



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

<u>Dispute Codes</u>	Landlord's application:	MND-S, LRSD, FF
	Tenant's application:	MNSD, FF

Introduction

This hearing was convened as the result of cross applications (application) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The Landlord applied for compensation for alleged damage to the rental unit, authority to retain the Tenants' security deposit, and recovery of the filing fee.

The Tenants applied for a return of their security deposit and recovery of the filing fee.

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The parties confirmed receipt of the other's applications and proceeding package and their evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants for alleged damage and to retain the Tenants' security deposit?

Are the Tenants entitled to a return of their security deposit?

Is either party entitled to recovery of the filing fee?

Background and Evidence

The written tenancy agreement shows a tenancy beginning on October 15, 2022, set for a fixed-term through October 31, 2023, monthly rent was \$2500, and the Tenants paid a security deposit of \$1300 on October 1, 2022, which the Landlord continues to hold.

The tenancy ended on or about June 8 or 9, 2024.

Landlord's application

In their application the Landlord wrote the following:

1. *Cleaning service* 2. *Flooring* 3. *Walls* 4. *Stove top repair* 5. *Dryer mount*
Please see attached photos and invoices

The Landlord's monetary claim is \$9999.45, as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
Flooring	\$6814.64
Cleaning	\$346.00
Cooktop repair	\$1650.31
Wall repair	\$800.00
Dryer mount	\$388.50
TOTAL	\$9999.45

The parties provided the following testimony and references to evidence for each of the claimed items:

Flooring

The Landlord testified that the flooring has not been replaced as of the day of the hearing, but they have put down a deposit. The damages to the flooring were not there at the beginning of the tenancy, but at the end of the tenancy, there were deep grooves in the laminate, some swelling and chipping. A professional inspection showed that the

flooring cannot be repaired and must be replaced. As to the age of the flooring, the building was built in 2017. They intend to replace the flooring with laminate and the cost is \$1000 less than the quote. They tried their best to resolve this, without success, and was not expecting this reaction.

In response, the Tenants testified that at the beginning of the tenancy, there were scuffs on the flooring and that the previous owner lived in the rental unit prior to their tenancy. They always reported any flooring issues to the Landlord and the few chips here and there does not seem reasonable for a complete flooring replacement. The rental unit was only 603 sq ft and the water damage was by the bathroom.

Cleaning

The Landlord said they expected the Tenants to leave the rental unit in the original condition, the way it was when they took possession. When they went into the rental unit at the end of the tenancy, it was quite dirty. They did not fill out the "Rental Inspection Checklist" (Checklist) until later. The Landlord used this in place of a condition inspection report.

The Tenants said they hired a professional cleaner as the Landlord suggested the rental unit should be professionally cleaned and the Landlord's claim is for just cleaning vents and the refrigerator. The Landlord never discussed damages until they received the Landlord's claim.

Cooktop replacement

The Landlord stated that the cooktop has not yet been replaced, but it will need to be replaced when they go to sell the rental unit. The surface has chunks of glass missing and in the professional 2022 inspection report, there was no damage.

The Tenant said they never had an issue with the cooktop and it showed reasonable wear and tear. The quote was a ballpark figure.

The Landlord said that scratches would be reasonable wear and tear, but not chunks.

The Tenant said the cooktop was never brought up at the move-out inspection and the Landlord only brought up the floors.

Wall repair

The Landlord said the walls were undergoing repairs, which was due to the number of holes left. The Landlord confirmed there was no Home Depot receipt.

The Tenants said that there were nail holes in the walls, but the claim for filling the holes is unreasonable. They reported a crack in the wall to the Landlord.

Dryer mount

The Landlord said there is a mount between the washer and dryer that was broken and in 5 pieces.

The Tenant said that they never noticed a dryer mount and it was not mentioned in the emailed claim by the Landlord. Further, the only time the dryer was moved was when a repairman came to make a repair.

Other evidence

Both parties provided an email chain between the parties discussing after-tenancy matters. The Landlord submitted to the Tenants their claim and acknowledged what they owed the Tenants, which was \$750 for furniture bought from the Tenants, pro-rated rent of \$1856.40, and the security deposit and interest of \$1342.47.

The parties also addressed an end-of-tenancy meeting between the parties.

The Landlord also filed a professional inspection report prior to purchasing the property in 2022, and one from June 2024, and the Checklist.

Tenants' application

The Tenants' application claims the amount of \$1342.27, for a return of their security deposit. In their application, the Tenants wrote the following in the description:

Landlord did not raise issues he claims damages during the Inspection on June 8, 2024 at 6 p.m. (the "Inspection"), other than cleaners, which Tenants disputed as they had hired cleaners same day. No Inspection Form was provided to Tenants by Landlord for review and signature during Inspection nor after. Tenants returned keys to Landlord after Inspection. Landlord did not provide

Tenants a second opportunity for Inspection. See attached claim form for more detail and further claims.

The Tenant submitted evidence showing their forwarding address was provided to the Landlord in an email sent on June 14, 2024. The Tenants said they were not given a chance to sign the move-out report, Checklist, as it was filled in later after the walk-through.

The Tenants in their evidence argued that the Landlord was extinguished from keeping their security deposit and must pay the Tenants double the amount.

The Landlord's application was filed on June 24, 2024.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, meaning more likely than not, I find as follows:

Landlord's application

Test for damages or loss

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the Landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party did whatever was reasonable to minimize their loss.

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

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 37 of the Act requires when a tenant vacates a rental unit, the Tenant must leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections.

