Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Casa Rental Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 11, 2020 (the "Application"). The Landlord applied as follows:

- For compensation for monetary loss or other money owed;
- For compensation for damage to the rental unit;
- To keep the security deposit; and
- For reimbursement for the filing fee.

The Agent for the Landlord appeared at the hearing. The Tenants appeared at the hearing with the Witness. Tenant J.B. chose not to call the Witness during the hearing.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord did not submit a Monetary Order Worksheet or list of amounts sought. The Agent confirmed the Landlord is seeking the amounts shown on three invoices submitted for carpets, cabinets and painting. Both Tenants confirmed they were prepared to address these three issues and invoices.

The Tenants sought monetary compensation in their materials. I told the Tenants they are required to file their own Application for Dispute Resolution if they say they are entitled to compensation and that I would not consider this issue.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agent testified that the hearing package and some evidence were sent to the Tenants September 17, 2020 and the remaining evidence was sent November 25, 2020. The Agent testified that the packages were sent to the address for Tenant J.B. because the Landlord did not have Tenant S.B.'s address.

Tenant J.B. confirmed receipt of the hearing package and Landlord's evidence. Tenant J.B. testified that he received the hearing package and some evidence at the end of September. During the hearing, Tenant J.B. did not dispute that the Landlord sent the package September 17, 2020. Tenant J.B. testified that he received an invoice for carpet replacement and an invoice for painting December 01, 2020.

Tenant S.B. confirmed receipt of the hearing package and Landlord's evidence. Tenant S.B. testified that she received these in September. The Tenants testified that Tenant S.B. moved before the second package of evidence was received. Tenant S.B. confirmed she has the carpet replacement invoice but not the painting invoice.

I am satisfied based on the testimony of the Agent that the hearing package and some evidence were sent to the Tenants September 17, 2020 as the Tenants did not dispute this and the testimony is consistent on this point. I find the Landlord complied with rule 3.1 of the Rules of Procedure (the "Rules") in relation to the timing of service of the first package.

I am satisfied Tenant J.B. received the second package of evidence December 01, 2020 as I find the testimony of the parties sufficiently consistent on this point. I find the Landlord complied with rule 3.14 of the Rules in relation to the timing of service of the second package. I acknowledge that Tenant S.B. did not receive the painting invoice because she moved prior to receiving the second package. However, the Tenants testified during the hearing that the forwarding address provided to the Landlord was for both Tenants and therefore I am satisfied the Landlord was entitled to serve Tenant S.B. at that address pursuant to section 88(d) of the *Residential Tenancy Act* (the "*Act*").

Given the above, I find the Landlord complied with the Rules in relation to service of the hearing package and evidence.

The Agent testified that she received the Tenants' materials the day before the hearing by email. The Agent testified that she did not have time to review the materials. The Agent sought exclusion of the materials.

Tenant J.B. confirmed the Tenants' materials were sent to the Agent the day before the hearing by email. Tenant J.B. said he did not know if more materials were coming from the Landlord given the package received December 01, 2020.

Rule 3.15 of the Rules states:

> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, **the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.**
>
> (emphasis added)

I told the parties I was not satisfied the Tenants complied with rule 3.15 of the Rules and therefore I would consider whether their materials should be admitted or excluded and would hear them on this issue.

Tenant J.B. submitted that he has small children, the Landlord's materials came late and he has not had proper time to respond. Tenant J.B. asked if the matter could be adjourned.

I asked Tenant J.B. for his submissions on why the hearing should be adjourned. Tenant J.B. made submissions about settling this matter between the parties and the stress of living at the rental unit. Tenant J.B. said he has never done this and has not had enough time.

The Agent did not agree to an adjournment.

I considered rule 7.9 of the Rules and the factors set out in relation to an adjournment. I found the two most important factors here to be as follows:

- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment…
- the possible prejudice to each party.

