



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order for compensation for damage or monetary loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The tenants confirmed receipt of the landlord's application ('Application'). In accordance with section 89 of the *Act*, I find that the tenants duly served with the Application. All parties confirmed receipt of each other's evidentiary materials, and the hearing proceeded.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as requested for losses or money owed?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed term tenancy began on May 1, 2022, with HC as the original tenant. EW resided there as a roommate from August 31, 2021 to April 22, 2022. After EW moved out, RC moved in on May 1, 2022, and resided there until August 31, 2022 when both tenants moved out. Monthly rent was set at \$1,925.00, payable on the first of the month. The landlord holds a security deposit of \$962.50 for this tenancy.

The landlord is seeking the following monetary orders listed below:

Item	Amount
Estimate-Kitchen Faucet	\$205.65
Estimate-Faucet Installation	160.00
Estimate-Replacement of drawer front	280.00
Estimate-Fix wall by shower rod	164.80
Invoice-repair walls and painting	448.00
Cleaning Service	105.00
Recovery of Filing Fee	100.00
Total Monetary Order Requested	\$1,562.44

The landlord testified that the home was brand new at the beginning of the tenancy. The landlord testified that the finish on the faucet in the tenants' suite was falling off, and was damaged by the tenants during this tenancy. The landlord testified that the faucets in their portion of the home were identical, and were fine, and therefore the damage was not a manufacturer's defect. The landlord submitted an estimate for cost of installing a new faucet to replace the damaged one.

The landlord also submitted an estimate for the replacement of the drawer front. The landlord testified that the damage exceeded wear and tear, and that the finish was not easy to damage. The landlord testified that the faucet and drawer was not yet replaced as they had a new tenant moving in immediately after.

The landlord testified that they had to repair the wall by the shower rod, which they did for the amount of the estimate submitted. The landlord submits that the damage was not regular wear and tear, and was damage caused by the tenants during this tenancy.

The landlord also submitted claims for painting and wall repair, as well as for cleaning. Invoices were submitted for these losses. The landlord submitted a statement from a

witness, BM, who stated that they observed “lots of damage” to the suite. BM stated that “the tenants did an OK job cleaning but missed several areas”, and “some of the damages required entire walls to be repainted”.

The landlord also submitted an inspection report completed on April 25, 2022, and a move-out report for August 31, 2022, as well as photos of the damage, and text message communication between the parties. The landlord argued that everything was brand new at the beginning of the tenancy, and therefore any damage was caused by the tenants.

The tenants dispute the landlord’s claims. HC testified that although the faucets were slightly tarnished, they were still useable, and did not require replacement. The tenants argue that the faucet was not damaged, and was simply showing signs of wear and tear.

The tenants submit that the damage claim for the drawer was also wear and tear, and that the size of the chip was smaller than a pea, and that the chip did not affect the function of the drawer. The tenants testified that the chip occurred during regular use, which was for storage of plates.

The tenants argued that the damage to the wall by the shower rod was not noted on the inspection report, and deny causing this damage during the tenancy.

The tenants testified that they did install shelving units during the tenancy, which were hung by a red seal carpenter. The tenants testified that they did offer to fill the holes before the end of the tenancy, but the landlord had entered the suite and completed the repairs without their knowledge or permission. The tenants testified that they did not have a fair opportunity to address this damage. The landlord responded that the tenants did not request more time to complete the repairs until the very end. The landlord also notes that the text messages show that they had allowed the tenants until the very last day to do a proper clean, but did not.

The tenants testified that they had spent a considerable amount of time cleaning the suite with HC’s brother MC assisting. The tenants submitted a copy of the checklist that they followed.

