



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S

Introduction

This hearing convened as a Landlord's Application for Dispute Resolution, filed on April 13, 2021, wherein the Landlord requested monetary compensation from the Tenants in the amount of \$1,425.00 as well as authority to retain the Tenants' security deposit towards the amounts awarded.

The hearing was conducted by teleconference at 1:30 a.m. on October 15, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenants called in on their own behalf and the Landlord was represented by an Agent, N.G.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. 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.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Application concluded on October 15, 2021. This Decision was rendered on November 24, 2021. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings, conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants for the cost to repair and clean the rental unit?
2. Should the Landlord be authorized to retain the Tenants' security deposit?

Background and Evidence

In support of the Landlord's claim, the Agent testified as follows. He stated that rent was originally \$2,400.00 and the Tenants paid a \$1,200.00 security deposit. The tenancy ended on March 31, 2021.

The Agent confirmed that although the Landlord spent considerably more repairing and cleaning the rental unit, the Landlord merely sought authority to retain the Tenants' security deposit towards these costs. In terms of the specific costs, the Landlord filed a Monetary Orders Worksheet wherein the following was itemized:

Cleaning costs	\$240.00
Misc. repairs	\$1,097.25
Refrigerator replacement	\$1,002.68
Light replacement	\$80.00
Garage remote replacement	\$85.00
TOTAL CLAIMED	\$2,504.93

In support of the claim for cleaning expense the Landlord provided photos of the rental unit taken at the time of move out.

The Landlord also provided a quote regarding the \$1,097.25 claimed for “misc. Repairs”. The Landlord received a quote from a repair company which included photos of the unit as well as a detailed quote for those repairs.

The Landlord also sought \$1,002.68 to replace the refrigerator. In support the Landlord provided photos of the refrigerator showing exterior and interior damage. The Landlord’s agent confirmed that the refrigerator was replaced in July of 2018.

The Landlord also sought \$80.00 to replace a light fixture which was broken during the tenancy; photos of the missing fixture were provided in evidence.

The Landlord also spent \$85.00 to replace the garage remote as the Tenants were unable to locate the remote. Notably, the residential tenancy agreement addendum set out this figure as recoverable in the event the remote was missing.

The Tenants provided a detailed written response to the Landlord’s claims. During the hearing before me the Tenant P.T. provided testimony in response to the Landlord’s claims and confirmed the contents of the written submissions to be true.

The Tenants acknowledged that some minor repairs and cleaning were required but disputed the Landlord’s claim that the repairs and cleaning costs were extensive, and disputed the Landlord’s request to retain the entirety of their deposit.

In their written statement the Tenants note that the tenancy was 9.5 years and that in their view the rental unit was left reasonably clean with only minor wear and tear after such a long term tenancy. The Tenants further noted that the Landlord did not paint during the tenancy such that any painting that was required was due to the passage of time, that there was a long standing mice problem in the building which predated their tenancy, and that the refrigerator which was replaced in 2018, was of poor quality and prone to premature damage.

The Tenant clarified that they paid a \$1,425.00 security deposit, not \$1,200.00; this was confirmed in the tenancy agreement provided in evidence before me.

In their written statement, the Tenants write that they are agreeable to the following deductions to their security deposit of \$1,425.00:

- \$150.00 in misc. repairs;

- \$90.00 in cleaning costs; and,
- \$80.00 to replace the garage remote.

TOTAL: \$320.00

During the hearing the Tenant stated that they were agreeable to the Landlord retaining \$325.00 of their deposit and that they sought return of the \$1,100.00 balance of their security deposit. The Tenant did not explain the discrepancy between the \$320.00 amount noted on their written submissions and the \$325.00 amount agreed to during the hearing.

The Tenants disputed the Landlord's claim for compensation for replacement of the refrigerator. The Tenant stated that the refrigerator was old when they moved in and was replaced in 2018 after it broke down. The Tenant stated that she doesn't understand why the refrigerator needed to be replaced for a few cosmetic cracks. She noted that she contacted the appliance repair person and they confirmed that the hole in the door had nothing to do with the Tenants and was in fact a result of a request by the Landlord to change the direction of the handle. The Tenant submitted that the refrigerator was of poor quality and that the cracks to the interior shelves and drawers was a result of this poor quality.

The Landlord's Agent replied that although the Tenants may have spoke with the appliance sales rep, there was no documentation confirming her testimony regarding the exterior damage.

The Agent confirmed that the Landlord did not want to receive additional funds from the Tenants, he simply wanted to retain the deposit, whether it is \$1,200.00 or \$1,425.00.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on

the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the testimony and evidence before me, and on a balance of probabilities, I find as follows.

I find the Tenants paid a \$1,425.00 security deposit. I accept the Tenant's testimony in this respect, which notably was not disputed by the Landlord's agent.

This was a long-term tenancy of nearly 10 years. I find the length of the tenancy to be a factor when considering whether the tenancy was left reasonably clean and undamaged as required by section 37 of the *Act*. Clearly there will be more wear and tear in a long term tenancy than one of a short duration as updating and more extensive repairs and maintenance typically occur between tenancies when units are vacant. In the case before me, the Tenants resided in the unit for 9.5 years such that there was less opportunity for the Landlords to attend to updating the unit and attending to repairs between tenancies. In the circumstances, I find the Tenants left the rental unit reasonably clean and undamaged considering the length of their tenancy.

I find the amounts claimed by the Landlords for cleaning and repairs to be excessive and more representative of the Landlords updating the unit and attending to deferred maintenance after this long term tenancy ended. While this updating and repairs were necessary, I find they were not related to anything the Tenants did in violation of their obligations under the *Act*.

The Tenants admit that some cleaning and repairs were required when the tenancy ended. I agree. I also find that their suggestion of **\$90.00** to be reasonable considering the condition of the rental unit as depicted in the photos. I similarly agree with the Tenants with respect to the compensable amount for repairs to the rental unit; based on the duration of this tenancy and the condition in which it was left, I find **\$150.00** to be recoverable from the Tenants.

The Tenants also agreed to paying \$40.00 for the replacement cost of the ceiling fixture. I was not provided any information as to the age of the original fixture which was damaged, and find \$40.00 to be reasonable in terms of compensation when also considering the depreciated cost. I therefore award the Landlord the sum of **\$40.00**.

The Tenants agreed to compensate the Landlord **\$80.00** for the replacement cost of the garage remote. I therefore award the Landlord this amount.

The evidence confirms the refrigerator was replaced approximately three years before the tenancy ended. The photos submitted by the Landlord show damage to interior shelves and drawers. On balance I find it likely the interior damage was caused by the Tenants due to misuse rather than poor quality. I am not persuaded the Tenants damaged the exterior of the refrigerator, nor am I satisfied the refrigerator required replacement in its entirety. I therefore award the Landlord the nominal sum of **\$500.00** as contribution towards the cost to replace the interior shelves and drawers which were damaged during the tenancy.

Conclusion

The Landlord's request for monetary compensation from the Tenants is granted in part. The Landlord is entitled to the sum of **\$860.00** for the following:

Miscellaneous repairs	\$150.00
Cleaning costs	\$90.00
Garage remote replacement	\$80.00
Ceiling light replacement	\$40.00
Damage to refrigerator	\$500.00
TOTAL AWARDED	\$860.00

The Landlord may retain \$860.00 from the Tenants' \$1,425.00 security deposit and must return the \$565.00 balance to the Tenants. In furtherance of this I grant the Tenants a Monetary Order in the amount of \$565.00. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: November 24, 2021

Residential Tenancy Branch