



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

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

- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit in the amount of \$4,378 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 2:11 pm in order to enable the tenants to call into the hearing scheduled to start at 1:30 pm. The landlord's agent ("**CH**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that CH and I were the only ones who had called into the hearing.

CH testified the landlord served that the tenants with the notice of dispute resolution package and supporting documentary evidence via registered mail sent to the tenants' forwarding address on April 22, 2022. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenants are deemed served with these documents on April 27, 2022, five days after the landlord mailed them, in accordance with sections 88, 89, and 90 of the Act.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) a monetary order for \$4,378;
- 2) recover the filing fee; and
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

## **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting April 3, 2020. Monthly rent was \$1,649.37. The tenants paid the landlord a security deposit of \$812.50, which the landlord continues to hold in trust for the tenants. The parties conducted a move-in condition inspection at the start of the tenancy. A copy of the move in condition inspection report (the "**Move-In Report**") was submitted into evidence.

On February 28, 2022, the tenants gave notice of their intention to vacate on March 31, 2022. The landlord scheduled a move out condition inspection at 11:00 am on March 31, 2022. CH testified that the tenants did not attend. She testified that she posted a notice of final opportunity to schedule a condition inspection (form #RTB-22) on the door of the rental unit, proposing a new time of 2:00 pm on March 31, 2022. The tenants did not attend this inspection either. CH conducted a condition inspection on her own, and completed a move-out condition inspection report (the "**Move-Out Report**"). A copy of this report was also submitted into evidence.

CH testified that the rental unit was significantly damaged during the course of the tenancy and that the landlord incurred significant costs repairing the damage and cleaning the rental unit. The landlord seeks \$4,378 in compensation, representing the following:

Description	Total
Flooring	\$2,453.00
Painting	\$550.00
Repairs - Toilet Seat, Electrical, Blinds, Refrigerator, Doors	\$1,025.00
Keys	\$50.00
Cleaning (partial charge)	\$150.00
Yard cleanup and garbage removal	\$150.00
	<b>\$4,378.00</b>

### 1. Flooring

The Move Out Report recorded damage to the floors (vinyl, linoleum, and carpet) throughout the rental unit. CH testified that she hired a carpet cleaning company to attempt to clean the carpets, but they told her that they could not be cleaned and needed to be replaced. The carpets were “extremely dirty” and had paint, marker, and nail polish stains throughout. She testified that the vinyl floors were damaged with burn marks and gouges throughout the house and also needed replacing. Additionally, CH testified that the vinyl flooring in the bathrooms was damaged and needed replacing.

CH testified that the landlord had to replace all of the flooring in the rental unit and replace it with vinyl planking. The age of the flooring that was replaced varied. The upper bathroom linoleum and master bedroom and stairs carpet was installed in 2007. The carpet in the other bedrooms, living room, and hallways was installed in 2015. The vinyl flooring was installed in the front entrance, the kitchen, and the dining room in 2016.

On its monetary order worksheet, the landlord indicated that it seeks to recover \$2,453 for the replacement cost for the flooring. It submitted an invoice which included a portion of this cost, as well as other expenses (the “**Labour Invoice**”). It showed that the landlord incurred a cost of \$150 for removing damaged flooring, \$1,397.25 in labour for installing new vinyl flooring, and \$393.75 for installing new baseboards (\$1,941 in total). CH testified that balance of the amount claimed for flooring (\$512) represented the cost of materials. No receipt was provided because the landlord purchased vinyl flooring in bulk, for use in many of its rental properties, and took the materials from its inventory.

## 2. Painting

CH testified that many of the walls (and the ceiling of one room) of the rental unit were damaged with gouges and dents, and that children has “graffitied” on several walls. She testified that when cleaners attempted to clean the graffiti, they had to scrub so hard they went through the existing paint. CH testified, and the Move-In Report indicated, that the landlord painted the rental unit in March 2020. She testified that after the tenants moved out, the landlord re-painted the entire interior of the rental unit. The landlord claims \$550 for painting on the monetary order worksheet. However, it submitted an invoice for \$1,025 for painting, \$150 for graffiti removal, and \$75 for ceiling repair (\$1,250 in total) (the “**Painting Invoice**”). CH testified that in addition to the repainting of damaged walls and ceilings, the landlord also took the opportunity to repaint undamaged walls and ceilings, which is why the landlord is claiming less than 50% of the cost incurred for repairing and repainting the walls and ceiling.

### 3. Cleaning and garbage removal

CH testified that the kitchen, bathroom, and bedrooms of the rental unit were not cleaned, and the tenants left a large amount of garbage and other items inside the rental unit. CH testified that one of the toilets was so dirty that she was unable to clean it, and that it had to be replaced (cost set out below). She testified that she tried to use a metal scraper inside the bowl of the toilet to remove the buildup, but could not. She was “baffled” as to what the substance was.

The Move-Out Report and the photographs submitted into evidence by the landlord confirmed this.

CH testified that the tenants did not clean the exterior of the rental unit either.

She testified that the landlord hired a cleaner who spend 22.5 hours cleaning the interior of the rental unit, 2.5 hours cleaning the outside yards, and 2.5 hours removing garbage from the rental unit. 10 of these hours were spent washing the walls in preparation for painting.

The landlord is seeking \$150 for cleaning of the interior of the rental unit and \$150 for the cleaning of the exterior and garbage removal (\$300 total).

