



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 as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order of \$2,877.83 for damages from the Tenants, retaining the security deposit to apply to the claim; and to recover the \$100.00 cost of their Application filing fee.

An agent for the Landlord, M.F. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about it. The Agent was able to provide her evidence orally and to respond to my questions. I 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.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that Landlord served the Tenants with the Notice of Hearing documents by Canada Post registered mail, sent on September 29, 2021. The Agent provided Canada Post tracking numbers as evidence of service to each Tenant. I find that the Tenants were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenants.

Preliminary and Procedural Matters

The Agent provided the Parties' email addresses in the Application, and she provided her email address in the hearing. She also confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider the Landlord's written or documentary evidence to which the Agent pointed or directed me in the hearing. I also advised the Agent that she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Agent affirmed that she was not recording the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The tenancy agreement states, and the Agent confirmed in the hearing that the fixed term tenancy began on October 15, 2019, and ran to October 31, 2020, and that it then operated on a periodic basis. She confirmed that the Tenants were required by the tenancy agreement to pay the Landlord a monthly rent of \$6,500.00, due on the first day of each month. She confirmed that the Tenants paid the Landlord a security deposit of \$3,250.00, and no pet damage deposit. The Agent verified that the Landlord holds the security deposit in full to apply to this Application.

The Landlord submitted the following monetary order worksheet setting out their claims.

	Receipt/Estimate From	For	Amount Claimed
1	Cleaners	Cleaning entire condo	\$476.07
2	National drug store	13 lightbulbs not working	\$150.33
3	Int'l furniture co.	Replace missing/damaged items	\$286.33
4	Online invoice	Replace missing mesh curtain rod	\$40.18
5	Online shopping site	Replace broken cooktop knob	\$67.99

6	??	Replace missing car decal	\$20.00
7	Contractor's invoice	Repairs throughout condo	\$1,680.00
8	Carpet cleaning invoice	Cleaning bedroom carpets	\$150.00
		Total monetary order claim	\$2,870.90

The Agent and I reviewed the items in the monetary order worksheet consecutively in the hearing, as follows.

#1 CLEANING RENTAL UNIT → \$476.07

The Agent said that the rental unit was not left in a clean condition, which she said is contrary to the tenancy agreement. Clause 10 of the Addendum to the tenancy agreement states:

10. CLEANING

The rental unit at the time of possession has been cleaned, including any carpeted areas. A minimum of \$200.00 will be deducted from the security deposit if at the time of move-out inspection, the property is not cleaned to the same extent as presented at the time of possession. The Tenant is responsible for having the carpets professionally cleaned upon moveout. If requested by the Landlord, a receipt must be provided to the Landlord by the Tenant upon move-out as proof that all carpeted areas were professionally cleaned.

The Agent submitted photographs and videos of the condition of the rental unit at the start of the tenancy. She submitted a condition inspection report ("CIR"), which details the move-in condition of the residential property at the start of the tenancy, with a move-out column indicating the condition at the end of the tenancy. In the hearing, the Landlord said that the Tenant, Z.Y., was present at the move-in and move-out condition inspections.

The move-out portion of the CIR indicates that there were dirty and scratched kitchen drawers, and the interior of the oven was dirty. The CIR also states that there were marks on the walls and baseboards of the master bedroom, marks on doors, front and back, and there were marks under the sink, on the door frame of the ensuite bathroom.

The Agent also submitted photographs at the end of the tenancy, which included:

- Dirt and debris on carpeting;
- Marks and scratches on the kitchen wall;
- Dirty, and marked windowsills;
- Scraped corners of baseboards and walls throughout the rental unit;
- Red spots on wall of closet;
- Dirty bathroom floor; and
- Scratches and dirt on flooring.

I asked the Agent how the Landlord selected this company to clean the rental unit. She said:

This is a company we use regularly. It's included in tenants' rental agreements that we clean at the start of the tenancy. So we used the same company for the end of tenancy cleaning.

However, I could not find an invoice for the cleaning work claimed in the Application.

#2 13 LIGHTBULBS NOT WORKING → \$150.33

I told the Agent that the Landlord had claimed a lot of light bulbs, and I asked the Agent from where in the rental unit they all came. She said:

I can tell you exactly where: two in the entry, one in the storage room, one in the second ensuite bathroom, eight in kitchen, and three in the primary bathroom. The owner had to go to three different [stores] to get all the lightbulbs. We don't hold them in our inventory.

