



Dispute Resolution Services

Page: 1

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 April 04, 2022 (the “Application”). The Landlords applied as follows:

- For compensation for damage to the rental unit
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

The Landlord 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.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all 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 or pet damage deposits?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation, all of which is outlined in one invoice as follows:

Item	Description	Amount
1	Removed and replaced damaged countertop	
2	Removed and replaced too noisy and completely chocked cooking hood	
3	Removed and replaced very dirty damaged exhaust duct	
4	Removed and replaced damaged room bath faucet	
5	Removed and replaced very loose damaged thread kitchen faucet	
6	Repair of damaged blinds	
7	Cleaning of kitchen, bathroom, bedroom 1 and 2 and sitting room blinds	\$815.00
8	Labour for above repair	\$500.00
9	GST for above	\$67.75
10	Filing fee	\$100.00
	TOTAL	\$1,482.75

A written tenancy agreement was submitted. The tenancy started July 01, 2020. The Tenants paid a \$600.00 security deposit and \$600.00 pet damage deposit.

The parties agreed the tenancy ended September 30, 2021.

The Landlord testified that they received the Tenants' forwarding address in writing for the first time March 22, 2022. The Tenants testified that they sent their forwarding address to the Landlord by email and regular mail October 10, 2021, and registered mail March 18, 2022. The Tenants relied on a letter in evidence dated October 10, 2021, to support their position. The Tenants also relied on an email in evidence. In reply, the Landlord testified that they received the Tenants' email but there was no forwarding address attached.

The parties agreed they did a move-in inspection. Tenant S.V.E. testified that they were at the move-in inspection and completed the Condition Inspection Report ("CIR") with the Landlord's son. Tenant S.V.E. submitted that the move-in CIR is not accurate and there was more wear and tear in the rental unit than recorded. The Tenants pointed to

photos taken to show the CIR is not accurate; however, the Tenants acknowledged these were taken when they already lived in the rental unit.

The parties agreed they started a move-out inspection. The Landlord testified that the Tenants left part way through the inspection and so the Landlord finished the inspection by themselves. The Tenants testified that the parties agreed the Landlord's son would attend to complete the inspection because the son would know more about the condition of the rental unit at the start of the tenancy.

In relation to the pet damage deposit, the Tenants acknowledged damage to the blinds in the rental unit occurred and was pet related.

The Landlord testified that everything in the rental unit was new in 2018. The Tenants testified that the rental unit in general was dated.

#1 Removed and replaced damaged countertop

The Landlord testified that the Tenants damaged the countertop in the rental unit and relied on a photo in evidence. The Landlord submitted that the Tenants' photo of the damage is not the same damage because the Landlord is not claiming for corner damage, the Landlord is claiming for damage in the centre of the countertop. The Landlord testified that the countertop had to be replaced. The Landlord testified that the cost claimed includes labour and supplies.

The Tenants testified that the countertop had wear and tear on it when they moved in and relied on photos in evidence. The Tenants submitted that the damage shown in the Landlord's photo shows the paint on the countertop had just rubbed off over time which shows the damage was simply wear and tear over time. The Tenants submitted that the notation "scuff near door" on the move-in CIR was referring to this issue with the countertop.

#2 Removed and replaced too noisy and completely chocked cooking hood

The Landlord testified that the vent fan was not working at the end of the tenancy and had to be replaced. The Landlord testified that the motor in the fan had stopped working. The Landlord relied on photos in evidence. The Landlord testified that the Tenants damaged the vent fan by not cleaning it and allowing dust to build up.

The Tenants testified that the damage claimed is simply wear and tear which happens over time. The Tenants disputed that the appliances in the rental unit were new in 2018. The Tenants submitted that the motor of the fan burnt out over time, they did not damage it.

#3 Removed and replaced very dirty damaged exhaust duct

The Landlord testified that the Tenants damaged the exhaust piping coming out of the cooking range. The Landlord referred to a photo showing green tape on the piping. The Landlord testified that the piping was two years old and had to be replaced.

The Tenants testified that the green tape on the exhaust piping was there at the start of the tenancy. The Tenants pointed to the photo submitted and said you can see white paint on the tape from when the unit was painted showing this was left there from prior to their tenancy. The Tenants denied they did anything to the exhaust piping.

#4 Removed and replaced damaged room bath faucet

The Landlord testified that the Tenants damaged the bathroom faucet and relied on photos in evidence. The Landlord testified that the faucet had a hole in it at the end of the tenancy. The Landlord testified that the faucet was new in 2018 and had to be replaced.

The Tenants testified that they did not notice this damage until a few weeks after they moved into the rental unit. The Tenants denied causing this damage.

#5 Removed and replaced very loose damaged thread kitchen faucet

The Landlord testified that the kitchen faucet was so poorly used that the thread was damaged at the end of the tenancy. The Landlord relied on a photo in evidence. The Landlord testified that water leaking onto the plate shown caused the damage. The Landlord testified that the faucet was new in 2018 and had to be replaced.

