



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNDL-S FFL
For the tenants: MNSDS-DR FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for monetary order in the amount of \$3,554.49 for damages to the unit, site or property, for authorization to retain all or part of the tenants' security deposit, and to recover the cost of the filing fee however the filing fee has already been waived. The tenants applied for a monetary order in the amount of \$1,850.00 for the return of double their security deposit, and to recover the cost of the filing fee.

Attending the teleconference was the landlord, ES (landlord) and tenants EL and AW (tenants). During the hearing the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence 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.

As both parties were aware of the application by the other party and confirmed having had the opportunity to review the documentary evidence from the other party, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Is either party entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit under the Act?
- Is either party entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 1, 2018 and reverted to a month-to-month tenancy after August 1, 2019. Monthly rent was \$1,750.00 and was due on the first day of each month. The tenants paid a security deposit of \$875.00 at the start of the tenancy, which the landlords continue to hold.

Tenant's Claim

There is no dispute that the landlord received the tenants' written forwarding address via registered mail on April 7, 2021. The landlords filed their application claiming towards the tenants' security deposit on April 13, 2021, which is within the 15-day timeline provided under the Act. In addition, the tenants stated at the second portion of the hearing, that they are no longer seeking double the return of the security deposit.

Landlords' claim

The parties agree that the landlord served the following monetary claim on the tenants as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Laminate flooring replacement	\$2,200.00
2. Glass stove cooktop	\$531.31
3. Labour for glass stove cooktop	\$100.00
4. Fridge door	\$354.24
5. Labour for fridge door replacement	\$50.00
6. Unit cleaning	\$180.00
7. March 6-31, 2021 utilities	\$28.86
8. Move out fee	\$100.00
TOTAL	\$3,544.41

Regarding item 1, the landlord has claimed \$2,200.00 to replace damaged laminate flooring. The landlord submitted a Condition Inspection Report (Condition Report) that indicates the incoming portion was completed on August 22, 2018 and the outgoing portion was completed on March 27, 2021. The landlord testified that the rental unit was brand-new in the middle of August 2018 and that the tenants were the first tenants in the rental unit effective September 1, 2018.

The landlord provided many colour photos from after the tenancy, which support that the laminate flooring shows water damage, uneven lifting, bubbling, separation of the boards, and that some areas were more severe than other areas. The areas show are the living room, bedroom and hallway. The landlord also submitted a video which shows lifting flooring on the bedroom joints, lifting and water dripping in a corridor, and lifting edges of the flooring around the joints.

The landlord testified that their flooring installer stated that there was no warranty when water damage has occurred as the laminate flooring is not waterproof or water resistant. An email was submitted to support this information. The landlord also submitted an estimate in the amount of \$2,200.00.

The landlord also referred to the Addendum to the tenancy agreement (Addendum), which states under #6, that no pets allowed for this unit. The landlord stated that in February 2020, the tenants were permitted to get a small dog; however, the landlord stated that the tenants failed to advise the landlord that they did get a dog and as a result, there was no second inspection at the time the dog was brought to the rental unit.

by the tenants. The tenants stated that although they were given permission to get a dog, they never did get a dog but stated that 3 of their neighbours did have dogs. Later in the hearing, the tenants confirmed that they did have a dog.

The tenants do not disagree that there was water damage to the laminate flooring but claim the damage was caused by 2 major water leaks. The tenants testified that they did not inspect the floors with a flashlight and became aware of the floor damage after removing furniture. The tenants stated that there was no quote from the original laminate supplier and instead the only quote was from a much more expensive company and the tenants feel that they are not responsible for the water damage.

The landlord stated that while there was a leak in October 2018, the flooring was not bubbling and as of February 2020, the flooring was still fine. The landlord stated that due to the condition of the laminate, the entire floor had to be repaired. The landlord also testified that in October 2018, after the first leak, the fridge door and drywall was repaired as part of the leak repairs.

Regarding item 2, the landlord has claimed \$531.31 to replace a damaged stove glass cooktop. The landlord presented a video which shows that the stove glass cooktop was dirty and had some scratches on the front and top of the stove and cooktop. The landlord presented a quote obtained online in the amount of \$425.05 US dollars. The tenant's response to this item was that the scratches were due to normal wear and tear and that they were superficial and does not impact the use of the stove. The tenants also denied being negligent in using the stove and confirmed that they used the stove daily during the tenancy. The landlord denied that the scratches were superficial and that the average stovetop should last 10 years and not just 3 years of use.

