



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL, FFL**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy pursuant to Section 67 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's husband, the Translator, the Tenant and Representative for the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The RTB issued the Notice of Dispute Resolution Proceeding package to the Landlord on January 11, 2022 (the "NoDRP package"). The Landlord testified that they served the Tenant with the NoDRP package on July 18, 2022; however, all the tracking numbers provided as proof of service state that the NoDRP packages were sent on January 13, 2022. I noted the registered mail tracking numbers on the cover sheet of this decision. The Tenant's Representative confirmed receipt of three envelopes of the Landlord's NoDRP package. I find that the Tenant was deemed served with the Landlord's NoDRP package five days after mailing them on January 18, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

There was one other registered mail package sent on July 18, 2022 which corresponds to when the Landlord's evidence was unloaded on the RTB website. I find this second registered mail package was the Landlord's evidence. The Landlord referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant's Representative confirmed receipt of the Landlord's evidence. I find that the Tenant was deemed served with the Landlord's evidence five days after mailing them on July 23, 2022 in accordance with Sections 88(c) and 90(a) of the Act.

Preliminary Matter

Naming parties

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. The Landlord named the Tenant and both her children as respondents in this matter. The Tenant's children are 7 and 10 years old. The Landlord stated they named all three people because the Tenant named herself and her two children in another matter. The Landlord was not opposed to removing the Tenant's children in this matter. The parties agreed to amend the naming of parties in this application to just the one adult respondent. The Tenant's name alone is noted in the style of cause of this Decision.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept that the respondent is properly named as just the one adult Tenant. I amended the Tenants' names to just the one adult named Tenant and it is reflected in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy?
2. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties provided testimony about the tenancy terms, as well as uploading tenancy agreements for the three fixed terms. The first fixed term began on August 16, 2018, and ended June 30, 2019. Monthly rent was \$3,700.00 payable on the 7th day of each month. A security deposit of \$1,850.00 was collected at the start of the tenancy.

The second fixed term tenancy began on July 15, 2019, and ended June 30, 2020. Monthly rent was \$3,300.00 payable on the 15th day of each month. A security deposit of \$1,850.00 was collected at the start of the tenancy.

The third fixed term tenancy began on August 16, 2020, and was to end on August 15, 2021. Monthly rent was \$3,300.00 payable on the 1st day of each month. The tenancy agreement states a security deposit of \$1,650.00 was collected at the start of the tenancy. The Tenant moved out of the rental unit on August 5, 2021. The Landlord testified that the security deposit was fully repaid to the Tenant.

Landlord's Claims:

Item	Description	Claim amount
1	Graffiti on dining table	\$200.00
2	Cut fabric on one dining chair	\$100.00
3	Office desk surface, lots of cuts, drawings, damage	\$500.00
4	Coffee table-drawings on surface	\$100.00
5	Bar table and stools-moved outside and damaged from outdoor elements	\$239.08
6	Bathtub-stained yellow	\$800.00
7	Hardwood floors-damaged	\$2,000.00
8	Damages to wall	\$800.00
9	Carpet cleaning fee	\$189.00

Item	Description	Claim amount
10	Small carpet under dining table and backpack chair	\$149.00 \$50.00
11	Outdoor chair missing	\$50.00
12	Application filing fee	\$100.00
13	Canada Post receipt	\$40.76
14	Translation fee	\$591.00

#1 Dining table

The Landlord stated that the graffiti on the dining table is impossible to remove. He said he bought the table in 2016. The Landlord said on the day that the Tenant moved out of the rental unit, his wife sent the Tenant a description of the damage done.

The Tenant disputes all the items claimed in the Landlord's application. The Tenant argues that no condition inspections were done in the rental unit at move-in or at move-out. The Tenant lived in the rental unit for three years, and there was no damage on the table when she vacated the home.

#2 Cut fabric on dining chair

The Landlord paid \$100.00 per chair. The Landlord notes that the fabric covering on one chair was cut.

In a Wechat message to the Landlord, the Tenant states, "*It wasn't intentionally damaged. It was the mouse. Not me or the kids.*" The Tenant relies on the lack of a condition inspection report completed at move-in or move-out, and she is not willing to work with the Landlord.

#3 Office desk

The Landlord provided a customs form showing they paid \$2,732.00 at customs for this high end furniture item. The Landlord said the surface of the desk has lots of cuts, drawings and serious damage. There is no mention of the damage to the desk in the Wechat messaging stream.

