



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing occurred by conference call based on an application for dispute resolution filed by the Landlord July 06, 2022, seeking:

- Compensation for damage to the rental unit
- To recover unpaid rent
- To keep the security deposit
- Compensation for monetary loss or other money owed
- To recover the filing fee

S.J.J., M.J. and D.G. (the “Landlords”) appeared at the hearing for the Landlord. The Tenants appeared at the hearing.

Both parties provided evidence for the hearing. I confirmed service of the hearing package and evidence, and no issues arose.

The parties were given a chance to provide relevant evidence and 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 recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to compensation for monetary loss or other money owed?
5. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord seeks the following compensation:

Item	Description	Amount
1	Cleaning	\$840.00
2	Replace two blinds	\$420.00
3	Kitchen cabinet repair	\$103.00
4	Replace floor	\$9,118.04
5	Interior wall/ceiling repaint	\$5,250.00
6	Management of clean up and repairs	\$7,875.00
7	Electrical consumption	\$63.88
8	Clean stained carpet	\$89.25
9	Washing machine repair	\$126.00
10	Lost rent June, July and August 1 to 20, 2022	\$5,333.00
11	Late payment charges	\$225.00
12	Filing fee	\$100.00
	TOTAL	\$29,543.17

A written tenancy agreement was provided. The tenancy started December 10, 2017, and was for a fixed term ending December 31, 2018. The tenancy then became month-to-month. Rent was \$2,000.00 per month due on the first day of each month. A security deposit of \$1,000.00 was paid.

The Landlords said an Order of Possession was posted on the rental unit door June 06, 2022. The parties agreed the Tenants returned the keys to the rental unit June 20, 2022.

The parties agreed the Tenants provided their forwarding address to the Landlord June 20, 2022.

The Landlords said the Tenants agreed verbally that the Landlord could keep the security deposit for unpaid June rent. The Tenants said the Landlord refused their offer of the Landlord keeping the security deposit for June rent and that nothing was put in writing.

The parties agreed the Landlord did not have an outstanding Monetary Order against the Tenants at the end of the tenancy and there was no written agreement that the Landlord could keep the security deposit.

A Condition Inspection Report ("CIR") was provided and the parties agreed it is accurate.

The Landlords said the following issues were present in the rental unit at the end of the tenancy:

- The unit was not left reasonably clean and the Landlord had to hire cleaners.
- Two blinds were broken and had to be replaced. The blinds were new at the start of the tenancy.
- A kitchen cabinet was broken and had to be reinstalled. The \$103.00 sought includes labour and materials.
- The carpet and laminate were damaged and had to be replaced. The flooring was from 2015. The carpet was stained, pulled and smelled. The Landlord had the carpets cleaned before they were replaced but the stains and smell could not be removed. Water damage to the laminate caused it to buckle and the edges to peel.
- There was water damage on two areas of the ceiling and walls were damaged throughout the unit. The entire unit had to be repainted. The unit was last painted in 2015 and touch ups were done in 2017.

The Landlord seeks the cost of hiring a management company to oversee the clean up and repairs in the rental unit.

The Landlord seeks the cost of electrical use after the tenancy because electricity was needed to do the cleaning and repairs.

The Landlord seeks the cost of having a washing machine repair person attend during the tenancy. The Landlords said the Tenants caused the issue with the machine and the technician found items clogging the machine.

The Tenants responded as follows.

The Tenants hired cleaners at the end of the tenancy and left the rental unit clean.

Two blinds were broken during the tenancy but the CIR shows other blinds in the unit were broken at the start of the tenancy which shows the blinds were poor quality.

The kitchen cabinet was broken during the tenancy. The Tenants tried to fix the cabinet but were not able to.

The flooring was actually replaced because it was squeaky, not because of damage. The carpet was stained but there was no lingering smell. The Tenants had the carpet cleaned before they moved out.

The move-in CIR shows there was damage to the walls at the start of the tenancy. Only the kitchen area was re-painted prior to the Tenants moving in.

The Tenants are not the only people who had lived in the unit and items in the washing machine could have been from others. It is possible the face mask found in the machine was the Tenants.

If there was water damage to the ceiling, this was from leaking pipes which was an issue in the rental unit.

The Tenants disputed that they should have to pay for management costs or electrical costs after the end of the tenancy.

In relation to loss of rent, the Landlords said the Tenants did not pay June rent. The Landlords said the remainder of the request is because of the time it took to clean and repair the rental unit.

