Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL / MNSD, FFT

Introduction

The hearing was convened following applications for dispute resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Landlords seek the following:

- A Monetary Order for damage to the rental unit under section 67 of the Act;
- A Monetary Order for loss under the Act, *Residential Tenancy Regulation* (the Regulation), or tenancy agreement, under section 67 of the Act;
- Authorization to retain all, or a portion, of the security deposit under section 38 of the Act; and
- To recover cost of the filing fee for their Application from the Tenants under section 72 of the Act.

The Tenants seek the following:

- A Monetary Order for the return their security deposit under sections 38 and 67 of the Act; and
- To recover the cost of the filing fee for their Application from the Landlords under section 72 of the Act.

As both parties were present, service was confirmed at the hearing. The parties confirmed receipt of the Notice of Dispute Resolution Package (the Materials) and evidence of the other party, with the exception of the photographs and copies of text messages submitted into evidence the day before the hearing, which the Landlords confirmed were not served to the Tenants.

Based on their testimony I find that both parties were served with the Materials and evidence as required under sections 88 and 89 of the Act, with the exception of the Landlords' evidence not served to them, as stated above. The evidence not served to the Tenants was not admitted to consideration on the grounds of procedural fairness.

Issues to be Decided

Are the Landlords entitled to the requested compensation?
Are the Landlords entitled to retain some, or all, of the Tenants' security deposit?
Are the Tenants entitled to the return of their security deposit?
Are either party entitled to recover the cost of the filing fee from the other party?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on November 1, 2021, and ended on June 30, 2023, through the mutual agreement of the parties.
- Rent was $1,750.00 per month due on the first day of the month when the tenancy ended.
- A security deposit of $750.00 was paid by the Tenants which the Landlords still hold.
- There is a written tenancy agreement which was entered into evidence.
- The Tenants' forwarding address was served to the Landlords in-person on July 20, 2023.

The Landlords testified as follows. The quartz countertop in the kitchen of the rental unit, which is a basement suite beneath the Landlords' residence, was damaged during the tenancy. At the move-out inspection the Landlords noticed there was a hole made at the back of counter to lift it with a screw, the countertop had sunk, and washers had been used to wedge it back up.

As the countertop has fallen, the cabinet beneath it has also broken. The counter will need to be removed, the cabinet, sink, faucet, backsplash and tiles will need to be replaced and then the new counter installed. As the sink has lowered, it can not be used

as water would leak out. There was also a chip taken out of the edge of the counter by the microwave.

The Landlords had visited the rental unit for inspections frequently throughout the tenancy and never noticed any issues with the countertop and do not know what happened at the end of the tenancy to cause the damage. The Landlords argued the Tenants had placed an organics bin and a dish wrack over the area where the damage was located to try and hide it during the move-out inspection. The countertop and rest of the kitchen was installed in September 2020 and has not yet been replaced, though the Landlords have obtained quotes for the work.

The Landlords submitted into evidence photographs of the countertop which appear to show one of the panels has dropped and now differs in height to the adjacent panel by approximately the width of a washer, which was provided for scale. The photographs also appear to show a gap in the caulking at the back of the sink and the countertop being wedged up by washers and a piece of wood. The quotes entered into evidence take the form of text message correspondence which the Landlords stated were from the person who installed the countertop.

The flooring in the rental unit was also installed in September 2020 and was left scratched at the end of the tenancy by the Tenants. The Landlords argued the scratches are deep, look unappealing and were caused by the Tenants wearing shoes in the rental unit. Four photographs of the vinyl flooring which appear to show scratches were entered into evidence, as well as quote from a flooring company was entered into evidence by the Landlords.

After the Tenants vacated, the Landlords' son spent three to four days cleaning the rental unit including shampooing the carpet and vacuuming three times each. The Landlords argued the Tenants had not cleaned the rental unit property and had also stained the carpet in one of the bedrooms, which had to be soaked in order to remove the stain. The Landlords obtained quotes for cleaning but opted not to use the cleaning companies. The Landlords submitted into evidence a wide range of photographs of the rental unit.

After the Tenants vacated, there was a musty smell which put off potential new tenants for the rental unit. The Landlords noticed the musty smell when they had visited the rental unit and believe this was from the Tenants not using fans when cooking and showering.

The Landlords paid their son to take a fan in and seek $1,500.00 for this, and the usage of additional electricity and time. The suite is legally zoned and there have been no issues with humidity since the Tenants vacated.

A copy of the condition inspection report was entered into evidence. The start of tenancy condition report is signed by both parties. The end of tenancy report is signed by the Landlords only, and the Landlords stated the Tenants left the inspection and did not sign the report, and that there was hostility was from the Tenants' side during the walkthrough.

