



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding ONNI PROPERTY MANAGEMENT SERVICES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$320 for damage to the unit, site or property, to retain the tenants' security deposit towards any amount owing, and to recover the cost of the filing fee.

An agent for the landlord (L agent) and an agent for the tenant (T agent) attended the teleconference hearing and gave affirmed testimony. The agents were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of their testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed that they were served with and had the opportunity to review the documentary evidence from the other party. Given the above, I find there are no service issues and that the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses during the hearing. The parties confirmed their understanding that the decision would be emailed to the parties.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit under the Act?

- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A fixed-term tenancy agreement began on May 1, 2020, and converted to a month-to-month tenancy after April 30, 2021. Monthly rent was \$2,200 per month and was due on the first day of each month. The tenants paid a security deposit of \$1,100 at the start of the tenancy, which the landlord continues to hold.

The landlord's monetary claim for \$320 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning costs (3 hours @ \$40 per hour)	\$120
2. Move out fee listed on condition report	\$100
3. Filing fee	\$100
TOTAL	\$320

Regarding item 1, the landlord has claimed \$120 for the cost of 3 hours of rental unit cleaning at \$40 per hour to bring the rental unit to a “presentable state”. Agent L referred to term 13 of the tenancy agreement addendum, which states the following:

13. Upon Vacating:
The Tenant shall, at his/her own expense, have the Premises and carpets cleaned by professional cleaning companies prior to vacating the Premises. Receipts for such cleaning services must be submitted to the Landlord or Agent, or the Tenant will be charged a cleaning fee.

The parties were advised that the requirement for a “professional” cleaning company is not something that is enforceable under the Act, which I will address later in this decision. Agent L presented many colour photos in support of the need for cleaning, which the agent described as follows:

- Lint-trap from dryer full and not emptied.
- Top of kitchen cabinets very dusty.
- Vent cover dusty (12-foot ceiling).
- Baseboards near toilet dusty.
- Very dirty outside balcony.
- Dust on light fixtures (12-foot ceiling).

- Dust between laundry appliance and wall.
- Water marking behind toilet.
- Staining under toilet rim.

The landlord submitted a cleaning invoice in the amount of \$120 dated May 31, 2022 which confirms the hours and rate charged; however, agent L stated that it was “on site cleaning staff” who performed the cleaning.

Agent L was asked about a Condition Inspection Report (CIR) and confirmed an incoming CIR was not completed, which will be addressed later in this decision. Regarding the outgoing CIR, agent L confirmed there was no walk through the unit with the tenant nor was there a request for the tenant to sign the outgoing CIR, which will be addressed later in this decision.

Agent T responded to this item by stating that the building caretaker, Mr. S (Caretaker) advised them that they would “personally be cleaning” and did not agree that \$40 per hour for a resident Caretaker to be cleaning was reasonable. Agent T suggested that the inference could be made that minimum wage applies. Agent T agreed that the lint-trap was not emptied and that there was dust between the laundry appliance and the wall.

Agent T claims that the outside balcony was a result of “corrosion” and had been vacuumed and mopped before the tenants vacated the rental unit. Agent T also said “there was no debris or dirt on it at the time of the move out”, which I will address later in this decision.

Agent T referred to the bathtub photo and indicated that it shows a clean tub. In addition, a photo from above the toilet was presented, which agent T stated says was clean. Regarding the kitchen ceiling lights, agent T stated that they look clean. Agent T also raised an issue with the cleaning receipt from the landlord, which has no GST number and no name of the cleaner listed.

Regarding item 2, the landlord has claimed \$100 for a move out fee. Agent L confirmed that the fee was not charged by the strata and instead is related to the time and fees for moving out of the rental unit. Agent T stated that the tenants made no agreement to pay a move out fee and that their position is that such a fee would be double-charging the tenants.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Firstly, I will address the lack of an incoming CIR. Section 23 of the Act requires that the landlord and tenant together must inspect the rental unit and complete the report as per the Regulation, which I find the landlord failed to do. As such, I order that the landlord complete an incoming CIR in all future tenancies.

