



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on May 11, 2022 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation, or loss;
- an order to retain the Tenant's deposits; and
- an order granting recovery of the filing fee.

The Landlords and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed receipt of the Landlord's Application and documentary evidence package.

The Landlords stated that they had not received the Tenant's documentary evidence until January 20, 2023 after finding the evidence in the bushes near their residence. The Landlords stated that despite receiving the Tenant's evidence late, they had time to review, consider, and to respond to the evidence. The Landlords indicated they wished to proceed with the hearing. As such, I find the above documents were sufficiently served pursuant to Section 71 of the Act.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for damage compensation or loss, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; during the tenancy, the Tenant was required to pay rent in the amount of \$2,500.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$1,250.00 and a pet damage deposit in the amount of \$1,250.00, both of which the Landlords continue to hold. The tenancy ended on April 30, 2022 as the Landlords sold the rental unit.

The Landlord submitted a monetary order worksheet outlining the following claims;

The Landlords are claiming \$20.00 to replace two parking passes that were not returned to them by the Tenant at the end of the tenancy. The Landlords referred to the Condition Inspection Report which was completed between the parties at the start and at the end of the tenancy. The Landlords stated that the Report indicates that the Tenant was provided with two parking passes. The Landlords stated that they have not provided evidence in support of the value of the loss, however, stated that they paid the \$20.00 replacement fee to the Strata.

The Tenant responded by stating that she could not find one of the parking passes and that she left the other parking pass with the Purchaser of the rental unit following the end of the tenancy. The Tenant stated that she does not think the Landlords purchased new parking passes.

The Landlords are claiming \$113.40 for the replacement of two garage door openers. The Landlords stated that the Tenant only returned one opener which was damaged. The Landlords stated that the Tenant did not return the other one. The Landlords provided a receipt for one garage door opener in the amount of \$56.70. The Landlords stated that the purchased another opener later on, but did not provide a receipt for the second opener.

The Tenant responded by stating that she was only provided with one garage door opener and that she provided the purchaser with the garage opener she had been provided with.

The Landlords are claiming \$359.01 in relation to unpaid utilities. The Landlords stated that the utilities were in the Landlord's name and that the Tenant was required to reimburse the Landlords the cost of Hydro. The Landlords provided a bill in the amount of \$283.37 for usage between January 21, 2021 to March 16, 2021. The Landlords stated that they had provided the Tenant with a \$65.00 a month credit for the first year.

The Landlord provided a calculation of rent and utilities paid by the Tenant to the Landlords throughout the entire tenancy, compared to what the Landlords were expecting to have received throughout the tenancy. The Landlords stated that there was a discrepancy of \$359.01 which is what they are claiming compensation for. The Tenant responded by stating that she always paid her bills when the Landlords provided her a copy of the invoice.

The Landlords are claiming \$781.21 to replace a shelf in the fridge that has a burn mark on it, the crisper in the fridge which had a crack in it, and for the replacement of a control panel on the oven. The Landlords provided a shopping cart print out of these items displaying the replacement cost. The Landlord provided pictures of the damaged items and also a copy of the Condition Inspection Report in support.

The Tenant responded by stating that she is missing pictures of the damaged fridge. The Tenant denied causing any damage. The Tenant stated that the Landlord has not provided a receipt indicating that they purchased these items.

The Landlords are claiming \$2,939.99 for the replacement of the kitchen counter. The Landlords stated that there was a large crack in the counter at the end of the tenancy. The Landlords stated that the counter was not repairable, therefore, they were required to replace the countertop. The Landlords referred to a quote and an email exchange with the countertop company in support of the replacement of the damaged countertop.

The Tenant responded by stating they had not noticed a crack in the kitchen counter during the tenancy. The Tenant stated that the crack was pointed out to her by the Landlords at the end of the tenancy. The Tenant stated that this may have been caused by the new rental unit settling after it had been built. The Tenant stated that she suspected that the Landlord did not replace the counter as no receipt was provided.

The Landlords are claiming \$386.66 for new flooring material to replace damaged flooring found in the living room of the rental unit. The Landlords stated that they found some floorboards had buckled due to dog urine. The Landlords said the smell of urine was awful and was found under the flooring. The Landlords stated that they purchased the flooring themselves and are seeking to be compensated for this cost. The Landlord provided a receipt and pictures of the damaged floor in support.

The Tenant responded by stating that there had been an issue with the sliding glass door not closing properly during the tenancy. The Tenant stated someone attended on three separate occasions to try and repair the door. The Tenant stated that the damaged flooring is directly in front of the sliding glass door, therefore, the Tenant suspects that moisture was able to get inside the rental unit and damage the flooring because of the door not closing properly.

