



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlords under the *Residential Tenancy Act* (the “Act”) for a monetary order for damages, for a monetary order for my monetary loss or other money owed, for permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlords, the Landlord’s Agent (the “Landlords”) and the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlords and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter – Evidence

At the outset of the hearing, the Tenants testified that they did not receive the Notice of Dispute documentation or any of the Landlords’ documentary evidence.

The Tenants testified that they contacted the Residential Tenancy Branch after receiving the Landlord’s email to obtain a copy of the Notice of Dispute documents.

The Landlord testified that they had served the Notice of Dispute documents to the Tenants but that they could not recall if the evidence package, that they had not served to the Residential Tenancy Branch, had been served to the Tenants.

The Tenants were asked to confirm what evidence they had received; the Tenants testified that they only received the hearing fact sheet, the respondent instruction sheet, and the applicant instructions sheet from the Landlords.

The Residential Tenancy Branch (RTB) Rule of Procedure states the following regarding the exchange of evidence for a hearing:

3.14 Evidence not submitted at the time of Application for Dispute Resolution

“Except for evidence related to an expedited hearing (see Rule 10) and an additional rent increase for capital expenditures application (see Rule 11), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than **14 days before** the hearing.”

The Landlord was asked to provide proof of service of the Notice of Dispute documents and their evidence package to the Tenants. The Landlord testified that they had not submitted any documentation to support that they had served their evidence to the Tenants.

As the service of the Landlord’s documentary evidence to the Tenants cannot be verified, I accept the Tenants’ testimony that they were not served the Landlords’ evidence package. Therefore, as the Tenants did not receive the Landlords evidence package in accordance with the RTB rules of procedure, I will not consider the Landlords’ documentary evidence in my decision for these proceedings.

The Tenants’ confirmed that even though they had not received the Notice of Dispute documents they were prepared to proceed in these proceedings.

The Landlords confirmed that they had received the Tenants’ evidence package. As the service of these documents was confirmed, I will consider the Tenants' evidence in my final decision.

Issues to be Decided

- Are the Landlords entitled to monetary order for damage?
- Are the Landlords entitled to monetary order for monetary loss or other money owed?
- Are the Landlords entitled to retain the security deposit for this tenancy?
- Are the Landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the tenancy began on November 1, 2014, that rent in the amount of \$1,358.50 was payable on the first day of each month, and the Tenants had paid a security deposit of \$587.50 at the outset of this tenancy. The parties agreed that the move-in inspection document was completed for this tenancy. The Tenants submitted a copy of the tenancy agreement into documentary evidence.

The parties agreed that the Tenants moved out of the rental unit on July 31, 2022. Both the Landlords and the Tenants agreed that the written move-out inspection document was completed for this tenancy.

The Landlords testified that the Tenants returned the rental unit to them damaged and uncleaned and that they are seeking to recover their costs for repairs and cleaning.

The Landlords submitted that the stovetop grate was damaged at the end of the tenancy and that it cost them \$365.57 to have the grate replaced. The Landlords testified that the stove had been purchased during the tenancy in October 2017.

The Tenant submitted that the stovetop grate was not damaged at the end of the tenancy. The Tenants submitted two pictures of the stove at the end of the tenancy into documentary evidence.

The Landlords submitted that the stove had been dirty at the end of the tenancy and that they are requesting to recover their costs of \$7.83 for the purchase of stove cleaner.

The Tenants agreed that there was some additional cleaning required to the stove at the end of their tenancy and they agreed to the Landlords' requested costs of \$7.83 for stove cleaner.

The Landlords submitted that there was a missing window blind in the master bedroom at the end of the tenancy, the Landlords are requesting the recovery of their costs in the amount of \$309.12 to buy a replacement blind and \$100.00 in labour costs to pick up and install the new window blind. The Landlord testified that they are requesting for the recovery of four hours of their labour costs at \$25.00 per hour. The Landlords testified that the window blinds were installed in 2014.

The Tenants testified that the window blind fell down during their tenancy as it was very old. The Tenants submitted that the blinds were old when the tenancy started and that they just broke down due to age and normal wear and tear during their tenancy. The Tenants submitted that the Landlords are not entitled to the recovery of cost for the purchase and installation of new blinds due to the age of the blinds in the rental unit.

