Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 January 07, 2022 (the "Application"). The Landlord applied as follows:

- For compensation for damage to the rental unit
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

This matter came before me August 18, 2022, and was adjourned. An Interim Decision was issued August 18, 2022, and should be read with this Decision.

The Landlord appeared at the reconvened hearing with M.Y. to assist. The Tenant appeared at the hearing with I.B. to assist. The Tenant appeared for Tenant B.D. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Tenant confirmed receipt of the hearing package and Landlord's evidence. The Landlord confirmed receipt of the Tenants' evidence three days prior to the hearing. The Landlord did not take issue with admissibility of the Tenants' evidence when asked.

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

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?

2. Is the Landlord entitled to keep the security and pet damage deposits?

3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Painting	$4,500.00
2	Stove	$1,120.00
3	Vanity	$1,512.00
4	Flooring	$400.00 - $600.00
5	Counter tops	$1,200.00
6	Curtain wash	$200.00
7	Cleaning	$450.00
8	Door lock and replacement	$500.00
9	Filing fee	$100.00
	TOTAL	**$9,982.00 - $10,182.00**

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started February 01, 2020, and was for a fixed term ending January 31, 2021. Rent was $3,800.00 due on the first day of each month. The Tenants paid a $1,900.00 security deposit. The parties agreed the Tenants paid a $1,900.00 pet damage deposit.

The Landlord testified that the Tenants returned the keys to the rental unit December 31, 2021. The Tenant testified that they returned the keys December 20, 2021.

The Tenant testified that they provided their forwarding address to the Landlord December 24, 2021. The Landlord confirmed receipt of the forwarding address but could not recall when they received it.

The parties agreed the Landlord did not have an outstanding Monetary Order against the Tenants at the end of the tenancy.

M.Y. advised that there was no written agreement between the parties stating the Landlord could keep some or all of the security and pet damage deposits but there was a verbal agreement. M.Y. advised that the Landlord's position is that the Tenants agreed by text message by stating "they will go with option 3" to the Landlord keeping some or all of the security and pet damage deposits.

The Tenant's position was that the Tenants agreed to the Landlord keeping some or all of the security and pet damage deposits; however, this agreement is not valid pursuant to section 38(5) of the *Residential Tenancy Act* (the "*Act*"). The Tenant submitted that the agreement about the Landlord keeping some or all of the security and pet damage deposits was based on a verbal conversation about damage to the rental unit. The Tenant stated that the agreement was that the Landlord could keep some or all of the security and pet damage deposits towards damages in general and that nothing specific was agreed to.

The Landlord submitted a move-in Condition Inspection Report ("CIR"). The Tenants submitted the move-in and move-out CIR. I understood M.Y. to suggest during the hearing that the Tenants' move-out CIR is not accurate.

The bottom of the move-out CIR states:

> The tenants and the landlord agree that the tenant forfeit the damage deposit and the pet deposit as a remedy of marking walls, stove damage and the vanity damage. The tenant moved out on December 20, 2021 and hand-in the keys to the landlord. By this agreement, both parties agree to release the other party from future claims regarding this tenancy agreement.

Neither party pointed to or made submissions about this statement while discussing whether the Tenants agreed to the Landlord keeping some or all of the security and pet damage deposits.

The Landlord stated the move-in CIR is accurate. The Landlord confirmed the parties did a move-in inspection and the CIR was signed for both parties. The Landlord said it was the Tenants who prepared the CIR and provided a copy to the Landlord to sign.

The Tenant stated that the parties did a move-in inspection and jointly completed the CIR. The Tenant agreed the CIR was signed by both parties. The Tenant confirmed there is no issue regarding when and how they received the move-in CIR.

The Landlord advised as follows in relation to a move-out inspection. The parties did an inspection December 20, 2021. The Landlord took photos during the inspection. The Landlord's agent, who was present at the inspection, had paperwork with them and was completing the paperwork. The Landlord's agent prepared the CIR through software and told the Landlord they would send a copy to the Landlord. The Tenants did not sign the move-out CIR so the Landlord could not sign the move-out CIR. The software did not allow the Landlord to sign the CIR.

The Tenant stated as follows in relation to a move-out inspection. The move-out CIR was completed by the Landlord on their own. The parties did not do a move-out inspection together and the Tenants did not sign a move-out CIR. The Tenants were not offered two opportunities, one on the RTB form, to do a move-out inspection. The Tenants did an unofficial walk-through of the rental unit; however, the CIR was not completed at that time. The Tenants received a copy of the move-out CIR December 02, 2021, but did not sign it.

The Landlord stated that they kept the pet damage deposit because some of the damage caused to the rental unit was pet related including damage to the back door, porch door and laminate. The Tenant denied that any of the claims are pet related and denied that their pet caused damage to the rental unit.

