



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, MNDC-S, FF

Introduction, Preliminary and Procedural Matters-

This hearing dealt with the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenants;
- compensation for a monetary loss or other money owed;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord, landlord's agent (agent), the tenant, KJC, and their interpreter/agent (tenant's agent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

This matter convened on March 12, 2021, and continued for 79 minutes. During that time, the landlord's application could not be considered in full. The hearing was adjourned and reconvened on October 12, 2021.

An Interim Decision was made on March 12, 2021, and that Interim Decision is incorporated by reference herein and should be read in conjunction with this Decision.

At the hearing, the parties were reminded that they were still under their affirmation to provide truthful testimony and that they were prohibited from recording the hearing.

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 tenant and recovery of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of November 1, 2019, a fixed term through October 31, 2020, monthly rent of \$3,300, due on the 1st day of the month, and a security deposit of \$1,650 being paid by the tenant 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 confirmed they retained the tenant's security deposit, having made this claim against it.

The tenancy ended on November 1, 2020.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. General repairs/repainting	\$725.00
2. Replace bedroom closet door	\$500.00
3. Window blinds repair	\$154.94
4. Cleaning	\$403.20
5. Bedroom window scratch	\$513.45
6. Replace kitchen stovetop	\$492.68
7. Paint solarium door scratch	\$393.75
8. Plumber report – bathroom	\$266.70
9. Strata move-in fee	\$100.00
10. Strata fine	\$100.00
TOTAL	\$3,649.72

The tenant has agreed to the charges for cleaning, replacing the bedroom closet door, and the strata move-in fee.

As to the remaining claims, the parties submitted the following:

General repairs/repainting –

The landlord testified that the repairs were for painting the heavily marked damage and to do repairs. The landlord mentioned that the plumber's report indicated the water flow damaging the drywall was from the tub, not ingress from a leak anywhere else. The landlord submitted that they took apart the tub to ensure that there was not a leak anywhere else.

The landlord submitted that the rental unit was repainted in 2018.

Filed in evidence were an invoice from a home services company, a move-in condition inspection report (Report) and two move-out Reports, with attached photographs.

The tenant testified that the landlord said there were already scuff marks, some scuff marks were not that bad as implied by the landlord, and that some scuff marks were from metal parts, not from the tenants' usage.

The tenant testified that they notified the landlord about a water leak in August 2020, and the landlord failed to have the leak investigated and repaired while they were still living there. The tenant said their video evidence shows that the water leak was not coming from the tub. The tenant testified that they should not be held responsible for repainting the entire wall when the painting was not new.

In a written submission, the tenant said that the photograph they supplied showed paint curling out and chipping, which proves the paint was older than 3 years.

Filed in evidence was an August 4, 2020 email from the tenants reporting the leak, with an attached video, an emailed response from the property management company, photographs at the move-in, and the videos.

Window blinds repair –

The landlord testified that the move-in photographs show that the blinds were not broken and had no issues. The landlord submitted that the damage occurred during the tenancy. The landlord submitted that there were weights hanging from the blinds at the move-out.

The agent submitted that there had to be some force to cause the blind damage.

The landlord submitted that the tenants never reported damage to the blinds during the tenancy.

Filed in evidence was an invoice for blind repair, and the landlord said that there were many photographs on the Report.

The tenant testified that the blinds had a history of breaking. In their written submission, the tenant said that the blinds were poorly designed, very old, and just a matter of time before they break.

The tenant wrote that some blinds are a different color, which shows they have been broken and replaced before. The blinds were of poor design and were old, causing the dangling metal to leave scuff marks around the window.

Filed in evidence were photographs of the blinds.

Bedroom window scratch –

The landlord testified that the interior to the double glazed windows had a deep scratch, which takes some force to make.

Filed in evidence was an invoice for scratch repair.

The tenant testified that the scratch was not reported on the move-out Report and there was not a photograph from the inspector.

Replace kitchen stovetop –

The landlord submitted that the stovetop could not be cleaned and that due to the damage from the tenants, the kitchen stovetop required replacing.

The landlord testified that there was a professional cleaning of the stovetop prior to having it replaced. The landlord said that the stovetop was new as of 2018.

In response to my inquiry regarding the two move-out Reports, the agent confirmed that the move-in inspection was done with another agent of the company and the two move-out reports were made by another agent who did not perform the initial inspection.

The agent was not sure why on the first move-out Report there were no notations at all on the Stove/Oven section, although there were remarks made on the second move-out Report.

The agent was not able to explain what the word “marked” meant, which was noted for the Stove/Oven on the move-in Report.

Filed in evidence was an estimate from a home repair company.

The tenant testified that they asked the landlord for the second move-out Report, but never received it.

The tenant questioned whether the stovetop has been replaced, as the landlord’s evidence was an estimate made on February 21, 2021.