The tenants also noted that contractors had entered the suite during the tenancy to perform repairs, which included the removal and pair of drywall. The tenants believe

that some damage to the suite and additional wear and tear can be attributed to the tools and ladders brought in for the work.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlord must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In regard to the landlord's claims for the damaged faucet and drawer front, I am not satisfied that the landlord had sufficiently supported these claims. Although I accept that the home was brand new at the beginning of the tenancy, the tenants are not expected to return the rental unit to the landlord in brand new condition. As noted in section 37(2)(a), there is an exception for reasonable wear and tear. In this case, although I accept that the landlord's own faucet may not be tarnished, this does not automatically mean that the finish on the tenants' faucet may have been defective. I am not satisfied that the evidence shows that the tarnish was due to intentional neglect or actions of the tenants. Furthermore, the landlord submitted claims for the replacement of the faucet and drawer front. As noted by the tenants, these two items were still able to perform their intended functions. As the landlord has a duty to not only support the loss claimed, the landlord also has a duty to mitigate the amount claimed. Not only am I not satisfied that this work has been performed and paid for, I am not satisfied that the landlord had no choice but to replace them. I find that the landlord has not met the burden of proof to support the damage claims for these two items, and therefore I dismiss these claims without leave to reapply.

Similarly, although I note that there appears to be damage to the wall by the shower rod, I am not satisfied that this damage is caused by the tenants, rather than due to a deficiency in the wall or shower rod. As noted by the tenants, even though the home was brand new, deficiencies were discovered and repaired during this tenancy. As this home was brand new, deficiencies may still exist and arise during the first few years, which the tenants should not be responsible for. I am not satisfied that the landlord had met the burden of proof that the damage was caused by the tenants, and I dismiss this claim without leave to reapply.

In regard to the holes and damage to the walls, I note that the final move out inspection was scheduled to take place on the official last day of this tenancy, August 31, 2022. I note that the inspection report reflects that the inspection took place on this date with both parties present. In review of the evidence before me, including the text message dated August 30, 2022, I find that the landlord had sent a contractor to attend at the rental unit on August 30, 2022 without the tenants' knowledge or permission, and without proper notice to the tenants.

Section 29 of the *Act* prohibits the landlord's right to enter the rental suite except with proper notice or the tenant's permission. The landlord's right to enter a rental unit is restricted, and the landlord must not enter unless:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

In this case, the landlord admitted that they "had the contractor here to fix the damages to the walls". I find that the landlord had contravened section 29 of the *Act*, as the landlord failed to demonstrate that the tenants had given permission or were provided with proper notice. I note that this even took place on August 30, 2022, prior to the end of the tenancy, and prior to the final inspection date. I am satisfied that this admission sufficiently supports that the tenants were not afforded a fair opportunity to repair the holes before August 31, 2022. Accordingly, I dismiss the landlord's claim for wall repairs and painting without leave to reapply.

Although the tenants may have attempted to clean the rental unit, I find that the landlord had provided sufficient evidence to support that the rental unit was not left in reasonably clean condition at the end of the tenancy. I find that rental unit was not thoroughly cleaned, and as a result the landlord had suffered the loss claimed. Accordingly, I allow the landlord's monetary claim for cleaning.

As the landlord's application was partially successful in their claim, I allow the landlord to recover the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary awards granted to the landlord. The remaining portion, plus applicable interest, shall be returned to the tenants. As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the period of this tenancy, \$3,93 is payable as interest on the portion of the tenants' security deposit paid on August 22, 2021 and \$3.94 as interest on the portion of the deposit paid on March 25, 2022, until the date of this decision, June 2, 2023.

Conclusion

I allow the landlord a monetary award totalling \$205.00 as set out in the table below. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary award. The remainder shall be returned to the tenants plus applicable interest.

Item	Amount
Cleaning Service	105.00
Recovery of Filing Fee	100.00
Less security deposit held plus applicable interest	-970.37
Deposit to be returned to tenants	\$ 765.37

I issue a Monetary Order in the amount of \$765.37 in the tenants' favour for the return of the remaining portion of their security deposit. Should the landlord 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.

The remainder of the application is dismissed without leave to reapply.

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: June 2, 2023

Residential Tenancy Branch