



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

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

1. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act;
2. An Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit pursuant to Sections 38 and 67 of the Act;
3. A Monetary Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, DH, and the Tenant, KM, and Legal Advocate, LH, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on July 24, 2022, Canada Post Tracking Number is on

the cover sheet of the decision, the Tenant confirmed receipt, deemed served on July 29, 2022;

- the Tenant served his evidence package by attaching a copy to the Landlord's door on March 1, 2023, the Landlord confirmed receipt, deemed served on March 4, 2023; and,
- the Landlord served his March 5, 2023 Amendment by registered mail on March 7, 2023, Canada Post Tracking Number is on the cover sheet of the decision, the Tenant confirmed receipt, deemed served on March 10, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act;
2. An Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit pursuant to Sections 38 and 67 of the Act;
3. A Monetary Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on July 1, 2020. The fixed term ended on June 31, 2022, then another fixed term tenancy began. The second fixed term ended on June 30, 2022. The tenancy formally ended on June 30, 2022. Monthly rent was \$3,950.00 payable on the first day of each month. A security deposit of \$1,975.00 was collected at the start of the tenancy and is still held by the Landlord.

The Landlord testified that the Tenants damaged some items in the rental unit, and they are seeking compensation for those repairs.

The Landlord uploaded an email to the Tenants of their suggestion to replace 600 square feet of the living room carpet that they allege was burned. They included a quote from the flooring contractors, and after deducting a sum for 40% depreciation, the Landlord proposed a cost of \$2,380.00.

The Landlord uploaded a very close up shot of a dent in an appliance metal surface. The Landlord claimed it was the dent in the fridge door. They submitted that it would cost \$1,066.00 to replace and install.

The Landlord uploaded a very close up shot of a dent in a metal surface which they submit is a dent in the sink. The Landlord claimed there was a large dent and a couple small ones.

The Landlord said they were charged for the Tenants missing an inspection of the rental units' smoke detectors. The Landlord amended their application to include this fee.

The Landlord is seeking:

ITEMS	AMOUNT
June 2022's rent	\$3,950.00
Carpet replacement	\$2,380.00
Fridge door replacement	\$1,066.00
Sink replacement	\$660.00
Bar repair	\$90.00
Blind replacement-master bedroom	\$293.00
Drywall repair	\$450.00
Missed fire inspection fee	\$168.00
TOTAL:	\$9,057.00

An April 4, 2022 email from the Landlord said that the Landlord's plan was to update the apartment when the Tenant's moved out. The Landlord said, "We would like to replace the carpet with engineered hardwood as strata now allows it, we will paint, fix and update whatever needs to be done." The Tenants testified that they were under the impression that the Landlord would be ripping out the carpet at the end of their tenancy.

The Tenants testified that they had never received a formal notice to end their tenancy; however, they did receive an email from the Landlord on April 14, 2022 that their

tenancy would end on June 30, 2022. The Landlord's email stated, "Please treat this email as a formal notice to end the lease on its maturity date, June 30th 2022. We won't be negotiating a new lease or accepting a month-to-month lease."

The Tenants said they spoke to an Information Officer at the RTB, and they said they told them that their tenancy was ending due to a sale. They were told that they were entitled to one-month free rent, and that they could just keep that last month's rent for that compensation. The Tenants did not pay June 2022's rent.

When cleaning the rental unit, the Tenants stated that they saw what looked like some small burns on the carpet in front of the fireplace. They had a carpet steam cleaning company come in and clean the carpets on June 27, 2022. After the carpets were steam cleaned the apparent burn marks were gone, and the Tenants said it just must have been soot. On June 28, 2022, the Tenants wrote the Landlord telling them that the "entire carpet looks amazing". The Tenants uploaded two pictures of the carpet in front of the fireplace after the steam cleaning.

The Tenants provided a Google Drive uninterrupted Video showing the condition of the rental unit just prior to them vacating. The carpet in front of the fireplace did not appear to be burned.

The Tenants said their kitchen sink had straight edges and the photo the Landlord included, the edges were rounded. They also maintained that the Landlord said there were multiple dents, but the Landlord only showed one close up. The Tenants argue that the picture is not a picture of their sink.

The Tenants maintain they did not pull the bar top counter away from the wall.

The Tenants stated they replaced the master bedroom curtains themselves at the beginning of the tenancy. After some time of regular use, the internal strings that support the slats wore thin. They submit this is normal wear and tear.

The Tenants said after doing the steam cleaning, all the carpeted areas were perfect. The Tenants rely on a June 21, 2022 email from the Landlord where they state, "It's perfect in all the bedrooms still and only requires a steam cleaning." The Tenants maintained that there were no issues with the carpet in the master bedroom. A witness statement submitted by the Tenants' former next door neighbour writes that the owner put in hardwood floors after the Tenants moved out.

The Tenants claimed they were unaware of the missed inspection for the smoke detectors. They stated many times tradespeople came to check on building inspections, chimney inspections, deck and drainage inspections or dryer vent inspections. They always allowed access to these trades people.

On February 5, 2021, they had returned from a trip abroad, and because of covid protocols at the time, they were placed under quarantine for two weeks. When the inspectors came to their door, they informed them of the covid quarantine and the inspectors told them they would return. The Tenants stated they never returned. The Tenants also stated they were never alerted by the owner, and the Landlord never informed them that they missed a follow up appointment.

