the property.

We finally listed the property and thankfully the property sold the first few days on the market.

The tenants started communicating with the new buyer and creating chaos and tension by their untrue and exaggerated statements. The worst part was all the broken appliances and damaged walls.

In November, appropriate notice was given to view the condition of the property as we'd been hearing from the buyer's realtor that the house is being damaged. The stovetop had been smashed which the tenants were trying to hide by putting a cutting board on it. Symphony did say that they would fix or replace the glass on the stove. The house was in disarray and did smell of marijuana and

garbage. A video was made as evidence and protection of the walk through as it had potential to escalate.

The communication of untruths between the tenants and the new buyer continued which continued to cause further friction.

Appropriate notice was given to view the property a day before completion and the new buyer is to take possession. The house had so much stuff still, had not been cleaned, the stove still smashed, inside of the fridge had the crispers, shelves and the door broken and the carpet grotesque.

At the 11th hour the tenants said washer was broken and texted the buyer days prior to letting [the Landlord] know.

The tenants left their mother and her 2 friends with a mess to deal with as they moved out of town. Once [the Landlord] was legally allowed to go into the property at 1:00pm on December 31st, she had an army of people lined up to help get the property ready for the 5:00pm possession time. It was shameful the amount of cleaning and items left behind.

The mother expressed disappointed and was ashamed of condition the property was left. She also stated that it's 3rd time they've been left to clean up after them. They should be thankful they have family with sense and some integrity.

In my 9 years as a realtor, I personally have not experienced avoidance and uncooperative tenants like [S. and O].

Please don't hesitate to contact me if you have any questions.

Kind Regards,
[K.B.]
REALTOR

Analysis

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

Before the Landlord testified, I told her how I would analyze the evidence presented to me. I said that a party who applies for compensation 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 Landlord must prove:

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

“Test”

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged.

However, sections 32 and 37 also provide that reasonable wear and tear is not damage and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #1 helps interpret these sections 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.

As set out in Policy Guideline #16 ("PG #16"), "the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

Based on J.M.'s letter to the Landlord, I find that it is more likely than not that the residential property was in good condition at the end of J.M.'s tenancy and the start of the tenancy before me. I find that this evidence outweighs the absence of a condition inspection report from the start of the tenancy.

Further, I find that the comments from the Landlord and those noted in the documentary evidence, such as that of the realtor and the rubbish removal company, indicate that the damage to the residential property from this tenancy was much more than normal wear and tear. Rather, I find that the Tenants did not use the residential property in a reasonable fashion. I find that they failed to meet their obligations under the Act to leave the residential property in a state of reasonable cleanliness and repair.

As a result, the Landlord was forced to clean up the mess and dirt and repair or replace the damaged appliances by enlisting the help of friends and hired maintenance workers. I find that the Landlord provided sufficient evidence on a balance of probabilities to support her claim for compensation against the Tenants, pursuant to sections 32 and 37 of the Act.

The Landlord said that this is not a "well-off family"; however, that does not give them the right to damage other people's property. I may have granted the Landlord aggravated damages in this case, had she applied, as such.

However, the Landlord claimed only the security and pet damage deposits as recompense. The Tenants did not attend the reconvened hearing to present their evidence; therefore, I find that they abandoned their position in this matter, and accordingly, I did not consider their evidence in making my Decision. I find that the Landlord's evidence is before me, therefore, undisputed.

I find that the Landlord's claims have merit and I find that the damage done to the residential property by the Tenants greatly exceeds the compensation sought by the Landlord to meet her obligations to the new owners. The Landlord's costs, which I find to be reasonable amounts in the circumstances, exceeded her claims; I, therefore, award the Landlord with the full amount she seeks, of **\$1,950.00** for her Application, pursuant to sections 32, 37 and 67 of the Act.

I authorize the Landlord to retain the Tenants' security and pet damage deposits of \$975.00 each for a total of \$1,950.00 in full satisfaction of this monetary award.

Conclusion

The Landlord is successful in her Application, as she provided sufficient evidence to exceed her claim of compensation in this matter. The Landlord is awarded **\$1,950.00** from the Tenants, and the Landlord is authorized to retain the Tenants' security and pet damage deposits in complete satisfaction of this award.

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: September 23, 2021

Residential Tenancy Branch