The Landlord submitted three receipts from a national drug store chain for the 13 lightbulbs.

#3 REPLACE MISSING AND DAMAGED ITEMS → \$286.33

The Landlord submitted a "Furnishings and Inventory Addendum", which lists the items in the rental unit and their condition at the start and the end of the tenancy. The items that were not in good condition or were missing at the end of the tenancy include:

- One missing mimosa glass;
- One missing white bowl, two others were chipped;
- Three stemless white wine glasses were missing;

- Two storage containers were missing;
- Spice shakers, salt & pepper, and cooking oil were missing;
- Wooden food tray missing;
- Three hot plate mats were broken;
- A leather ottoman was damaged on top;
- Marks on suede mirror frame; and
- Two decorative pillows were stained;

On the bottom of this report, the Tenant had signed it acknowledging the condition of the contents of the rental unit on October 15, 2019. However, the Tenant had not signed it in the “end of tenancy” section, but she had written the following comment: “I agree for missing tray and containers but it is normal to have glasses broken.” [dated April 7, 2021].

I asked the Agent how old the items noted above were at the start of the tenancy, and she said:

All of the items were new. The owner was living there, and moved some of his furniture out, and moved in items from [an international furnishings store]. Same ones replaced. They were newer at the start of the tenancy. The ottoman was new, as were the mirror and the wooden tray.

The Landlord submitted a copy of an online order form from the international furnishings retailer for the following items: However, this is not a receipt indicating payment.

Wooden tray -	\$ 19.99
Ottoman	- \$149.00
Mirror	- <u>\$ 79.99</u>
Total	$\$248.98 \times 1.12 = \278.86

The Landlord’s total for this claim is \$7.47 higher than the items purchased above.

I asked the Agent if the Landlord had considered having items repaired, rather than replaced, and the Agent said: “The mirror was a suede finish frame and was completely scratched up. The ottoman top was ripped – it would cost more to fix them than purchase them new, and the tray was missing.”

#4 REPLACE ANGLED MESH CURTAIN ROD → \$40.18

The Agent explained that this was a mesh, wire curtain from in front of a fire place. I asked her how old it was at the start of the tenancy, and she did not directly answer, although she had said that the residential property was new in 2009.

The Agent explained the damage to the curtain rod, as follows: “One mesh was hanging down, and a rod was missing; there should be a second rod.” She said it was obtained through an online purchasing site.

The Landlord submitted a photo from the online purchasing site showing an angled mesh curtain rod and hardware for \$34.94; however, the Agent did not explain nor point me to any evidence explaining why the Landlord is claiming \$5.24 more than the amount in the online advertisement. There is no indication that this reflects taxes or shipping costs.

#5 BROKEN MIELE COOKTOP KNOB → \$67.99

The Agent explained that a knob on the cooktop or stovetop was broken and did not work to turn on the element. She said the cooktop was new in 2009, so it was eleven years old at the end of the tenancy. The Agent said that she found a new knob for the cooktop on an international shopping site. However, the website information provided shows how much it cost, not that this item was purchased from the site. Further, it shows that the amount claimed includes \$32.53 for the knob, and \$35.46 for the shipping.

I note that the move-out CIR does not indicate that there was anything wrong with the cooktop. Rather, there is a check mark indicating that it was in “good condition”.

#6 REPLACE MISSING CAR DECAL → \$20.00

The Agent explained that this item is stored in the Tenants’ vehicle and when the Tenant pulled up to the parkade, the decal is scanned and the Tenant is then let into the garage. The Agent said that this decal was not returned by the Tenants.

The car decal is not listed in the Furnishings and Inventory Addendum, but it is listed on the bottom of the CIR as present at the start of the tenancy, and “missing” at the end of the tenancy.

#7 REPAIRS THROUGHOUT CONDO → \$1,680.00

In the hearing, I noted to the Agent that she had provided an invoice with a handwritten list of the repairs on a very small receipt. However, it is difficult to read all the items listed, there is no indication of how long it took to complete each task, and there is no indication of the hourly rate charged by the contractor. There is a \$1,600.00 lump sum plus tax charged. The Agent said she would have to contact the Landlord for more information; however, all evidence was supposed to be provided at least two weeks prior to the hearing, therefore, I cannot accept any additional evidence on this matter.

The receipt appears to note the following work done in the rental unit:

- Replace & repair baseboards;
- Replaced cracked outlet cover;
- Curtain repair;
- Dents repair;
- Paint on walls & window sill ledge;
- Baseboard [illegible]; and
- Fireplace, dryer repair.