The tenants wrote that they did not agree with the move-out inspector’s report and they were not able to sign it, that they were biased, and requested another inspection with someone else, which did not happen.

Paint solarium door scratch –

The landlord testified that the rubber flange on the door between the kitchen and solarium has been rubbed away, and will need to be replaced. The landlord said that it had not yet been replaced as the next tenants did not want it replaced during their tenancy. The landlord said that the fixture was original with the condominium, built in the mid-2000’s. When they are able, the rubber flange will be removed and refinished.

The agent said they communicated with the new tenants, who were hesitant about the work involved.

The tenant testified when they moved out, there was no damage to the solarium door and that the landlord never mentioned the damage until three months later. The tenant testified that there was not a photo of the solarium door in the move-out Report they received.

Plumber report – bathroom –

The landlord testified that there was water damage on the bathroom wall, so they arranged for a plumber to inspect to investigate whether there was a leak. The tenants reported a leak during the tenancy, and the plumber did a cutting of the walls. The landlord said that the water had come over by the shower ledge, which indicated the tenants were responsible.

Filed in evidence was a plumber's written report.

The tenant submitted they reported a leak to the landlord in August 2020, and the landlord did not respond. The tenant testified that there was leakage when they turned the water on in the bathtub, not the shower, and because the landlord did not respond to their leak report, they never used that bathroom again during the tenancy.

Filed in evidence were the videos of the water running, the tenant's notification to the landlord and the landlord's response, as previously noted within this Decision.

Strata fine –

The landlord said that the strata assessed them a \$100 bylaw fine due to the tenant speeding in the parking lot. The agent said the tenants signed the appropriate form K agreeing to strata fines if caused by them.

In response to my inquiry, the agent said there must have been a warning to the tenant about speeding.

The tenant testified that the parking lot is very narrow, that they never received a warning, and only heard about the fine at the end of the tenancy.

Analysis

I have considered the relevant evidence of each party and reached a decision taking into account the Act, Regulation, policy, on the balance of probabilities.

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 sufficient 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.

As to the costs claimed by the landlord associated with cleaning and repairing, 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.

In this case, the tenant agreed to the repair/replacement of the closet door for \$500, the professional cleaning of \$403.20, and the move-in fee of \$100. I therefore grant the landlord a monetary award for these amounts, or \$1,003.20.

The landlord has relied heavily on the condition inspection reports and photographs to substantiate their claim. The landlord and agent were unable to provide direct, first-hand testimony about the condition of the rental unit during the inspections. Neither inspector was present to present testimony, and the agent here was only able to provide speculative testimony as to what occurred during the two inspections. The agent was not able to provide definitive testimony as to why two move-out inspections took place, as they were not present. I find hearsay testimony to be insufficient evidence to support a claim.

I have reviewed all three of the condition inspection reports, the move-in Report and the two move-out Reports, and the attached photographs. I did not hear a clear explanation as to why there were two separate move-out inspections or two Reports, taken on separate days. Although the evidence shows the tenants were present for the move-out inspection on November 1, 2020, there was no indication that the tenants were invited to participate in the second inspection on November 2, 2020. Additionally, there was no space on either Report for the tenants to sign, which is a requirement under the Act and the Residential Tenancy Regulation.

The Act requires that the landlord and tenant **must** inspect the rental unit together, and I find the landlord submitted insufficient evidence to show that the tenants were given another opportunity to inspect the rental unit, at which time additional photographs were taken. I therefore find the landlord violated their obligation under the Act.

Additionally, I have looked at the photographs and do not find them convincing. For instance, photographs on the November 1, 2020, and November 2, 2020 Reports were in up-close range. One photograph showed an up-close photo hair on a floor tile, which I find is unreasonable to depict the rental unit was not left reasonably clean.

I found that the landlord's up-close range photographs taken at the end of the tenancy were of no probative value as there were no corresponding photographs from the beginning of the tenancy.

I was therefore unable to determine if there was any damage that occurred during the tenancy which was above normal wear and tear.

I also considered that the landlord's expectation as shown by their written response to the tenants on various issues exceeds the requirement of the Act. The landlord clearly expected the tenants to provide the rental unit in a move-in ready condition for the next tenants, which does not account for the tenants being allowed to leave the rental unit reasonably clean. Based upon these expectations, I find the landlord did not take the Act into consideration when making this claim.

For the above reasons, I find the landlord submitted inconsistent and confusing evidence and therefore find the Reports unreliable.

General repairs/repainting –

The move-in inspection Report noted scuffs throughout the rental unit and the invoice for this claim was in large part due to paint touch-ups.

I was unable to determine whether the scuff marks that were repainted or touched-up were there from the beginning or were incurred during the tenancy.

As to the items for wall repair from "minor" water damage, I do not find the landlord submitted sufficient evidence to show the tenants were responsible. I arrived at this finding due to the undisputed evidence that the tenants reported a water leak in August 2020, and the landlord did not address or investigate this matter until the tenancy ended. Further, the landlord's own plumber's report shows a small amount of water behind the shower tile, a recommendation to replace the seals in the shower valve to stop water from passing through, and that the splash guards in both bathrooms were missing.