The Landlords had included a claim for \$2,939.99 which is a quote to install the replacement flooring. The Landlords stated that they did the flooring work themselves and are claiming compensation for their time later on in their monetary order worksheet. The Landlords clarified that this reference was only meant to support their labour costs and does not constitute a claim.

The Landlords are claiming \$250.00 for carpet cleaning. The Landlords stated that the carpets were left dirty with dog urine, feces, and stains at the end of the tenancy. The Landlords stated that they purchased a carpet cleaner and cleaned the carpet throughout the entire rental unit. The Landlords stated that it took them 12 hours to clean. The Landlord provided pictures of the carpet as well as the carpet cleaner full of dirty water from the carpets in support.

The Tenant stated that she had her father rent a carpet cleaner at the end of the tenancy and that they cleaned the carpets themselves. The Tenant denies that there were any stains on the carpets. The Tenant confirmed she did not provide evidence in support of her renting a carpet cleaner.

The Landlords are claiming \$1,400.00 relating to Strata fines that the Landlords were required to pay as a result of the Tenant breaching Strata bylaws relating to parking and smoking violations throughout the tenancy. The Landlords stated that they were not made aware of the fines until they checked the mailbox after the tenancy had ended. The Landlords stated that they send all Strata fines to the Tenant's forwarding address and also scheduled and notified the Tenant of a Strata Hearing the Landlords had scheduled to provide the Tenant with the opportunity to respond to the fines, however,

the Tenant did not appear to the hearing. The Landlords produced a Notice of Late Strata fees in support of this claim, communications between the Landlords and Strata relating to the Landlords' discovery of the fines at the end of the tenancy, as well as the Registered Mail receipt confirming service of the fines and subsequent hearing information to the Tenant.

The Tenant stated that all the Strata fines were in the Landlord's name. The Tenant stated that half of the fines were dropped and that the Landlords did not provide a receipt demonstrating their loss. The Tenant denied that she was responsible for the Strata bylaw contraventions.

The Landlords are claiming \$300.00 to clean the concrete floor in the garage at the end of the tenancy. The Landlords stated that the Tenant left the garage floor dirty with feces, urine, and cigarette stains. The Landlords stated that they spent two days cleaning the garage floor. The Landlords provide their own bill for the time they spent cleaning the garage. The Landlords provided pictures of the condition of the garage floor before and after cleaning it.

The Tenant stated that the stains were caused by her deep freezer that defrosted and leaked onto the floor. The Tenant stated that she was prepared to clean the floor, but that the Landlords said not to.

The Landlords are claiming \$100.00 to clean and repair the upper deck at the rental unit. The Landlords stated that it took hours to clean the deck and to repair a hole in the vinyl. The Landlords stated that the deck was brand new at the start of the tenancy and that the Tenant caused the damage during the tenancy.

The Tenant stated that she had a mat covering the deck and that she had three planters which leaked dirt from the rain. The Tenant stated that she cleaned the deck at the end of the tenancy. The Tenant denies any damages to the deck and that the Landlords attended the rental unit many times for showings and never noted any issues. The Tenant stated she had a cleaner attend the rental unit each month throughout the tenancy.

The Landlords are claiming \$67.12 to replace the hardware on a closet door. The Landlords stated that the bi-fold door track was bent, and that the Landlords were required to replace it. The Landlords stated that they provided a quote and no receipt. The Tenant stated that the track was not broken and that there was a plastic part that was missing, resulting in the door coming off the track.

The Landlords are claiming \$392.00 for the cost associated with replacing a garage door panel. The Landlords stated that the Tenant backed into the garage door during the tenancy. The Landlords stated that they replaced the garage door panel themselves and provided a quote in support. The Tenant denied damaging the garage door. The Tenant stated that the garage door was in good condition at the end of the tenancy. The Tenant stated that the Landlords took possession of the rental unit for one month before the new purchaser took possession. As such, the Tenant feels as though the damage may have occurred after the end of the tenancy.

The Landlords are claiming \$300.00 for a move out cleaning fee. The Landlords stated that the Tenant left the rental unit dirty with debris left in the kitchen, stains in the carpet, dirty bathroom, cupboards still had food in them, which all had to be cleaned before the new owner could take possession. The Tenant stated that she had the rental unit professionally cleaned throughout the tenancy and that she offered to have her cleaner return at the end of the tenancy. The Tenant stated that her father cleaned the carpets in the rental unit. The Tenant provided receipts in support of the cleaning throughout the tenancy. The Landlords provided several pictures of the condition of the rental unit at the end of the tenancy in support.

