Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDL-S, FFL / MNSDB-DR, FFT**

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the Act). The Landlord's application for:

- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit in the amount of $2,000 pursuant to section 67; and
- authorization to recover the filing fee for this application from the Tenants pursuant to section 72.

And the Tenants' application for:

- monetary order for $3,200 representing double the security and pet damage deposit, less the $2,000 it is claiming pursuant to sections 38 and 62 of the Act;
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

Issues to be Decided

Did the Tenants:

1) Damage the rental unit?
2) Fail to adequately clean the rental unit prior to the end of the tenancy?

Did the Landlord comply with its obligations regarding the security deposit and pet damage deposit after the tenancy ended?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting September 1, 2021. Monthly rent was $3,400. The Tenants paid the Landlord a security deposit of $1,700 and a pet damage deposit of $1,700, which the Landlord continues to hold in trust for the Tenants. The Tenants also paid a $200 deposit for the garage door remote, which has not been returned, despite the Tenants returning the remote.

The parties conducted a move-in condition inspection at the start of the tenancy. A copy of the move in condition inspection report (the Move-In Report) was entered into evidence.

The tenancy ended on August 25, 2022, when the Tenants moved out of the rental unit.

The parties agreed that they conducted a move-out condition inspection on August 25. An agent of the Landlord (TB) completed a report during this inspection (the Move-Out Report). The Tenants testified that they signed a copy of the Move-Out Report after the inspection, and that TB stated he would email a copy of it to them. The Tenants included their forwarding address on the Move-Out Report

The Tenants testified that, when they received the emailed copy, the Landlord filled out an additional part of the Move-Out Report, which stated:

> **End of tenancy**
> Z. Damage to rental unit or residential property for which the tenant is responsible:
>
> > general cleaning, damages to walls in respective rooms, appliances, outside would damage trim
>
> I, [the Tenants] agree that this report fairly represents the condition of the rental unit.
>
> (Section Z)

The Tenants testified that section Z was blank when they signed the Move-Out Report.

At the hearing, a different agent of the Landlord (CJ) testified that no additions were made to the Move-Out Report after the move out inspection.

1. Landlord's Application

CJ testified that the Tenants damaged the rental unit and failed to adequately clean it prior to the end of the tenancy.

a. Cooking Range

CJ testified that the Tenants damaged the glass-topped cooking range by using a cleaning product which scratched the surface. The Landlord submitted a quote for a new surface for the range of $266.70. The quote also included the cost for a new knob for the range ($45.89) and a new control panel ($99.49). The Landlord has not alleged that the Tenants damaged these items.

CJ testified that it was not cost effective to replace the glass surface alone, and that the owners of the rental unit elected to purchase a new range at a cost of $898.78, as it would be covered by a new warranty, whereas the repaired range would not be.

The Landlord submitted a receipt supporting this amount. CJ was unsure of the exact age of the damaged range, but believe it was “fairly new” at the start of the tenancy.

The Move-In Report did not record any damage to the cooking range. The Move-Out Report indicated that it was dirty. The Landlord submitted photos of the cooking range into evidence which show significant rings of discolouration around the cooking elements. CJ testified these rings could not be cleaned off.

The Tenants testified that the kitchen was adequately cleaned at the end of the tenancy and that the range was not damaged. They argued that the stove was original to the house, which was built 10 years ago. They did not provide any evidence to support this assertion. However, CJ did not dispute this assertion.

b. Walls

CJ testified that the Tenants damaged the walls of the rental unit during the tenancy, and that this required them to be repaired and repainted. CJ testified that the rental unit was not painted during the tenancy nor was it the practice of the Landlord to repaint rental units before the start of a new tenancy. CJ could not say when the last time the rental unit was repainted.

The Landlord submitted photographs of the walls in various rooms in the rental unit which showed scratches which appeared to be caused by furniture, dents in the walls,

and small holes. All of these photos were taken after a the Landlord's handyman had filled and sanded them, but before they were painted.

The Move-In Report recorded all the walls in the rental unit as being in good condition with the exception of the stairwell and lower hallway, which had a 12" x 2" gouge. This damage is not depicted in the photographs.

The Landlord submitted two invoices totaling $1,250 for the painting of the interior of the rental unit, a receipt for $127.58 for paint, and a handyman invoice of $150 (the Handyman's Invoice) for several different items of work, including fixing holes in drywall and hanging the towel rack.

CJ also testified that the Tenants removed a towel rack from the bathroom wall, and that the handyman had to reinstall it. The Tenants did not dispute this.