The Landlords submitted that there was damage to the ceiling of a bedroom at the end of the tenancy and that it took them five hours to repair the damage. The landlords are requesting the recovery of their labour costs in the amount of \$125.000, for five hours of work at the rate of \$25.00 per hour.

The Tenants testified that there was a repair required to the ceiling in one of the bedrooms at the end of the tenancy but that they did not damage the ceiling, and that they reported the need for repair to the Landlords' agent before the tenancy ended. The Tenants submitted a copy of a text message they sent the Landlord regarding the ceiling into documentary evidence.

The Landlords testified that 10 hours of additional cleaning was required at the end of the tenancy. The Landlords testified that they had to clean dust and cobwebs on the tops of lights, cabinets, baseboards, blinds, walls, trim, and closet. The Landlord's also testified that they had to clean the stove, oven, oven hood, fridge, doors, and windows. The Landlords are requesting the recovery of their labour for cleaning in the amount of \$250.000, for ten hours of work at the rate of \$25.00 per hour.

The Tenants agreed that additional cleaning was required to the stove at the end of the tenancy but that everything else was returned reasonably clean. The Tenants submitted 11 pictures of the rental unit and a copy of a carpet cleaning receipt into documentary evidence.

The Tenants submitted that at most one hour of cleaning was required for the stove. The Tenants agreed to pay the Landlords \$25.00 for cleaning the stove.

The Landlords testified that the Tenants left non-recyclable items on the property at the end of the tenancy and that they are requesting the recovery of their labour costs in the amount of \$25.00, for one hour of work to collect the items and taking them to the local disposal site.

The Tenants submitted that when they moved into the rental unit there were several items left behind by the previous renters or the Landlords and that they agreed they left those items in the rental unit as they were not theirs to dispose of. The Tenants submitted that they should not have to pay for the Landlords' labour to dispose of items that were left on the property before their tenancy began.

The Landlords testified that the Tenants left grass and yard waste on the property at the end of the tenancy and that they are requesting the recovery of their labour costs in the amount of \$25.00, for one hour of work in collecting the waste and it to the local disposal site.

The Tenants submitted that the yard waste was from them cleaning up the yard at the end of the tenancy, as required, and that the yard waste was properly bagged, and tagged for the weekly community pick up at the rental property by the local garbage/recycling company on collection day. The Tenants submitted that the yard waste should have been left for regular pick up and that the Landlord did not have to take it to the collection site, and that they should not have to pay this requested labour cost as it was not necessary.

The Landlords submitted that there was damage to the fence at the end of the tenancy and that it took them four hours to repair the damage and it cost them \$385.28 to purchase supplies for repairs, consisting of two new fence panels. The landlords are requesting the recovery of their labour costs in the amount of \$100.000, for four hours of work at the rate of \$25.00 per hour, and their cost for new fence panels in the amount of \$385.28.

The Tenants testified that they did not damage the fence during the tenancy, that they reported the missing fence panels to the Landlord during the tenancy, and that they have no idea as to what happened to them. The Tenants submitted a copy of two text messages they sent the Landlord regarding the fence into documentary evidence.

The Landlords have also requested the recovery of the filing fee they paid for these proceedings. The Tenants submitted that they do not feel that they should be responsible for paying the filing fee for the Landlords' dispute claim, as the Landlords had sent them a letter giving them until August 12, 2022, to respond to a letter from them to resolve this issue before going to a hearing. The Tenants submitted that they had sent a counteroffer to the Landlords letter but that the Landlords did not respond to their counteroffer, and instead, the Landlords filed for a dispute hearing on August 6, 2022. Additionally, the Tenants submitted that the hearing was only required, in large part, due to the Landlords' false claims against them. The tenants submitted copies of two letters they received from the Landlords into documentary evidence.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlords have claimed for compensation in the amount of \$1,692.80, consisting of \$365.57 for the replacement of a damaged stove top grate, \$7.83 for stove cleaner, \$309.12 for new blinds, \$100.00 for labour to install blinds, \$125.00 in labour to repair the ceiling, \$250.00 for labour for cleaning, \$25.00 in labour to take recycling to the local collection center, \$25.00 labour to take yard waste to the local collection center, \$385.28 for new fence panels, and \$100.00 in Labour to pick up and install fence panels.