In this case, I find the Landlord failed to comply with their obligations under the Act inspecting and completing the move-in inspection report. The Rental Inspection Checklist is not a move-in condition inspection report. Residential Tenancy Regulation 20 lists the requirements of the form, all of which can be found on a standard RTB form. The Checklist uses the term, "inventory checklist" and was just a basic table-type document, with the move-in condition of building fixtures marked with either a check mark or NA, rather than a description. For this reason, I find the Landlord's Checklist insufficient to use as evidence of the state of the rental unit at the beginning of tenancy and give it no weight.

I also do not find a professional inspection report made for the purpose of purchasing the property sufficient to meet the requirements of the Landlord under the Act.

Flooring

In reviewing the photographs of the Landlord, I find that there were areas of deficiency which could be considered damage. However, as noted, I find the only evidence before me relevant to the condition of the flooring was in the 2022 professional report. When the report was made in July 2022, the home was furnished during the inspection. I find this is not proof of the condition of the flooring.

As I find no independent evidence of the condition of the flooring at the beginning of the tenancy, I find the Landlord submitted insufficient evidence to prove that the damaged areas were caused by the Tenants. Additionally, the Landlord has failed to prove they have incurred a loss, as the flooring has not been replaced and I have no proof the flooring will ever be replaced.

For these reasons, I dismiss the Landlord's claim for flooring replacement, without leave to reapply.

Cleaning

The Landlord submitted video and close range photographic evidence of certain areas of the rental unit which they claimed were left dirty. While I agree that there were areas of deficiency, I find the Landlord did not provide wide range photographs which would show whether the rental unit was left overall reasonably clean. I find the Landlord's expectation that the rental unit be in the same condition as when the tenancy began is unreasonable, as it is not required by the Act, which is reasonably clean.

Additionally, the Landlord did not provide they incurred a loss for this claim, as the claim amount was an estimate from a cleaning company, which use professional cleaners.

Having noted that I find there were certain areas of deficiencies where I find the Tenants did not reasonably clean, I find it reasonable grant the Landlord a nominal award of \$100.

Cooktop replacement

The Landlord said they have not replaced the cooktop, but will at some point when they go to sell the rental unit. I am not convinced by the evidence that the Tenants intentionally or unintentionally damaged the cooktop, due to the insufficient evidence of the state of the cooktop at the beginning of the tenancy. Further, I do not rely on the move-out Checklist, as it was not a compliant condition inspection report and importantly, was filled out after the inspection outside the presence of the Tenants. Further I do not rely on the professional inspection report filed by the Landlord as I find this is for another purpose, possibly to sell the rental unit.

For these reasons, which includes the Landlord's lack of proof of a loss, I dismiss the claim for a cooktop replacement, without leave to reapply.

Wall repair

Having reviewed the photographic evidence of the Landlord, I do not find the number of nail holes to be excessive and that they are reasonable wear and tear. For this reason, and due to insufficient evidence of a cost incurred, I dismiss the Landlord's claim for wall repair, without leave to reapply.

Dryer mount

No mention was made of the washer and dryer on the Checklist. I also find the Landlord submitted insufficient evidence that the Tenants broke a dryer mount and it was not mentioned in the email chain with the Tenants where the Landlord listed their claim.

I dismiss the Landlord's claim for a dryer mount replacement, without leave to reapply.

Tenants' application

Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord **must** either repay any security deposit to the tenant **or** make an application for dispute resolution claiming against the security deposit and pet damage deposit.

If a landlord fails to comply, then the landlord must pay the tenant double the security deposit and pet damage deposit, pursuant to section 38(6) of the Act.

When a landlord fails to properly complete a condition inspection report, as is the case here, the landlord's right to make a claim against the security deposit for damage to the property is extinguished under sections 24 and 36 of the Act.

In this case, the Landlord's application claiming against the security deposit was filed on June 24, 2024, within 15 days of receiving the Tenants' written forwarding address. Although the Landlord's right to claim against the security deposit for damage to the rental unit was extinguished, the Landlord's application also included a claim for cleaning.

Residential Tenancy Branch Policy Guideline 17 suggests that a landlord may make a claim against the security deposit for any other monies owing other than for damage to the rental unit, even in the light of sections 24 and 36 of the Act.

As part of the Landlord's claim was not for damage to the property but for cleaning, I find that the Landlord complied with the requirement under section 38 to make an application to keep the deposit within 15 days of the end of the tenancy. The Tenants are therefore not entitled to double recovery of the security deposit.

Although I find the Tenants are not entitled to double their security deposit, I find the Tenants are entitled to a return of their security deposit of \$1300 plus interest of \$52.90, less the Landlord's monetary award for nominal damage of \$100.

Both applications-

I decline to award either party recovery of the filing fee, as both parties were granted compensation.

I have awarded the Landlord compensation of \$100 for nominal damage. I direct the Landlord to retain this amount from the Tenant's security deposit and interest of \$1352.90, leaving a balance owing to the Tenants in the amount of \$1252.90.

I grant the Tenants a monetary order pursuant to section 67 of the Act for the amount of \$1252.90.

Should the Landlord fail to pay the Tenants this amount without delay, the order must be served to the Landlord for enforcement purposes, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The Landlord is advised that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Landlord's application was minimally successful in the above terms.

The Tenants' application was successful in the above terms.

The Landlord has been ordered to return the balance of the Tenants' security deposit and interest, and have been granted a monetary order as noted above.

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: October 07, 2024

Residential Tenancy Branch