On June 9, 2022, the date of the move-out condition inspection, the Tenants had already moved out all their furniture. The move out condition inspection report does not list damage to the kitchen sink, refrigerator door/exterior, bar top counter, window coverings in the master bedroom, aside from "3 spots on carpet", it does not list a run in the master bedroom carpet, and it does not list issues with wall repairs done in any other the rooms in the rental unit. The only item that is listed deficient are burns in the carpet in the living room in front of the fireplace.

The Landlord signed off on the move-out condition inspection report, but the Tenants did not agree to sign off on the report as the Landlord wanted to add an amount later for the carpet repair. The Tenants said they would not sign off on the report where there were blank areas that needed to be filled in.

Analysis

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.

Section 26(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenants were not issued a formal notice to end tenancy by the Landlord. The Landlord's April 14, 2022 email that the tenancy would end on June 30, 2022 is not in the approved form and did not end the tenancy. The fixed term ended on June 30, 2022; however, the tenancy could have continued as a month-to-month tenancy pursuant to Section 44(3) of the Act. The Tenants were still required to pay rent for the month of June 2022 pursuant to Section 26(1) of the Act, and I grant **\$3,950.00** to the Landlord.

Leaving the rental unit at the end of a tenancy

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- (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*

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline 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.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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.

The Landlord claims the Tenants did not leave the rental unit undamaged except for reasonable wear and tear at the end of this tenancy. The Landlord and the Tenants conducted a move-out condition inspection which the Landlord signed off on, but the Tenants did not sign due to a disagreement about carpet repair.

Carpet replacement

The Landlord claims the Tenants burned the carpet in front of the fireplace in the living room. On June 9, 2022, the Landlord and the Tenants did an early move-out condition inspection. The Tenants had already moved out all their furniture, but they stated they had not steam cleaned the carpets yet. The move-out condition inspection report states in the living room, "burned carpet in front of fireplace."

On June 27, 2022, the Tenants had the carpets steam cleaned, and the male Tenant claimed it must have been soot, as all the marks came out of the carpet. The Tenants testified that the real estate agent noted how fantastic the carpets looked after the steam cleaning. The Landlord maintained after the steam cleaning, the Tenants left small pieces of tufts of carpet concealing the burns in the carpet. A former neighbour witness wrote that the Landlord put in hardwood floors after the Tenants moved out of the rental unit.

I do not find the Landlord's statement credible that the Tenants left tufts of carpet to conceal burns in the carpet from the fireplace. The Tenants noted that the June 9, 2022 inspection of the rental unit was early as they had not had the carpets steam cleaned prior to the inspection. I find the Tenants' evidence believable that after the steam cleaning the carpets were in great shape. I note that the real estate agent agreed that the carpets were in good shape after the steam cleaning. I find the Landlord has not substantiated their claim and I decline to grant compensation to the Landlord for these carpets which were subsequently changed to hardwood flooring.

Fridge door replacement

The Landlord claims the Tenants dented the refrigerator door, and it had to be replaced. The Tenants claim they did not damage the refrigerator door. The move-out condition inspection report does not note there is damage to the refrigerator door. The Tenants did not sign the move-out condition inspection report as they were not agreeable to signing a document for which the Landlord was still wanting to seek compensation to replace the carpets and had not inputted an amount for which they were claiming.

I find on a balance of probabilities that the Tenants did not damage the refrigerator door, and I decline to grant compensation to the Landlord for this item.

Sink replacement

The Landlord claims the Tenants dented the kitchen sink. The Tenants noted that that picture the Landlord uploaded does not correctly depict what their sink looked like in the

rental unit. The Tenants submitted that their sink had square corners, while the very close up picture the Landlord submitted showed a sink with rounded corners. The move-out condition inspection report does not identify any problems with the kitchen taps, sink and stoppers.

I find on a balance of probabilities that the Tenants did not damage the kitchen sink, and I decline to grant compensation to the Landlord for this item.

Bar repair, Blind replacement-master bedroom, Drywall repair

The Landlord submitted that the Tenants pulled the bar top counter away from the wall, they damaged the master bedroom blinds and that the Landlord had to do drywall repairs all of which they submit is beyond normal wear and tear.

The Tenants stated they did not damage the bar top counter or that walls were damaged beyond normal wear and tear.

The Tenants said they replaced the master bedroom blinds near the beginning of their tenancy, and as a characteristic of the type of blinds, the internal strings that support the slats wore thin. They submit this is normal wear and tear for these types of blinds. I note the Landlord's move-out condition inspection report did not point to damage to the bar top counter, any walls, or the blinds in the master bedroom. Accordingly, I find that the Landlord has not substantiated their claims of damage to these items, and I decline to grant compensation to the Landlord.

Missed fire inspection fee

The Landlord claims reimbursement for the fee they incurred because of the missed inspection. The Tenants stated that the Landlord never alerted them that a follow up appointment was made or was upcoming. They did not receive any emails about this matter. I find the Landlord's conduct to minimize this loss was absent. They did provide any evidence about the circumstances of the missed inspection, whether a follow up inspection was arranged or any invoices for this event. I find on a balance of probabilities that the Landlord has not substantiated this part of their claim, and I decline to grant compensation for missed fire inspection.

Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award. In addition, having been partially successful, I find the Landlord is entitled to recover

\$50.00 of the application filing fee. The Landlord's total monetary award is (\$3,950.00-\$1,975.00+\$50.00) **\$2,025.00**.

Conclusion

I grant a Monetary Order to the Landlord in the amount of \$2,025.00. The Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: May 01, 2023

Residential Tenancy Branch