The Tenants acknowledged that the walls were damaged in places. They were not sure if they were there at the start of the tenancy, or if they caused them during the tenancy.

c. Outdoor windowsill

CJ testified that an outdoor windowsill was damaged by the Tenants' dog. The Landlord submitted a photo of it, in which it appears the corner of the sill has been gnawed on. The Landlord's handyman repaired it. The cost is included in the Handyman's Invoice.

The Tenants asserted that this damage existed at the start of the tenancy.

The Move-In Report does not record this damage. The Move-Out Report only records this damage in Section Z, which the Tenants dispute was completed when they signed it.

The Tenants testified that the windowsill was damaged prior to the start of the tenancy.

d. Cleaning

The Landlord alleged that the Tenants did not adequately clean the rental unit prior to vacating yet. On the Move-Out Report, the Landlord specified that the following parts of the rental unit were not adequately cleaned:

- Washer/dryer

- Walls in the stairwell and lower hallway
- Floors and closets in the second bedroom
- Drawers and shower in the ensuite bathroom
- Floor, cabinets, countertops, and parts of the refrigerator in the kitchen

The Landlord submitted photos of the kitchen which show that the exteriors of the dishwasher & cabinets and the interior of the microwave were not cleaned.

The Landlord hired a cleaner to clean the kitchen, bathroom, window edges, walls, and doors at a cost of $440 (11 hours at $40 per hour). Additionally, the Landlord's handyman attempted (unsuccessfully) to clean the glass top of the cooking range. This work is recorded on the Handyman's Invoice.

The Tenants denied that the rental unit was not adequately cleaned. Additionally, they argued that the question of whether they were liable for any cleaning or repair costs was resolved by their signing of the Move-Out Report and the Landlord's agent not requesting any compensation for damage at that time.

2. Tenants' Application

The Tenants have paid $3,600 in deposits (a security and a pet damage deposit of $1,700 each plus a garage remote deposit of $200). The Tenants argue that, as the Landlord has only claimed $2,000 in damages, it should have returned the remaining $1,600. As the Landlord did not do this, the Tenants argue that they are entitled to an amount equal to double the balance ($3,200).

Analysis

1. Landlord's Application

Section 37 of the Act requires tenants to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear.

Per RTB Policy Guideline 16 and Rule of Procedure 6.6, the Landlord must prove it is more likely than not that it is entitled to compensation. So, the Landlord must prove:

- the tenant has failed to comply with section 32;
- loss or damage has resulted from this non-compliance;
- the amount of or value of the damage or loss; and
- it acted reasonably to minimize that damage or loss.

(the "**Four-Part Test**")

I will address each of the Tenants' alleged breaches in turn.

a. Cooking Range

Based on the photographs submitted into evidence, I accept that the glass cooking top was damaged at the end of the tenancy. The stains and marks seen in these photos are common and cannot readily be removed with cleaning. I accept that it was reasonable for the Landlord consider replacement necessary. I find that such damage exceeds reasonable wear and tear, as it can be avoided with regular cleaning of the stovetop. Based on the quote submitted into evidence, I find that the replacement cost of the cooktop was $266.70.

I do not, however, find it reasonable for the Landlord to have replaced the entire range. CJ did not allege that the Tenants damaged the range in other ways, and the photographs provided do not persuade me that any other damage that existed is beyond ordinary wear and tear.

I accept that the owners of the rental unit would prefer to have a cooking range with a warranty. However, it is not appropriate for them to obtain this at the expense of the Tenants.

Additionally, Residential Tenancy Branch (RTB) Policy Guideline 40 lists the useful life of a stove at 15 years. The Landlord did not provide any reliable evidence as to the age of the range. In the absence of such evidence, I accept that the stove is original to the rental unit, and I accept that the rental unit was 10 years old (an assertion of the Tenants which was not disputed).

Accordingly, I find that the glass top of the cooking range was 2/3 through its useful life at the end of the tenancy. Accordingly, any amount the Landlord is entitled to as a result of the Tenants' breach must be reduced by this amount.

I find that as a result of the Tenants' breach of the Act, the Landlord suffered a $266.70 loss. Taking into consideration the useful life guidelines, I order that the Tenants pay the Landlord $90.68 ($266.70 - 66%).

b. Walls

Based on the Move-In Report, I find that the walls in the rental unit were undamaged at the start of the tenancy. Based on the photographs submitted into evidence, CJ's testimony, and the uncertain testimony of the Tenants, I find that the Tenants damaged the walls as alleged by the Tenants, and that the damage exceeds ordinary wear and tear. This amounts to a breach of section 37 of the Act.