The Tenants testified that they were not aware of this issue until they received the Landlord's evidence. The Tenants submitted that the faucet was dated and therefore the Landlord should expect this type of damage to it.

#6 Repair of damaged blinds

The parties agreed the Tenants damaged the blinds in the rental unit. The issue is the amount of compensation to be awarded.

The Landlord did not know what amount to seek for this issue due to how the invoice is written as can be seen in the outline of it above. The Landlord confirmed one blind was damaged.

The Tenants submitted that \$100.00 to \$200.00 would be reasonable for the damage caused to the blind.

#7 Cleaning of kitchen, bathroom, bedroom 1 and 2 and sitting room blinds

The Landlord testified that the Tenants left the rental unit completely dirty. The Landlord testified that they had to purchase stove cleaner and clean the stove. The Landlord testified that the entire rental unit required cleaning. The Landlord does not know how long it took the contractor to clean the rental unit but said perhaps two to five hours.

The Tenants testified that they cleaned the rental unit. The Tenants acknowledged they may have forgotten to clean the oven. The Tenants testified that the rest of the rental unit was left reasonably clean.

Documentary evidence

The Landlords submitted the following relevant documentary evidence:

- Written submissions
- Photos
- Emails
- Inspection forms
- A Condition Inspection Report from a subsequent tenancy
- Repair invoice
- Interac E-transfer
- Tenant's Notice of Forwarding Address
- Tenancy agreement

The Tenants submitted the following relevant documentary evidence:

- Inspection form
- Pet and security deposit letter dated October 10, 2021
- Tenant's Notice of Forwarding Address
- A document of compiled evidence
- Tenancy agreement

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 testimony of the parties, I find the Tenants participated in the move-in and move-out inspections as required and 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, which is not damage.

I note that the Landlords were permitted to claim against the pet damage deposit because the Tenants acknowledged damage to the blinds in the rental unit occurred and was pet related.

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

I accept based on the October 10, 2021 letter and email of the same date that the Tenants sent their forwarding address in writing to the Landlord October 10, 2021 by email. I find the Landlord received the email because they acknowledged this. I find the evidence sufficient to show the October 10, 2021 letter was attached to the email. I

find the Landlord received the forwarding address October 13, 2021, considering section 44 of the *Regulations*.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from October 13, 2021, to repay the security and pet damage deposits in full or file a claim with the RTB against them. The Application was filed April 04, 2022, well outside the deadline. I find the Landlords failed to comply with section 38(1) of the *Act*. Given this, and pursuant to section 38(6) of the *Act*, the Landlords must pay the Tenants double the security and pet damage deposits being **\$2,400.00**. No interest is owed on the deposits because the amount of interest owed has been 0% since 2009.

The Landlords are still allowed to claim for compensation, and I consider that now.

Compensation

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.

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...

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.

Section 21 of the *Regulations* states:

Evidentiary weight of a condition inspection report

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 move-in CIR accurate and rely on it unless the Tenants have provided a preponderance of evidence to the contrary which I will address under each item claimed as necessary.

#1 Removed and replaced damaged countertop

I find the countertop was in okay condition at the start of the tenancy because it is marked as a 3 out of 5 on the move-in CIR. I accept there was a scuff on the countertop based on the move-in CIR. I do not accept that the Tenants' photos show the state of the countertop at the start of the tenancy because they were taken during the tenancy. I am satisfied the damage shown in the Landlords' photo was not present at the start of the tenancy and was present at the end. I am satisfied the Tenants caused the damage. I am satisfied the damage is beyond reasonable wear and tear because it is inconsistent with the wear and tear on the remainder of the countertop and is clearly damage. I find the Tenants breached section 37 of the *Act*.

I accept that the Landlords had to have a section of the countertop replaced due to the damage.

I cannot tell from the Landlords' invoice how much it cost to replace the section of countertop because the person who created the invoice did not separate out amounts for different issues. I do not accept that the Landlords are entitled to the full cost of replacing the countertop because it is clear there was some wear and tear on it already. Further, the countertop was more than three years old according to the Landlord and this would reduce the amount awarded to the Landlords.

RTB Policy Guideline 16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or **no significant loss has been proven**, but it has been proven that there has been an infraction of a legal right. (emphasis added)

I award the Landlords nominal damages of **\$100.00** because the Landlords have failed to prove the amount or value of the loss claimed.

#2 Removed and replaced too noisy and completely choked cooking hood

I am not satisfied based on the evidence provided that the Tenants did something to damage the vent fan in the kitchen. I accept that the fan was dirty at the end of the tenancy based on the photo submitted; however, I do not accept that this caused the motor to stop working in the absence of further evidence to support this. Further, fan motors will stop working with normal use over time and therefore I am not satisfied the Tenants caused damage to the fan simply because the motor was not working at the end of the tenancy. I am not satisfied the Tenants breached section 37 of the *Act*.

