



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on August 10, 2020 (the "Application"). The Landlord applied for compensation for damage to the rental unit or property, to keep the security deposit and reimbursement for the filing fee.

The Landlord appeared at the hearing. Tenants C.C.H. and L.C. appeared at the hearing and appeared for Tenants L.G. and A.C. I explained the hearing process to the parties. The parties provided affirmed testimony.

The Landlord advised that there was a previous hearing between these parties on File Number 1. This was the Landlord's Application for Dispute Resolution for the same issues filed March 12, 2020. The Landlord's Application for Dispute Resolution was dismissed with leave to re-apply, other than in relation to the filing fee for File Number 1.

The Landlord submitted evidence prior to the hearing. The Tenants did not. I addressed service of the hearing package and Landlord's evidence. Tenant C.C.H. confirmed receipt of these on behalf of all Tenants.

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

I note that the Tenants were disruptive at numerous points throughout the hearing, for example laughing while the Landlord was providing testimony or making unnecessary comments while the Landlord or I were speaking. After this occurred a few times, I had to stop the proceedings and explain to the Tenants what was and was not acceptable behaviour during this hearing. I understood Tenant L.C. to have himself on mute for

most of the hearing. It therefore seemed that it was Tenant C.C.H. causing the disruptions. Pursuant to rule 6.10 of the Rules of Procedure (the "Rules"), I told Tenant C.C.H. to put himself on mute while he was not speaking or being asked questions so that we could continue the hearing without his disruptions.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit or property?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Stove control panel	\$620.95
2	Stove cooktop	\$398.13
3	Oven range repair (labour @ 2 hours @ \$75.00 + tax)	\$168.00
4	Lawn mowing (labour @ 1.5 hours @ \$50.00 + tax)	\$84.00
5	Oven cleaning (.5 hours @ \$50.00)	\$25.00
6	Filing fee	\$100.00
	TOTAL	\$1,396.08

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started January 15, 2019 and was for a fixed term ending March 14, 2020. The Tenants paid a \$1,225.00 security deposit.

The Landlord testified that the Tenants vacated the rental unit March 02, 2020. Tenant C.C.H. testified that the Tenants vacated March 01, 2020.

The Landlord testified that \$225.00 of the security deposit was returned to the Tenants by cheque sent April 01, 2020. The Tenants agreed \$225.00 was returned in April.

The Landlord testified as follows in relation to the Tenants' forwarding address. The Tenants gave her their forwarding address verbally and not in writing. She wrote the address down. This was done March 01 or 02, 2020.

Tenant C.C.H. agreed the Landlord asked for the Tenants' forwarding address and the Tenants provided it verbally and the Landlord wrote it down. He also testified that the forwarding address was provided August 04, 2020 by email.

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 (CIR) was submitted as evidence. It shows a move-in inspection was done January 15, 2019, the CIR was completed, both parties participated and both parties signed the CIR. Both parties agreed the CIR is accurate.

Tenant C.C.H. testified that the Tenants received the CIR in person the day they moved into the rental unit. The Landlord was not sure when the CIR was provided.

The Landlord testified that a move-out inspection was done March 01 or 02, 2020 but no CIR was completed.

The Tenants testified that a move-out inspection was done and a CIR was completed.

#1 Stove control panel

The Landlord testified as follows. The Tenants damaged the stove control panel during the tenancy with soap making and the associated heat or chemicals. The control panel was warped. The photos in evidence show this. The warped control panel impacted the use of the oven which was turning off automatically. It cost \$620.95 to replace the control panel. The stove and oven were new in the fall of 2018.

Tenant C.C.H. testified as follows. The Tenants did not make soap in the rental unit. The Landlord sent an email about the oven saying it sounded like an internal problem. There was an electrical fault. The kitchen was 100 years old.

Tenant L.C. testified as follows. The Tenants never made a commercial product on the stove. The stove had known issues. It was just a bad oven.

