



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL and MNSD, FFT

Introduction

On May 4, 2021, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to request the return of the security deposit, and to be compensated for the cost of the filing fee.

On May 13, 2021, the Landlords submitted an Application for Dispute Resolution under the Act to request a Monetary Order for damages and compensation, and to be compensated for the cost of the filing fee. The Landlords’ Application was crossed with the Tenants’ Application and the matters were set for a participatory hearing via conference call.

The Landlords and one of the Tenants attended the original hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

During the original hearing, I found that the evidence before me had been exchanged between the parties and is admissible for the hearings.

The original hearing was adjourned due to a large amount of submitted evidence, an extensive claim and to allow both parties to present their oral, written and documentary evidence.

The same parties attended a reconvened hearing and continued to present their evidence. This reconvened hearing was also adjourned to allow for both parties to present their evidence.

The second reconvened hearing was held where the same parties attended and were able to complete their submission of oral, written and documentary evidence.

Issues to be Decided

Should the Landlords receive a Monetary Order for damages, in accordance with section 67 of the Act?

Should the Landlords receive a Monetary Order for compensation, in accordance with section 67 of the Act?

Should the Landlords be authorized to apply the security deposit to the monetary claims, in accordance with section 72 of the Act?

Should the Landlords be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Should the Tenants receive a Monetary Order for the return of the security deposit, in accordance with section 38 and 67 of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

Unless otherwise stated in this decision, only documentary evidence presented or referred to by the parties during the hearing has been considered, pursuant to rule 7.4 of the Rules of Procedure.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on May 1, 2017, which was renewed on an annual basis. The rent was \$1,900.00 and was due on the first of each month. The Landlords collected and still hold a security deposit in the amount of \$950.00.

Both parties agreed that the tenancy ended on April 30, 2021, when the Tenants moved out of the rental unit.

The Landlords submitted a Monetary Order Worksheet, documentary evidence and provided testimony on the following claims:

1. Loss of Rental Income -May 2021 \$1,900.00

The Landlords testified that the rental unit was not in any condition to show to prospective buyers as the Tenants had caused damage, excessive condensation and failed to clean the unit. The Landlords submitted move-in and move-out condition

inspection reports and photos of the condition of the unit. The Landlords testified that due to the time it took to repair and clean the unit, new tenants could not be arranged for the month of May 2021.

The Tenant testified that the unit looked as it should except for four years of “wear and tear”. The Tenant stated that they had cleaned the rental unit prior to vacancy and had let the Landlords’ painters into the unit prior to the end of the tenancy. The Tenant disagreed that the condition of the rental unit interfered with the Landlords being able to rent it for May 2021 and further, that the Landlords never intended to rent it, rather, their intention was to prepare the unit to list for sale.

2. Half the cost for painting unit \$1,417.50

The Landlords acknowledged that the Tenant’s lived in the unit for four years and are only claiming half the cost of patching the holes and painting much of the unit.

The Landlords provided photos to support that the Tenants had caused damage to most of the walls in the rental unit with nail holes and by drilling anchors into the walls and ceiling. The Landlords stated that the Tenants left the patch work for the painter to complete versus the painter telling the Tenants not to patch.

The Landlords provided photos, a witness statement and contractor’s opinions to support that the Tenants’ actions of keeping the heat up, the windows closed and hanging wet laundry caused excessive condensation in the rental unit, resulting in mold and mildew in the bathroom and around the windows and door frames.

The Tenant testified that they had begun to prepare the holes in the walls for patching when the Landlords’ painter asked them to stop as they (the painter) were going to be taking care of the patching and painting. The Tenant did not provide any documentary evidence to support this testimony.

The Tenant stated that they reported the issue of condensation to the Landlords in late 2018 and the Landlords chose not to act. The Tenants reported condensation issues again in 2020 and the Landlords brought in a dehumidifier in early 2021.

