



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, RP, OLC, FFT (Tenants)
FFL, MNDL-S, OPC, MNRL, MNDCL (Landlords)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application March 22, 2022 (the “Tenants’ Application”). The Tenants applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause (the “Notice”)
- To suspend or set conditions on the Landlords’ right to enter the rental unit
- For a repair order
- For an order that the Landlords comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Landlords filed their application March 28, 2022 (the “Landlords’ Application”). The Landlords applied as follows:

- For compensation for damage to the rental unit
- To keep the security deposit
- For an Order of Possession based on the Notice
- To recover unpaid rent
- For compensation for monetary loss or other money owed
- For reimbursement for the filing fee

The Tenants appeared at the hearing. Tenant W.X. attended with two Articling Students and Legal Counsel. The Landlords appeared at the hearing with J.P. as their agent.

Withdrawal of Tenants' Application

The parties agreed the Tenants had moved out of the rental unit. I explained to the Tenants that the Tenants' Application is moot now that they have moved out of the rental unit because the issues raised in the Tenants' Application are only relevant during a tenancy. The Tenants withdrew the Tenants' Application with the agreement of the Landlords.

I also note that the Landlords' request for an Order of Possession based on the Notice is moot and this is dismissed without leave to re-apply. I proceeded to hear the parties on the remaining issues in the Landlords' Application.

Tenants are not co-tenants

The parties agreed the Tenants were not co-tenants but were tenants in common and each had separate tenancy agreements with the Landlords.

I explained to the Landlords that they cannot proceed against the three separate Tenants, who have three separate tenancy agreements, in one Application for Dispute Resolution because the Tenants are not responsible for damages caused, or monies owed, by the others. I told the Landlords I would not allow them to proceed against all three Tenants on the Landlords' Application and that they could choose which of the Tenants they wished to proceed against. I told the Landlords the claims against the other two Tenants would be dismissed with leave to re-apply. I told the Landlords they are required to file further separate Applications for Dispute Resolution against the other two Tenants.

The Landlords asked that I decide the admissibility of Tenant W.X.'s evidence before they choose which of the Tenants to proceed against. I told the Landlords I would not decide the admissibility of evidence before a claim is properly before me and that they had to choose which of the Tenants to proceed against before I would decide admissibility of evidence. After further discussion, it was determined that the Landlords would proceed against Tenant E.J.

The claims against Tenants L.W. and W.X. are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Landlords’ Application against Tenant E.J.

We proceeded with the Landlords’ Application as it relates to Tenant E.J. Tenant E.J. confirmed they were prepared to address the Landlords’ Application on the hearing date. 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.

I addressed service of the hearing package for the Landlords’ Application as well as the evidence of the parties. Tenant E.J. confirmed there were no service issues with the hearing package or evidence for the Landlords’ Application. Tenant E.J. sought to rely on evidence uploaded by Tenants L.W. or W.X. The Landlords objected to this and said they did not know Tenant E.J. was going to rely on evidence submitted by Tenants L.W. or W.X. Given the Landlords had received evidence from Tenants L.W. and W.X., I told the parties I would require Tenant E.J. to tell me during the hearing what specific evidence they were relying on and, if admissibility of that evidence was an issue for the Landlords, I would hear from the parties about admissibility at that point.

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?
2. Are the Landlords entitled to keep the security deposit?
3. Are the Landlords entitled to recover unpaid rent?
4. Are the Landlords entitled to compensation for monetary loss or other money owed?
5. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	First Jacuzzi repair	\$60.00
2	Drywall repair due to Jacuzzi assessment and repair	\$30.00
3	Ceiling repair due to water damage due to Jacuzzi damage	\$200.00
4	Carpet cleaning	\$91.87
5	Recycling and garbage left behind	\$106.25
6	Cleaning areas of the rental unit	\$60.00
7	Sanitizing areas of the rental unit	\$70.00
8	Painting and plastering	\$45.00
9	Second Jacuzzi repair	\$580.00
10	Filing fee	\$100.00
	TOTAL	\$1,343.12

The parties agreed the Tenants were not co-tenants but rented separate rooms in a house, and shared common areas of the house. The parties agreed there were four tenants living in the house sharing common areas.

A written tenancy agreement was submitted. The tenancy started September 01, 2021, and was for a fixed term ending April 30, 2022. Rent was \$775.00. The parties agreed Tenant E.J. paid a \$387.50 security deposit.

The parties agreed a fourth tenant moved out of the house first and the Tenants moved out the following day.

The parties agreed Tenant E.J. provided their forwarding address to the Landlords in writing April 30, 2022.