#1 Painting $4,500.00

The Landlord sought painting costs due to damage caused by the Tenants' children and dog to the walls of the rental unit. The Landlord said the Tenants' cleaners damaged the paint on the walls when cleaning them. The Landlord said they hired professionals to paint the entire rental unit; however, they paid them in cash and therefore there is no documentary evidence about the cost.

The Tenant disputed all of the costs claimed in the Application because the Landlord did not provide evidence of the amounts claimed.

The Tenant took the position that any damage to the walls of the rental unit was reasonable wear and tear. The Tenant stated that the move-out CIR was done by the Landlord so only shows the Landlord's opinion about the state of the rental unit. The Tenant pointed out that the Landlord only noted three areas of the rental unit that required painting on the move-out CIR and questioned why the entire rental unit needed to be painted.

In reply, the Landlord said the Tenants agreed to pay $3,500.00 for painting; however, the Landlord could not point to documentary evidence showing this.

In further reply, the Tenant denied they agreed to pay $3,500.00 for painting. The Tenant said they initially agreed to forfeit the security and pet damage deposits but then disagreed to this. The Tenant said there was no breakdown of damages and costs at the point they initially agreed to forfeit the deposits so there was no agreement reached.

#2 Stove $1,120.00

The Landlord sought costs for replacing the stove and said the stove did not work at the end of the tenancy. The Landlord relied on photos of the stove to show it did not work.

The Tenant denied that the stove was broken at the end of the tenancy.

#3 Vanity $1,512.00

The Landlord sought costs for replacing the bathroom vanity because it was new at the start of the tenancy and the Tenants chipped it. The Landlord said the vanity could not be repaired and had to be replaced. The Landlord said there was a photo of the vanity in evidence; however, there is no such photo before me.

The Tenant agreed there was a small chip in the bathroom vanity but submitted that it could have been repaired and there was no need to replace the vanity. The Tenant also stated that the move-out CIR shows the vanity was in good condition at move-out.

In reply, the Landlord said the vanity was ceramic and could not be repaired.

#4 Flooring $400.00 - $600.00

The Landlord said the floor was new when the Tenants moved in, and the Tenants' dog damaged the floor. The Landlord said the laminate floor had to be replaced.

The Tenant said any damage to the floor was reasonable wear and tear. The Tenant stated that the move-out CIR shows the floor was in good condition at move-out.

In reply, the Landlord took the position that the Tenant has changed the move-out CIR.

#5 Counter tops $1,200.00

The Landlord stated that someone the Tenants hired to replace the dishwasher broke the counter above the dishwasher.

The Tenant pointed to the photos of a chip in a counter and stated that this was the damage the Landlord is talking about. The Tenant said the chip could be repaired. The Tenant stated that, even if the counter had to be replaced, the Landlord has not submitted evidence to support the amount claimed. The Tenant stated that the move-out CIR shows the counter was in good condition at move-out.

In reply, the Landlord said the photo does not show the extent of the chip and the chip could not be repaired.

#6 Curtain wash $200.00

The Landlord said the Tenants left the curtains in the rental unit dirty and so they had to hire someone to attend and clean them.

The Tenant submitted that any dirt or dust on the curtains was reasonable wear and tear. The Tenant pointed to their evidence of an invoice for having the rental unit cleaned at the end of the tenancy.

#7 Cleaning $450.00

The Landlord said the Tenants did not clean the rental unit at the end of the tenancy. The Landlord submitted that the Tenants hired cleaners to clean the walls of the rental unit and not to clean generally. The Landlords said the photos show the rental unit was not left clean. The Landlord said the same person who did the curtains also cleaned the rental unit for $40.00 per hour.

The Tenant stated that they hired professionals to clean the rental unit and paid $630.00 for this as shown in their evidence.

#8 Door lock and replacement $500.00

The Landlord said the Tenants did not return the keys to the rental unit and therefore the Landlord had to change the locks. The Landlord said the lock was electronic and expensive and had to be replaced.

The Tenant pointed to the note outlined above about the Tenants returning the keys December 20, 2021. The Tenant also stated that they were given a code for the door and not a key.

The parties submitted documentary evidence which I have reviewed and will refer to below as necessary.

Analysis

Security and pet damage deposits

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits 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 security and pet damage deposits at the end of a tenancy.

Based on the testimony of both parties about a move-in inspection, I find neither party extinguished their rights in relation to the security or pet damage deposits pursuant to section 24 of the *Act*.

Section 36 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],
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> (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.

Section 38(4) and (5) of the *Act* state:

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant…

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

In relation to the move-out inspection, it is the Landlord's responsibility to ensure they comply with the *Act* at the end of the tenancy in relation to a move-out inspection. If they have agents conduct the inspection, it is their responsibility to ensure their agents do so properly. I find it is the Landlord who must prove the facts claimed in relation to the move-out inspection pursuant to rule 6.6 because this is the Landlord's Application.