3. Cleaning blinds and track repair \$517.65

The Landlords submitted photos and receipts to support that the blinds required professional cleaning and track repair. The Landlords stated that the 5 sets of blinds had to be removed to access and clean around the windows because of the mold build-up. The Landlords stated that the Tenants did not intend on cleaning the blinds and acknowledged that they (the Landlords) removed the blinds from the rental unit on April 19, 2021.

The Tenant stated that they did not have an opportunity to clean the blinds as they had been removed from the unit on April 19, 2021.

4. Damaged blinds to be replaced

The Landlords withdrew this part of their claim and stated that the damaged blinds weren't replaced as they sold the rental unit in late July of 2021.

5. Damaged sink and floor repair \$630.00

The Landlords submitted photos and receipts to support that the sink was damaged during the tenancy and that the repair cost \$105.00.

The Landlords submitted photos and receipts of various gouges and scratches on the laminate flooring. The Landlords stated that 10 floor panels were replaced at a cost of \$525.00.

The Tenant didn't dispute that there were small chips on the kitchen sink; however, didn't believe that the Tenants should be responsible for the \$100.00 cost. The Tenant acknowledged that there were small scratches in the laminate flooring that were part of normal wear and tear and that were a result of moving furniture.

6. Fridge Replacement Parts \$282.86

The Landlords submitted a receipt and pictures of four broken drawers from the fridge and testified the fridge was new in 2017, at the beginning of the tenancy. The Landlords submitted an email from the Tenant that indicated an admission from the Tenant that they had broken a fridge bracket. The Landlord commented on the Tenants' evidentiary photo of the fridge and noted that the damaged drawers weren't pulled out (therefore damage couldn't be observed) and the light was burned out.

The Tenant submitted a photo and stated the picture showed the fridge as clean and undamaged.

7. Cleaning supplies and light bulbs \$ 414.31

The Landlords submitted various receipts and corresponding photos of areas that required cleaning. The Landlords stated that the condition of the rental unit required significant cleaning and the supplies to do so. Included in the submissions:

- Picture of cook top that required cleaning
- Burned out and damaged light bulbs left at the end of tenancy
- Silicone cleaner and lubricant for extremely dirty sliding door tracks
- Fridge and freezer lights burned out
- A toilet paper holder that was missing
- Spackle repair

The Landlords are requesting compensation for these costs.

The Tenant indicated that some of the light bulbs were discontinued and couldn't be replaced. The Tenant also stated that he "didn't realize some of them were burnt out".

8. Repair damaged fixtures \$349.33

The Landlords submitted receipts and testified that they required an electrician to attend the rental unit to repair several light fixtures, including some where the wrong bulbs caused transformers to overload, and one fixture where the wires were cut. The Landlords acknowledged the copy of the receipt submitted was poor quality and provided few details.

The Tenant denied causing any damage to the fixtures.

9. Tote Replacement \$110.88

The Landlords submitted photos and testified that there were two plastic storage totes in excellent condition that were included as part of the tenancy for storage on the decks. The Landlords testified that both were not cleaned, and one was broken by the end of the tenancy. The Landlords are claiming the cost for replacing one of the totes.

The Tenant stated that any damage to the totes was normal wear and tear.

10. Personal hours to clean the unit \$4,273.50

The Landlords submitted pictures of the rental unit prior to the tenancy, after the tenancy and while the Landlords were cleaning the rental unit. The Landlords submitted

copies of emails to document the work and the related hours that it took to clean the rental unit. The Landlords charged themselves out at \$50/hour and also submitted a receipt for a cleaning service to clean the bathroom, in the amount of \$141.00.

The Landlords submitted documentation to counter the Tenants' evidence that the mess in the rental unit was a result of the painter being present and pointed out photos of the painter's equipment stored in an organized manner. The Landlord submitted that the photos the Tenants submitted, and dated April 30, 2021, were not correct and the dates conflicted with the Tenants' submissions.

The Landlords acknowledged that the labour to clean the rental unit was a large part of their claim and that it included the time to drive back and forth to the unit.

