



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on May 13, 2021 (the “Application”). The Landlords applied as follows:

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

The Landlords and Tenants appeared at the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlords submitted evidence prior to the hearing. The Tenants did not submit evidence. I confirmed service of the hearing package and Landlords’ evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for damage to the rental unit?
2. Are the Landlords entitled to keep the security deposit?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	Repair of chip in counter	\$420.00
2	Repair of paint and drywall	\$707.50
3	Fixing cabinet damage	\$585.00
4	Filing fee	\$100.00
	TOTAL	\$1,812.50

At the hearing, the Landlords confirmed they are only seeking to keep the \$675.00 security deposit and obtain a Monetary Order for \$100.00 for the filing fee.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started November 01, 2018 and was for a fixed term ending August 31, 2019. The tenancy then became a month-to-month tenancy. The parties agreed rent at the end of the tenancy was \$1,420.00 per month due on the first day of each month. The Tenants paid a \$675.00 security deposit.

The parties agreed the Tenants vacated the rental unit April 30, 2021.

The parties agreed the Tenants provided their forwarding address to the Landlords on April 30, 2021.

The parties agreed the Landlords did not have an outstanding monetary order against the Tenants at the end of the tenancy and the Tenants did not agree to the Landlords keeping the security deposit.

The parties agreed on the following. They did a move-in inspection. The rental unit was brand new at the start of the tenancy.

The Landlords testified that they gave a copy of the Condition Inspection Report (the "CIR") to the Tenants in person within a couple of days of the move-in inspection. The Landlords testified that they have a copy of the CIR with the Tenants' initials on the back confirming a copy was received November 03, 2018.

Tenant C.P. testified that they do not know when the Tenants received a copy of the move-in CIR. Tenant N.M. testified that the Tenants received a copy of the move-in CIR within a couple of weeks of the inspection and not within the first couple of days.

The CIR was submitted as evidence and the parties agreed it is accurate as it relates to the move-out inspection. The parties agreed that a copy of the CIR was provided to the Tenants in person on the same day as the inspection.

#1 Repair of chip in counter

The Landlords sought compensation for the cost of repairing a chip in the counter of the rental unit. The Landlords testified that the Tenants told them they had dropped something on the counter which caused the chip. The Landlords testified that they received a quote of \$400.00 + GST to repair the chip.

The Tenants did not dispute that there was a chip in the counter the size of the end of a pencil eraser. The Tenants testified that they told the Landlords about the chip and the Landlords did not mention it needing to be repaired at that time. The Tenants testified that the chip happened within the first two months of them living there.

#2 Repair of paint and drywall

The Landlords sought compensation for the cost of repairing chipped paint and holes in the drywall.

The Tenants agreed they chipped walls, paint and trim in the rental unit; however, they submitted that the damage was reasonable wear and tear. The Tenants denied that they left holes in the walls. The Tenants testified that they had to vacate the rental unit abruptly and that they offered to paint before they left but the Landlords did not take this into consideration.

In reply, the Landlords testified that the damage was more than reasonable wear and tear. The Landlords disputed that the Tenants offered to paint before they left the rental unit.

#3 Fixing cabinet damage

The Landlords sought compensation for the cost of repairing the bottom of a cupboard where the Tenants had spilled oil which caused a stain. The Landlords testified that the whole cupboard must be removed to repair the bottom due to how the cupboards are made.

The Tenants agreed they caused the oil stain and testified that it was an accident. The Tenants submitted that the damage is reasonable wear and tear.

Documentary Evidence

The Landlords submitted the following documentary evidence:

- Photos
- The CIR
- Quotes
- The tenancy agreement
- A Notice of Rent Increase
- A Mutual Agreement to End a Tenancy

As stated, the Tenants did not submit documentary evidence.

Analysis

Security deposit

Under 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.

Based on the testimony of the parties and the CIR, I find 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*.

With regards to the Landlords extinguishing their rights in relation to the security deposit pursuant to section 24 of the *Act*, the only issue is when the Landlords provided a copy

of the CIR to the Tenants. Section 18 of the *Regulations* required the Landlords to provide the CIR to the Tenants within seven days of the inspection. I find it more likely than not that the Landlords provided the CIR to the Tenants within seven days of the move-in inspection because the Landlords were able to refer to documentary evidence of this during the hearing whereas the Tenants were not and could not provide a date that the CIR was given to them. I do not find that the Landlords extinguished their rights in relation to the security deposit pursuant to section 24 of the *Act*.

Based on the testimony of the parties and the CIR, I find the Landlords did not extinguish their rights in relation to the security deposit pursuant to section 36 of the *Act*.

Based on the testimony of the parties, I accept that the tenancy ended April 30, 2021.

