



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

This hearing convened as a result of two Applications filed by the Landlords, one on October 5, 2022 and one on November 8, 2022, in which the Landlords sought monetary compensation from the Tenants for repairs to the rental unit and recovery of the filing fee. In both applications the Landlords also requested authority to retain the Tenants' security deposit towards any amounts awarded.

The hearing of the Landlords' applications occurred on June 29, 2023 and continued on August 17, 2023. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Landlord's Monetary Claim

As noted, the Landlords filed two separate applications; in each application they sought the sum of \$4,600.00. During the initial hearing the Landlords' daughter confirmed the Landlords sought the sum of \$6,992.00 in monetary compensation from the Tenants.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Should the Landlords recover the filing fee?

Background and Evidence

In support of the Landlords' claim, the Landlords' daughter, D.S. provided the following testimony:

- This tenancy began November 1, 2020, and ended on September 20, 2022.
- Rent was payable in the amount of \$3,552.00 per month.
- The Tenants paid a \$1,750.00 security deposit.
- The Landlords' agent, L.B. completed the move in and move out condition inspection report.
- Neither the Landlords, nor their daughter, D.S., participated in the move out inspection.
- In terms of the condition of the rental unit when the tenancy ended, the Landlords alleged that the Tenants:
 - repainted some of the rooms and did a very poor job as it was patchy;
 - installed a shelf and damaged the walls;
 - stained the carpets;
 - damaged the landscaping by removing some of the garden "logs";
 - damaged the granite countertops as large chunks of the counter were gone such that the countertop was replaced;
 - did not clean the fireplace;
 - removed the "fire alarm"; and,
 - removed components from the washer and dryer such that they both needed to be replaced.

D.S. stated that they hired a contractor to repair all the damage and he repainted the downstairs, replaced the granite counter, replaced patches of the carpet, and replaced the landscaping logs. In total the contractor charged \$6,037.50 to repair the unit. The Landlords also replaced the washing machine for \$954.78.

The Landlord, S.S., also testified. She stated that the rental unit was in good condition when the tenancy began. She noted that home is an older home, but claimed it was renovated in 2017. S.S. stated that they replaced the electricity, plumbing and drywall, as well as the kitchen, windows, blinds, sliding door.

Neither S.S. nor D.S. were able to provide testimony with respect to the condition inspection report. The agent confirmed that he completed the document.

The Landlord's agent testified as follows. He stated that he is the property manager for the Landlord. He confirmed that when the tenancy began they completed the condition inspection report and noted the deficiencies on the report. He stated that they also did a move out inspection, but that report was not provided in evidence.

In terms of the condition of the rental unit at the end of the tenancy, the agent stated that it was relatively similar, and in his opinion, in relatively decent condition when it was returned. He noted no house ever is, especially when it is tenanted. When asked if the unit required \$6,037.50 in repair costs, he stated that wasn't his area of expertise.

In terms of the washing machine the agent stated that the washing machine had been returned to its original spot, but he did not open the back to see if there were components missing.

In response to the Landlords' claim the Tenant E.D. testified as follows.

In terms of the Landlords' claim for the cost to repair the landscaping, E.D. submitted that wood degrades over time, and in this case the wood in the garden simply degraded due to its age. In support the Tenants provided photos of the landscape logs. She stated that they told the Landlord when it happened because the nails were sticking out and it was a safety concern for their children such that the wood was removed. She submitted that even if this claim is allowed, the \$500.00 claimed by the Landlords to replace the log, is excessive.

In terms of the Landlords' claim for the "unauthorized painting and damages" the Tenant testified that the walls were already patched when they moved in. Additionally, Tenant stated that they did repaint the rec-room and the gym room because they repaired the holes in the wall resulting from hanging a television. She confirmed they used the paint that was in the storage room which they assumed was for the house. E.D. stated that the patches were noticeable, but this was the case with other prior repairs, which is shown in photos provided by the Tenants of the paint condition when they first moved in. She agreed that the closet was repainted but claimed she did so as the condition of the closet was unacceptable for storing food. She also stated that they did not paint the shelves, but rather covered them.

The Tenant also noted that the Landlords' quote for repainting was for the entire house (as noted on the estimate), however, the Landlords' claim is for only a few rooms on the bottom floor and if they are claiming the amount to pain the entire house this should not be permitted.

In response to the Landlords' claim with respect to the washer "damage", the Tenant stated that they did not use the washer as they stored them for a portion of the tenancy and brought them back just before they moved out. The Tenant further stated that when they did use it, they used it normally. The Landlords claimed that the dents were caused by the tenancy; in response the Tenant stated that those dents pre-existed the tenancy.

They also submitted an email to the Landlords noting that the washer was working for three weeks before it broke down. The Tenant noted that the Landlords sought to replace the washer with a brand new appliance despite the fact the washer was likely 3-5 years old. The Tenant denied removing any parts from the washing machine and noted that there was no report from a professional that this damage actually existed.

In response to the Landlords' claim regarding a chip in the granite countertop. The Tenant submitted a copy of the move in condition inspection report which clearly notes that the chip was existing at the beginning of the tenancy.

The Landlord also claimed the Tenants were not authorized to use the fireplace. The Tenant stated there was no restriction on use. The Tenant also noted that the cleaning of the chimney is the Landlord's responsibility. The Tenant acknowledged however that they did not clean the fireplace and agree to compensate the Landlord **\$50.00** for the related cleaning cost.