I found the need for an adjournment arose out of the Tenants failing to comply with rule 3.15 of the Rules and failing to be diligent in serving their materials on the Landlord. I

found it would be prejudicial to the Landlord to adjourn the hearing given the Landlord had already waited more than three months to have this matter resolved and given the Landlord had complied with the Rules in relation to the timing of service. I denied the adjournment and advised the parties of this.

At this point, Tenant J.B. said he needed legal counsel and sought to adjourn on this basis. I told Tenant J.B. that he needed to have arranged to have legal counsel present prior to the hearing, and needed to have legal counsel at the hearing, if he wished to be represented by legal counsel. I told Tenant J.B. we would not be adjourning the hearing for him to get legal counsel.

I asked the parties for any further submissions on admission or exclusion of the evidence.

Tenant J.B. said he was not aware of the timeline and would like to seek legal counsel.

The Agent submitted as follows. The materials should be excluded. The Landlord complied with the Rules. She did not have time to review the Tenants' materials.

I told the parties I would decide about admissibility of the Tenants' materials in my written decision. I told the Tenants they could provide whatever verbal testimony they wished at the hearing and that they should conduct the hearing as if the evidence will be excluded so that they cover everything they wish to cover.

Rule 3.17 of the Rules states:

> Evidence not provided to the other party…in accordance with the Act or Rules…3.15…may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.
>
> The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.
>
> Both parties must have the opportunity to be heard on the question of accepting late evidence.

I exclude the Tenants' materials pursuant to rule 3.17 of the Rules for the following reasons. The Application states that the Landlord is seeking compensation for replacing carpets and painting. The Application was received by the Tenants at the end of September along with the majority of the Landlord's evidence. Therefore, the Tenants had two and a half months to get their materials together to serve them on the Landlord. The two invoices received December 01, 2020 did not raise a new issue or change the Landlord's Application. Further, the Tenants had eight days to respond further to the two invoices which I find to be sufficient time. The Tenants provided their materials a week late. The reasons provided for serving the evidence late are not sufficient. I am satisfied the Agent did not have time to review the materials given they were received the day before the hearing. I am satisfied it would be unfair to the Landlord to consider evidence the Agent did not have time to review and could not address at the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony and all admissible documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

I note that the fire alarm in my location went off during the hearing and I had to put the parties on hold. I rejoined the hearing once able. The parties remained on the line and we proceeded with the hearing.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to compensation for damage to the rental unit?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Carpet	$4,084.89
2	Painting	$3,200.00
3	Cabinets	$1,155.00
4	Filing fee	$100.00
	TOTAL	**$8,539.89**

A written tenancy agreement was submitted. It names a different landlord. The parties agreed the Landlord changed their name during the tenancy. The tenancy started September 01, 2013 and was for a fixed term of 12 months then became a month-to-month tenancy. The agreement shows a $1,250.00 security deposit was paid.

Tenant J.B. testified that the tenancy agreement is not accurate in relation to the security deposit amount and that the Tenants paid $5,000.00 which the Landlord still holds. Tenant S.B. did not know what was paid for a security deposit and did not confirm Tenant J.B.'s testimony in this regard.

The Agent testified that Tenant J.B.'s testimony in relation to paying $5,000.00 at the start of the tenancy is false and pointed out that this would be in breach of the *Act*.

The parties agreed the tenancy ended August 31, 2020.

The Agent testified that the Landlord received a forwarding address from Tenant J.B. September 01, 2020. Tenant J.B. agreed a forwarding address was provided September 01, 2020 and said this was for both Tenants.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. The parties agreed the Tenants did not agree to the Landlord keeping the security deposit.

A Condition Inspection Report was submitted (the "CIR"). It shows a move-in inspection was done August 30, 2013, the CIR was completed and both parties signed the CIR. The Agent confirmed the CIR is accurate. Tenant S.B. confirmed the CIR is accurate and testified that a copy of it was left with her on the inspection date.

The Agent testified that a move-out inspection was done August 30, 2020. The Agent testified that Tenant J.B. participated to an extent but would not sign the CIR. The CIR shows it was completed and signed by the Agent. The Agent testified that the CIR was provided to the Tenants as evidence on this hearing September 17, 2020 by registered mail.