The Tenant says that both her children are private school children and are very respectful. The Tenant states it does not look like the same desk that was in the rental unit.

#4 Coffee table

The Landlord notes similar damage as the table and the desk. There is no mention of the damage to the coffee table in the Wechat messaging stream.

The Tenant relies on the lack of condition move-in and move-out reports. The Tenant states they did not do carvings into the table, and the picture posted does not look like the same table as in the rental unit.

#5 Bar table and stools

The Landlord testified that during the Tenant's stay in the rental unit, she moved the bar table and stools outside and left them there for a long time. The Landlord stated they are very damaged. The Landlord uploaded the original receipt when the bar table and stools were purchased on February 13, 2016.

The Tenant stated the bar table and stools were moved outside early in the tenancy and the Landlord knew about this, but did not say anything about it at the time.

#6 Bathtub

The Landlord stated the inside of the white bathtub is stained yellow. They do not know which chemical was used. The Landlord stated that they cannot provide a receipt for the bathtub as it was part of the house when purchased.

The Tenant said there is no stain in the bathtub. She does not use any medication that would cause staining in a bathtub. There is no mention of the bathtub staining in the Wechat messaging stream.

#7 Hardwood floors

The Landlord said that two square meters of damage to the hardwood floors beside the kitchen is evident. The Landlord maintained that there is nothing they can do to repair this damage, and the maintenance workers said it cannot be fixed. The Landlord said it

was obvious that the damage was caused by legs of stools rubbing on the floor. After a consult with their maintenance workers, they determined the value to be \$2,000.00 to repair/replace the flooring.

The Tenant relies on the fact that no condition inspection was completed at move-in or move-out, and argues that this damage was pre-existing.

#8 Damage to walls

The Landlord said there was damage to the walls, corners of the walls, and drawings on the walls. One picture was uploaded from the Wechat messaging stream about damage done to the living room wall.

The Tenant questioned the date the photo was taken depicting the damage to the living room wall. Some of the damage was small, or normal wear and tear, and some was pre-existing. No condition move-in and move-out reports were done, so the Landlord cannot prove that this damage was done during the Tenant's tenancy.

#9 Carpet cleaning fee

The Landlord testified that when the Tenant moved out, she did not clean the carpet prior to leaving. The Landlord used a professional cleaner to clean the carpets. The Landlord uploaded the receipt for this work.

The Tenant said that the cleaners came in two times prior to her vacating. The Tenant did not confirm or deny that the carpets were cleaned prior to her vacating.

#10 Carpet under dining table and backpack chair

The Landlord said the small carpet under the dining table and the backpack chair were missing after the Tenant moved out. They said they cannot buy this carpet anymore.

The Tenant testified that both the carpet under the dining table and the backpack chair remained in the rental unit when she left on August 5, 2021.

#11 Missing outdoor chair

The Landlord said an outdoor chair was missing when they gained possession of the home. They are missing the receipt, and had not repurchased another chair prior to this hearing.

The Tenant said the chair remained in the rental unit when she left on August 5, 2021.

Analysis

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. 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.

Liability for not complying with this Act or a tenancy agreement

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other'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-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, “*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*” This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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...*

I decline to award compensation for damage to items numbered 1, 2, 3, 4, 5, 6, 7, 8, 10, and 11 given there are no condition inspection reports on move-in or move-out, and the Landlord has not proven that the Tenant caused the damage. I note that the Landlord was required pursuant to the Act to conduct move-in and move-out inspections, and is expected to conduct these properly and thoroughly.

#9 Carpet cleaning fee

RTB Policy Guideline #1-Landlord & Tenant – Responsibility for Residential Premises sets out the responsibilities of landlords and tenants during and at the end of tenancies. Policy Guideline #1 states that generally at the end of the tenancy the Tenant will be held responsible for cleaning carpets after a tenancy of one year. I find the Tenant is responsible for cleaning the carpets at the end of this three-year tenancy. The Landlord uploaded a receipt for the cost of \$189.00 and I find this a reasonable expense for this cleaning.

The Landlord must bear the costs of postage and translation fees as costs for doing business.

As the Landlord is partly successful in their claim, I find the Landlord is entitled to recover the application filing fee paid to start this application. The Landlord's Monetary Award is calculated as follows:

Monetary Award

	Amount
Carpet cleaning fee	\$189.00
Application filing fee	\$100.00
TOTAL Monetary Award:	\$289.00

Conclusion

I grant a Monetary Order to the Landlord in the amount of \$289.00. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: August 16, 2022

Residential Tenancy Branch