



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 October 15, 2021 (the “Application”). The Landlords applied as follows:

- For compensation for damage to the rental unit or property
- To keep the security and pet damage deposits
- 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 are 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 relevant evidence provided. 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 or property?
2. Are the Landlords entitled to keep the security and pet damage deposits?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	Waste fees	\$9.20
2	Replacement bulbs	\$26.34
3	Replacement vinyl for deck	\$670.14
4	Mow/weed whack lawns and boulevard	\$115.50
5	Cleaning rental unit and deck	\$80.00
6	Utilities	\$56.00
7	Truck for removal of garbage	\$50.00
8	Truck for removal of compost	\$40.00
9	Dirt/seed/labour backyard	\$80.00
10	Vinyl installation for deck	\$750.00
11	Filing fee	\$100.00
	TOTAL	\$1,977.18

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started June 01, 2017, and was for a fixed term of one year. Rent was \$1,100.00 per month due on the first day of each month. The Tenants paid a \$550.00 security deposit and \$250.00 pet damage deposit.

The parties agreed the tenancy ended September 30, 2021.

The parties agreed on the following. The Tenants provided their forwarding address to the Landlords on the Condition Inspection Report (the "CIR") on September 30, 2021. The Landlords did not have an outstanding Monetary Order against the Tenants at the end of the tenancy. The Tenants did not agree to the Landlords keeping the security or pet damage deposits.

The CIR was submitted. The parties agreed a move-in inspection and move-out inspection was done as shown on the CIR.

The Landlords said they kept the pet damage deposit for damage to the vinyl deck and yard of the rental unit.

#1 Waste fees \$9.20

The Tenants agreed to pay this amount.

#2 Replacement bulbs \$26.34

The Landlords sought compensation for light bulbs that were present at move-in and missing at move-out. The Landlords testified that light bulbs were missing in every room and the bathroom of the rental unit. The Landlords relied on receipts in evidence and the CIR.

The Tenants denied there were more than two light bulbs missing at the end of the tenancy.

#3 Replacement vinyl for deck \$670.14

#10 Vinyl installation for deck \$750.00

The Landlords sought compensation for replacing vinyl on one section of the deck. The Landlords testified that the Tenants damaged a section of the vinyl deck beyond reasonable wear and tear and that this had to be replaced. The Landlords testified that the damaged section of the deck was six by fourteen feet. The Landlords testified that the costs claimed are for materials and installation.

The Tenants testified that the deck was two years old at the start of the tenancy. The Tenants submitted that any “damage” to the deck was reasonable wear and tear. The Tenants testified that the deck is not covered and submitted that UV rays increase the wear and tear on the deck over the years. The Tenants pointed out the length of the tenancy.

In reply, the Landlords submitted that the vinyl deck should have lasted 20 years and looked new if it was maintained properly. The Landlords submitted that the damage on the deck is excessive, and the photos show the deck was not taken care of or even washed by the Tenants. The Landlords testified that the damage caused by the Tenants includes burn marks. The Landlords pointed to the CIR showing the vinyl deck was like new on move-in and in poor shape at move-out.

#4 Mow/weed whack lawns and boulevard \$115.50

The Landlords sought compensation for having to hire a company to mow the front and backyard as well as the boulevard at the end of the tenancy.

The Tenants acknowledged they did not mow the front lawn during the last week of the tenancy. The Tenants submitted that the amount claimed seems excessive.

#5 Cleaning rental unit and deck \$80.00

The Landlords sought compensation for four hours of cleaning at \$20.00 per hour. The Landlords testified that the cleaning included cleaning the stove, dusting, cleaning cupboards, cleaning windows, cleaning blinds and washing curtains. The Landlords advised that they did the cleaning themselves.

The Tenants testified that they had to clean the rental unit for hours before they moved in. The Tenants testified that they left the rental unit in better condition than they found it. The Tenants said they did their best at cleaning in the time they had.