Tenant J.B. testified as follows. A move-out inspection was done August 30, 2020. The CIR was not completed in his presence. The Agent wanted him to sign the CIR before it was completed. It was "weird" that the CIR showed "all new" at move in. He did not

sign the CIR. He does not dispute that the evidence for this hearing was sent September 17, 2020 and he received it by registered mail.

#1 Carpet $4,084.89

The Agent testified as follows. The carpet was new when the Tenants moved in as shown in the photos. At move-out, the carpets were stained beyond reasonable wear and tear. The photos in evidence are from after the carpets were cleaned. The carpets in the entire house had to be replaced. The carpets were seven years old at the end of the tenancy.

Tenant J.B. testified as follows. The Agent told the Tenants to clean the carpet. He let the Agent know the carpets were “really bad”. The Agent told them to get a professional cleaner and a receipt for this was provided. He enquired at a store and was told the style of carpet was not recommended and was cheap. The warranty was only five years at best so the carpets should have been replaced after five years. He lived at the rental unit for seven years.

Tenant S.B. testified as follows. The Tenants cleaned the carpet many times throughout the tenancy. The damage at the end was just wear and tear after seven years. The carpet was not durable and not made to last long.

In reply, the Agent denied that the Tenants maintained the carpet and testified that they completely neglected it.

#2 Painting $3,200.00

The Agent testified as follows. There was extreme damage to the walls of the rental unit at the end of the tenancy. The Tenants patched the walls as shown in the photos. There were a lot of patches on the walls. The walls and ceiling had to be painted beyond the average painting required between tenancies. An invoice for this is in evidence. The paint was seven years old.

Tenant J.B. testified as follows. A lot of the holes that were patched were screw holes where the paint had come off. The ceiling in the main room was damaged from a toilet leaking. The damage was never fixed by the Landlord. He cleaned, patched and primed the walls. He was not told he needed to paint.

In reply, the Agent denied the ceiling damage was from a toilet leak. The Agent also denied that the Tenants did anything other than patch the walls.

#3 Cabinets $1,155.00

The Agent testified as follows. The photos in evidence show the damage to the kickboard throughout the rental unit at the end of the tenancy. The kickboard had to be replaced in the kitchen and bathroom. The damage shown is usually caused by water. An invoice for this is in evidence. The invoice is for replacement of the kickboard and two broken doors. The cabinets were seven years old.

Tenant J.B. testified as follows. One of the cabinet doors did not close properly when the Tenants moved in. One of the doors in the kitchen came off the hooks. The Tenants asked the Landlord to fix the doors and the Landlord told them to do it themselves. The cabinets were not installed properly. The damage is from a toilet leaking and mopping. The cabinets are cheap and expanded when they got wet. The damage is regular wear and tear. The kickboard should have been plastic. There are only two photos of the kickboard, one from the kitchen and one from the bathroom. There are no further photos of other bathrooms. The Landlord has put new cabinets in the entire rental unit when this was not needed. The cabinet in photo eight may have needed replacing but the damage was from steam from doing dishes.

Tenant S.B. agreed with Tenant J.B. and testified as follows. There was obviously wear and tear at the end of the tenancy. The Landlord neglected issues with the rental unit during the tenancy. The cabinets were cheap and falling apart.

The Landlord submitted the following evidence:

- Invoices;
- Photos from the start of tenancy;
- Photos of the damage at the end of the tenancy;
- The CIR; and
- The tenancy agreement.

Analysis

Security deposit

I am not satisfied the Tenants paid a $5,000.00 security deposit as stated by Tenant J.B. Tenant S.B. could not confirm this. The Agent denied this. The written tenancy agreement does not support this. There is no documentary evidence before me to support this. In the circumstances, I am satisfied the Tenants paid a $1,250.00 security deposit as shown in the written tenancy agreement.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*"). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of both parties, I accept that the tenancy ended August 31, 2020.

Based on the testimony of both parties, I accept that the Landlord received a forwarding address from the Tenants September 01, 2020.