The Tenants submitted that the warping on the stove was caused by an internal electrical issue.

In reply, the Landlord said she is not sure where the Tenants' submissions about electrical problems are coming from.

The Tenants asked the Landlord about an email sent by her October 06th about the stove stating that it sounded like an internal problem with the stove. The Landlord testified that she remembered the email. The Landlord testified that she recalls one of the Tenants saying there was a problem with the oven turning itself off but that this had corrected itself and the Landlord told the Tenants to let her know if this continued. The Landlord said the Tenants did not let her know about a further issue until she was at the rental unit fixing the washing machine.

The Tenants asked the Landlord about a further email sent to her October 02, 2019 with reference to the stove problem, error code, issues with the wiring and that the stove flickers and turns on and off. The Landlord agreed this email was sent.

#2 Stove cooktop

The Landlord testified as follows. The range was brand new at the start of the tenancy. There were no problems with it. The cooktop was unmarked. The Tenants were provided a manual for the cooktop. The cooktop sustained visible scratching as shown in the photos. The scratching is beyond normal scratching to a cooktop. The cost of a new cooktop is \$398.00 as shown at page 30 of the evidence. This amount does not include tax, delivery or installation.

The Tenants submitted that the scratching on the cooktop is normal wear and tear after one-and-a-half years and that an additional scratch or two should not cost the Tenants \$398.00.

#3 Oven range repair (labour @ 2 hours @ \$75.00 + tax)

The Landlord testified as follows. She had a repair person attend October 16, 2019 to look at the oven range in relation to the warped part of the stove and defect in the oven. The repairperson attended after the emails referred to by the Tenants. The receipt for this is at page 43 of the evidence. She assumed the repairperson had fixed the issue, but new tenants advised that the oven was still turning itself off.

The Tenants testified that the oven worked after the repairperson attended. The Tenants did not have anything further to add to their submissions in relation to item #1.

#4 Lawn mowing (labour @ 1.5 hours @ \$50.00 + tax)

The Landlord testified as follows. She told the Tenants they had to mow the lawn during the tenancy and that she would not provide a lawn mower. Terms 3(b) and 7 of the tenancy agreement relate to this. The backyard lawn was not mowed at the end of the tenancy. The grass was long and difficult to mow. She mowed the lawn and it took an hour and a half. Photos of the lawn are in evidence.

Tenant L.C. testified as follows. The lawn was two feet tall at move-in and it took a number of weekends to get it under control. The Tenants moved at the end of February which is out of season for lawn mowing. The Tenants mowed the front lawn, but it rained the day they moved out.

Tenant C.C.H. testified as follows. The Tenants maintained the yard in the same condition or better condition than when they moved in.

#5 Oven cleaning (.5 hours @ \$50.00)

The Landlord testified as follows. The interior of the oven door was dirty at the end of the tenancy as shown in photo 4 in evidence. It took her half an hour to clean the oven. She picked \$50.00 an hour for this but does not know what others are awarded.

Tenant C.C.H. testified as follows. The cost claimed seems like a lot. The oven door just had reasonable wear and tear. The Tenants did do a final clean.

Tenant L.C. said this issue was “the least of [his] concerns”.

Evidence

The Landlord submitted the following evidence:

- A receipt for the repairperson in the amount of \$193.20. It shows the repairperson attended the rental unit October 16, 2019. It states, “performed factory reset on oven main control. If the reset doesn’t work the board will have to be replaced...”
- An email from the Landlord asking for confirmation of the Tenants’ address to which the Tenants replied August 04, 2020 that they live at the address provided.
- Documentation showing the cost of a range control panel.
- Documentation showing the cost of a cooktop.

- An email about the Tenants moving in, the kitchen being brand new and it being important to the Landlord that it not be damaged. The email also mentioned the Tenants needing to keep up the grounds.
- An email about the lawn needing to be mowed.
- An invoice from prior lawn moving services for the rental unit at a rate of \$35.00.
- The CIR.
- Photos.