#6 Utilities \$56.00

The Tenants agreed to pay this amount.

#7 Truck for removal of garbage \$50.00

The Landlords sought compensation for use of their truck and time to remove garbage that was left outside and around the rental unit and in the backyard.

The Tenants testified that the garbage left at the end of the tenancy was from two different units and submitted that some of the items shown in the photos were removed before the end of the tenancy.

In reply, the Landlords acknowledged some of the items left around the rental unit were from another tenant. The Landlords said they would agree to reduce the amount sought by 1/3 because there was only one other tenant on the property. The Landlords confirmed items were removed directly from the rental unit.

#8 Truck for removal of compost \$40.00

The Tenants agreed to pay this amount.

#9 Dirt/seed/labour backyard \$80.00

The Landlords sought compensation for having to re-seed and fertilize the backyard lawn. The Landlords testified that the Tenants had dogs, greenhouses and four large planter boxes, all of which caused damage to the lawn.

The Tenants testified that the lawn was already dug up by previous animals in the rental unit when they moved in. The Tenants referred to a dirt pile being in the yard from a sink hole.

Documentary Evidence

The Landlords submitted the following relevant documentary evidence:

- Photos
- Receipts
- The CIR
- Emails
- Bills
- Tenancy agreement
- Invoices
- Quotes

Analysis

Security and pet damage deposits

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits 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 security and pet damage deposits at the end of a tenancy.

Based on the CIR and testimony of the parties, 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 or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlords extinguished their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlords have claimed for cleaning and utilities, neither of which are damage.

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

Based on the testimony of the parties, I accept that the Tenants provided their forwarding address to the Landlords on the CIR on September 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 and pet damage deposits or file a claim against them. Here, the Landlords had 15 days from September 30, 2021. The Application was filed October 15, 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.

RTB 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.

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 are as claimed.

The CIR is in evidence. Both parties signed the CIR. Under the “End of Tenancy” section, it is checked off that the parties agree with the CIR and the Tenants signed the CIR without indicating they did not agree with it. Section 21 of the *Regulations* states:

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I find the CIR is accurate and evidence of the condition of the rental unit because the parties agreed with it and signed it. Further, the Tenants have not provided any documentary evidence to support their positions taken during the hearing. I do not find the testimony of the Tenants alone to be compelling evidence calling into question the CIR.

#1 Waste fees \$9.20

The Tenants agreed to pay this amount and therefore the Landlords are awarded this amount.

#2 Replacement bulbs \$26.34

RTB Policy Guideline 01 addresses the responsibilities of landlords and tenants in relation to rental units and states at page five:

2. The tenant is responsible for:

- Replacing light bulbs in his or her premises during the tenancy

The CIR shows light bulbs were missing at the end of the tenancy and I find the Tenants responsible for replacing these bulbs. I accept based on the receipt in evidence that replacing the bulbs cost \$26.34 and I find this amount reasonable. The Landlords are awarded the amount sought.

#3 Replacement vinyl for deck \$670.14

#10 Vinyl installation for deck \$750.00

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 RTB Policy Guideline 01 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.

I have reviewed the photos of the vinyl deck. I accept that the deck was two years old at the start of the tenancy because the Landlords did not dispute this. I find the photos, for the most part, show normal wear and tear over six years. Outside decks exposed to

the elements and used by tenants and their pets will not remain looking like new. The type of “damage” shown in most of the photos is not damage but normal deterioration of an outside deck over the years. Further, there is no compelling evidence before me showing the Tenants misused the deck in any way.

However, I do accept that the burn or puncture marks in the deck are beyond reasonable wear and tear. The normal use of a deck should not result in burn or puncture marks. I find the Tenants breached section 37 of the *Act* in relation to the burn or puncture marks in the deck. I do not accept based on the photos that the area of the burn or puncture marks is six by fourteen feet. Further, I do not accept that the vinyl deck needed to be replaced due to the burn or puncture marks. Although I do accept that the burn or puncture marks devalued the deck, I am not satisfied they are serious enough to warrant replacing the vinyl deck.