The Landlord also seeks late fees for late rent paid from May of 2021 to January of 2022.

The Tenants said they could have returned keys to the rental unit June 15, 2022, but the property manager was not available. The Tenants disputed that they owe for loss of rent.

In relation to late fees, the Tenants said they were never billed for these and were only issued a warning letter about the fees.

I have reviewed the evidence provided and will refer to it below as necessary.

Analysis

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

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 find the Tenants participated in the move-in and move-out inspections and did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

I do not need to decide if the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for unpaid rent, loss of rent and late fees.

The tenancy ended June 20, 2022, when the Tenants returned the keys to the rental unit.

The Tenants provided their forwarding address to the Landlord June 20, 2022.

Under section 38(1) of the *Act*, the Landlord had 15 days from June 20, 2022, to repay the security deposit or file a claim against it. The Landlord’s application was filed July 06, 2022, one day late. The Landlord did not comply with section 38(1) of the *Act*. Given the testimony of the parties, none of the exceptions to section 38(1) of the *Act* applied. The Landlord must pay the Tenants double the security deposit under section 38(6) of the *Act*. The Landlord also owes the Tenants interest on the original amount of the security deposit.

Compensation

Section 7 of the *Act* sets out when compensation is owed.

RTB Policy Guideline 16 addresses compensation and states:

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.

#1 Cleaning \$840.00

Section 37 of the *Act* required the Tenants to leave the rental unit reasonably clean. This standard is explained in RTB Policy Guideline 01.

Based on the photos from both parties, I do not find there were major cleanliness issues with the rental unit at the end of the tenancy. Based on the Landlord's photos, I accept that some items were left in the garage and two bathroom fans, the garage door, the washing machine, behind the laundry machines, two window sills, a small part of the fridge and the microwave needed cleaning. Cleaning these areas could not reasonably have taken more than one and a half hours to clean. The average cost of cleaning is \$20.00 to \$25.00 per hour. I award the Landlord **\$37.50** for cleaning.

#2 Replace two blinds \$420.00

The Tenants had to leave the rental unit undamaged except for reasonable wear and tear under section 37 of the *Act*. This standard is explained in RTB Policy Guideline 01.

I accept the Tenants broke two blinds in the rental unit because the Tenants acknowledged this. This is not reasonable wear and tear. The invoice in evidence

shows the blinds cost \$420.00 to replace. The Tenants have not provided convincing evidence that the blinds were of poor quality. The blinds were new in December of 2017 and the Landlord had use of them until June 20, 2022, around four and a half years. RTB Policy Guideline 40 says the useful life of blinds is 10 years. I award the Landlord **\$210.00** to account for the useful life of blinds.

#3 Kitchen cabinet repair \$103.00

Section 37 of the *Act* applies to this item.

I accept the Tenants broke the kitchen cabinet during the tenancy because they acknowledged this. This is beyond reasonable wear and tear. I accept that it cost \$103.00 to reinstall the kitchen cabinet and find this amount reasonable. I award the Landlord **\$103.00**.

#4 Replace floor \$9,118.04

Section 37 of the *Act* applies to this item.

Based on the Landlord's photos, I accept the carpet was stained beyond reasonable wear and tear in three locations throughout the rental unit. I also accept the laminate in the kitchen was damaged beyond reasonable wear and tear. I do not accept that the photos support \$9,118.04 worth of damage to the flooring. I find this amount high. There is some indication on the CIR that the flooring was not perfect at move-in. The flooring was from 2015 and the Landlord got seven and a half years of use out of it. RTB Policy Guideline 40 says the useful life of carpet is 10 years and of hardwood or parquet is 20 years. I award the Landlord **\$2,279.51** being a quarter of the amount sought to account for the issues outlined.

#5 Interior wall/ceiling repaint \$5,250.00

Section 37 of the *Act* applies to this item.

RTB Policy Guideline 40 says the useful life of interior paint is four years. The paint in the rental unit was more than four years old at the end of the tenancy. The Landlord is not entitled to compensation for painting the entire rental unit. This claim is dismissed without leave to re-apply.

#6 Management of clean up and repairs \$7,875.00

Section 37 of the *Act* applies to this item.

The Invoice for the management fees shows it is for management, electrical fixtures, light bulbs and supplies, garbage removal and labour. I find the amounts sought unreasonable. The photos of the rental unit do not support a need for \$7,875.00 worth of supplies and labour. For example, the invoice shows a \$1,000.00 charge for light bulbs and supplies. The photos do not justify such a charge. The evidence does not support this claim and it is dismissed without leave to re-apply.