Regarding item 3, the landlord has claimed \$100.00 for the cost of labour to replace the damaged cooktop. The landlord stated that they used the amount of \$100.00 as that was their best estimate of what the "industry average" would be to install a cooktop. The landlord confirmed they did not get an official estimate but had spoken to a cooktop repair store that suggested \$100.00 was the "industry average". The tenant stated that \$640.00 would be the cost of a new stove and that they cannot see any cracks all the way through and that scratches and being dirty would constitute wear and tear.

Regarding item 4, the landlord has claimed \$354.24 for the cost to replace a damaged fridge door. The landlord testified that in October 2018, the fridge door was replaced with a new fridge door and that by the end of the tenancy, the tenants dented the fridge door, which is supported by video and photo evidence. The tenants admitted that the

fridge was dented and scratched and offered up to \$177.50 or ½ of the amount claimed. The parties did not reach a mutually settled agreement regarding this item and the landlord stated that they would like me to determine the amount owed as a result.

Regarding item 5, the landlord has claimed \$50.00 for labour to replace the dented fridge door. The landlord stated that the amount of \$50.00 was obtained from a telephone conversation from a shop that repairs appliances and that they were verbally quoted \$50.00 as the amount it would cost to have someone replace the fridge door. The tenants provided no further comments on this item other than “we admit there is damage”.

Regarding item 6, the landlord has claimed \$180.00 for unit cleaning. The landlord stated that although they raised the amount to \$200.00 in a subsequent Monetary Order Worksheet, the parties were advised that I was not satisfied that the original application was formally amended to change the \$180.00 amount to \$200.00. Therefore, I find the claim for cleaning must remain at \$180.00 versus \$200.00 in the interests of fairness to the tenants. The landlord submitted the following after-tenancy colour photos, which show the following:

1. A burned item left inside the oven.
2. An inside edge of the oven that had residue.
3. Debris behind the knobs of the stove (knobs were removed for photo).
4. A close-up of a single hair on the seal of the laundry machine with door open.
5. A close-up of some minor spots in a drawer.
6. A close-up of dirt on one dimmer light switch.
7. Debris in cabinet above hood fan.
8. A close-up of some spots on a privacy blind in the lowered position.
9. Same photo as 7 but from a different angle.
10. A close-up of 2 of the glass cooktop elements showing some scratches and dirty marks.
11. A close-up of an inner fridge shelf showing some residue.
12. A window showing that it had not been fully wiped down.
13. A wear mark on a wall.
14. A close-up of some dust that is of no weight as the appliance cannot be determined as the photo is too close to a minor amount of dust.
15. A close-up of the dishwasher with some areas that were not cleaned around the edge of the door.
16. The outside deck and railing that were not cleaned and very dirty.
17. A close-up of an inner fridge drawer with some residue in the seal.

18. A close-up of a small amount of residue in the humidity control switch of the fridge.
19. A close-up of a spot in the seal of the fridge door that is very minor.
20. Same photo as 1 but from a different angle.
21. Similar photo to 3 but of the other 2 elements with knobs removed and debris showing.
22. A few hairs and a tiny piece of what appears to be paper in a small plastic piece that is taken so close the item cannot be determined.
23. Residue left behind in the laundry detergent drawer of the washing machine.
24. Dirt and debris behind an appliance in the kitchen (appliance not shown).
25. Triple light switch showing a minor amount of residue.
26. A close-up of a different privacy blind with one small spot on it.
27. A close-up of 5 more spots on a different area of a privacy blind.
28. Similar photo to 9 except the other 2 elements showing some scratches and elements that were not cleaned.
29. Another close-up of residue in a fridge shelf.
30. A close-up of a small amount of residue on the flooring.
31. A close-up of a tiny mark in the microwave.
32. A window that was not fully wiped.
33. Similar photo to 14 except from a distance.
34. Similar photo to 13 however taken from a further distance to show the appliance is a dishwasher.
35. Residue under a plastic piece removed from the fridge.
36. A close-up of a small minor mark on flooring.
37. A close-up of no weight as the photo was taken far too close to be of any use.
38. Another fridge photo close up taken of a minor amount of debris in an inner edge of the fridge.
39. Another close-up of no weight as the photo was taken far too close to be of any use.

