Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL, MNDCT, MNSD, FFT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of double their security deposit pursuant to section 38; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Although Tenant BC (the tenant) into the hearing after the scheduled time to commence this hearing, he gave sworn testimony that he represented the interests of the other tenant as well as himself.

While both parties testified that they left copies of their dispute resolution hearing packages for one another at their respective doors, both parties did confirm that they

had received one another's hearing packages and written and photographic evidence. The landlord also confirmed that he understood that the tenants had made claims for the return of double their security deposit plus a later amended application in which the tenants also sought a monetary award for damage to a vehicle they had parked under the landlord's carport. Under these circumstances, I find that both parties were duly served with all of the above documents in accordance with sections 88 and 89 of the *Act.*

Issues(s) to be Decided

Are either the landlord or the tenants entitled to a monetary award for damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the tenants entitled to a monetary award equivalent to double the value of their security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*? Are either of the parties entitled to recover the filing fee for this application from one another?

Background and Evidence

The most recent signed tenancy agreement between these parties covered the period from July 2, 2017 until January 1, 2018. At the expiration of that term, the tenancy converted to a month-to-month tenancy, which expired by April 30, 2018, the last day of this tenancy. Monthly rent was set at $1,350.00, payable in advance on the first of each month. The landlord continues to hold the tenants' $675.00 security deposit paid on or about January 1, 2017.

The landlord's application for a monetary award included the following items:

Item	**Amount**
Cleaning (7 hours @ $25.00 per hour = $175.00)	$175.00
Replacement of Light Bulbs	65.00
Extra Storage ($600.00 + $300.00 = $900.00 for more than six months)	900.00
Less Security Deposit	-675.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Requested by Landlord (Including Filing Fee)	**$565.00**

For their part, the tenants applied initially for a monetary award of $1,350.00 plus the recovery of their filing fee. The totals shown on the amended application only identified a total of $2,068.50 for the damage to the vehicle in addition to the recovery of the $100.00 filing fee. After discussion at the hearing, it became apparent that some type of mistake had been made by the tenants or by Service BC in submitting the amended application. I accept that the landlord realized that the tenants were still seeking a return of double their security deposit in addition to the amendment they had made to their application to add the recovery of the damage to the vehicle to their original claim. As consideration of the amount of the damage to the vehicle in addition to the original amount claimed by the tenants will not lead to any unfairness to the landlord, I have considered the tenants' claim for a total of $3,518.50 before me.

Item	**Amount**
Return of Double Security Deposit ($675,00 x 2 = $1,350.00)	$1,350.00
Monetary Award for Damage to Vehicle left under the Carport on this Property	2,068.50
Recovery of Filing Fee for this Application	100.00
Total of Above Items Listed in Tenants' Original Application and Amended Application (Including Filing Fee)	**$3,518.50**

Although the parties agreed that they participated in a joint move-in inspection when this tenancy began on or about December 31, 2016, they disagreed as to whether the landlord produced a copy of that report and provided it to the tenant. The tenant said this did not happen, and as a result, the landlord was extinguished from submitting an application to retain the tenants' security deposit. The landlord testified that he did create a report of that joint move-in inspection, but could no longer locate a copy of that report. While he testified that he thought he would have provided a copy of that report to the tenants, the landlord said that this happened a long time ago, and he could not recall these details.

The tenant provided undisputed written evidence that the tenants surrendered the keys to the rental unit on or about April 22, 2018. Although the tenant initially refused to participate in the landlord's requested joint move out condition inspection, the parties agreed that a joint move-out condition inspection did occur on May 6, 2018.

The landlord's written evidence included a copy of the joint move-out condition inspection report signed by both parties. The tenant made the notation on the joint move-out condition inspection report that he disagreed with the landlord's description of the condition of the rental unit at the end of this tenancy. The tenant noted on this report that he had hired a cleaner to "come in to clean the unit" and asserted that the rental unit was left in better condition than it was in when the tenancy began.