The Landlords' Application had been amended numerous times; however, the original claims included a request to keep the security deposit and therefore the Landlords filed a claim against the security deposit March 28, 2022.

The parties agreed the Landlords did not have an outstanding Monetary Order against Tenant E.J. at the end of the tenancy and Tenant E.J. did not agree to the Landlords keeping the security deposit.

The Landlords testified that the parties did a move-in inspection September 01, 2021. Tenant E.J. testified that they did not do a move-in inspection with the Landlords and that one of the Landlords did the inspection on their own. Tenant E.J. testified that they did not know at the time that an inspection was being done.

The Landlords submitted a move-in Condition Inspection Report (the "CIR") with Tenant E.J.'s signature on it. Tenant E.J. testified that they signed the CIR because they thought it was about furniture. Tenant E.J. did not rely on any documentary evidence to support their position about a move-in inspection. The Landlords relied on text messages submitted to support their position about a move-in inspection.

The parties agreed Tenant E.J. took a photo of the move-in CIR on the same date as the move-in inspection.

The Landlords submitted the move-out CIR. The Landlords testified that Tenant E.J. did not sign the move-out CIR and it was emailed to Tenant E.J. April 30, 2022.

Tenant E.J. agreed the parties did a move-out inspection and completed the CIR. Tenant E.J. agreed the Landlords signed the CIR but Tenant E.J. did not. Tenant E.J. confirmed receipt of the CIR April 30, 2022, by email.

#1 First Jacuzzi repair \$60.00

#2 Drywall repair due to Jacuzzi assessment and repair \$30.00

#3 Ceiling repair due to water damage due to Jacuzzi damage \$200.00

#9 Second Jacuzzi repair \$580.00

The Landlords testified as follows. Tenant E.J. was the only tenant who had access to the jacuzzi tub which was in their bathroom. A plumber had to repair the jacuzzi twice due to it leaking. The first time a plumber repaired the jacuzzi, the plumber found a loose nut but could not determine the cause of the issue. The second time a plumber repaired the jacuzzi, the plumber said it was being used roughly and concluded that the first repair was due to the same issue, which was Tenant E.J.'s rough use of the tub. The Tenants had parties in the rental unit. Tenant E.J.'s boyfriend was at the rental unit all the time.

Tenant E.J. testified as follows. The jacuzzi was leaking. Someone came to repair the jacuzzi and said the issue was old piping and a bolt that was loose and almost stripped. They used the tub twice before someone had to attend again to fix the tub. The second

repair person said the tub has an old piping system that needs to be changed. They do not understand how they could have been rough with a tub and the issues were not caused by them.

In reply, the Landlords testified that the second repair was done after Tenant E.J. moved out of the house and therefore the plumber could not have communicated the reason for the issues to Tenant E.J.

The Landlords could not point to documentary evidence to support their position that it was Tenant E.J. who caused damage to the jacuzzi.

#4 Carpet cleaning \$91.87

The Landlords testified that the carpets in Tenant E.J.'s room and common areas of the house required cleaning at the end of the tenancy. The Landlords testified that the carpet cleaning cost \$475.65.

Tenant E.J. testified that they did their best to clean the house at move-out and vacuumed the carpets. Tenant E.J. testified that the carpets were "gross" at the start of the tenancy and smelled like cat urine. Tenant E.J. acknowledged the carpets in the house were not steam cleaned or cleaned by a professional company at the end of the tenancy.

#5 Recycling and garbage left behind \$106.25

The Landlords testified that junk and waste were left in the house and on the property by the Tenants as shown in the photos submitted. The Landlords testified that the cost of removing the items left behind was split between the four tenants who lived in the house. The Landlords testified that the items removed included a table, chairs, lamps and a loveseat, all of which were Tenant E.J.'s.

Tenant E.J. questioned when the Landlords' pictures were taken and testified that their father took garbage left on the property to the dump prior to Tenant E.J. leaving. Tenant E.J. testified that the garbage bins were for all tenants living in the house and that they did not leave excess garbage. Tenant E.J. submitted that the cost claimed includes disposing of furniture that was not theirs. Tenant E.J. testified that they removed all their furniture items at the end of the tenancy.

In reply, the Landlords testified that the invoice for this claim shows that the items listed on the move-in CIR as Tenant E.J.'s were removed at the end of the tenancy.

#6 Cleaning areas of the rental unit \$60.00

The Landlords testified that areas of the house were not clean at move-out and relied on the CIR. The Landlords also relied on an invoice for cleaning in evidence and testified that the total cleaning cost was divided by the four tenants.