The Tenants testified as follows. They only put the dish wrack on the countertop and did not damage it. They stated they did not put the screw in the countertop or install the piece of wood as they knew they had no right to do this. The Tenants argued the person who built the countertop should be responsible for any defects.

The Tenants stated they took their shoes off when entering the rental unit and asked their visitors to do the same. Shoes were left on the shoe wrack which was provided by the Landlords. They were not aware of the scratches and argued the Landlords went through the rental unit with a fine-tooth comb.

The Tenants offered to clean the carpet, but the Landlords did not allow them to. The stain is actually from their bedframe and is compressed carpet, rather than a stain. The Tenants stated they cleaned the rental unit with their family as best they could.

The Tenants stated they did their best to comply with the "humidity rules", a copy of which were entered into evidence by the Tenants, and argued that as the rental unit is 600 square feet, any humidity issues could be related to ventilation.

I was referred to extensive records of text message correspondence between the parties entered into evidence by the Tenants. The Tenants stated they decided to leave the rental unit because of the intrusions relating to humidity.

The Tenants stated they left the inspection of the rental unit at the end of the tenancy because of hostility from the Landlords.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that 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.

Are the Landlords entitled to the requested compensation?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlords must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Landlords followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 67 of the Act states 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.

The Landlords' claim for a Monetary Order against the Tenants is summarized as follows:

Item	**Amount**
Quartz countertop	$3,000.00
Flooring	$2,134.27
Sink and faucet	$592.76
Backsplash for kitchen	$500.00
Cleaning and shampooing carpet	$600.00
Cabinet	$300.00
Humidity	$1,500.00
Tiles for backsplash	$1,107.68
Total	**$9,734.71**

Section 32 of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, though a tenant is not required to make repairs for reasonable wear and tear.

Additionally, section 37 of the Act requires a tenant to leave the rental unit reasonably clean and free from damage, except for reasonable wear and tear at the end of a tenancy. I shall address the Landlords' claims in turn.

Countertop, Sink and Faucet, Cabinet, and Backsplash

I find the claims relating to the replacement of the quartz countertop, sink and faucet, cabinet, backsplash and tiles for the backsplash are closely related given they all stem from an issue with a change in the level of a section of the countertop.

Having considered the testimony and evidence of both parties, I find there is apparent lowering of one of the sections of the quartz panels which makes up the countertop in the kitchen of the rental unit and from viewing the photographic evidence of the Landlords, I find the panels are no longer flush.

It was undisputed this change occurred during the tenancy, though the responsibility for it was in dispute. The Landlords argued the Tenants were responsible for the lowering of the countertop, though no explanation or theories as to how this would have occurred were put forward. The Tenants argued they used the countertop reasonably and had not caused any of the damage.

I find on a balance of probabilities that in order for the countertop to lower as it has done, assuming it is of adequate build quality, there would need to have been very significant force or pressure from above for this to happen. Having considered the testimony and evidence of both parties I found nothing to suggest the Tenants caused the issue with the countertop to occur and I found the Tenants' testimony it was used in accordance with everyday living to be more plausible and credible than the testimony of the Landlords'.

Additionally, I find the requested monetary amounts required to compensate the Landlords to be dubious. I find there is little basis for the figures put forward besides text messages from a person who apparently installed the kitchen, which I found to be very rough and simplistic.

Given the above, I dismiss the Landlords' claim for a Monetary Order in relation to the quartz countertop, sink and faucet, cabinet, backsplash and tiles for the backsplash without leave to reapply.

Flooring

From reviewing the start of tenancy condition inspection report, which was signed by both parties and took place on November 1, 2021, I note the flooring is described as in good condition and “new vinyl planks” is a further description provided in the comments section. The end of tenancy condition report notes scratches, though this was not signed by the Tenants, as detailed previously in this Decision.

However, I find the photographic evidence of the Landlords particularly telling as to the condition of the flooring at the end of the tenancy. I find there are pronounced scratches in the planks, some significant in length, covering the width of multiple planks in places.

Considering the above, I find the scratches occurred during the tenancy, are above reasonable wear and tear, and the Landlords have established a claim for a monetary award, however I am not inclined to award the full amount requested. I do not find the replacement of the entire flooring is necessary and whilst the scratches diminish the aesthetic appeal of the flooring and may have brought forward the time the flooring would require replacement, there appears to be no reduction in its functioning. In this case, I find a monetary award of $400.00 is appropriate.

Cleaning and Shampooing Carpet

I find the start of tenancy condition inspection report notes the condition of the carpet in the bedroom as “new”. Though the Tenants argued the marks on the carpet were indentations, based on the photographic evidence, the round mark on the carpet appears to be brown discolouration.

Based on the Landlords’ photographic evidence, I also note there was a significant blockage of the sink in the bathroom which appeared to have been caused by hair requiring removal by a drain snake, and a significant amount of dust appears to have been removed by both vacuum cleaner and dusting accessory.