### 4. Other repairs

CH testified that the blinds and window screens were new at the start of the tenancy, but at the end were “all trashed” and had to be replaced. Some of the closet door tracks were also damaged by the tenants. CH testified that she was able to bend some of them back into shape, but others had to be replaced. She also testified that the tenants damaged five of the doorknobs in the rental unit and had to be replaced. The Move-Out Report recorded this damage, as well as other minor damage caused by the tenants to the rental unit.

The landlord submitted an invoice for \$975 plus GST and PST for the supplies needed to make these repairs and to replace the toilet (the “**Materials Invoice**”).

She also testified that the dryer vent was pulled out from the wall and had to be replaced and the floor registered covers were damaged. However, this damage was not recorded on the Move-Out Report and no photographs of the damage were submitted. The Materials Invoice included charges of \$125.82 plus GST and PST for these items.

The landlord also seeks to recover the cost of the labour for undertaking these repairs, which is set out on the Labour Invoice (in addition to the labour cost of flooring). Excluding the labour cost for installing flooring set out above (\$1,941), the amount of the Labour Invoice is \$525. Of this amount, CH stated that \$50 was for work which amounted to upgrades to the rental unit for which the landlord is not seeking compensation. As such, the landlord seeks to recover \$475.

Additionally, the tenants damaged one of the crisper drawers in the refrigerator, which also had to be replaced at a cost of \$159.56. It submitted screenshot for the replacement part supporting this amount.

The tenants did not return the keys at the end of the tenancy. The landlord claims \$50 to replace them.

In summary, based on CH's testimony, I understand that the landlord's monetary claim to be as follows:

Description	Total
Labour Invoice - Flooring	\$1,941.00
Flooring - materials	\$512.00
Materials Invoice (including taxes)	\$951.09
Labour Invoice - Excluding flooring	\$475.00
Painting Invoice (partial)	\$550.00
Cleaning and garage removal	\$300.00
Replacement part for refrigerator	\$159.56
New keys	\$50.00
	<b>\$4,938.65</b>

### **Analysis**

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It 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. 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:

**Leaving the rental unit at the end of a tenancy**

37(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
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Rule of Procedure 6.6 states:

**6.6 The standard of proof and onus of proof**

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. In most circumstances this is the person making the application.

So, the landlord must prove it is more likely than not that the tenants failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy, that it suffered a quantifiable loss as a result, and that it acted reasonably to minimize its loss.

Based on CH's testimony, the Move-Out Report, and the photographs submitted into evidence, I find that the rental unit was damaged as the landlord alleged. Based on the condition of the rental unit set out in the Move-In Report, I accept that the tenants caused this damage. I do not find that the damage amounts to reasonable wear and

tear. Additionally, I accept CH's testimony that the tenants did not adequately clean the rental unit prior to vacating.

As such, I find that the tenants have breached section 37(2)(a) of the Act. Additionally, in all circumstances, I find that the landlord acted reasonably to minimize its loss.

I accept the testimony of CH, much of which is supported by invoices, as to amount of the cost incurred by the landlord to repair the damage caused by the tenants and to undertake the cleaning. However, I find that the landlord is not entitled to recover the full amount of the cost of the painting or flooring materials.

Residential Tenancy Branch Policy Guideline 40 - Useful Life of Building Elements states:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the 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 or replacement.

Policy Guideline 40 sets out the useful life of carpet and tile flooring at 10 years. It does not mention vinyl or engineered hardwood, but I find a similar life expectancy is appropriate. Based on CH's testimony, the rental unit's flooring was past or near the end of its useful life. On the evidence before me, I cannot say what percentage of the rental unit's flooring was past its useful life expectancy, and what percentage was nearing it. In the circumstances, I find it appropriate to award the landlord \$168.96, representing 33% of the material costs for replacing the flooring ( $\$512 \times 33\% = \$168.96$ ). The landlord is entitled to recover the full amount of the installation costs set out on the Labour Invoice.

Policy Guideline 40 sets the useful life of interior paint at four years. The rental unit was last painted in March 2020, making the interior paint two years old at the end of the

tenancy. As such, the landlord is entitled to recover \$225, representing 50% of the cost to repaint ( $\$550 \times 50\% = \$225$ ).

As stated above, I find that the rental unit was not adequately cleaned by the tenants, which amounts to a breach of the Act. I find that as a result of this, the landlord suffered loss of at least \$300 in cleaning expenses. Accordingly, I order the tenants to pay the landlord this amount.

I also find that the rental unit was damaged as claimed by the landlord, and that the landlord suffered a monetary loss of \$1,585.65 ( $\$951.09 + \$475.00 + \$159.56$ ) to repair the damage. I order that the tenant pay the landlord this amount.

I also accept CH's evidence that the tenants did not return the keys to the rental unit at the end of the tenancy. As such, I order that the tenants pay the landlord the replacement cost of \$50.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover the filing fee from the tenants.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

### **Conclusion**

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the tenants pay the landlord \$3,558.11, representing the following:

Description	Total
Flooring labour	\$1,941.00
Flooring materials	\$168.96
Repair materials	\$951.09
Repair labour	\$475.00
Painting	\$225.00
Cleaning and garage removal	\$300.00
Replacement part for refrigerator	\$159.56
New keys	\$50.00
Filing fee	\$100.00
Security deposit credit	-\$812.50



	<b>\$3,558.11</b>
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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: January 18, 2023

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Residential Tenancy Branch