The Landlords are claiming \$1,800.00 for excessive damage repairs to the walls in the rental unit, including mudding and sanding drywall before painting. The Landlords stated that the entire rental unit needed to be repainted. The Landlords stated that they provided their own receipt of their labour and could not find the receipts for the materials.

The Tenant stated that the rental unit had a one-year warranty given it was a new build. The Tenant stated that the rental unit formed cracks in the drywall from the structure settling. The Tenant stated that the builder attended to cover up the cracks. The Landlords stated that only nail pops were covered under the warranty.

The Landlords are claiming \$400.00 to replace baseboard trim and to paint the baseboards throughout the rental unit as a result of dog urine and feces damaging the baseboards. The Tenant denied any damage to the baseboards and stated that the pictures provided by the Landlord only shows the damaged baseboard by the back sliding door which has already been claimed for by the Landlords. The Tenant stated that the Landlords have not submitted a receipt to prove the cost. The Tenant stated that this damage was not noted on the Condition Inspection Report.

The Landlords stated that all materials relating to their claims were provided by the same builder that constructed the rental unit. The Landlords stated that they contacted the same trades used to purchase the material, however, the Landlords could not find all the receipts for the materials they purchased. The Tenant questioned why the Landlord would not keep receipts seeing as they knew they would be submitting these claims for damage. The Tenant suspects that the Landlords did not complete the work they are claiming compensation for and have since sold the rental unit, therefore, would not be able to complete the work in the future.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

Section 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.

The Landlords are claiming \$20.00 to replace two parking passes that were not returned to them by the Tenant at the end of the tenancy. I find that the Tenant confirmed that she could not find one parking pass and provided the other to the purchaser. I find that the Tenant would have been required to return both parking passes to the Landlords at the end of the tenancy. As the Tenant failed to do so, I find that the Landlords are entitled to compensation in the amount of **\$20.00** to replace the parking passes.

The Landlords are claiming \$113.40 for the replacement of two garage door openers. The Tenant stated that they were only provided one garage door opener which they provided to the purchaser. I find that the Tenant would have been required to return the garage opener to the Landlord. The Landlord only provided a receipt for the replacement of one garage door opener in the amount of \$56.70. I find that the Landlords did not provide sufficient evidence to demonstrate that they purchased a second opener. As such I find the Landlords are only entitled to compensation in the amount of **\$56.70**.

The Landlords are claiming \$359.01 in relation to unpaid utilities. The Landlords provided a calculation of rent and utilities paid by the Tenant to the Landlords throughout the entire tenancy, compared to what the Landlords were expecting to have received throughout the tenancy. The Landlords stated that there was a discrepancy of \$359.01 which is what they are claiming compensation for. I find that the Landlords have provided insufficient evidence to demonstrate what month the missed payment relates to and have not provided a bill in support of the amount being claimed for. As the Tenant stated that they paid all the bills they were provided, I find that the Landlords provided insufficient evidence to demonstrate that the Tenant breached the Act and that the Landlords suffered a loss or the value of that loss. I therefore dismiss the Landlords' claim without leave to reapply.

The Landlords are claiming \$781.21 to replace a shelf in the fridge that had a burn mark on it, the crisper in the fridge which had a crack in it, and for the replacement of a control panel on the oven. The Landlords provided a shopping cart print out of these items displaying the replacement cost. The Tenant denied causing any damage. In this

case, I find that the Landlords have provided insufficient evidence to demonstrate that they suffered a loss, given they did not provide a proof of payment indicating that they purchased the selected items shown in the shopping cart print out. As such, I dismiss this claim without leave to reapply.

The Landlords are claiming \$2,939.99 for the replacement of the kitchen counter. The Landlords stated that there was a large crack in the counter at the end of the tenancy. The Landlords provided a quote for the replacement of the counter. The Tenant stated that this may have been caused by the new rental unit settling after it had been built. I find that the Landlords have provided insufficient evidence to demonstrate that they replaced the counter. I find that the quote provided does not indicate that the work was completed, and the Landlords did not provide a proof of purchase receipt. As such, I dismiss this claim without leave to reapply.

The Landlords are claiming \$386.66 for new flooring material to replace damaged flooring found in the living room of the rental unit. The Landlords stated that they found some floorboards had buckled due to dog urine. The Landlord provided a receipt and pictures of the damaged floor in support. While the Tenant stated that there had been issues with the sliding glass door, I find that the Tenant provided insufficient evidence to demonstrate that they communicated their concerns about the door to the Landlords. I find that the Landlords are entitled to compensation in the amount of **\$386.66** to repair the damaged floorboards.