Tenant E.J. testified that they cleaned the house thoroughly at move-out. Tenant E.J. could not point to documentary evidence to support their position.

#7 Sanitizing areas of the rental unit \$70.00

The Landlords testified that cleaning the house took two days and therefore there is a second invoice for cleaning in evidence. The Landlords testified that the second invoice for cleaning was divided by four to arrive at the amount sought from Tenant E.J. The Landlords relied on the CIR to show the house was not left clean at the end of the tenancy. The Landlords also relied on photos of the house submitted.

Tenant E.J. did not add to their position on item #6.

#8 Painting and plastering \$45.00

The Landlords testified that there was damage in the common area of the house at the end of the tenancy which had to be patched and painted. The Landlords testified that the damage was only in the common areas of the house and therefore the cost of repairing the damage was divided by the four tenants. The Landlords relied on the CIR, photos and page 21 of the Monetary Order Worksheet ("MOW") showing the breakdown of the cost.

Tenant E.J. testified that there were scratches and dents on the walls of the house when they moved in. Tenant E.J. denied they caused damage to the walls.

Analysis

Security deposit

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

Regardless of which version of events is accurate in relation to a move-in inspection being completed, I find Tenant E.J. did not extinguish their rights in relation to the security deposit pursuant to section 24 of the *Act*.

Based on the testimony of the parties about a move-out inspection, I find Tenant E.J. did not extinguish their rights in relation to the security deposit pursuant to section 36 of the *Act*.

It is not necessary to determine whether the Landlords extinguished their rights in relation to the security deposit 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 carpet cleaning, removing recycling and garbage, cleaning and sanitizing, none of which are damage.

Based on the CIR, I find the tenancy ended April 30, 2022.

Based on the testimony of the parties, I accept that Tenant E.J. provided their forwarding address to the Landlords April 30, 2022.

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 Tenant E.J.’s forwarding address in writing to repay the security deposit or file a claim against it. Here, the Landlords had 15 days from April 30, 2022, to repay the security deposit or file a claim against it. The Landlords’ Application was filed March 28, 2022, prior to the end of the tenancy. 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.

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.

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...

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 occurred as claimed.

When 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.

RTB Policy Guideline 01 defines reasonable wear and tear as follows (page 1):

...The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act...

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.

#1 First Jacuzzi repair \$60.00

#2 Drywall repair due to Jacuzzi assessment and repair \$30.00

#3 Ceiling repair due to water damage due to Jacuzzi damage \$200.00

#9 Second Jacuzzi repair \$580.00

The parties disagreed about the cause of the problems with the jacuzzi tub. The Landlords could not point to documentary evidence to show it was something Tenant E.J. did, or neglected to do, that caused the problems with the jacuzzi tub. I agree with Tenant E.J. that it is difficult to understand how Tenant E.J. could have been rough on the jacuzzi tub such that parts of it became loose or damaged. In the absence of further compelling evidence about the cause of the problems with the jacuzzi tub, I am not satisfied Tenant E.J. caused the problems or breached the *Act, Regulations* or tenancy agreement in this regard. Given this, I am not satisfied the Landlords are entitled to compensation for these claims and they are dismissed without leave to re-apply.

#4 Carpet cleaning \$91.87

The parties disagreed about whether the carpets in the house were clean at the end of the tenancy. I have looked through the documentary evidence provided by the Landlords and do not see photos of the carpets as they relate to Tenant E.J.'s room or associated with Tenant E.J. I am not satisfied based on the evidence pointed to during the hearing or outlined in the MOW that Tenant E.J. left the carpet dirty in breach of section 37 of the *Act* at the end of the tenancy. I note that Tenant E.J. was not required to have the carpets professionally cleaned as stated in RTB Policy Guideline 01 because this tenancy was less than one year in length. I am not satisfied the Landlords have proven a breach of section 37 of the *Act* by Tenant E.J. in relation to the carpets and I dismiss this claim without leave to re-apply.

#5 Recycling and garbage left behind \$106.25

The parties disagreed about whether items left behind in the house and on the property were Tenant E.J.'s. Tenant E.J. is not responsible for items left behind by other tenants of the house because the tenants were not co-tenants of the house. Tenant E.J. is only responsible for removal of items they left behind.