I accept CJ's undisputed testimony that the Tenants removed the towel rack from the wall of the bathroom, and that the cost to reinstall the towel rack was included on the Handyman's Invoice.

Based on the invoices submitted into evidence, I find that the Landlord paid $1,200 in labour and $127.58 in supplies to repaint the rental unit, plus some portion of the Handyman's Invoice to fill and sand the holes and dents in the walls.

Policy Guideline 40 sets the useful life of interior paint at four years. CJ was unable to say when the rental unit's interior was last repainted. Based on her testimony, I am not satisfied that it was repainted within four years of the end of the tenancy.

Accordingly, I find that the interior paint was past its useful life, and that the Landlord is not entitled to any compensation for the cost of repainting it.

Policy Guideline 40 sets the useful life of drywall at 20 years. I accept the Tenants' undisputed assertion that the rental unit is 10 years old. As such, I find the drywall is halfway through its useful life.

The Handyman's Invoice does not set out how much time was spent on each task listed. The parties have not provided any evidence as to how the tasks should be apportioned between the $150 cost. In the circumstances, I find it appropriate to apportion $75 to the cost of installing the bathroom towel rack and filling and sanding the drywall holes, $50 to the cost of repairing the exterior windowsill, and $25 to the cost of cleaning the stovetop.

As such, I order that the Tenants pay the Landlord $37.50 ($75.00 - 50%).

c. Outside Windowsill

As the move in report does not record any damage to the outside windowsill, I find that the damage occurred during the tenancy. Based on the photographs submitted into

evidence, I do not find that the damage is reasonable wear and tear. As such, the Tenants breached section 37 of the Act.

I accept that the Landlord paid the handyman $50 to repair this damage. I do not find that any depreciation to this amount is appropriate. I order the Tenants to pay the Landlord $50.

d. Cleaning

Based on the descriptions of the rental unit's rooms on the move out report, which are partially supported by the photographs submitted into evidence, I find that the Tenants did not leave the rental unit reasonably clean ta the end of the tenancy. This amount to a breach of section 37 of the Act.

Based on the invoices provided, I find that the landlords paid a cleaner $440 to clean the rental unit, plus paid the handyman $25 to clean the stove and the oven. I find that these amounts are reasonable in the circumstances. Accordingly, I order the Tenants to pay the Landlord $465.

2. Tenants' Application

Section 38 of the requires a landlord, within 15 days of the later of the end of the tenancy or receiving the Tenants' forwarding address to either return the security and pet damage deposit or make an application claiming against them. If they do not, a Landlord must pay the Tenants an amount equal to double the deposits.

The Landlord received the Tenants' forwarding address on the day the tenancy ended, August 25, 2022. It made an application for dispute resolution claiming against the security deposit and the pet damage deposit on September 7. As such, it applied within the required time frame.

There is no requirement in the Act that the amount of the application must exceed the security or pet damage deposit. All that is required to avoid the doubling penalty is to make the application within the required time.

As such, I do not order that the Tenants are entitled to any doubling of the security or pet damage deposit. I dismiss this portion of the Tenants' application.

Section 6(1) of the *Residential Tenancy Regulation* permits a Landlord to collect a "refundable fee" for keys or an access device. Per section1 of the Act, such fees are not considered either part of the security or pet damage deposits. As such, they are not subject to the section 38 doubling provisions.

However, as this fee is refundable and as the Tenants have returned the garage remote, there is no legitimate reason for the Landlord to retain this refundable fee. I order the Landlord to pay the Tenants $200, representing the return of this refundable fee.

3. Filing Fee and Deposits

As both parties have been partially successful in their applications, each must pay the other's filing fee.

The Landlord may deduct the monetary orders made in its favour from the security and pet damage deposits. It must return the balance.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the Landlord pay the Tenants $2,956.82, representing the following:

Description	Total
Security and Pet Damage Deposit	$3,400.00
Garage Remote Fee	$200.00
Tenant's Filing Fee	$100.00
Cooktop Credit	-$90.68
Walls Credit	-$37.50
Windowsill Credit	-$50.00
Cleaning Credit	-$465.00
Landlord's Filing Fee Credit	-$100.00
	$2,956.82

At the hearing, I advised the Landlord that the refundable fee for the garage remote was not part of the deposits, and that it would have to return it. I cannot say whether it has already done this. If it has, that payment must be credited against this monetary order.

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 9, 2023