The Tenants also disputed the Landlords' claim for the "fire alarm" which they say is actually a smoke detector. She noted it was 14 feet up on the ceiling and they could not access it and that in any case they did not remove it

In response to the Landlords' claim for compensation relating to stains and tears on the carpet, the Tenant stated that they are disputing the rip, but acknowledging the stains. The Tenants agree to compensate the Landlord **\$200.00** for the stains. The Tenant also noted that the move in CIR clearly notes that there was a rip in the carpet at the start of the tenancy.

In reply S.S, testified that the washing machine was purchased approximately four years ago. In terms of why the machine could not be repaired, D.S. testified that they wanted to repair the unit, but the repairperson stated that "most of the components were missing and had been taken out". S.S. stated that they believe the Tenants removed these components.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;

- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (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.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

Painting

I dismiss the Landlords' claim for the cost to repaint the rental unit for the following reasons.

I have reviewed the photos submitted by the Tenants which indicate that the paint was in poor condition when the tenancy began. This suggests to me that the rental unit had not been painted in some time.

Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, guidance can be found in

Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements which provides in part as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. 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.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 also provides a table setting out the useful life of most building elements. *Policy Guideline 40* provides that interior paint has a useful life of five years. In this case the Landlord testified that the rental unit had been renovated in 2017, five years before the tenancy ended. There was no evidence before me that the rental unit was painted at any time after this, nor do the photos submitted in evidence support such a finding. I therefore find the rental unit would have required repainting in any case such that I dismiss this portion of the Landlords' claim.

Carpet

The Tenants acknowledge that they stained the carpet. The Landlords submitted that the cost to attend to these stains was \$140.00 to \$270.00. There was no explanation for this figure, however, I find the amount suggested by the Tenants, namely **\$200.00** to be a reasonable sum to compensate the Landlords as this is also approximately the midway point between the Landlords' estimate; as such, I award them this amount.

The move in condition inspection report confirms that the carpet was ripped when the tenancy began. I therefore dismiss the Landlords' claim for the cost to repair any rips.

Landscaping costs

The photos submitted in evidence before me show that the gardens were delineated by wooden landscaping logs. I agree with the Tenants that these logs naturally degrade over time. I am not satisfied the logs required replacement due to anything the Tenants did or failed to do. As such, I dismiss this portion of the Landlords' claim.

Granite countertops

I also dismiss the Landlords' claim for the cost to replace the granite countertops. As aptly noted by the Tenant, the move in condition inspection report confirms the counters were chipped when the tenancy began.

Chimney/Fireplace Cleaning

Residential Tenancy Policy Guideline 1 1. Landlord & Tenant – Responsibility for Residential Premises FIREPLACE, CHIMNEY, VENTS AND FANS provides that the landlord is responsible for cleaning and maintaining the fireplace chimney at appropriate intervals. The tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it.

In this case I find the Tenants are responsible for the cost of cleaning the fireplace and the Landlords are responsible for the cost of chimney cleaning. As the receipt submitted by the Landlords does not separate the costs for these two activities, I agree with the Tenants that the sum of **\$50.00** is reasonable as compensation for cleaning the fireplace and I award the Landlord this amount.

Fire alarm

Although the Landlords claim compensation relating to a "fire alarm" the photos submitted in evidence suggest it was a smoke detector that was missing when the tenancy ended.

Policy Guideline 1 provides that a landlord must install and keep smoke alarms in good working condition. The landlord is also responsible for regular maintenance including, annual inspection of the system; annual cleaning and testing of the alarm; and replacing batteries at least annually and according to the manufacturer's instructions.

I accept the Tenant's testimony that they could not reach the smoke detectors and did not remove them from their location. I find it likely the parties simply didn't notice the smoke detector was missing when the tenancy began, rather than the Tenants removing the smoke detector.

For these reasons I dismiss the Landlords' claim for the cost to replace the smoke detector.

Washer/Dryer

The Landlords claim compensation for the cost to replace the washer and dryer. The Tenants testified that they did not use these appliances and instead used their own. However, the Tenants also acknowledged that the washer/dryer stopped working at some time during the tenancy.

I find the Landlords have submitted insufficient evidence to support a finding that the Tenants damaged the washer and dryer through their actions or neglect. I also find the Landlords request for the full replacement cost to be excessive given that these appliances were not new. I therefore dismiss this portion of the Landlords claim.

While the Landlords filed two separate applications, and paid \$200.00 in filing fees, there was no need for duplicate applications. Having been only partially successful in their claims, I award the Landlords **\$50.00** of the filing fee paid.

Conclusion

The Landlords are entitled to monetary compensation in the amount of **\$300.00** for the following:

Compensation to remove carpet stain	\$200.00
Compensation to clean chimney	\$50.00
Filing fee	\$50.00
TOTAL AWARDED	\$300.00

Pursuant to section 38 of the *Act* I authorize the Landlords to retain \$300.00 of the Tenants' \$1,750.00 security deposit, the balance of which must be returned to the Tenants.

To give effect to this Decision, I grant the Tenants a Monetary Order in the amount of **\$1,450.00**. This Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: August 30, 2023

Residential Tenancy Branch