



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 \$3,675.00 for damages for the Landlord, retaining the security deposit to apply to the claim; and to recover their \$100.00 Application filing fee.

The Tenants, A.K. and A.A., and an agent for the Landlord, J.Y. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. 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.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenants said they had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenants confirmed that they had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these in the hearing. They also confirmed their 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 Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

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 Application filing fee?

Background and Evidence

The Parties agreed that the Tenants rented a 5-bedroom/4 bathroom townhouse from the Landlord. They agreed that the fixed-term tenancy for this residential property began on February 1, 2021, and ran to January 31, 2022, with a monthly rent of \$5,210.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$2,605.00, and no pet damage deposit. The Agent confirmed that the Landlord still holds the security deposit in full to apply to this claim.

The Parties agreed that the Tenants vacated the rental unit on January 31, 2022, and that they emailed the Landlord their forwarding address on February 15, 2022. They agreed that they did move-in and move-out condition inspections of the residential property; however, they acknowledged that they did not produce a condition inspection report ("CIR") to document these inspections, although the Landlord submitted a move-out CIR with a few notes on it.

The Landlord submitted a monetary order worksheet for their claims, and we reviewed the items on the worksheet during the hearing.

	Receipt/Estimate From	For	Amount
1	[Home Service organization]	Cleaning	\$1,500.00
2	" " " "	Carpet cleaning	\$300.00
3	" " " "	Garbage removal	\$800.00
4	" " " "	Painting	\$900.00
5	GST	GST	\$175.00
		Total claim	\$3,675.00

#1 CLEANING → \$1,500.00

In the hearing, I asked the Agent how the Landlord found the company who did all of these activities. He said: "The property managers have several cleaning companies, so

we use who is available, and pick them and let them do the work.”

I asked the Tenants if they had cleaned the rental unit before they vacated, and they said: “Yes, we cleaned all the rooms and the floor area, as well as we could. We also mopped and vacuumed, [disinfectant] wiped the counters.” The Tenants acknowledged that they had not had time to clean the oven and stovetop.

The Agent pointed to the photographs the Landlord submitted of the condition of the residential property at the end of the tenancy. I reviewed these photos and made the following observations:

- Dirty stovetop,
- Dirty oven,
- Unclean kitchen sinks,
- Decals on a glass door,
- Unwashed carpeting,
- Unclean bathtubs,
- Shower curtain left behind,
- Unclean toilet,
- Unclean shower stalls,
- A cluster of items in a room such as chairs, a microwave, boxes, etc.,
- Additional pieces of furniture left in living room,
- A bicycle,
- Scratches on laminate flooring,
- Unclean bathroom sink,
- Burned out bathroom lightbulbs, and
- Holes/scratches in the drywall under a mirror.

#2 CARPET CLEANING → \$300.00

The Tenants acknowledged that they did not clean the carpeting in the rental unit. The Parties agreed that there were three bedrooms that were carpeted, as well as a hallway on the third floor.

Clause 20 of the tenancy agreement states:

(20). CARPETS

The tenant, at the tenant's expense will have a professional carpet cleaning company clean the carpets at the end of a tenancy and annually if requested by the landlord. The tenant will provide a valid receipt for this service. **Failure to do so will result in the tenant being charged for the carpet cleaning and a service fee of \$100 per room.**

I infer the Landlord has not claimed the \$100.00 per room service fee, as the total claimed is less than the number of rooms.

#3 GARBAGE REMOVAL → \$800.00

In the photographs submitted by the Landlord, I noticed a few rooms with belongings left behind. The Agent said that this was garbage that the Tenants did not want, so they disposed of it at the Tenants' expense.

In the hearing, the Tenants commented on these items, saying:

The only thing left behind was a bike; everything else was there when we moved in. The couch and microwave and stuff against the wall was there when we moved in, and they said we can use it and to keep it there. So, we didn't really touch it; we had our own furniture.

We did leave the bike there and one or two chairs that were a little broken, but the rest of the stuff was there when we moved in.

Unfortunately, the Landlord did not produce a CIR for the move-in inspection, which could disprove the Tenants' assertions in this regard. The Agent said: "I'm not sure about that, because the Landlord required – I was not the one doing the move-in inspection - so can't confirm anything - whether it was empty or not."

The Tenants said that the bike belonged to another tenant, and that it was worth approximately \$50.00 to \$100.00.

#4 PAINTING → \$900.00

I asked the Agent when the rental unit was last painted, and he did not know, but he said: "More than five years, I believe."

The Agent directed my attention to the photograph of the wall beneath a mirror that has two gouges or scratches in the wall. He indicated that this was what needed to be

repaired and repainted.

When I asked the Agent why it cost so much to repair and paint one wall, he said: “You can’t do this on one trip. They have to patch first and wait for it to dry, and then come back and paint the whole wall. The damage was not like in the picture - only two to three feet long - but we have to paint the whole wall to match colour.” The Agent did not know how long it took to do this work.

The Agent said they obtained a quote for this work ahead of time; however, there was only one quote from one company.

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 Parties testified, I let them know how I analyze 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. In this case, the Landlord must prove:

1. That the Tenants 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”)

Pursuant to Rule 6.6, 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 – the Landlord in this case.

