



Dispute Resolution Services

Page: 1

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 concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord and one of the tenants attended the hearing and the tenant also represented the other tenant. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the rental unit or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on July 1, 2020 and expired on July 1, 2021 and the tenancy ended at the end of the fixed term. Rent in the amount of \$1,600.00 was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$800.00 which is still held in trust by the landlord, and no pet damage

deposit was collected. The rental unit is a single family house, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy with both tenants present, and a copy has been provided for this hearing. A move-out condition inspection was scheduled for 1:00 p.m. on June 30, 2021, but the landlord didn't get to the rental unit on time, arriving at about 1:30 p.m. The tenants were there when the landlord arrived but had to leave to get a child to swimming lessons at 1:35 p.m. and they left. The landlord went through the house alone and filled out the report. One of the tenants came back around 3:00 or 3:30 and the landlord gave him a copy of the move-out condition inspection report. The landlord asked if the tenant wanted to go through it line by line, however the tenant asked to take photographs of the deficiencies that the landlord had noted on the report and wanted time to go over the report that evening. The tenants have not signed it.

On March 12, 2021 the landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property and an unsigned copy has been provided for this hearing. It is dated March 10, 2021 and contains an effective date of vacancy of June 30, 2021. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)," specifying the landlord or the landlord's spouse. The landlord testified that the house had been listed for sale from July, 2019 and was taken off the market in May, 2020; about 6 weeks before the tenants moved in. The landlord moved into the rental unit as of June 30, 2021.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$5,906.80:

- \$1,795.00 for kitchen counter replacement;
- \$440.00 for kitchen counter installation;
- \$150.00 for steam cleaning the fridge and kitchen;
- \$52.96 for replacement of a stove burner;
- \$38.58 for cleaning supplies and insecticide;
- \$600.00 for the landlord's time cleaning;
- \$2,200.00 for labor and painting materials;
- \$500.00 for inspection and pest control for ants;
- \$130.26 for a baseboard heater and labour to install.

Numerous photographs have also been provided for this hearing.

The landlord has not yet replaced the countertop, however an estimate in the amount of \$1,795.00 plus taxes for a new countertop has been provided for this hearing. The counters were not new but had no signs of water damage and is noted as “fair” at move-in and “poor” at move-out on the reports. At the end of the tenancy the L-shape or U-shape corner seams are warped with water damage. The underside was also swollen at the end of the tenancy from taking on water. No estimate has been provided for the cost of installation.

The landlord has provided a receipt in the amount of \$150.00 for steam cleaning and testified that the service was for cleaning the fridge, cabinets and bathroom. The fridge at the end of the tenancy was not clean enough to put anything in it, and the cabinets in the kitchen had something stuck on them.

The landlord has provided a receipt for replacement for the stover burner at cost \$33.89, and shop towels for cleaning on the same receipt at a cost \$2.43. The landlord testified that the tenants did not advise the landlord of an ant infestation during the tenancy, and the landlord purchased ant traps for \$4.99 and ant killer for \$5.98.

The pest control services were not obtained so the landlord withdraws the \$500.00 claim for pest control. However, further cleaning supplies and insecticides were purchased for \$38.58, and a receipt has been provided.

The landlord testified that the landlord spent at least 24 hours from July 1 to July 10, 2021 cleaning, and claims \$25.00 per hour for labour, or \$600.00.

The rental unit was professionally painted at some time prior to tenancy and the landlord has provided a copy of an Invoice dated January 19, 2019 as evidence. However at the end of the tenancy the walls were filthy with hand prints, marker, and crayon and could not be cleaned.

A toy had melted into the fins of the baseboard heater in the child’s bedroom and the landlord could not remove it. No receipt for its replacement has been provided for this hearing.

The landlord moved into the rental unit as of June 30, 2021 and testified that the tenants did not dispute the Two Month Notice to End Tenancy for Landlord’s Use of Property, and have not served the landlord with an Application for Dispute Resolution claiming against the security deposit.

The tenant testified that the tenant believed the landlord would be happy with the way the rental unit was left at the end of the tenancy, and takes issue with the characterization of the landlord that the tenants were negligent.

The tenants used the same cleaners that the landlord used the day after they moved out and paid \$550.00 for a full move-out clean, but forgot food in the fridge. The landlord claims \$150.00 for the cleaners and another \$600.00 for the landlord's time to clean which seems unfair.

When the tenants moved in they had a 1 year old child and a 4 year old. Some of the damage, like crayons, the tenant is careful to purchase washable supplies. With Magic Eraser it's a quick wash. The tenant offered to patch walls, but the landlord declined that offer, and the tenant accepts that the landlord preferred to do it himself.

There were a few ants; maybe 10 in a localized area under sink but the tenant hadn't noticed any during the tenancy. The ants didn't need the extent that the landlord has claimed. It's a rural gulf island property and ants are a common issue. It's not outside the norm to have a few under sinks. There were some other bugs under chest that the movers took and no live bugs were there.

The tenants worked hard to be good tenants and tried to communicate with the landlord about required repairs. The landlord had very specific directions with respect to caring for the house, and the tenants followed those instructions. The tenants had to take down a lightbulb that was shining in neighbour's house and the tenants knew the landlord was particular and had high standards. The tenants tried hard to honour those, but the tenants are 2 working parents.