I dismiss this claim without leave to re-apply.

#3 Removed and replaced very dirty damaged exhaust duct

I am not satisfied based on the evidence provided that the Tenants damaged the exhaust duct or piping. The photo submitted does not show damage. The photo shows green tape around the piping; however, I agree with the Tenants that the tape has clearly been there since the surrounding area was painted and is clearly old tape. Nor do I find green painters tape wrapped around exhaust piping to be something parties would reasonably note in a move-in condition inspection report. I am not satisfied the Tenants breached section 37 of the *Act* in relation to this issue.

I dismiss this claim without leave to re-apply.

#4 Removed and replaced damaged room bath faucet

I accept based on the move-in CIR that the bathroom faucet was fine on move-in. The Tenants have not submitted sufficient evidence to contradict this. I accept the faucet was damaged on move-out based on the Landlords' photo. I find the damage is beyond reasonable wear and tear because there is a hole through the metal of the faucet which would not result from normal use. I find the Tenants breached section 37 of the *Act*.

I accept the Landlords had to replace the bathroom faucet due to the damage.

I cannot tell from the invoice how much it cost to replace the bathroom faucet. Further, the amount awarded to the Landlords would be reduced given the faucet was more than three years old at the end of the tenancy. I find the Landlords have failed to prove the

amount or value of the damage claimed and therefore are awarded nominal damages of **\$25.00**.

#5 Removed and replaced very loose damaged thread kitchen faucet

The photos of the kitchen faucet appear to show an inside part of the faucet versus something that would be on the outside of the faucet such as a handle or tap. The photo shows the piece is rusted and has worn away. It is not clear how the Tenants' use of the kitchen sink could have caused the damage shown in the photo and there is insufficient further evidence to prove the damage was caused by the Tenants. I find it more likely that the damage is from normal wear and tear over time. I do not accept that the Tenants are responsible to pay for replacement of this piece. I am not satisfied the Tenants breached section 37 of the *Act*.

I dismiss this claim without leave to re-apply.

#6 Repair of damaged blinds

I accept that the Tenants damaged a blind in the rental unit in breach of section 37 of the *Act* because the parties agreed on this.

I accept that the Landlords had to have the damage repaired or the blind replaced because the Tenants did not dispute this.

I cannot tell from the invoice how much it cost to repair or replace the one blind. I award the Landlords **\$150.00** being the middle point of the amounts the Tenants said were reasonable. I note that the Landlords have failed to prove that any further amount should be awarded.

#7 Cleaning of kitchen, bathroom, bedroom 1 and 2 and sitting room blinds

I accept based on the photo submitted that the vent fan was left dirty at the end of the tenancy. I accept that the Tenants did not clean the oven given their testimony about this. I am not satisfied based on the evidence provided that other areas of the rental unit were left unclean at the end of the tenancy because the photos do not support this. I find the Tenants breached section 37 of the *Act* in relation to the vent fan and oven.

I accept that the Landlords had to clean, or have someone clean, the two areas noted at the end of the tenancy.

I find cleaning the vent fan and oven would have taken one hour at the most and award the Landlords **\$25.00** which is the average rate of a cleaner for one hour.

#8 Labour for above repair

I decline to award the Landlords additional amounts for labour because the invoice does not separate this out such that I can tell how long each item claimed took to address. I decline to award the Landlords the full amount shown on the invoice because some of the labour would have been for issues that the Tenants are not responsible for. Further, the amounts awarded above account for the fact that labour was required to address the issues.

I dismiss this claim without leave to re-apply.

#9 GST for above

I decline to award the Landlords the GST outlined in the invoice for the same reasons already noted. Some of the issues addressed by the person who created the invoice are not the Tenants' responsibility and I cannot tell what items cost what amount given how the invoice was written.

I dismiss this claim without leave to re-apply.

#10 Filing fee

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	Removed and replaced damaged countertop	\$100.00
2	Removed and replaced too noisy and completely chocked cooking hood	-
3	Removed and replaced very dirty damaged exhaust duct	-
4	Removed and replaced damaged room bath faucet	\$25.00
5	Removed and replaced very loose damaged thread kitchen faucet	-
6	Repair of damaged blinds	\$150.00
7	Cleaning of kitchen, bathroom, bedroom 1 and 2 and sitting room blinds	\$25.00
8	Labour for above repair	-
9	GST for above	-
10	Filing fee	\$100.00
	TOTAL	\$400.00

As explained above, the Landlords owe the Tenants \$2,400.00, being double the security and pet damage deposits. The Tenants owe the Landlords \$400.00, and the Landlords can keep this amount from the amount owing to the Tenants. The Tenants are issued a Monetary Order for the remaining \$2,000.00 pursuant to section 67 of the *Act*.

Conclusion

The Tenants are issued a Monetary Order for \$2,000.00. This Order must be served on the Landlords and, if the Landlords 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: January 04, 2023

Residential Tenancy Branch