Analysis

Security deposit

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 CIR, I am satisfied the Tenants participated in the move-in inspection and therefore did not extinguish their rights in relation to the security deposit under section 24 of the *Act*.

It is my understanding from the testimony of the parties that both agree the parties did a move-out inspection and therefore I find the Tenants did not extinguish their rights in relation to the security deposit under section 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished her rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit and the Landlord has claimed for lawn mowing and cleaning.

Based on the testimony of the parties, I accept that the tenancy ended March 01 or 02, 2020.

I am not satisfied the Tenants provided the Landlord a forwarding address in writing until August 04, 2020 at best. Providing a forwarding address verbally is not sufficient. As is clear from sections 38(1)(b) and 39 of the *Act*, the Tenants were required to provide a forwarding address in writing. The reason for this requirement is so that there

is no mistake or misunderstanding about the address provided by tenants as the landlord has written documentation of it.

In relation to the August 04, 2020 email, I note that the Landlord asked for the Tenants' address and the Tenants confirmed the address. Although this does not strictly comply with sections 38 or 39 of the *Act*, I accept that it was sufficient as a forwarding address being provided in writing. I note that neither of the Tenants testified about a forwarding address being provided other than verbally and in the August 04, 2020 email. Nor did the Tenants point to further evidence in this regard.

Accepting that the August 04, 2020 emails were a forwarding address in writing, I find August 04, 2020 to be the relevant date for the purposes of section 38(1) of the *Act*.

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 Tenant's forwarding address in writing to repay the security deposit or claim against it. Here, the Landlord had 15 days from August 04, 2020. The Application was filed August 10, 2020, within 15 days. I find the Landlord complied with section 38(1) of the *Act*.

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 32 of the *Act* states:

(3) A tenant of a rental unit 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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

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 1 deals with landlord and tenant responsibilities and states at page seven:

3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

#1 Stove control panel

Based on the CIR, I am satisfied the stove, stove top and oven were new at move-in. Based on the photos, I am satisfied the stove control panel was damaged at the end of the tenancy. Given the Tenants or their guests were the only individuals with access to the stove and oven during the tenancy, I am satisfied the Tenants caused this damage.

The Tenants suggested that the damage was caused by an internal electrical problem. I accept that an internal electrical problem may have caused the oven issue. However, I am not satisfied that an internal electrical problem would cause structural damage to the stove control panel. I find this unlikely given the nature of the damage and lack of an apparent connection between the two issues.

I am satisfied it is more likely than not the Tenants damaged the stove control panel. I am satisfied based on the photo that the damage is beyond reasonable wear and tear as I do not accept that the normal use of a stove or oven would cause the damage shown. I am satisfied the Tenants breached section 37 of the *Act*.

I am satisfied the stove control panel had to be replaced given the damage and am satisfied based on the documentary evidence that this cost \$620.95. I find this amount reasonable given the documentary evidence from the Landlord and absence of evidence from the Tenants showing the cost is not reasonable.

Policy Guideline 40 deals with the useful life of building elements. At page six it shows the useful life of a stove as 15 years. The stove was used by the Tenants for just over one year and I reduce the amount awarded by \$41.00 to account for this. The Landlord is awarded \$579.95.

#2 Stove cooktop

Based on the CIR, I am satisfied the stove top was new at move-in. Based on the photos, I am satisfied the stove top was scratched at move-out. I did not understand the Tenants to dispute this. Based on the photos, I am satisfied the scratching is beyond reasonable wear and tear given the extent of it and the relatively short tenancy. I am satisfied the Tenants breached section 37 of the *Act*.

I am satisfied the Landlord was entitled to replace the stove cooktop given it was new at the start of the tenancy and badly scratched at the end of the tenancy. I am satisfied based on the documentary evidence that the stove cooktop cost \$398.00. I find this

amount reasonable given the documentary evidence from the Landlord and absence of evidence from the Tenants showing the cost is not reasonable.

