



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

This hearing was scheduled for a hearing on February 23, 2023, and adjourned to June 15, 2023 to deal with the landlords' application pursuant to the *Residential Tenancy Act* ("the Act") for:

- a monetary order for compensation for unpaid rent, money owed, 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 reconvened hearing, and 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 landlords' application for dispute resolution ('Application') and amendment. In accordance with section 89 of the Act, I find that the tenants duly served with the Application and amendment. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

I apologize for the delay in providing the parties with a decision within 30 days. Due to the number of claims made in the landlords' application, and significant amount of evidence submitted by both parties, additional time was required to properly review these materials before providing a decision. I note that although 30 days has passed after the proceedings were held, 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 in the case that a decision is provided after the 30 day period.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for money owed or losses arising out of this tenancy?

Are the landlords entitled to recovery of their filing fee?

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 tenancy began on February 1, 2020 and ended on May 25, 2022. Monthly rent was set at \$3701.10, payable on the first of the month. The landlord still holds a security and pet damage deposit of \$1,825.00 each deposit.

The landlord is claiming the following losses associated with the end of this tenancy:

Item	Amount
New microwave	\$251.95
Repair and painting	840.00
Repair and Painting	787.50
Air Duct and Vent Cleaning	614.25
Cleaning and Sanitizing of Pest	719.25
Clean and Sanitize Carpet	315.00
Yard Maintenance-Clean & Remove dog feces	389.80
Flea Inspection	165.00
Pest control-disinfect appliance, bsmt	157.50
Move Out Clean	525.00
Move Out Cleaning	262.50
Move Out Cleaning paid to new tenants	968.36
Cleaning of bathroom	262.50
Dishwasher	778.72
Dishwasher Install	378.00
Replace Toilet & Faucet	567.00
Replace bathroom Tub Drain	474.56
Plug rewire chewed by rat	420.00
Replacement of damaged carpet	2,541.63
New window due to dog damage	1,025.38
Sliding door roller repair	33.60
Living sliding screen mesh	61.60
Dining & kitchen blinds	966.84
Utility Bill	193.06
Hydro Bill	214.28
Loss of rent due to extensive repairs-June 2022	3,700.00
Loss of rent-July 1-15	1,850.00
Total Monetary Order Requested	\$19,900.85

The landlords are requesting reimbursement of the above claims as the landlords feel that the tenants failed to leave the rental unit in reasonably clean and undamaged condition. The landlords submit that due to the extensive damage caused, they were unable to re-rent the home until July 15, 2022.

The landlords testified that the tenants gave notice on April 29, 2022 that they were ending the tenancy effective May 31, 2022. The landlords attempted to schedule a move-out inspection with the tenants, but on May 25, 2022 the landlords received a text message from RP at 2:56 p.m. that they house was cleaned by the cleaners, and that the main door key was under the front door mat, and the garage opener was in the mail box. As a result the landlords were unable to complete a move-out inspection with the tenants.

The landlord SG attended the home with their daughter PG on May 25, 2022 and submits that the house smelled like pet urine, and that the tenants left the home in damaged and unclean condition. The landlord submits that the tenants had left food behind in the appliances, including the microwave, and therefore had to be replaced.

The landlord submits that upgrades were made to the home in 2016, including the installation of new carpet, new faucets, blinds, and windows. The landlord submits everything was new, except the dishwasher. The landlord further submits that the tenants' neglect had contributed to the significant damage referenced in the landlords' claims.

The landlords are also seeking payment of the outstanding utilities as set out in the tenancy agreement.

The tenants confirmed that they agreed to compensate the landlords \$1,425.00, and are disputing the remaining monetary claims. The tenants deny that the damage exceeded regular wear and tear of the home that was built in 1963. The tenants feel that the home was not in good condition, and the landlords failed to support that the damage exceeded regular wear and tear, and that the landlords failed to properly support the age of the items referenced in this claim.

The tenants submit that there were dogs previously in the home, and that the damage cannot be attributed to the tenants' dogs. The tenants also testified that the landlord failed to disclose that they would be sharing the utilities with other occupants in the home, and therefore the utility bills did not reflect the actual usage of the tenants.

The tenants noted the home was not in good condition, and there were numerous issues such as broken strings for the blinds, a hole in the fireplace, and old appliances, which were then replaced with used appliances.

The tenants felt that the microwave was not new when they moved in, and was probably at least years old. The tenants dispute that they should replace a microwave that has exceeded its useful life of 10 years.

Similarly the tenants felt that the paint has already exceeded its useful life of 4 years, and therefore the landlord should be responsible for painting of the home.

The tenants pointed out that as per RTB Policy Guideline #1, the landlord is responsible for duct cleaning, and not the tenants.

The tenants acknowledged that by leaving earlier without attending a move-out inspection that they would be likely waiving the return of their deposits, which they felt was more than sufficient to cover any losses.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the party making the claim to prove, on a balance of probabilities, that the other party had caused damage and losses in the amounts claimed in their application.