The Tenant acknowledged that there was "some fault on our end." The Tenant stated that they are responsible for the missing light bulbs, didn't know the fridge drawers were broken, and took responsibility for the cleaning that was required in the bathroom in the amount of \$140.00.

The Tenant suggested that the Landlord keep the security deposit in compensation for the damages and stated that the rest of their claim regarding \$4000.00 in cleaning labour is "asinine". The Tenant stated that he does not agree that the rental unit required this much cleaning.

Analysis

Section 7(1) of the Act establishes that a party who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the other party for damage or loss that results from that failure to comply.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the Landlords have the burden to prove that they suffered a loss as a result of the Tenants violating the Act or the Tenancy Agreement; demonstrate the amount or value of the loss; and prove that they acted reasonably to minimize that loss. The standard of proof is on a balance of probabilities meaning it is more likely than not that the facts occurred as claimed.

Section 32 of the Act sets out the responsibility of a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and residential property. A tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37 states that a tenant must vacate the rental unit by 1:00 p.m. on the day the tenancy ends. When the tenant vacates the rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in possession or control of the tenant and that allow access to and within the residential property.

The Landlords presented nine issues where they claimed the Tenants caused damage and for which the Landlords are seeking compensation for their losses. The Landlords submitted an extensive amount of evidence to demonstrate that the rental unit required both cleaning and repairs at the end of the tenancy. I find that the end-of-tenancy pictures of the walls, floors, fridge, decks, appliances, screens, the bathroom and cabinets demonstrated that the Tenants failed to comply with section 32 and 37 of the Act, specifically, that the Tenants failed to repair the damages to the walls, floor and fridge, and also failed to leave the rental unit in a reasonably clean condition.

1. Loss of Rental Income -May 2021 \$1,900.00

The Landlords' first claim is for a loss of one month's rent based on the condition of the rental unit at the end of the tenancy. I find that the Landlords have established that they spent a significant amount of time cleaning and repairing the rental unit after the tenancy.

Before awarding a monetary claim to the Landlord, I have to consider Section 7(2) of the Act that states a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the Regulations or their Tenancy Agreement must do whatever is reasonable to minimize the damage or loss.

In this case, I find that the Landlords' failed to provide sufficient evidence that they attempted to mitigate their losses by re-renting the unit. I find the Landlords failed to provide any evidence that they attempted to find new tenants for the unit through advertising, arranging showings or any other means.

Although the Landlords have established that they suffered a loss as a result of the Tenants contravening the Act, I find that compensation for this will be considered below. Regarding the issue of loss of rent, I find that the Landlords did not minimize their damages, pursuant to section 7(2) of the Act. As such, I dismiss this part of the Landlords' claim.

2. Half the cost for painting unit \$1,417.50

When considering whether the Landlords have established a monetary claim regarding the painting of the unit, I referenced Policy Guideline 1 which directs tenants to pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws have left the walls damaged. I also referenced Policy Guideline 40 which provides the useful life of interior paint at 4 years.

Based on the testimony and evidence before me, I find that the Tenants did cause damage to the walls of the rental unit and failed to repair them. I also find that the paint in the rental unit, according to Policy Guideline 40 was likely at the end of its useful life. Based on this, I find that the Landlords' claim for half the cost of painting is excessive. Instead, I award the Landlords 50% of their claim to acknowledge the damage and subsequent patching required for the walls, in the amount of \$708.75, in accordance with section 67 of the Act.

3. Cleaning blinds and track repair \$517.65

Based on the evidence provided by the Landlords, I find that the blinds did require cleaning. However, I find that the Landlords removed the blinds before the end of the tenancy and did not give the Tenants an opportunity to clean and/or repair the blinds. As such, I dismiss this part of the Landlords' claim.

4. Damaged blinds to be replaced - the Landlords withdrew this part of their claim.

5. Damaged sink and floor repair \$630.00

The Landlords submitted photos and receipts to support that the sink was damaged during the tenancy and that the repair cost \$105.00. The Tenants admitted that the sink was damaged during their tenancy. As such, I award the Landlords \$105.00 in damages, pursuant to section 67 of the Act.