I refer again to page six of Policy Guideline 40 and the useful life of a stove being 15 years. Again, the stove was used by the Tenants for just over one year and I reduce the amount awarded by \$26.00 to account for this. The Landlord is awarded \$372.00.

#3 Oven range repair (labour @ 2 hours @ \$75.00 + tax)

I am not satisfied based on the evidence provided that the Tenants caused the issue that resulted in the oven turning off automatically. I am not satisfied this issue is linked to the structural damage on the stove control panel as there is no apparent connection between the two. The repairperson receipt does not state what the issue with the oven was or what caused it. In the absence of further evidence, I am not satisfied the Tenants caused the issue or are responsible for the cost of the repairperson to look at the issue. Given this, I am not satisfied the Tenants breached section 32 of the *Act* and am not satisfied the Landlord is entitled to compensation for this issue.

#4 Lawn mowing (labour @ 1.5 hours @ \$50.00 + tax)

I understand from the testimony of the parties and materials that the rental unit is a single-family dwelling or that the Tenants had exclusive use of the backyard. Neither party submitted otherwise. I am satisfied pursuant to the testimony of the Landlord, documentary evidence and Policy Guideline 1 that the Tenants were responsible for mowing the lawns. I did not understand the Tenants to dispute this.

Based on the photo, I am satisfied the Tenants did not mow the backyard lawn at the end of the tenancy. I understood Tenant L.C. to acknowledge this. I am not satisfied the Tenants were not required to mow the lawn given the time of year given the Tenants did mow the front lawn. Nor is the state of the lawn at the start of the tenancy relevant. I find lawn mowing similar to cleaning requirements and that tenants are required to do it at the end of the tenancy regardless of whether it was done for them at the start of the tenancy. I am satisfied the Tenants failed to comply with their obligations to mow the backyard lawn at the end of the tenancy.

I am satisfied based on the testimony of the Landlord that she mowed the backyard lawn. The Landlord is entitled to claim for her time spent doing so. In relation to the amount, I rely on the invoice in evidence from previous lawn mowing services at the

rental unit and find that \$35.00 is an appropriate amount. The Landlord is awarded \$35.00 for this issue.

#5 Oven cleaning (.5 hours @ \$50.00)

I am satisfied based on the photo that the oven door was not clean at the end of the tenancy. I did not understand the Tenants to dispute this given Tenant C.C.H. said the oven door had reasonable wear and tear. The standard for cleanliness at the end of a tenancy is "reasonably clean". Although the photo of the oven door is not great quality, I am satisfied based on it that the oven was not left reasonably clean. I find this given the oven was new at the start of the tenancy as shown in the CIR. I am satisfied the Tenants breached section 37 of the *Act*.

I am satisfied the Landlord had to clean the oven and am satisfied based on the Landlord's testimony that this took half an hour. I find this amount of time reasonable. The cost of cleaning is usually around \$25.00 per hour. Therefore, I award the Landlord \$12.50 for this issue.

#6 Filing fee

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	Stove control panel	\$579.95
2	Stove cooktop	\$372.00
3	Oven range repair (labour @ 2 hours @ \$75.00 + tax)	-
4	Lawn mowing (labour @ 1.5 hours @ \$50.00 + tax)	\$35.00
5	Oven cleaning (.5 hours @ \$50.00)	\$12.50
6	Filing fee	\$100.00
	TOTAL	\$1,099.45

The Landlord can keep the remaining \$1,000.00 of the security deposit pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$99.45 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$1,099.45 and can keep the remaining \$1,000.00 of the security deposit. The Landlord is issued a Monetary Order for the remaining \$99.45. This Order must be served on the Tenants. If the Tenants fail 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 21, 2020

Residential Tenancy Branch