Based on the testimony of the parties, I accept that the Tenants provided their forwarding address to the Landlords April 30, 2021.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from the later of the end of the tenancy or the date the Landlords received the Tenants' forwarding address in writing to repay the security deposit or file a claim against it. Here, the Landlords had 15 days from April 30, 2021 to repay the security deposit or file a claim against it. The Application was filed May 13, 2021, within time. I find the Landlords 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.

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...

The meaning of “reasonable wear and tear” is set out in Policy Guideline 1 as follows:

Reasonable wear and tear refers 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.

Pursuant to rule 6.6 of the Rules, it is the Landlords as applicants who have 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.

#1 Repair of chip in counter

I accept that the Tenants caused the chip in the counter as the Tenants did not dispute this. Based on the photo in evidence, I accept that the chip is beyond reasonable wear and tear. I acknowledge that the chip is not large; however, it is much more than the type of artificial scratches one might expect on a counter after normal use of the counter. The chip is not due to natural deterioration which occurred due to aging and other natural forces as the Tenants caused the chip. I find the Tenants breached section 37 of the *Act* in relation to the chip in the counter.

I do not find it relevant that the Landlords did not tell the Tenants they were responsible for paying for repair of the chip when it happened. There is no evidence before me that the chip got worse over the course of the tenancy which may have made this point relevant. The Landlords not raising the issue earlier does not relieve the Tenants of their obligation to leave the rental unit undamaged except for reasonable wear and tear at the end of the tenancy.

I am satisfied based on the photo as well as the size and location of the chip that the Landlords must have the chip repaired.

I am satisfied based on the quote in evidence that it will cost the Landlords \$420.00 to repair the chip. I find this amount reasonable and note that there is no evidence before me showing that the repair could be done for less. The Landlords are entitled to the amount sought.

#2 Repair of paint and drywall

I accept based on the photos in evidence that the Tenants caused damage to the walls or trim in seven areas of the rental unit. I accept that the damage is beyond reasonable wear and tear because the damaged spots are relatively large and there are seven of them. I find the Tenants breached section 37 of the *Act* in relation to the damage shown in the photos.

It is not relevant that the Tenants had to vacate the rental unit abruptly. The Tenants were required to comply with section 37 of the *Act* regardless of their timeline in relation to moving.

I do not find it relevant that the Tenants offered to paint prior to moving. The Tenants were required to comply with section 37 of the *Act* and should have done what was needed to do so, regardless of their discussions with the Landlords. Further, I am not satisfied the Tenants did offer to paint as I would expect there to be some written communication about this and there is no such evidence before me.

I am satisfied the Landlords had to have the damage repaired based on the photos of the damage. I am satisfied repairing the damage will cost \$707.50 for repairs and painting based on the estimate in evidence.

Policy Guideline 40 addresses the useful life of building elements and states that the useful life of interior paint is four years. The Tenants lived in the rental unit for two-and-a-half years and therefore the \$707.50 is reduced to account for this. The Landlords are entitled to \$265.31.

#3 Fixing cabinet damage

I do not accept that the oil spill in the cupboard is beyond reasonable wear and tear for a two-and-a-half year tenancy. Based on the photo in evidence, I find the oil spill minor in the sense that it simply discolored the wood in half of the bottom shelf of the cupboard. I note that the wood is simply darker where the oil was spilled. There is no warping of the wood that is viewable in the photo. There is no other damage, other than slight discoloration. The slight discoloration does not affect the use of the cupboard in any way. The slight discoloration is inside the cupboard and therefore only viewable when the cupboard is open. I find the damage to be so slight that it does not reach the level of beyond reasonable wear and tear. Further, I find the damage to be the sort of damage the Landlords should expect over time as people live in the rental unit. Spills will occur in the cupboards; this is part of everyday normal use of the rental unit. I am not satisfied the Tenants breached section 37 of the *Act* in relation to the oil spill and therefore the Landlords are not entitled to the amount sought. This claim is dismissed without leave to re-apply.

#4 Filing fee

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

Summary

In summary, the Landlords are entitled to the following:

Item	Description	Amount
1	Repair of chip in counter	\$420.00
2	Repair of paint and drywall	\$265.31
3	Fixing cabinet damage	-
4	Filing fee	\$100.00
	TOTAL	\$785.31

The Landlords can keep the \$675.00 security deposit pursuant to section 72(2) of the *Act*. The Landlords are issued a Monetary Order for \$100.00 pursuant to section 67 of the *Act*. I acknowledge that this leaves \$10.31 unaccounted for; however, the Landlords confirmed they are only seeking to keep the security deposit and a Monetary Order for \$100.00 for the filing fee and therefore this is what the Landlords are awarded.

Conclusion

The Landlords can keep the security deposit. The Landlords are issued a Monetary Order for \$100.00. This Order must be served on the Tenants. If the Tenants fail 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: November 17, 2021

Residential Tenancy Branch