In review of the evidence before me, I am satisfied that the landlords had provided sufficient evidence to show that despite any cleaning that was done by the tenants or a company hired by the tenants, the home was not left in reasonably clean condition. Although two different parties may have different interpretations of what they considered to be reasonably clean, I find that that not only do the pictures submitted show the home in a state that would require a substantial amount of cleaning, the landlords' position is corroborated by the cleaner's report dated June 6, 2022. Furthermore, although the tenants deny damage by their pets, on a balance of probabilities, I find the evidence shows that the tenants neglected to clean after their dogs' feces as noted by the yard maintenance company, which is a condition of the tenants' tenancy agreement. Accordingly, I allow the landlords' claims related to the yard maintenance, and professional cleaning of the home. I have considered the additional compensation for cleaning after the new tenants had moved in. In consideration of the evidence before me, I find that the landlords had already hired a professional cleaner to address the cleaning deficiencies. Although I accept the fact that the new tenants were not satisfied with the level of cleaning, I find that the landlords had ample opportunity to address this issue well before July 15, 2022. Accordingly, I dismiss the landlords' claim for reimbursement for further cleaning after the new tenancy had started.

As noted in RTB Policy Guideline #1, "The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises. ". In consideration of the landlords' claims for the carpet replacement, I

am satisfied that the landlord did provide evidence to show that the carpets were replaced on April 1, 2016. As per RTB Policy Guideline #40, the useful life of carpet is 10 years, which means that in May 2022, the carpet had approximately 4 years of useful life left. Although the tenants did point out that there were pets from previous occupants, I note that the move-in inspection report does not mention any stains or odours from these pets. I note that there is a note about wear and tear. Section 21 of the Residential Tenancy Regulation states the following about the evidentiary weight of a condition inspection report:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this case, I find that the move-in inspection report does not reference any previous pet odours or damage. I find that the landlord has met their evidentiary burden on a balance of probabilities that the damage caused by the tenants and their pets exceeded regular wear and tear, which necessitated the early replacement of the carpet. At the end of the tenancy, the carpet had approximately 3 years and 10 months of useful life left. The approximate prorated value of the remainder of the useful life of the carpet is \$974.29. ($\$2,541.63/120 \times 46$). Accordingly, I find the landlord is entitled to \$974.29 for replacement of the damaged carpet.

I am satisfied that the landlords had provided sufficient evidence to show that the tenants' pets had damaged the window and sliding door and screen. I find that the move-in inspection report does not note any damage to these items at the beginning of this tenancy. I am not satisfied that this damage is considered regular wear and tear. Accordingly, I allow the landlords' claims for repair or replacement of these items.

In consideration of the landlords' other claims for damage, the onus is on the landlord to support their age. As noted in *Residential Tenancy Policy Guideline #40* "Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence."

The landlords' own testimony was that there were significant upgrades performed in 2016 to the home. I note that as per RTB Policy Guideline #40, the useful life of paint is 4 years. If the home was last repainted in 2016, at the end of the tenancy, the paint had exceeded its useful life. Accordingly, I dismiss the landlords' claim for painting and associated repairs without leave to reapply.

I am not satisfied that the landlord had sufficiently supported the age of the microwave, dishwasher, toilet, faucet, and blinds. Furthermore, I am not satisfied that the landlord supported that the damage to these items were due to the tenants' actions rather than regular wear and tear. Accordingly, I dismiss the landlords' claims for the replacement of these items without leave to reapply.

As per RTB Policy Guideline #1, "The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary." I find that the duct and vent cleaning fell under the responsibility of the landlords, and accordingly, I dismiss their claim for duct cleaning without leave to reapply.

Also noted in RTB Policy Guideline #1 is that the "landlord is generally responsible for major projects, such as tree cutting, pruning and insect control". Pest control is the responsibility of the landlord, unless the landlord can establish that the issue is due to the neglect or actions of the tenants. In this case, I am not satisfied that the tenants are responsible for the pest issue. Accordingly, I dismiss the landlords' claims related to the rats and pest control without leave to reapply.

In relation to the landlords' claims for loss of rental income, although I acknowledge the landlords' concerns of the fact that the tenants did not assist the landlord by providing access on an earlier date, and although I acknowledge that a significant amount of cleaning was required before new tenants could occupy the rental unit, I am not satisfied that the main reason for the delay in re-renting the suite was due to the tenants' actions. Accordingly, I dismiss the tenants' claims related to loss of rental income without leave to reapply.

Lastly, the landlords are seeking reimbursement of unpaid utilities. Although the tenants claim that amounts exceeded the tenants' share of what they were responsible for, I am not satisfied that the evidence supports that the tenants were "overcharged". I find that the tenancy agreement clearly specified the portions of the utility bills the tenants were responsible for. I am not satisfied that the tenants had demonstrated that the amounts have been paid. Accordingly, I allow the landlords' claims for the outstanding utilities.

As the landlords were successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award granted to the landlord. 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, \$38.24 is payable as interest on the tenants' security deposit from when the deposit was originally paid, until the date of this decision, July 15, 2023.

Conclusion

I issue a Monetary Order in the amount of \$991.27 in the landlords' favour under the following terms which allows for the following monetary awards:

Item	Amount
Clean and Sanitize Carpet	315.00
Yard Maintenance-clean and remove dog feces	389.80
Flea Inspection	165.00
Pest control	157.50
Move Out Clean	525.00
Move Out Cleaning	262.50
Cleaning of bathroom	262.50
Replacement of damaged carpet	974.29
New window due to dog damage	1,025.38
Sliding door roller repair	33.60
Mesh	61.60
Utility Bill	193.06
Hydro Bill	214.28
Filing Fee	100.00
Less Security and Pet Damage Deposit plus applicable interest	-\$3,688.24
Total Monetary Order	\$ 991.27

The landlords should serve the tenants with the Monetary 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 and enforced as an Order of that Court.

I dismiss the remaining claims 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: July 15, 2023

Residential Tenancy Branch