In the circumstances, I award the Landlords \$355.00 being a quarter of the amount sought. I find this amount reasonable given the size and seriousness of the burn or puncture marks on the deck. I do not find based on the evidence provided that the deck was devalued more than \$355.00 due to the burn or puncture marks.

#4 Mow/weed whack lawns and boulevard \$115.50

RTB Policy Guideline 01 states that tenants are responsible for routine yard maintenance. I am satisfied the Tenants did not mow or weed whack areas as required based on the testimony of the parties and photos. I find the Tenants are responsible for the Landlords having to hire someone to attend to mow and weed whack. I accept based on the invoice that it cost \$115.50 to hire someone to attend the rental unit to mow and weed whack. I find the amount sought reasonable considering the time it takes to mow and weed whack. The Tenants disputed the amount claimed; however, they did not provide any compelling evidence to show someone would have attended the rental unit and mowed and weed whacked for less than the amount sought. I award the Landlords the \$115.50.

#5 Cleaning rental unit and deck \$80.00

I accept based on the CIR that some areas of the rental unit were dirty at the end of the tenancy, and I find the Tenants breached section 37 of the *Act* in this regard. It is not relevant that the rental unit was dirty on move-in, the Tenants were required to leave the rental unit, including the deck, reasonably clean at the end of the tenancy. I accept that

the Landlords cleaned the rental unit themselves and that this took four hours. I find the amount sought reasonable and award the Landlords the amount sought.

#6 Utilities \$56.00

The Tenants agreed to pay this amount and therefore the Landlords are awarded this amount.

#7 Truck for removal of garbage \$50.00

I accept that the Tenants left some items at the end of the tenancy because the Tenants did not deny that some of the items left were theirs, the Tenants simply stated that the items were from their unit and a second unit. Further, the CIR notes that shelving was left in the yard and the photos show items left around the rental unit. I find the Tenants breached section 37 of the *Act* by not removing all items from the rental unit at the end of the tenancy. I accept that the Landlords had to remove items left by the Tenants. I award the Landlords \$25.00 for this claim because it was acknowledged that some of the items left were from another tenant.

#8 Truck for removal of compost \$40.00

The Tenants agreed to pay this amount and therefore the Landlords are awarded this amount.

#9 Dirt/seed/labour backyard \$80.00

I accept that the yard was fine on move-in because the CIR shows this. I accept that the yard was in bad shape on move-out because the photos show this and the CIR notes that grass was “missing” at the end of the tenancy. Again, the Tenants were responsible for routine yard maintenance during the tenancy pursuant to RTB Policy Guideline 01. I find the Tenants are responsible for the cost of repairing the yard. I accept that the Landlords had to repair the yard based on the photos. I find the amount sought reasonable and award the Landlords the \$80.00.

#11 Filing fee \$100.00

Given the Landlords have been 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	Waste fees	\$9.20
2	Replacement bulbs	\$26.34
3	Replacement vinyl for deck	\$355.00
4	Mow/weed whack lawns and boulevard	\$115.50
5	Cleaning rental unit and deck	\$80.00
6	Utilities	\$56.00
7	Truck for removal of garbage	\$25.00
8	Truck for removal of compost	\$40.00
9	Dirt/seed/labour backyard	\$80.00
10	Vinyl installation for deck	Above
11	Filing fee	\$100.00
	TOTAL	\$887.04

Pursuant to section 72(2) of the *Act*, the Landlords can keep the \$800.00 in security and pet damage deposits. The Landlords are entitled to a further \$87.04 and are issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Landlords can keep the \$800.00 in security and pet damage deposits. The Landlords are entitled to a further \$87.04 and are issued a Monetary Order in this amount. This Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: June 29, 2022

Residential Tenancy Branch