The tenants' response was that the stovetop could have been cleaned better and that they did have a cleaning company attend but the tenants were not there to see what the cleaning company cleaned, and it is possible that a great job was not done. The tenants claim that they offered to do more cleaning, which the landlord denied was offered. Regarding items 7 and 8, which relate to the utility bill and a move-out fee, the parties reached a mutually settled agreement. During the hearing, the parties agreed that the tenants would pay the landlord \$28.86 for the cost of March 6-31, 2021 electricity utilities, plus \$100.00 for the move-out fee.

Analysis

Based on the documentary evidence and the testimony of the parties, and on the balance of probabilities, I find the following.

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 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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on both parties to provide sufficient evidence to prove their respective claims and 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 other party. Once that has been established, the parties must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the applicant party did what 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.

Landlord's claim

Item 1 - The landlord has claimed \$2,200.00 to replace damaged laminate flooring. I have reviewed the Condition Report that indicates the incoming portion was completed on August 22, 2018 and the outgoing portion was completed on March 27, 2021. I accept the landlord's undisputed testimony that the rental unit was brand-new in the middle of August 2018 and that the tenants were the first tenants in the rental unit effective September 1, 2018.

I have also carefully reviewed the photos which I find major damage with the laminate flooring and that such damage would be noticeable without having to use a flashlight and move furniture as claimed by the tenants. Therefore, I prefer the testimony of the landlord over the tenants. I also find the landlord's testimony has the ring of truth to it when the flooring installer stated that there was no warranty when water damage has occurred as the laminate flooring is not waterproof or water resistant. Furthermore, I find the email submitted to support this information. I also find the landlord supported the amount owing was supported by the estimate in the amount of \$2,200.00.

I afford little weight to the tenants' testimony about a flooring company provided a high quote as the tenants had the ability to secure and submit their own flooring quote and did not do so. I find the dog is not relevant, because the landlord at some point agreed to a small dog via text message, and I find there is insufficient evidence before me regarding the size of the dog. Given the above, I find the tenants are liable for the laminate flooring damage as I find the tenants were negligent in advising the landlord of water damage in a timely manner whereby the landlord may have been able to prevent such a large amount of flooring damage.

I have applied RTB Policy Guideline 40 – *Useful Life of Building Elements* (Guideline 40), which does not specifically mention laminate flooring. The flooring described in Guideline 40 is tile which has a useful life of 10 years, and hardwood parquet flooring at 20 years. I find that laminate flooring would be 10 years or 120 months as it is not a solid wood product. I also find the landlord received 31 months of useful life from the laminate flooring between August 2018 and the end of March 2021. Therefore, I find the laminate flooring value has depreciated by 31 of the 120 months, or 25.8%. Therefore, I will reduce the \$2,200.00 amount claimed by the landlord by 25.8%, which I find is \$567.60 and I award the landlord the net amount after depreciation in the amount of **\$1,632.40**. I find the landlord has met the burden of proof in that amount and dismiss any amount higher than \$1,632.40 due to insufficient evidence.

Item 2 - The landlord has claimed \$531.31 to replace a damaged stove glass cooktop. I disagree with the tenants that the video and photo evidence support that the dirty and scratches represent normal wear and tear as I find the scratches were not consistent with a 30-month tenancy, however, I find the cooktop was still usable and did not require replacement. Therefore, I award the landlord **\$200.00** as nominal amount to reflect the damage the tenants did to the cooktop, which I find to be beyond normal wear and tear and to reflect the tenant's breach of section 37 of the Act, which requires the tenants not to damage anything in the rental unit, beyond normal wear and tear. I

dismiss any amount higher than the nominal amount of \$200.00 due to insufficient evidence.

Item 3 - The landlord has claimed \$100.00 for the cost of labour to replace the damaged cooktop. In keeping with my find above for item 2, I dismiss this portion of the landlord's claim in full due to insufficient evidence that the cooktop required replacement. I find the cooktop is still useable as noted above.

Item 4 - The landlord has claimed \$354.24 for the cost to replace a damaged fridge door. I accept the undisputed testimony of the landlord that in October 2018, the fridge door was replaced with a new fridge door. I also note that the tenants admitted to damaging the fridge door by the end of the tenancy. According to Guideline 40, the useful life of a fridge is 15 years or 180 months. I find the new fridge door was used for 29 months, between October 2018 and the end of March 2021. I find the depreciated value of the fridge would be 16.1%. Therefore, I find that after deducting 16.1% from \$354.24, which I find is \$57.03, I find the landlord has established a total claim of **\$297.21** and I grant that amount as I find the landlord has met the burden of proof. I find the tenants were negligent in causing what I find to be large dents on the fridge door and deep scratches.