I note the Landlords obtained quotes for cleaning and the minimum quote from one company was $207.00, plus tax, and a carpet cleaning quote was $336.00, though ultimately they paid their son to do the cleaning. I find the professional carpet cleaning may not have been entirely necessary given the relatively small area of carpet affected by discolouration so carrying out the work is adequate mitigation of this loss.

Based on the above, I find on a balance of probabilities the Tenants breached section 37 of the Act by failing to leave the rental unit reasonably clean at the end of the tenancy and the Landlords have established their claim for cleaning costs. I find the amount of $600.00 claimed by the Landlords to be excessive and determine $300.00 to be appropriate compensation in this instance.

Humidity

From reviewing the records of correspondence between the parties submitted into evidence, I find the Landlords paid very close attention to the humidity within the rental unit using a smart meter type device. Additionally, specific rules relating to the regulation of humidity were put in place by the Landlords, requiring the Tenants to, amongst other things, use fans when showering and cooking, but turn off the fans other than the bathroom fan when not at home.

I found the Tenants testimony in which asserted they complied with the rules regarding using fans when cooking and showering to be both credible and supported by the substantial records of correspondence submitted into evidence in which I find the Tenants are seen to frequently confirm the fans in the rental unit are already switched on, or they were away from the rental unit and the fans will be turned on when they returned home.

In consideration of the above and the evidence and testimony before me, I find the Landlords have failed to prove on a balance of probabilities the Tenants breached the Act, Regulation, or tenancy agreement in relation to the alleged humidity issues in the rental unit. Aside from this, I find the Landlords' failed to establish how the requested figure of $1,500.00 was arrived at. Therefore, the Landlords' claim in retaliation to humidity in the rental unit is dismissed without leave to reapply.

Are the Landlords entitled to retain some, or all, of the Tenants' security deposit? Are the Tenants entitled to the return of their security deposit?

Section 38(1) of the Act requires a landlord to either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within fifteen days of the tenancy ending and receiving the tenant's forwarding address in writing, which ever is later.

A landlord may also retain the security deposit if they either have authority from an arbitrator, or written agreement from the tenant to do so as set out in sections 38(3) and 38(4) of the Act.

Section 36 of the Act also states that a tenant may also extinguish their right to the return of a security deposit if they fail to attend an inspection of the rental unit at either the start or end of the tenancy after being given two opportunities to do so, unless the tenant has abandoned the rental unit.

Section 38(6) of the Act states that if a landlord does not take either of the courses of action set out in section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

It was undisputed the tenancy ended on June 30, 2023 and the Landlords received the Tenants' forwarding address on July 20, 2023 when it was provided to them in person. This means the Landlords would have had to either return the security deposit to the Tenants or make an application for dispute resolution claiming against the security deposit by August 4, 2023. I find the Landlords did the latter, submitting their Application on August 4, 203, therefore, the Landlords have complied with the fifteen day timeframe set out in section 38(1) of the Act and the doubling provisions of section 38(6) of the Act do not apply.

Nothing before me indicated the Landlords or Tenants extinguished their rights in relation to the security deposit by failing to participate in an inspection of the rental unit, per sections 24 and 36 of the Act.

As I have issued a monetary award in favour of the Landlords, I authorized the Landlords to retain $700.00 ($400.00 + $300.00) from the security deposit under sections 38 and 72 of the Act. As will be confirmed later in this Decision when the filing fee is discussed, as the total amount the Landlords may withhold exceeds the security deposit, plus interest, the Landlords are authorized to retain the security deposit and the Tenants' Application for the return of the security deposit is dismissed without leave to reapply.

Per section 4 of the Regulation, interest on security deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the security deposit was calculated to be $16.52 using the Residential Tenancy Branch interest calculator using today's date. The interest applies only to the original deposit and is not doubled.

Are either party entitled to recover the cost of the filing fee from the other party?

As the Landlords' Application was at least partially successful, I find they are entitled to recover the cost of the filing fee of $100.00 from the Tenants under section 72 of the Act. Since the Tenants were not successful in their Application, I find they must bear the cost of the filing fee for their Application.

Conclusion

The Landlords' Application for compensation under section 67 of the Act is granted in part. The Tenants' Application for the return of the security deposit is dismissed without leave to reapply.

The Landlords are issued a Monetary Order which is attached to this Decision and must be served on the Tenants. It is the Landlords' obligation to serve the Monetary Order on the Tenants. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court). The Order is summarized below.

Item	**Amount**
Flooring	$400.00
Cleaning	$300.00
Filing fee	$100.00
Less: security deposit, plus interest	($766.52)
Total	**$33.48**

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: February 2, 2024

Residential Tenancy Branch