Both parties acknowledged that there were scratches and gouges on the laminate flooring. The Landlords submitted a receipt where the contractor noted that there was

normal wear and tear on the laminate floors and that only those panels that were damaged beyond normal wear and tear were repaired/replaced.

In this case, I find the Landlords used their discretion and only replaced those panels that were damaged beyond normal wear and tear during the tenancy. I find the Landlord mitigated their damages and should be compensated for the amount claimed, \$525.00, pursuant to section 67 of the Act.

6. Fridge Replacement Parts \$282.86

The Landlords presented testimony and photographic evidence that the fridge was damaged during the tenancy. By the end of the hearing, the Tenant took responsibility for the damaged fridge. As such, and in accordance with section 67 of the Act, I award the Landlords \$282.86.

7. Cleaning supplies and light bulbs \$ 414.31

The Landlords presented evidence and I have found that the rental unit required further cleaning after the tenancy ended. The Landlords submitted receipts for the cleaning supplies and replacement bulbs for various light fixtures throughout the unit. By the end of the hearing, the Tenant took responsibility for the missing and burnt-out light bulbs. As such, I find the Landlords have established a monetary claim, in the amount of \$414.31, pursuant to section 67 of the Act.

8. Repair damaged fixtures \$349.33

The Landlords claimed there were electrical repairs required to some of the light fixtures. Based on the Landlords' submissions, I find they failed to provide sufficient evidence that the Tenants were responsible for the damages versus normal wear and tear on the fixtures. I find that the Landlords also failed to provide a readable copy of the invoice for the repairs. As such, I dismiss this part of the Landlords' claim.

9. Tote Replacement \$110.88

The Landlords claimed that the Tenants were responsible for the damage to two outside plastic storage units. Based on the Landlords' evidence, I find that the Landlords established that the Tenants did not care for or clean the totes. However, I find that the Landlords failed to prove that the damage was caused by the Tenants versus the

normal wear and tear that would occur to plastic containers left outside for four years. As such, I dismiss this part of the Landlords' claim.

10. Personal hours to clean the unit \$4,273.50

As stated above, I find that the Landlords presented evidence that firmly established that the rental unit required significant cleaning and a fair amount of repair after the tenancy ended.

The Landlords acknowledged that some of the accumulated hours were spent monitoring other trades and driving back and forth to the rental unit. I have found that the Tenants were responsible for some damages; however, I find that the Tenants should not be held responsible for the Landlords' choice to, for example: monitor various trades, the travel back and forth from the rental unit, clean the blinds.

In this case I award the Landlords compensation for 40 hours of their labour to clean and repair the rental unit at \$50.00 per hour for a total of \$2,000.00. Furthermore, I find with the Tenant's admission, that the Landlords established their claim of \$140.00 for the cleaning of the bathroom. In total, I award the Landlords \$2,140.00 for this part of their claim, in accordance with section 67 of the Act.

I issue a Monetary Order in the Landlords' favour under the following terms, which allows the Landlords to recover damages under section 67 of the Act, to be compensated for the filing fee for this Application and to retain the Tenants' security deposit, pursuant to section 72 of the Act:

Item	Amount
Partial cost for painting unit	\$708.75
Damaged sink and floor repair	630.00
Fridge Replacement Parts	282.86
Cleaning supplies and light bulbs	414.31
Labour to clean the unit	2,140.00
Less Security Deposit	-950.00
Recovery of Filing Fee for this Application	100.00

Total Monetary Order	\$3,325.92
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Conclusion

As I have applied the security deposit to the Landlords' claim, pursuant to section 72(2) of the Act, I dismiss the Tenants' Application for the return of the security deposit and to be compensated for the cost of the filing fee.

Pursuant to Section 67 of the Act, I grant the Landlords a Monetary Order for \$3,325.92. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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 *Residential Tenancy Act*.

Dated: January 5, 2022

Residential Tenancy Branch