The plastic figure in baseboard is a normal thing that kids do. Google says to heat it up and take it out and the tenant would have done that but didn't notice it. The tenant didn't see crayon on bricks but that would not be hard to remove.

The tenants sent a counter offer to the landlord about the countertop which is made from particle board and had 1 curved edge exposed around the sink. The landlord could have shaved off any swollen wood.

The rental unit was not as clean as the tenant would have liked at the end of the tenancy, but during the chaos may have missed something. The tenant would have liked to go over all walls, but paid a professional to have the oven cleaned, and the tenant did more

cleaning after the cleaners left. The tenant washed windows and window tracks but didn't take the baseboard heaters off which is why the tenants missed the plastic figure.

SUBMISSIONS OF THE LANDLORD:

The landlord is trying to determine what is wear and tear. The rental unit has not been re-rented but is recreational property for the landlord a couple of times per month. The photographs provided by the landlord were taken between June 30 to July 10, 2021.

SUBMISSIONS OF THE TENANT:

The tenant does not dispute all of the landlord's claim but wants to point out that the landlord isn't currently residing in the rental unit except about once per month; the tenants drive by regularly. The tenants have provided a "walk-through" video taken on June 30, 2021 which gives an overview of the home when the tenants left.

Analysis

In order to be successful in a claim for damage or loss, the landlord must satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenants' failure to comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any damage or loss suffered.

I also refer to Residential Tenancy Policy Guideline 16 – Compensation for Damage or Loss, which states, in part: "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."

I have reviewed all of the evidence, and I accept that the landlord has tried to determine what is considered wear and tear.

Policy Guideline 40 – Useful Life of Building Elements specifies that the useful life of counters is 25 years. The landlord did not specify the age of the counters, however considering the photographs, I accept that they are made from particle board and wood, and I find that the swelling and warping is wear and tear. Therefore, I am not satisfied that the damage is a result of the tenants' failure to comply with the law or the tenancy agreement, and the landlord's claim for replacement of the countertop and installation are dismissed.

The photographs provided by the landlord show that the rental unit was not left reasonably clean, and I accept that the tenant hired a cleaning company, however neither the tenants nor the cleaners completed the job. I accept the landlord's claims of **\$150.00** for steam cleaning and **\$600.00** for labour and costs to clean.

The tenant does not dispute the cost of the stove burner, and the landlord has provided a copy of a receipt showing that the amount was \$33.89, plus taxes. The receipt also shows purchases of \$2.43 for shop towels and the amounts of \$4.99 and \$5.98 as testified by the landlord are for ant traps and ant killer. I find that the landlord has established the **\$33.89** claim and **\$2.43** claim, plus taxes of **\$4.36**. I also accept the claims for additional cleaning supplies for a total of **\$30.45**, plus taxes of **\$3.65**. I find that the receipt dated July 2, 2021 includes a Brita water pitcher, which the tenants are not responsible for.

With respect to ants, I have reviewed the photographs of the pests under the kitchen sink. The photographs show a very old cabinet under the sink with a lot of corrosion on the pipes and cracks along the wall. I am not satisfied that the landlord has established that the ants were caused by any failure by the tenants to comply with the *Act* or the tenancy agreement, and I dismiss the landlord's claims for insecticides. During the hearing the landlord withdrew the \$500.00 claim for pest control services.

The landlord's photographs also show that a toy had melted into the fins of the baseboard heater, which ought to have been cleaned out by the tenants prior to vacating. However, the landlord has not provided any receipts for purchasing the item, and has therefore not satisfied element 3 in the test for damages.

With respect to the landlord's \$2,200.00 claim for painting the rental unit after the tenancy had ended, the useful life of interior paint is deemed to be 4 years. The landlord has provided evidence of having the rental unit painted in January, 2019 at a cost of \$3,000.00, plus 5% GST. Considering that the tenancy ended on June 30, 2021, and the move-in and move-out condition inspection reports, the photographs of the landlord and videos of the tenants, I find that the landlord has satisfied the 4-part test. Using the previous invoice as a benchmark, I divide the amount of \$3,000 by 4, and multiply the sum by 2.5 years, being the remaining useful life. I find that the landlord has established a claim of **\$1,875.00**. ($\$3,000.00 / 4 = \$750.00 \times 2.5 = \$1,875.00$). The landlord has not indicated if any GST will be payable or if the landlord will complete the painting.

In summary, I find that the landlord has established the following claims as against the tenants:

- **\$150.00** for steam cleaning;
- **\$600.00** for labour for cleaning;
- **\$33.89** claim for the stove burner and **\$2.43** for cleaning supplies, plus taxes of **\$4.36**;
- **\$30.45**, plus taxes of **\$3.65** for additional cleaning supplies; and
- **\$1,875.00** for painting;

for a total of **\$2,699.78**.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the **\$100.00** filing fee.

The landlord has also applied to keep the \$800.00 security deposit, and I so order. I find that the landlord has complied with the law by filing the application claiming against the security deposit within 15 days of receiving the tenants' forwarding address in writing. I further order that the landlord recover the balance from the tenants and I grant a monetary order in favour of the landlord for the difference of **\$1,999.78**.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$800.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$1,999.78**.

This order is final and binding and may be enforced.

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: February 03, 2022

Residential Tenancy Branch