The Landlord also submitted videos showing the condition of the rental unit at the start of the tenancy, and 31 unidentified photographs of the rental unit at the end of the tenancy. There were no explanations accompanying the photographs for context.

The move-out CIR does not have any notations indicating “D” for damage done in the rental unit. Rather, the move-out CIR has mainly check marks indicating that the areas of the unit were in “good condition” at the end of the tenancy. There are some notes in the move-out items indicating such things as some marks, scuffs, scratches, and wear on corners. However, there are also check marks beside these items, indicating that they were in “good condition”.

#8 CARPET CLEANING IN BEDROOM → \$150.00

I asked the Agent how she chose the carpet cleaning service, and she said: “We have used them repeatedly, and they are good. Just the two bedrooms were carpeted.”

There are notes at the end of the move-out CIR that the carpets needed to be shampooed. The Tenant signed the bottom of the CIR and checked a box stating: “Agree that this report fairly represents the condition of the rental unit.”

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Agent testified, I let her know how I analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. I advised that in this case, the Agent must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

Rule 6.6 sets out the standard of proof and the onus of proof in this dispute resolution proceeding. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim generally, as in this case, this is the person who applied for dispute resolution – the Landlord in this case.

#1 CLEANING RENTAL UNIT → \$476.07

Based on the Landlord's photographs and videos which show the condition of the rental unit at the start and at the end of the tenancy, I find the following. I find that there were scratches or marks, and some dirt apparent in the rental unit; however, I find it was not in need of the amount of cleaning that would result in an invoice for the amount claimed. A standard cleaning rate is \$30.00 per hour, which if divided by the amount claimed indicates that over 15 hours were spent cleaning this two-bedroom, two bathroom residential property. An hour for each room would be excessive, and there is no evidence before me that there were as many as 15 rooms in this rental unit.

I find that the Landlord has not provided sufficient evidence of uncleanliness in the rental unit, nor have they provided an invoice for the cleaning that was done after the

tenancy ended. Further, I find that the marks and scratches that were evident throughout the rental unit are no more than normal wear and tear. As such, I dismiss this claim without leave to reapply, pursuant to section 62 of the Act.

#2 13 LIGHTBULBS NOT WORKING → \$150.33

According to Policy Guideline #1, tenants are responsible for “replacing light bulbs in his or her premises during the tenancy”. Therefore, I find that the Tenants were responsible for replacing lightbulbs as they burned out and for making sure they were all working at the end of the tenancy.

With no evidence to the contrary, I find it is more likely than not that the Landlord’s claim for missing lightbulbs is substantiated. I, therefore, award the Landlord with **\$150.33** from the Tenants, pursuant to section 67 of the Act.

#3 REPLACE MISSING AND DAMAGED ITEMS → \$286.33

Section 32 (3) of the Act requires a tenant to 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.

As such, I find that the Tenants were responsible for returning the residential property to the condition it was at the start of the tenancy, beyond normal wear and tear.

Accordingly, and without any evidence from the Tenants to the contrary, I find the Landlord has provided sufficient evidence to meet their burden of proof in this claim. I, therefore, award the Landlord with the amount calculated from their receipts of **\$278.86** for this claim, pursuant to sections 32 and 67 of the Act.

#4 REPLACE ANGLED MESH CURTAIN ROD → \$40.18

Without evidence to the contrary from the Tenants, I find that the Landlord has provided sufficient evidence to meet their burden of proof in this matter. As such, and pursuant to sections 32 and 67 of the Act, I award the Landlord with recovery of **\$34.94**, which is the amount presented in the online invoice for this item.

#5 BROKEN MIELE COOKTOP KNOB → \$67.99

Policy Guideline #40 (“PG #40”) is a general guide for determining the useful life of building elements and provides me with guidance in determining damage to capital

property. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

Another consideration is whether the claim is for actual damage or normal wear and tear to the unit. Section 32 of the Act requires tenants to make repairs for damage caused by the action or neglect of the tenant, other persons the tenant permits on the property or the tenant's pets. Section 37 requires tenants to leave the rental unit undamaged. However, sections 32 and 37 also provide that reasonable wear and tear is not damage and a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

In PG #40, the useful life of a stove is 15 years. The evidence before me is that the stove was new in 2009, so it was approximately 12 years old at the end of the tenancy and had three years or 20% of its useful life left. The CIR indicates that the Parties agreed that the stovetop or cooktop was in good condition at the start and at the end of the tenancy, but the Landlord said in the hearing that a knob was broken on the stovetop.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures to a rental unit, a claim for damage and loss is based on the depreciated value of the item and **not** based on the replacement cost. This reflects the useful life of fixtures, such as carpets, countertops, doors, etc., which depreciate all the time through normal wear and tear.