The only documentary evidence about a move-out inspection is the move-out CIR submitted by the Tenants. I accept this copy of the move-out CIR as accurate because the Landlord did not submit a different version to show the Tenants have changed it in any way. The move-out CIR does not support the Landlord's position about what occurred in relation to the move-out inspection. In the absence of further evidence, I am not satisfied the Landlord's position has been proven. I am not satisfied the Landlord or Landlord's agent completed the move-out CIR with the Tenants as required. Further, I find the Landlord did not sign the move-out CIR as required by section 18 of the *Regulations*. It does not matter whether the Tenants signed the move-out CIR or not, the Landlord was required to. If the software being used did not allow the Landlord to sign the CIR, the Landlord should have used different software or signed a hardcopy of the CIR and provided it to the Tenants.

I find the Landlord extinguished their right to claim against the security and pet damage deposits for damage to the rental unit pursuant to section 36(2)(c) of the *Act*. Given this, I accept the Tenants' position that the Landlord could not keep the security or pet damage deposits pursuant to section 38(4)(a) of the *Act.*

Given the Landlord extinguished their right to claim against the security and pet damage deposits for damage to the rental unit, the Landlord had to either repay the deposits or file a claim against them for something other than damage to the rental unit in accordance with section 38(1) of the *Act*.

I accept that the tenancy ended for the purposes of section 38(1) of the *Act* when the move-out inspection was done, and the Tenants returned the keys. The Landlord testified that the parties did a move-out inspection December 20, 2021, and this is supported by the move-out CIR. I find the tenancy ended December 20, 2021.

I accept that the Tenants provided their forwarding address to the Landlord December 24, 2021, because the Landlord did not dispute this.

Pursuant to section 38(1) of the *Act,* the Landlord had 15 days from December 24, 2021, to repay the security and pet damage deposits or file a claim against them for something other than damage to the rental unit. The Application was filed January 07, 2022, within time. Further, the Landlord claimed for cleaning, which is not damage, and therefore was allowed to claim against the security deposit. However, RTB Policy Guideline 31 states:

> The landlord may apply to an arbitrator to keep all or a portion of the deposit **but only to pay for damage caused by a pet.** (emphasis added)

As stated, cleaning is not damage so the Landlord had to return the pet damage deposit within 15 days of December 24, 2021. The Landlord did not return the pet damage deposit within 15 days of December 24, 2021, and therefore did not comply with section 38(1) of the *Act*. Given this, pursuant to section 38(6) of the *Act*, the Landlord must return double the pet damage deposit to the Tenants. The Landlord must pay $3,800.00 to the Tenants as double the pet damage deposit.

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.

RTB 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:
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> - 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.

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, 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.

The meaning of “reasonable wear and tear” is set out in RTB Policy Guideline 01 as follows:

> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

RTB Policy Guideline 16 outlines the concept of nominal damages and states:

> 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. (emphasis added)

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.

When 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.

I note that I do not accept that the Tenants agreed to pay certain amounts for specific items of damage in the rental unit because the parties disagreed about this and there is no documentary evidence to show what the agreement, if any, was. I acknowledge the statement at the bottom of the move-out CIR outlined above; however, the Tenants did not sign this statement and therefore I am not satisfied it constitutes an agreement between the parties. The Landlord attempted to rely on text messages to show there was an agreement between the parties; however, the text messages before me do not show what the agreement was.

#1 Painting $4,500.00

The Landlord's photos show approximately eight areas of the rental unit where there was wall damage that I find is beyond reasonable wear and tear. There are three areas showing walls are in poor shape on the move-out CIR. In the circumstances here, where the Tenants have not agreed with the move-out CIR, I would expect to see further evidence to support the Landlord's position about damage. I do not find that the photos show that the entire rental unit needed to be painted at the end of the tenancy due to damage caused by the Tenants. Further, the Landlord has failed to provide sufficient evidence of the cost of painting and therefore has failed to prove the amount or value of the damage or loss such that I decline to award the Landlord $4,500.00.

I do accept based on the photos submitted that the Tenants did damage the walls beyond reasonable wear and tear in some areas and therefore the Landlord has proven a breach of section 37 of the *Act*. Given I am not satisfied of the amount or value of the damage or loss, I award the Landlord nominal damages of $100.00 for this issue.

#2 Stove $1,120.00

The parties disagreed about whether the Tenants broke the stove top. The move-out CIR shows the "range top/oven" was fair on move-in and broken on move-out. However, the CIR says it was the oven that was the issue, not the stove top. The statement at the end of the CIR refers to stove damage; however, this is not referenced above, and the Tenants did not agree with the move-out CIR. The photos of the stove top do not show that it is broken, they show that two plastic knobs had come off. Given the lack of evidence showing the stove top was broken, I do not accept that it was. I do not accept that the Landlord had to replace the stove top due to two plastic knobs coming off. I dismiss this claim without leave to re-apply.