In the landlord's written evidence, the landlord claimed that they had alerted the tenants of the need to clean the oven/stove on April 22, 2018, that the tenant had initially committed to undertake this cleaning, but by April 30 informed the landlord that the tenants were not responsible for cleaning anything else as the tenant felt they did not have to, but were still entitled to the return of their security deposit.

Both parties confirmed that there was nothing in the written residential tenancy agreement between the parties or any amendment or appendix to that agreement which called for the extra storage charge that the landlord claimed. The landlord testified that the parties entered into an oral agreement whereby the tenant could park a 35 foot trailer in the back of this property for an agreed additional amount. The tenant denied ever having agreed to pay anything extra for permission to park his trailer on the property. The tenant said that the landlord had agreed to let him do this without any additional charge.

The landlord produced no receipts to support his monetary claim.

The tenant maintained that the claim for damage to his vehicle arose after the insurer for the vehicle advised the tenant that it would not pay for damage caused by a collapse in the landlord's carport. The tenant maintained that they had been given permission to park in the freestanding carport and that the damage claimed was a direct result of the collapse of that carport from the weight of snow on the roof of the carport. The landlord said that this damage to the tenant's vehicle occurred when the tenant parked the vehicle in the carport when the landlord was out of the country and did not know that this was happening. The landlord testified that the two parking spots that were supposed to be attached to this tenancy were in the front of the cabin and not in the carport.

Analysis - Tenants' Claim for Return of Security Deposit

Section 23 of the *Act* reads in part as follows:

23 *(1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day...*

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion...

Section 24 of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

24 *(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord...*

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...

In this case, there is undisputed sworn testimony that a joint move-in condition inspection was conducted when this tenancy began. The tenant provided convincing sworn testimony that this was an informal "walk-through" of the rental unit, which did not lead to the landlord's provision of a written joint move-in condition inspection report to the tenants for their signature. By contrast, the landlord had few detailed recollections of this part of the start of the this tenancy. Although the landlord maintained that a joint move-in condition inspection report was prepared and provided to the tenants for their signing, he admitted that his recollection of these details was imprecise as these events happened some time ago. While be believed that he had kept a copy of the joint move-in condition inspection report, he was unable to locate it by the end of this tenancy.

Given the contrast between the two accounts provided by the parties, I find the sworn testimony of the tenant more convincing with respect to his claim that no joint move-in condition inspection report was provided to the tenants. The landlord's way of disproving this testimony would rely on his production of a copy of that report, which the landlord admitted he could not provide. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies. Under these circumstances and based on a balance of probabilities, I find it more likely than not that no joint move-in condition inspection report was prepared and provided to the tenants at the start of this tenancy. In accordance with paragraph 24(2)(c) of the *Act,* I find that the landlord's right to claim against the tenants' security deposit was extinguished shortly after this tenancy began.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord's right to claim against that deposit has not been extinguished. If the landlord fails to comply with section 38(1) or if the right to apply to retain that deposit has been extinguished, then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must also pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case there is undisputed testimony that the tenants' provision of their forwarding address coincided with the end of this tenancy on April 30, 2018. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "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."

In this case, I find that the landlord has not returned the tenant's security deposit in full within 15 days of receipt of the end of this tenancy. Although the landlord applied to retain the tenants' security deposit within 15 days, the landlord's right to claim against that deposit was extinguished by the failure to provide the tenants with a copy of the joint move-in condition inspection report as per paragraph 24(2)(c) of the *Act*.

The following provisions of Policy Guideline 17 of the Residential Tenancy Branch's Policy Guidelines would seem to be of relevance to the consideration of this application:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- *If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;*
- *If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*
- *If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;*
- *If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;*
- *whether or not the landlord may have a valid monetary claim.*

Having made the above findings, I must order, pursuant to section 38 and 67 of the *Act,* that the landlord pay the tenants the sum of $1,350.00 , comprised of double the security deposit (2 x $675.00 = $1,350.00) and the $100.00 fee for filing their application.