Given that the stovetop was not noted as damaged on the move-out CIR in which both Parties were present, and the age of the stovetop, I find that this claim is for no more than normal wear and tear. As such, I dismiss this claim without leave to reapply, pursuant to section 62 of the Act.

#6 REPLACE MISSING CAR DECAL → \$20.00

Without evidence to the contrary from the Tenants, I find that the Landlord has provided sufficient evidence to determine that the Tenants were provided with this item at the start of the tenancy, but that they failed to return it at the end of the tenancy.

Accordingly, I award the Landlord **\$20.00** for the replacement of this car decal from the Tenants, pursuant to section 67 of the Act.

#7 REPAIRS THROUGHOUT CONDO → \$1,680.00

I find that the bulk of the photographs I reviewed showed nicks and small holes and no clear, significant damage to the rental unit. I find that the bulk of these photos indicated that the Tenants caused no more than normal wear and tear throughout the rental unit. The photographs were not identified, nor were they connected to the repairs listed in the contractor's condensed receipt.

Further, I find that the notations on the move-out CIR are internally inconsistent, as there were no items identified as "D" for damaged beside the notations of marks and scratches, etc. – only check marks indicating that the items were in good condition.

I find that the Landlord has not submitted sufficient evidence, to establish that the Tenants caused \$1,600.00 worth of damage to the rental unit. The lack of identification and explanation of the photographs or any connection of them to the contractor's receipt is inconsistent with Rule 3.7, which states:

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents, and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

[underlining emphasis added]

I find that the Landlord has not provided sufficient evidence to establish that the Tenants breached the Act, Regulation, or tenancy agreement in terms of having left the rental unit damaged; therefore, I dismiss this claim without leave to reapply.

#8 CARPET CLEANING IN BEDROOM → \$150.00

Based on the evidence before me in this matter, I find that the Landlord provided sufficient evidence to meet their burden of proof on a balance of probabilities. As such, I award the Landlord with **\$150.00**, pursuant to sections 32 and 67 of the Act.

Summary and Set Off

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenants' \$3,250.00 security deposit in complete satisfaction of the Landlord's monetary awards.

	Receipt/Estimate From	For	Amount Awarded
1	Cleaners	Cleaning entire condo	\$0.00
2	National drug store	13 lightbulbs not working	\$150.33
3	Int'l furniture co.	Replace missing/damaged items	\$278.86
4	Online invoice	Replace missing mesh curtain rod	\$34.94
5	Online shopping site	Replace broken cooktop knob	\$0.00
6		Replace missing car decal	\$20.00
7	Contractor's invoice	Repairs throughout condo	\$0.00
8	Carpet cleaning invoice	Cleaning bedroom carpets	\$150.00
		Total monetary order claim	\$634.13

Given the Landlord's partial success in this matter, I award the Landlord with recovery of half the Application filing fee or **\$50.00**, pursuant to section 72 of the Act. I authorize the Landlord to retain **\$684.13** of the Tenants' security deposit and return the remaining **\$2,565.87** to the Tenants, as soon as possible.

As such, I grant the Tenants a Monetary Order of **\$2,565.87** for the remainder of the security deposit left after the Landlord's monetary awards have been satisfied in full.

Conclusion

The Landlord is partially successful in their claim for compensation from the Tenants, as

the Landlord provided sufficient evidence to meet their burden of proof on a balance of probabilities for the amounts awarded, but not for the other claims. The Landlord has established monetary awards of **\$684.13**, including recovery of **\$50.00** of the \$100.00 Application filing fee from the Tenants.

The Landlord is authorized to deduct **\$684.13** from the Tenants' **\$3,250.00** security deposit in complete satisfaction of the monetary awards. The Landlord is Ordered to return the remaining **\$2,565.87** of the security deposit to the Tenants as soon as possible.

I grant the Tenants a **Monetary Order** of **\$2,565.87** from the Landlord in this regard. This Order must be served on the Landlord by the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: June 02, 2022

Residential Tenancy Branch