Secondly, I find the outgoing CIR does not comply with section 35 of the Act as the document filled out does not comply with the Regulation. Therefore, I afford the outgoing CIR no weight. I order the landlord to comply with section 35 of the Act in all future tenancies. The RTB has an approved form, RTB-27, located at the following website:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/forms/forms-listed-by-number>

Item 1 - The landlord has claimed \$120 for the cost of 3 hours of rental unit cleaning at \$40 per hour to bring the rental unit to a “presentable state”. As indicated above, I find term 13 of the tenancy agreement is not enforceable under the Act as section 37 of the Act only requires tenants to leave the rental unit in a reasonably clean condition. Furthermore, section 5 of the Act prevents landlords from contracting outside of the Act

and I find term 13 was such an attempt and that term 13 of the tenancy agreement addendum has no force or effect as a result.

In addition, I find that 12-foot ceilings are very high and that it is not reasonable to assume that the tenant would or should have such a tall ladder in the rental unit to clean the lights or vents that are so high. As such, I find that 12-foot ceilings are the responsibility of the landlord to clean and not the tenant.

I disagree with agent T however that the toilet was left reasonably clean as the landlord's toilet photo shows a dirty toilet under the rim of the toilet, where I find the tenants failed to clean. In addition, I find the testimony of agent T is contradictory to the photo evidence and I find the balcony was left dirty and was not reasonably cleaned. I find the photo evidence supports my finding.

Therefore, I find the tenants owe 90% of the \$120 cleaning cost. I have deducted 10% for height-related cleaning, which I find to be the responsibility of the landlord. I find the tenants breached section 37(2)(a) of the Act by failing to leave the rental unit in a reasonably clean condition.

I disagree with agent T regarding minimum wage for cleaning and find that there is insufficient evidence before me to support that cleaners work for minimum wage. As such, I am satisfied with the invoice presented on the balance of probabilities and I find the landlord has met the burden of proof. Therefore, I award the landlord 90% of the \$120 total, which I find is **\$108**. I dismiss any amount over \$108 for item 1 due to insufficient evidence, without leave to reapply.

Item 2 – I find the landlord has not met the burden of proof as I am not satisfied that the tenant ever agreed to the move out fee of \$100 and the landlord confirmed that the strata did not impose such a fee. Therefore, I find the landlord has created this fee and is not authorized to charge the tenant for it under the Act. The landlord added the fee to the outgoing CIR which I have already determined above does not comply with section 35 of the Act. Given the above, I dismiss this item in full due to insufficient evidence, without leave to reapply.

As the landlord's claim was partially successful, I grant the landlord the \$100 filing fee pursuant to section 72 of the Act.

I find the landlord has established a total monetary claim of \$208, comprised of \$108 for item 1 plus the \$100 filing fee. Pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain \$208 of the tenants' security deposit of \$1,100, which has accrued \$4.88 for a total of \$1,104.88, in full satisfaction of the landlord's monetary claim.

I ORDER the landlord to return the balance of the tenants' security deposit including interest, which totals **\$896.88**, within 15 days of the receipt of this decision. Should the landlord fail to comply with my order, I grant the tenants a monetary order pursuant to section 67 of the Act, for the balance owing by the landlord to the tenants in the amount of **\$896.88**.

Conclusion

The landlord's claim was partially successful.

The landlord has established a total monetary claim of \$208. The landlord has been authorized to retain \$208 from the tenants' \$1,104.88 security deposit, which includes interest. The landlord has been ordered to return the balance of the tenants' security deposit with interest, which is \$896.88, within 15 days of the receipt of this decision.

Should the landlord fail to comply with my order, the tenants have been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the landlord to the tenants in the amount of \$896.88.

If the landlord complies with my order above, the monetary order will be of no force or effect.

Should the tenants require enforcement of the monetary order, the monetary order must first be served on the landlord by the tenants and then may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord may be held liable for the costs associated with enforcing the monetary order.

This decision will be emailed to the parties.

The monetary order will be emailed to the tenants only for service on the landlord, if necessary.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: March 24, 2023

Residential Tenancy Branch