#7 Electrical consumption \$63.88

The Tenants are not responsible for paying for electricity used after the end of the tenancy when they had no control over the amount of electricity used. This claim is dismissed without leave to re-apply.

#8 Clean stained carpet \$89.25

Section 37 of the *Act* applies to this item.

The photos from both parties support that the carpet was not professionally cleaned at the end of the tenancy. The carpet was stained at the end of the tenancy and I accept that it was reasonable for the Landlord to try to clean the carpet. Based on the invoice provided, I accept carpet cleaning cost **\$89.25** and award the Landlord this amount.

#9 Washing machine repair \$126.00

The Tenants had to repair damage they caused to the rental unit during the tenancy under section 32 of the *Act*.

I accept that the Tenants caused an issue with the washing machine because the Tenants acknowledged an item clogging the machine may have been theirs. Further, the issue occurred in 2021, well into the tenancy. Based on the invoice, I accept the Landlord had to pay **\$126.00** to have the machine repaired and I award the Landlord this amount.

#10 Lost rent June, July and August 1 to 20, 2022 \$5,333.00

Under section 26 and 57 of the *Act*, the Tenants had to pay rent while they had possession of the rental unit. I accept the Tenants had possession of the rental unit until June 20, 2022. The Tenants have not provided convincing evidence that they tried to return keys to the rental unit earlier than June 20, 2022. The Tenants owe the Landlord unpaid rent up until June 20, 2022.

Further, I accept that the Tenants are responsible for paying all of June rent for loss of rent. I accept that the Tenants breached section 37 of the *Act* in the ways outlined above and that some cleaning and repairs had to be done at the end of the tenancy. I find it reasonable that the Landlord could not re-rent the unit for the remainder of June due to the issues present at the end of the tenancy.

I do not accept that the state of the rental unit reasonably prevented the Landlord from re-renting the unit for July. The photos do not support that the unit was left in such a terrible state that 10 days was not enough to clean and repair it. The request for loss of rent past June based on the state of the rental unit at the end of the tenancy is unreasonable. The photos show the rental unit was left in pretty good condition. The only issue that may have taken longer than usual was the flooring; however, the Landlord has not provided convincing evidence that the flooring could not have been done sooner.

The Landlord is awarded **\$2,000.00** for June rent.

#11 Late payment charges \$225.00

Term 18 of the tenancy agreement sets out late fees of \$25.00 for late payment of rent. The Tenants were sent a letter April 30, 2021, stating they would be charged late fees moving forward. In a letter submitted by the Tenants, the Tenants seem to believe rent is not late if they send it in time, even if their bank does not process it in time. This is not correct. If the Tenants' bank took time to process a payment, the Tenants had to make the payment earlier to ensure it was received by the Landlord by the first day of each month. The other reasons provided in the letter for paying rent late are not valid reasons for this. However, the parties clearly disagree about how many late rent payments there were and the Landlord has not provided convincing evidence about this. I award the Landlord **\$112.50** being half the amount sought to account for the fact that there were some late rent payments but the exact number is not clear.

#12 Filing fee \$100.00

The Landlord has been partially successful in their application and is entitled to recover the **\$100.00** filing fee under section 72(1) of the *Act*.

Summary

The Landlord is entitled to the following compensation:

Item	Description	Amount
1	Cleaning	\$37.50
2	Replace two blinds	\$210.00
3	Kitchen cabinet repair	\$103.00
4	Replace floor	\$2,279.51
5	Interior wall/ceiling repaint	-
6	Management of clean up and repairs	-
7	Electrical consumption	-
8	Clean stained carpet	\$89.25
9	Washing machine repair	\$126.00
10	Lost rent June, July and August 1 to 20, 2022	\$2,000.00
11	Late payment charges	\$112.50
12	Filing fee	\$100.00
	TOTAL	\$5,057.76

The Landlord is considered to hold \$2,006.20 being the \$1,000.00 security deposit, \$1,000.00 for the security deposit being doubled and \$6.20 in interest on the original amount of the security deposit. The Landlord can keep this \$2,006.20 under section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining **\$3,051.56** under section 67 of the *Act*.

Conclusion

The Landlord can keep the security deposit. The Landlord is issued a Monetary Order for **\$3,051.56**. 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: April 26, 2023

Residential Tenancy Branch