Based on the testimony of the parties and CIR, I am satisfied the Tenants participated sufficiently in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

Based on the testimony of the parties and CIR, I am satisfied the Landlord complied with their obligations under section 24 of the *Act* and therefore did not extinguish their rights in relation to the security deposit pursuant to this section.

Section 36(2) of the *Act* states:

> (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
>
> (a) does not comply with section 35 (2) [2 opportunities for inspection],
>
> (b) having complied with section 35 (2), does not participate on either occasion, or

> (c) having made an inspection with the tenant, **does not** complete the condition inspection report **and give the tenant a copy of it in accordance with the regulations.**
>
> (emphasis added)

Section 18(1)(b) of the *Regulations* states:

> 18 (1) The landlord must give the tenant a copy of the signed condition inspection report…
>
> (b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of
>
> (i) the date the condition inspection is completed, and
>
> (ii) the date the landlord receives the tenant's forwarding address in writing.

The Agent testified that the CIR was provided to the Tenants September 17, 2020. This was not within 15 days of the date the move-out inspection was completed or the date the Landlord received the Tenants' forwarding address in writing. The Landlord failed to comply with section 18(1)(b) of the *Regulations* and therefore failed to comply with section 36(2)(c) of the *Act*. Given this, the Landlord extinguished their right to claim against the security deposit for damage.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security deposit or claim against it. However, the Landlord had extinguished their right to claim against the security deposit for damage so had to return the security deposit within 15 days. The Landlord did not do so and therefore failed to comply with section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlord could not claim against the security deposit and must return double the security deposit to the Tenants. The Landlord must pay the Tenants $2,500.00.

The Landlord is still entitled to seek compensation and I consider this now.

Compensation

Section 7 of the *Act* states:

> 7 (1) If a…tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying…tenant must compensate the [landlord] for damage or loss that results.
>
> (2) A landlord…who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

> It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Section 37 of the *Act* states:

> (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…

Policy Guideline 40 sets out the useful life of building elements and states at pages one and two:

> **Damage(s)**
>
> 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…
>
> **Items where the useful life is substantially different from the table**
>
> <u>If the useful life of a building element is substantially different from what appears in the table, parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation from the manufacturer for the particular item claimed.</u>
>
> (emphasis added)

#1 Carpet $4,084.89

Based on the photos and CIR, I am satisfied the carpet was new at the start of the tenancy. Based on the photos and CIR, I am satisfied the carpet was damaged at the end of the tenancy. Based on the photos, I am satisfied the damage was beyond reasonable wear and tear given the extent of the damage. I am satisfied the Tenants breached section 37 of the *Act*.

I am satisfied the photos show the carpet after it was cleaned as the Tenants did not dispute this. I am satisfied based on the photos and CIR that the carpets had to be replaced given the damage.

I am satisfied based on the invoice that the carpet replacement cost $4,084.89 and find this amount reasonable.

I am satisfied based on Policy Guideline 40 (page 5) that the useful life of the carpet was 10 years. I do not accept the Tenants' submissions otherwise. I do not find verbal submissions on this sufficient and would expect to see documentary evidence if a party wishes to show Policy Guideline 40 does not apply. Further, Tenant J.B. seemed to link the useful life of the carpet to the warranty period which are usually two separate issues. In the absence of further evidence about the carpet used in the rental unit and documentary evidence calling into question Policy Guideline 40, I rely on Policy Guideline 40.

I find the useful life of the carpet was 10 years. The carpet was used for seven years and therefore I reduce the award by $2,859.42 to account for this. The Landlord is awarded $1,225.47 for the carpet replacement.

#2 Painting $3,200.00

I am satisfied based on the photos and CIR that the paint was new or in good condition at the start of the tenancy. I am satisfied based on the photos and CIR that the Tenants patched the walls at the end of the tenancy and that there were a lot of patches on the walls. I am satisfied based on the photos that the damage to the walls at the end of the tenancy was beyond reasonable wear and tear given the number and extent of the patches on the walls. I am satisfied the Tenants breached section 37 of the *Act*.