The Landlords relied on the move-in CIR to show what items in the house were Tenant E.J.'s. The notations on the move-in CIR are difficult to read; however, they appear to say: yellow bike, white bike, grey loveseat, grey chair, round table, one vacuum and pool. Tenant E.J. did not agree with the notations on the move-out CIR and therefore I have considered the invoice submitted which lists the items removed from the house and property at the end of the tenancy. The only items on the invoice that could be Tenant E.J.'s is a table, a loveseat, chairs and lamps. The Landlords also relied on four photos; however, none of the photos show the items listed as Tenant E.J.'s on the move-in CIR.

I cannot tell from the evidence pointed to during the hearing and in the MOW whether the items removed from the house and property at the end of the tenancy belonged to Tenant E.J. or other tenants of the house. In these circumstances, I am not satisfied Tenant E.J. breached section 37 of the *Act*. I acknowledge that the photos and invoice do prove that numerous items were left in the house and on the property at the end of the tenancy. However, based on the evidence provided, it is just as likely that the items were left by the other tenants of the house. Given the four tenants were not co-tenants, Tenant E.J. cannot be held responsible for the Landlords having to haul items out of the

house or from the property at the end of the tenancy unless the Landlords prove the items were left by Tenant E.J. and the Landlords have failed to do so here. I am not satisfied Tenant E.J. breached section 37 of the *Act* in this regard and dismiss this claim without leave to re-apply.

#6 Cleaning areas of the rental unit \$60.00

#7 Sanitizing areas of the rental unit \$70.00

The CIR is not sufficient to show the rental unit was not left reasonably clean at move-out because Tenant E.J. did not agree with the move-out CIR. The invoices submitted are very difficult to read; however, what I can read of them supports that areas of the house were not left reasonably clean at the end of the tenancy. The invoices and photos support that common areas of the house were not left reasonably clean. I am satisfied on a balance of probabilities that common areas of the house were left dirty at the end of the tenancy and therefore all four tenants breached section 37 of the *Act*. I accept that it cost \$520.00 to have the house cleaned which I find reasonable given the size of the house and state of the house at the end of the tenancy as shown in the photos. I accept that Tenant E.J. is responsible for $\frac{1}{4}$ of the cost of cleaning because it is reasonable to conclude that Tenant E.J. contributed to the uncleanliness of the common areas of the house given Tenant E.J. used them. I accept that Tenant E.J. was responsible for cleaning common areas of the house at the end of the tenancy. I find Tenant E.J. must pay the Landlords \$130.00 as requested.

#8 Painting and plastering \$45.00

I do not accept that Tenant E.J. is responsible for damage to walls in the common areas of the house because the Landlords have not provided sufficient evidence proving Tenant E.J. is the tenant who caused the damage. The CIR is not sufficient evidence of Tenant E.J. causing damage because Tenant E.J. did not agree with the CIR at move out. The photos relied on do not prove who caused the damage. The invoices and proof of payments do not prove who caused the damage.

The issue here is that the four tenants were not co-tenants and are not responsible for damage caused by the other tenants. I cannot tell from the evidence provided whether the damage shown in the photos was caused by Tenant E.J. If the damage was not caused by Tenant E.J., Tenant E.J. is not responsible for it even if it occurred in a common area of the house because Tenant E.J. is not responsible for the actions or neglect of other tenants. I find damage to walls to be different than cleaning in that I

cannot reasonably conclude that Tenant E.J. contributed to the damage just because Tenant E.J. used the common areas. In the circumstances, I am not satisfied Tenant E.J. breached section 37 of the *Act* and therefore I dismiss this claim without leave to re-apply.

#10 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	First Jacuzzi repair	-
2	Drywall repair due to Jacuzzi assessment and repair	-
3	Ceiling repair due to water damage due to Jacuzzi damage	-
4	Carpet cleaning	-
5	Recycling and garbage left behind	-
6	Cleaning areas of the rental unit	\$60.00
7	Sanitizing areas of the rental unit	\$70.00
8	Painting and plastering	-
9	Second Jacuzzi repair	-
10	Filing fee	\$100.00
	TOTAL	\$230.00

The Landlords can keep \$230.00 of the security deposit pursuant to section 72(2) of the *Act*. The Landlords must return the remaining \$157.50 of the security deposit to Tenant E.J. and Tenant E.J. is issued a Monetary Order in this amount.

Conclusion

The Landlords are entitled to \$230.00 and can keep this from the security deposit. The Landlords must return the remaining \$157.50 of the security deposit to Tenant E.J. and Tenant E.J. is issued a Monetary Order in this amount. This Order must be served on the Landlords. If the Landlords fail to comply with this Order, it may be filed in the Small Claims division of the Provincial 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 *Act*.

Dated: July 26, 2022

Residential Tenancy Branch