Item 5 - The landlord has claimed \$50.00 for labour to replace the dented fridge door. I grant the full amount for this portion of the landlord's claim as I find the amount is very reasonable and the tenants admitted to damaging the fridge door and I find the damage was negligent. Therefore, I award the landlord **\$50.00** for this portion of their claim and I exercise my discretion not to apply depreciation to labour as I find the labour would not have been required had it not been for the negligence of the tenants.

Item 6 - The landlord has claimed \$180.00 for unit cleaning. As noted above, I do not permit the landlord to increase the amount to \$200.00 in a subsequent Monetary Order Worksheet, as I find the landlord did not formally amend their application.

I note the tenants admitted that the rental unit could have been cleaned better. I have also reviewed all of the video and photo evidence, some of which I find were too minor to be of any weight. I find the photo evidence of the dirty windows, compelling however, and find the tenants failed to clean the windows as required before vacating the rental unit and the cooktop and in some of the cabinets. I afford no weight to the cooktop knobs, as I find the tenants are not expected to remove the knobs while cleaning and could have actually damaged the knobs by doing so unless there was written cleaning directions, which I find were not supplied for my consideration. I also find the blind photos show normal wear and tear for privacy blinds. All of the close-up photos, I find

are very minor and do not support the need for additional cleaning. As a result, I grant the landlord $\frac{1}{2}$ of the \$180.00 amount for cleaning for a total of **\$90.00**. I dismiss any amount above \$90.00 as I find the landlord's version of clean differs from what the Act requires as the Act does not require the rental unit to be spotless and perfect, just "reasonably clean".

Items 7 & 8 – As noted above, the parties agreed that the tenants would pay the landlord \$28.86 for the cost of March 6-31, 2021 electricity utilities, plus \$100.00 for the move-out fee by way of a mutually settled agreement pursuant to section 63 of the Act.

As the landlords' application had merit, I grant the landlords **\$100.00** for the recovery of the cost of the filing fee under section 72 of the Act.

I find the landlords have established a total monetary claim of **\$2,498.47** as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Laminate flooring replacement	\$1,632.40
2. Glass stove cooktop	\$200.00
3. Labour for glass stove cooktop	Dismissed
4. Fridge door	\$297.21
5. Labour for fridge door replacement	\$50.00
6. Unit cleaning	\$90.00
7. March 6-31, 2021 utilities	\$28.86 (mutual)
8. Move out fee	\$100.00 (mutual)
Filing fee	\$100.00
TOTAL	\$2,498.47

I ORDER the parties to comply with their mutual agreement for items 7 and 8, which was recorded pursuant to section 63 of the Act.

As the landlord continues to hold the tenants' security deposit of \$875.00, which I find does not double under the Act and of which the tenants made it clear during the hearing they did not wish it to double, I offset the security deposit amount of \$875.00 from the \$2,498.47 owing and I grant the landlords a monetary order for the balance owing by the tenants to the landlord in the amount of **\$1,623.47** pursuant to section 67 of the Act.

Given the above, I dismiss the tenants' application as I find they are not entitled to the return of any portion of their security deposit, as the security deposit has been used to offset the money owing to the landlords by the tenants as noted above. I do not grant the tenants the recovery of the filing fee as a result.

Conclusion

The landlords' claim is partially successful.

The tenants' claim is dismissed without leave to reapply.

Pursuant to section 38 of the Act, I have offset the tenants' \$875.00 security deposit, which has accrued \$0.00 in interest under the Act from the landlords' monetary claim of \$2,498.47 for a total amount owing by the tenants to the landlords in the amount of \$1,623.47.

The landlords have been authorized to retain the tenants' full \$875.00 security deposit under section 62(3) of the Act. The monetary order must be served on the tenants by the landlords. The monetary order may then be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The tenants may be held liable for the costs associated with enforcing the monetary order.

The parties have been ordered to comply with their mutual agreements for items 7 and 8 pursuant to section 63 of the Act.

This decision will be emailed to both parties.

The monetary order will be emailed to the landlords only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 16, 2022

Residential Tenancy Branch