I am satisfied based on the photos that the walls had to be repainted given the condition of the walls at the end of the tenancy.

I am satisfied based on the invoice that the painting cost $3,200.00 and find this amount reasonable.

Pursuant to Policy Guideline 40 (page 5), interior paint has a useful life of four years. Here, the original paint lasted seven years, almost double its useful life. Given this, I am not satisfied the Landlord is entitled to compensation for the full cost of the painting.

However, Policy Guideline 16 deals with compensation and states at page two:

> An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:
>
> - "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has

> been proven, but it has been proven that there has been an infraction of a legal right.

I am satisfied the Tenants breached the *Act*. I am satisfied the Landlord suffered loss due to this breach. However, I am not satisfied the Landlord suffered significant loss given the useful life of interior paint. Therefore, I award the Landlord $100.00 as nominal damages.

#3 Cabinets $1,155.00

I am satisfied based on the photos and CIR that the kitchen and bathroom cabinets were new or in good condition at the start of the tenancy. I am satisfied based on the photos and CIR that some of the cabinets were damaged at the end of the tenancy. I am satisfied based on the photos that the damage was beyond reasonable wear and tear given the extent of it. I do not accept that the damage shown would occur with proper care and maintenance of the rental unit.

Tenant J.B. listed a number of things that he says caused the damage. The Landlord has the onus to prove the Tenants caused the damage. The standard is such that it must be more likely than not that the Tenants caused the damage. I am satisfied it is more likely than not that the Tenants either caused the damage or failed to take reasonable steps to prevent the damage. The damage is extensive. It is not a small amount of lifting one would expect if there was a leak, unless the water was left on the floor for an extended period of time. I do not accept that the damage shown could occur from the Tenants doing dishes given the extent of the damage. Tenant J.B. acknowledged mopping contributed to the damage which I find to be the fault of the Tenants. I do not accept that the installation of the cabinets caused the damage given the location and nature of the damage. In the circumstances, I am satisfied the Tenants breached section 37 of the *Act*.

I am satisfied the areas of the cabinets shown in the photos had to be replaced given the extent of the damage.

I am satisfied based on the invoice that the Landlord paid $1,100.00 to replace cabinets and I find this amount reasonable.

However, I am not satisfied that the $1,100.00 reflects the cost to address the issues shown in the photos or on the CIR as I understood the Agent to say that the Landlord had all of the kickboard in the kitchen and bathroom replaced as well as additional

items. I find the invoice unclear and I cannot tell from it what was replaced. I am not satisfied based on the evidence provided that the damage shown cost $1,100.00 to fix. I have taken this into account below.

I also note Policy Guideline 40 (page 6) which states that cabinets have a useful life of 25 years. The Tenants submitted that these cabinets were cheap; however, I do not find verbal testimony on this point sufficient and I rely on Policy Guideline 40. The cabinets were used for seven years and therefore I reduce the award by $308.00 to account for this. I award the Landlord half the remaining amount, which is $396.00, as I am not satisfied based on the evidence provided that the Landlord is entitled to more than this.

#4 Filing fee $100.00

Given the Landlord was partially successful in the Application, I award the Landlord reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Carpet	$1,225.47
2	Painting	$100.00
3	Cabinets	$396.00
4	Filing fee	$100.00
	TOTAL	**$1,821.47**

The Landlord is entitled to $1,821.47 pursuant to section 67 of the *Act*. However, the Landlord must pay the Tenants $2,500.00. Therefore, the $1,821.47 is deducted from this pursuant to section 72(2) of the *Act*. The Landlord must pay the Tenants $678.53. The Tenants are awarded a Monetary Order in this amount.

Conclusion

The Landlord is entitled to $1,821.47. However, the Landlord must pay the Tenants $2,500.00. Therefore, the $1,821.47 is deducted from this and the Landlord must pay the Tenants $678.53. The Tenants are awarded a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it

may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

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: December 23, 2020

Residential Tenancy Branch