For these reasons, I therefore dismiss this claim, without leave to reapply, due to the landlord's insufficient evidence.

Window blinds repair –

The tenants submitted that they used the blinds as intended and that any damage was from ordinary use. The tenant submitted that the blinds were old and in bad shape.

As I have addressed and found the landlord's Reports to be unreliable, and due to the disputed evidence from the tenants on this point, I find the landlord has not met their burden of proof on a balance of probabilities.

I also did not hear evidence from the landlord as to the age of the blinds, and as such, I could not assess whether the blinds had been fully depreciated, and exceeded their useful life.

For these reasons, I therefore dismiss this claim, without leave to reapply, due to the landlord's insufficient evidence.

Bedroom window scratch –

The Report of November 1, 2020, listed the second bedroom window as "Dirty" and the Report of November 2, 2020, without the tenants present for the inspection, listed the window as having a "deep vertical scratch". In neither of the photographs attached to the Reports did I see the deep, vertical scratch to which this claim referred.

Due to the landlord's contradictory evidence, I find the landlord has not met their burden of proof on a balance of probabilities.

For these reasons, I therefore dismiss this claim, without leave to reapply, due to the landlord's insufficient evidence.

Replace kitchen stovetop –

I find the landlord submitted insufficient evidence to show that the kitchen stovetop was damaged beyond repair or that it could not be cleaned. The landlord's evidence was that the rental unit was professionally cleaned, but the invoice listed 6 hours of cleaning, without a specific breakdown of which items were cleaned.

I therefore could not determine if the landlord attempted to have the stovetop cleaned and there was no professional's report that indicated damage enough to render it unusable.

The landlord's estimate for replacement, dated February 21, 2021, shows that the landlord has not suffered a loss and there is no proof that the landlord ever will suffer a loss, as new tenants are in the rental unit and presumably using the stovetop.

For these reasons, I therefore dismiss this claim, without leave to reapply, due to the landlord's insufficient evidence.

Paint solarium door scratch –

The landlord confirmed that the solarium door has not been repaired or replaced, and I therefore find the landlord has submitted insufficient evidence that they have suffered a loss or that they will ever suffer a loss, a requirement of section 7(1) of the Act.

For these reasons, I therefore dismiss this claim, without leave to reapply, due to the landlord's insufficient evidence.

Plumber report – bathroom –

I have addressed the plumber's report previously in this Decision. The evidence shows the landlord failed to address the tenants' report of a leak in the bathroom during the tenancy and I found the landlord submitted insufficient evidence to show the tenants were responsible for water damage.

I therefore dismiss this claim, without leave to reapply, due to the landlord's insufficient evidence.

Strata fine –

For this claim, the landlord's evidence was a letter dated November 6, 2020, from the strata, with notice of the fine assessment.

There was no evidence that the landlord took reasonable steps to minimize their loss, such as filing an appeal of the fine or allowing the tenants to respond.

For this reason, I dismiss this claim, without leave to reapply, due to the landlord's insufficient evidence.

As I have dismissed all of the landlord's monetary claim with the exception of the amounts agreed upon by the tenants, I decline to award them recovery of their filing fee.

Due to all the above, I find the landlord is entitled to repair/replacement of the closet door for \$500, the professional cleaning of \$403.20, and the move-in fee of \$100 for a total monetary award of \$1,003.20.

In these circumstances, I find it appropriate to off-set the amount of the landlord's monetary award of \$1,003.20 from the tenants' security deposit of \$1,650, and order the landlord to return the balance, in the amount of \$646.80. To give effect to this order, I grant the tenants a monetary order in the amount of \$646.80.

Should the landlord fail to pay the tenants this amount without delay, the monetary order must be served on the landlord for enforcement purposes and may be filed in the Provincial Court of British Columbia (Small Claims). The landlord is advised that costs of such enforcement are recoverable from the landlord.

I find it important to note that the Reports show the tenants paid a security deposit of \$1,650, at the beginning of the tenancy, and that at the end of the tenancy, the landlord held a security deposit of \$1,550.

There was no explanation provided at the hearing as to why there is a \$100 discrepancy; however, at the beginning of the hearing, in response to my inquiry, the landlord confirmed that the tenant's paid a security deposit of \$1,650, and that amount has been retained.

Conclusion

The landlord's application has been partially successful, they have been granted a monetary award of \$1,003.20, which is off-set against the tenants' security deposit of \$1,650 in total.

The landlord is ordered to return the balance of the tenants' security deposit of \$646.80, immediately, and the tenants are granted a monetary order in the amount of \$646.80 in the event the landlords do not comply with this order.

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: October 13, 2021

Residential Tenancy Branch