The Landlords are claiming \$250.00 for carpet cleaning. The Landlords stated that the carpets were left dirty with dog urine, feces, and stains at the end of the tenancy. While the Tenant stated that they had also cleaned the carpets, I find that the Landlords provided sufficient evidence to demonstrate that the carpets required further cleaning. I find that the Landlords are entitled to compensation in the amount of **\$250.00**.

The Landlords are claiming \$1,400.00 relating to Strata fines that the Landlords were required to pay as a result of the Tenant breaching Strata bylaws relating to parking and smoking violations throughout the tenancy. The Landlords stated that they send all Strata fines to the Tenant's forwarding address and also notified the Tenant of a Strata Hearing the Landlords had scheduled to provide the Tenant with the opportunity to respond to the fines, however, the Tenant did not appear to the hearing.

In this case, I find that the Landlords provided sufficient evidence to demonstrate that the breaches to the Strata Bylaws were incurred during the tenancy. I am satisfied that the Tenant received the Bylaw fines and had an opportunity to attend a Strata Hearing,

should the Tenant wish to dispute the fines. As the Tenant did not attend, I find that they did not mitigate their loss. I find that the Tenant is responsible for compensating the Landlords in the amount of **\$1,400.00** in Strata fines.

The Landlords are claiming \$300.00 to clean the concrete floor in the garage at the end of the tenancy. The Landlords stated that the Tenant left the garage floor dirty with feces, urine, and cigarette stains. I find that the Landlords have provided sufficient evidence to demonstrate that the garage floor required further cleaning at the end of the tenancy. I find that the Landlords are entitled to compensation in the amount of **\$300.00**.

The Landlords are claiming \$100.00 to clean and repair the upper deck at the rental unit. The Landlords stated that it took hours to clean the deck and to repair a hole in the vinyl. The Landlords stated that the deck was brand new at the start of the tenancy and that the Tenant caused the damage during the tenancy. I find that the Landlord provided sufficient evidence to demonstrate that the deck required further cleaning and some repair. As such, I find that the Landlords are entitled to compensation in the amount of **\$100.00**.

The Landlords are claiming \$67.12 to replace the hardware on a closet door. I find that the Landlords have not provided sufficient evidence to demonstrate that they incurred the cost to replace the door hardware. As such, I dismiss this claim without leave to reapply.

The Landlords are claiming \$392.00 for the cost associated with replacing a garage door panel. The Landlords stated that the Tenant backed into the garage door during the tenancy. The Landlords stated that they replaced the garage door panel themselves and provided a quote in support. I find that the Landlords provided insufficient evidence to demonstrate that they incurred any loss as a result. I find that the quote is not sufficient to demonstrate that the Landlords purchased a new garage door panel. As such, I dismiss this claim without leave to reapply.

The Landlords are claiming \$300.00 for a move out cleaning fee. The Landlords stated that the Tenant left the rental unit dirty such as debris left in the kitchen, stains in the carpet, dirty bathroom, cupboards still had food in them, which all had to be cleaned before the new owner could take possession. I find that the Landlords provided insufficient evidence to demonstrate that the rental unit required a further \$300.00 worth of cleaning. I have previously awarded the Landlords compensation for cleaning carpets and the garage floor. I find that the Landlords have provided insufficient evidence to

demonstrate that they are entitled to further compensation. I dismiss this claim without leave to reapply.

The Landlords are claiming \$1,800.00 for excessive damage repairs to the walls in the rental unit, including mudding and sanding drywall before painting. The Landlords are also claiming \$400.00 to replace baseboard trim and to paint the baseboards throughout the rental unit. The Landlords stated that the entire rental unit needed to be repainted. The Landlords stated that they provided their own receipt of their labour and could not find the receipts for the materials. I find that the Landlord have provided insufficient evidence to demonstrate substantial damage to the walls and baseboards, that the work took place, or that material were purchased. I dismiss these claims without leave to reapply.

Having been partially successful, I find the Landlords are entitled to recover the **\$100.00** filing fee paid to make the Application. The Landlords have demonstrated an entitlement to monetary compensation in the amount of \$2,613.36. I find it appropriate in the circumstances to order that the Landlords retain the Tenant's deposits totalling \$2,500.00 in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of $(\$2,613.36 - \$2,500.00 = \$113.36)$.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings contrary to section 77(1)(d) of the *Act*, I note that section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

Conclusion

The Landlords have established an entitlement to monetary compensation in the amount of \$2,613.36. The Landlords are permitted to retain the Tenant's deposits in the amount of \$2,500.00 and have been provided with a monetary order in the amount of **\$113.36** which represents the remaining balance owed by the Tenant to the Landlords. The order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 25, 2023

Residential Tenancy Branch