During the hearing, the parties agreed that the stove required additional cleaning at the end of this tenancy. Therefore, I grant the Landlords the agreed to amounts of \$7.83 for stove cleaner and \$25.00 for one hour of cleaning for the stove. I grant permission to the Landlord to retain \$32.83 from the security deposit they are holding for this tenancy in full satisfaction of these agreed amounts.

I will continue in this decision on the remaining disputed amounts consisting of \$365.57 for the replacement of a damaged stove top grate, \$309.12 for new blinds, \$100.00 for labour to install blinds, \$125.00 in labour to repair the ceiling, \$225.00 for labour for cleaning, \$25.00 in labour to take recycling to the local collection center, \$25.00 labour to take yard waste to the local collection center, \$385.28 for new fence panels, and \$100.00 in Labour to pick up and install fence panels. Awards for compensation due to damage are provided for under sections 7 and 67 of the Act.

A party that makes an application for monetary compensation against another party has the burden of proving their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. 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.

An Arbitrator normally looks to the move-in/move-out inspection report (the “inspection report”) as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy as it is required that this document is completed in the presence of both parties and is seen as a reliable account of the condition of the rental unit. However, there is no copy of this document in the accepted evidence for these proceedings; therefore, I am unable to reference or rely on this document in my determinations on this claim.

In the absence of a move-in/move-out inspection report, I must rely on verbal testimony given during this hearing and the remaining documentary evidence regarding the condition of the rental unit at the beginning and the end of the tenancy.

Throughout these proceedings, the parties offered conflicting verbal testimony regarding the condition of the rental unit at the beginning and end of the tenancy, and whether the claims for damages made in this application are for damage caused by these Tenants or normal wear and tear. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As it is the Landlords who filed this claim, the Landlords hold the burden to prove this claim over and above their testimony.

As stated above, I am unable to consider the Landlords' documentary evidence package as they failed to serve those documents on the Tenants in accordance with the Residential Tenancy Branches Rules of Procedure. Therefore, the only evidence I am able to consider in these proceedings is that of the Tenants.

I have reviewed the 25 pages of evidence submitted by the Tenants, and I find that these documents show a reasonably clean rental unit with minor areas of wear and tear. Section 37(2) of the Act states the following regarding the conditional of the rental unit at the end of a tenancy:

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, and***
- (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.***

After reviewing the documentary evidence that I have before me in these proceedings, I find that the Tenants were in compliance with section 37(2) of the Act when they return this rental unit to the Landlords in a reasonably clean state, with a reasonable amount of wear and tear at the end of this tenancy.

Overall, I find that there is a lack of evidence to show that the Tenants breached the Act in any way during their tenancy. Therefore, I must dismiss the Landlords' remaining claims for \$365.57 for the replacement of a damaged stove top grate, \$309.12 for new blinds, \$100.00 for labour to install blinds, \$125.00 in labour to repair the ceiling, \$225.00 in labour for cleaning, \$25.00 in labour to take recycling to the local collection center, \$25.00 labour to take yard waste to the local collection center, \$385.28 for new fence panels, and \$100.00 in labour to pick up and install fence panels in their entirety.

Finally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. I accept the Tenants' submissions that they should not be responsible to refund the Landlords' filing fee for these proceedings, as the Landlords have been mostly unsuccessful in this application. Therefore, I find that the Landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant permission to the Landlords to retain \$32.83 from the security deposit they are holding for this tenancy, in full satisfaction of the agreed amounts contained in this decision.

I order the Landlords to return the remaining \$554.67 security deposits they are holding for this tenancy to the Tenants within 15 days of the date of this decision.

I grant the Tenants a **Monetary Order** in the amount of **\$554.67** for the return of their remaining security deposit pursuant to section 38 of the *Act*. The Tenants are provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: May 31, 2023

Residential Tenancy Branch