#1 CLEANING → \$1,500.00

Section 37 of the Act states that tenants must leave the rental unit “reasonably clean and undamaged”.

Policy Guideline #1 helps interpret section 37 of the Act:

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* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer 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.

[emphasis added]

From the Parties' testimony and the photographs of the residential property at the end of the tenancy, I find that the house was not filthy, but that it needed a superficial, overall cleaning.

The Landlord charged \$1,500.00 to clean this five-bedroom, four-bathroom house. If the cleaners charged a market rate of \$35.00 per hour, this would entail over 42 hours of cleaning, which does not include the carpet cleaning (covered in the next category). If I consider the number of rooms in the residential property to include five bedrooms, four bathrooms, one kitchen, one dining room, one living room, and one for other areas, then there are approximately 13 areas to be cleaned. Cleaning for 42 hours would mean that it took approximately three and a quarter hours to clean each room. I find that the level of cleanliness at the end of the tenancy would require less than one hour per room – with some requiring more and some less.

I find that the Landlord has not provided sufficient evidence that the residential property required this level of cleaning to be ready for the next tenants. While I find that there are approximately two-thirds too many hours of cleaning claimed, I deduct half from the total and **award the Landlord with \$750.00** in cleaning costs, pursuant to sections 37 and 67 of the Act.

#2 CARPET CLEANING → \$300.00

I find that the Parties' tenancy agreement requires a tenant to have the carpets professionally cleaned at their expense; however, the Tenants acknowledged not having done this at the end of their tenancy. Accordingly, I **award the Landlord** with **\$300.00** for providing this service, pursuant to sections 37 and 67 of the Act.

#3 GARBAGE REMOVAL → \$800.00

Pursuant to sections 23, and 35 of the Act, a landlord must complete a CIR at both the start and the end of a tenancy, in order to establish that the damage occurred as a result of the tenancy. If the landlord fails to complete a move-in or move-out inspection and CIR, they extinguish their right to claim against either the security or pet damage deposit for damage to the rental unit, in accordance with sections 24 and 36 of the Act. Further, a landlord is required by section 24 (2) (c) to complete a CIR and give the tenant a copy in accordance with the regulations.

Given the absence of a complete CIR, and the Agent's lack of knowledge on this matter, I find that the Landlord has not met their burden of proof in this matter. As such, pursuant to section 62 of the Act, I **dismiss this claim without leave to reapply**.

As a **caution to the Landlord**, the *Residential Tenancy Act* Residential Tenancy Regulation ("Regulation") addresses personal property left behind by tenants. I caution the Landlord to become familiar with these sections of the Regulation.

Part 5 — Abandonment of Personal Property

Abandonment of personal property

24 (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment **only if**

- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
- (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property. .

[emphasis added]

Landlord's obligations

25 (1) The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
- (b) keep a written inventory of the property,
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- (c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2). [emphasis added]

#4 PAINTING → \$900.00

The painting crew needed to repair a small part of a wall and paint one wall. If they charged \$40.00 an hour, this would have taken 22.5 hours. The Agent acknowledged that the Landlord did not obtain competing quotes for doing this work, and I find that it is unreasonably expensive for the amount of work required. I find that the Landlord has failed the third step of the Test by not providing the value of the cost incurred because of the damage caused by the Tenants.

Considering the time it would take to repair the wall, having to return on another day to do the painting, and the efficiency of a crew of people who only do this type of work, I find that three hours is a reasonable amount of time to complete this work. Three hours at \$40.00 an hour – a generous rate – is \$120.00. Despite having failed the third step of the Test, I **award the Landlord** with **\$120.00** from the Tenants for this claim, pursuant to sections 62 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' \$2,605.00 security deposit in complete satisfaction of the Landlord's monetary awards.

	Receipt/Estimate From	For	Award
1	[Home Service organization]	Cleaning	\$750.00
2	" " " "	Carpet cleaning	\$300.00
3	" " " "	Garbage removal	\$0.00
4	" " " "	Painting	\$120.00
5	GST	GST	\$58.50
		Total claim	\$1,228.50
	RTB	Application filing fee	\$100.00
		Less security deposit	\$2,605.00
		Amount owed to Tenants	(\$1,276.50)

Given their success, I also award the Landlord with recovery of their **\$100.00**

Application filing fee for a total award of **\$1,328.50**. The Landlord is authorized to deduct this amount from the Tenants' \$2,605.00 security deposit and to return the remaining **\$1,276.50** to the Tenants as soon as possible.

I grant the Tenants a **Monetary Order** from the Landlord of **\$1,276.50**. 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.

Conclusion

The Landlord is partially successful in their claims. They provided sufficient evidence to prove part of their claims, as set out above; however, there was insufficient evidence to establish the validity of all of the claims.

The Landlord is awarded **\$1,228.50**, as well as the recovery of their **\$100.00** Application filing fee from the Tenants. The Landlord is authorized to retain \$1,328.50 from the Tenants' \$2,605.00 security deposit and to return the remaining amount to the Tenants as soon as possible.

The Tenants are granted a **Monetary Order** of **\$1,276.50** from the Landlords for the remainder of their security deposit. 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 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: November 02, 2022

Residential Tenancy Branch