Analysis - Tenants' Claim for Reimbursement for Damage to Vehicle

Although I have given the tenants' claim for compensation for damage to their vehicle careful consideration, I find that any claim they may have would be through their motor vehicle insurance and not through any alleged contravention by the landlord of the *Residential Tenancy Act*. There is no mention of the location of the parking spaces connected with this tenancy in the residential tenancy agreement that the parties signed. The tenant did not dispute the landlord's claim that the regular parking spaces for these tenancies are in front of the cabin and not in the carport. The parties presented conflicting evidence as to whether the landlord had given the tenants verbal permission to park a vehicle in the carport.

The landlord gave undisputed testimony that this accident happened in the winter when he was out of the country. The carport apparently collapsed under the weight of a heavy snowfall and the tenant has made no allegation that the landlord was in any way negligent with respect to this unfortunate weather related event, which caused damage to the tenant's vehicle.

Under these circumstances, I am without jurisdiction under the *Act* to make a finding with respect to the tenants' claim for compensation for damage to their motor vehicle.

The tenants will need to pursue this matter elsewhere, perhaps as a no fault motor vehicle insurance claim and not through the *Residential Tenancy Act*.

Analysis - Landlord's Monetary Claim

The landlord's claim for damage and loss arising out of this tenancy is separate from whether the landlord is in contravention of section 38 of the *Act* with respect to the return of the tenants' security deposit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

While there is a report of the condition of the rental unit at the end of this tenancy, as was noted above, the tenant maintained in that report that the premises were left in better condition than they were in at the beginning of this tenancy. Without a signed joint move-in condition report it is difficult to establish the extent to which the damage cited in the joint move-out condition inspection report of May 6, 2018 represents damage that arose as a result of this tenancy.

I also note that section 37(2) of the *Act* requires a tenant to “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.”

In this case, I find that the landlord has entered sufficient written evidence and sworn testimony to entitle them to a monetary award for some additional cleaning that was

required at the end of this tenancy, particularly to the oven. I also allow the undisputed costs the landlord claimed for replacing missing light bulbs that were the responsibility of the tenants to replace.

I allow part of the landlord's claim for additional cleaning of 4 hours at a rate of $25.00 per hour, most of which was to look after the cleaning of the oven and stove. I also allow the landlord's $65.00 claim for the replacement of light bulbs in this rental unit.

There is conflicting sworn testimony from the parties as to whether there was or was not an oral agreement between the parties for the extra storage that the landlord has claimed. Under such circumstances, the best evidence is the written commitments that the parties made to one another. The landlord confirmed that there is no provision in the tenancy agreement or in any appendix or addendum to that agreement between the parties for the extra storage he has claimed in his application. In the absence of any form of written agreement between the parties, I dismiss the landlord's claim for a monetary award for extra storage of one of the tenant's vehicles/trailers on the landlord's property during the course of this tenancy.

As the landlord has been only partially successful in his claim, I allow him to recover one half of his filing fee from the tenants.

Conclusion

I issue a monetary Order in the tenants' favour under the following terms, which allows the tenants to recover a return of double their security deposit and the filing fee for their application, less the monetary award issued to the landlord for damage and for the recovery of a portion of his filing fee:

Item	**Amount**
Return of Double Security Deposit ($675,00 x 2 = $1,350.00)	$1,350.00
Less Landlord's Award for Cleaning (4 hours @ $25.00 = $100.00)	-100.00
Less Landlord's Award for Light Bulb Replacement	-65.00
Recovery of Filing Fee for this Application by Tenants	100.00
Less Landlord's Recovery of one-half of	-50.00

Filing Fee for Landlord's Application	
Total Monetary Order for the Tenants	$1,235.00

The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

As the *Act* does not grant me jurisdiction to consider the tenants' claim for a monetary award for damage to their motor vehicle, I decline to make any finding with respect to that portion of the tenants' application. They will need to pursue whatever remedies they may have in this regard through other channels.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 28, 2018

Residential Tenancy Branch