#3 Vanity $1,512.00

There is no issue that there was a chip in the bathroom vanity at the end of the tenancy because the Tenant agreed with this. The move-out CIR states that there is a chip on the vanity but also states that the "cabinets/vanity" were in good condition on move-in and good condition on move-out. The statement at the end of the move-out CIR mentions the vanity damage. However, the Landlord did not submit photos of the chip and therefore I cannot see the extent of it. The parties disagreed about whether the chip could have been repaired and the Landlord has not submitted any compelling

evidence to support their position about this. In the absence of further evidence, I am not satisfied the vanity had to be replaced. Further, the Landlord has failed to prove the amount or value of the claimed damage or loss because the Landlord has submitted no compelling evidence of the cost claimed such as receipts or invoices. This claim is dismissed without leave to re-apply.

#4 Flooring $400.00 - $600.00

The Landlord submitted one photo showing edging to the laminate broken off. I note that this is not a piece of laminate, it is the small piece of edging where the laminate meets tile. The move-out CIR shows the flooring in the rental unit was good at move-out. I do not accept that flooring in the rental unit had to be replaced at the end of the tenancy due to damage caused by the Tenants because the evidence does not support this. I do accept that a small piece of edging had to be replaced due to damage by the Tenants at the end of the tenancy and I accept the broken piece of edging is a breach of section 37 of the *Act*. The small piece of edging could not have cost $400.00 to repair. In the absence of some evidence about a reasonable cost for the edging, I award the Landlord nominal damages of $1.00.

#5 Counter tops $1,200.00

I accept that the Tenants or someone on their behalf chipped the counter because the Tenant acknowledged this, and it is shown in the photos. I note that the move-out CIR does show that the counter tops in the kitchen were good at move-out. I do not accept that the extent of the chip is larger than what is shown in the photo because the Landlord did not submit compelling evidence of this. Further, I am not satisfied the chip could not have been repaired because it is on the edge of the counter, is small and the counter appears to be wood with a thin cover of melamine-type material. I am not satisfied in the absence of some evidence that the Landlord looked into repairing the chip that it cannot be repaired. As well, I am not satisfied the counter needed to be replaced given the location and extent of the damage. In the circumstances, I accept the Tenants breached section 37 of the *Act* in relation to the chip. However, I am not satisfied the Landlord has proven the amount or value of the damage or loss claimed and therefore I award the Landlord nominal damages of $1.00.

#6 Curtain wash $200.00

The parties disagreed about whether the curtains were left dirty at the end of the tenancy. The Landlord has not provided any compelling evidence that the curtains were left dirty because there is no documentary evidence to support this before me. I note that the move-out CIR shows all window treatments were good at move-out. I dismiss this claim without leave to re-apply.

#7 Cleaning $450.00

I accept based on the photos submitted that there were some areas of the rental unit that required cleaning at the end of the tenancy including two wall areas, the dryer filter, the backyard door, a wall on the outside of the house and under an appliance. I accept that these are areas the Tenants' cleaners likely did not clean. I accept that the Tenants breached section 37 of the *Act* in relation to these areas. I accept that the Landlord is entitled to some compensation for cleaning. However, the average cost of cleaners is $20.00 to $25.00 per hour. Based on the photos, I accept that it would have taken someone an hour and a half at most to clean the areas. Given this, I award the Landlord $37.50.

#8 Door lock and replacement $500.00

The parties disagreed about whether the Tenants failed to return keys at the end of the tenancy. The only documentary evidence about this is the move-out CIR which shows that one key was given at move-in, and the key was missing at move-out. However, the move-out CIR also includes the statement at the bottom outlined above saying the Tenants handed in the keys December 20, 2021. In the absence of further evidence, I am not satisfied the Tenants failed to return the key and am not satisfied they breached section 37 of the *Act*. This claim is dismissed without leave to re-apply.

#9 Filing fee $100.00

Given the Landlord has been partially successful on the Application, I award them $100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Painting	$100.00
2	Stove	-
3	Vanity	-
4	Flooring	$1.00
5	Counter tops	$1.00
6	Curtain wash	-
7	Cleaning	$37.50
8	Door lock and replacement	-
9	Filing fee	$100.00
	TOTAL	**$239.50**

The Landlord is considered to hold $5,700.00 in deposits being the $1,900.00 security deposit and double the pet damage deposit as explained above. The Landlord can keep $239.50 from this $5,700.00. The Landlord must return $5,460.50 to the Tenants. The Tenants are issued a Monetary Order in this amount pursuant to section 67 of the *Act*.

Conclusion

The Tenants are issued a Monetary Order for $5,460.50. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: November 03, 2022

Residential Tenancy Branch