



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MULTIPLE REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S, 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 July 9, 2018 (the “Application”). The Landlord sought compensation for damage to the unit, compensation for monetary loss or other money owed and reimbursement for the filing fee. The Landlord sought to keep the security and pet deposit.

A Representative for the Landlord (the “Representative”) appeared at the hearing for the Landlord. Legal Counsel appeared for the Tenant. I explained the hearing process to the parties who did not have questions when asked. The Representative provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose in this regard.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all documentary evidence submitted. 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 unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to keep the security and pet deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between the Landlord and Tenant in relation to the rental unit. The tenancy started September 1, 2017 and was for a fixed term ending August 31, 2018. The rent was \$6,000.00 per month due on the first day of each month. The Tenant paid a \$3,000.00 security deposit and \$3,000.00 pet deposit. The agreement included a liquidated damages clause.

The parties agreed the Tenant vacated the rental unit June 23, 2018.

Legal Counsel advised that the Tenant's forwarding address was provided to the Representative on June 28, 2018. This email was submitted as evidence. The Representative said he had to confirm the forwarding address with the Tenant and that he did so June 30, 2018.

Both parties agreed a move-in inspection was done August 28, 2017. Both parties agreed a move-in Condition Inspection Report was completed and signed by both parties.

The Representative testified that he believed he emailed the Tenant a copy of the move-in Condition Inspection Report a day or two after the inspection.

Both parties agreed a move-out inspection was done June 23, 2018. Both parties agreed a move-out Condition Inspection Report was completed. Both parties agreed the Tenant's agent signed the move-out Condition Inspection Report. Legal Counsel advised that the Tenant's copy of the move-out Condition Inspection Report is not signed on behalf of the Landlord. The Representative testified that he signed the move-out Condition Inspection Report electronically and suggested there may have been a technical error when the report was sent to the Tenant.

The Representative testified that a copy of the move-out Condition Inspection Report was emailed to the Tenant June 24, 2018. Legal Counsel advised that a link to the move-out Condition Inspection Report was provided. The evidence submitted shows this was done June 25, 2018.

Legal Counsel submitted that the Landlord extinguished their right to the security and pet deposit by not signing the move-out Condition Inspection Report and therefore not completing the move-out Condition Inspection Report.

The Landlord sought the following compensation:

Item	Description	Amount
1	Carpet cleaning	\$231.00
2	Light bulbs	\$472.50
3	Garage remote	\$52.28
4	Liquidated damages	\$3,150.00
5	Water bill	\$327.55
	TOTAL	\$4,233.33

Carpet cleaning

The Representative testified that the carpet in the rental unit was stained upon move-out and said this was noted in the move-out Condition Inspection Report. He said he was not going to claim for this if the new tenants did not care about the stain which is why the stain is not noted in the “damage” section of the report. He said the new tenants did care about the stain and therefore he had cleaners attend to clean the carpet. The Landlord submitted a receipt for the carpet cleaning.

Legal Counsel submitted that the carpet cleaning was done weeks after the Tenant vacated the rental unit and after the new tenants had moved in. He also pointed out that the receipt is not for stain removal but for carpet shampoo. He referred to the last page of the move-out Condition Inspection Report and noted that the carpet stain is not noted under the “damage” section. He submitted that this is relevant because the stain noted on the move-out Condition Inspection Report could have been reasonable wear and tear.

Light bulbs

The parties agreed that the Landlord would keep \$180.73 for the light bulbs.

Garage remote

The parties agreed that the Landlord would keep \$52.28 for the garage remote.

Liquidated damages

The liquidated damages clause states that the Tenant will owe two months rent if the tenancy is ended early. The Representative confirmed the Landlord is only seeking \$3,150.00 which is the actual loss resulting from the Tenant ending the tenancy early.

He said this was the cost to the owner for getting new tenants in the rental unit. The Representative advised that the owner was not able to find new tenants herself and therefore had to hire the Landlord to do this. He said \$3,150.00 was the cost to hire the Landlord to screen tenants, do showings and to execute a new tenancy agreement.

Legal Counsel submitted that the Representative waived the liquidated damages clause and therefore could not now seek damages for the Tenant ending the tenancy early. Legal Counsel pointed to email correspondence submitted between the Representative and Tenant in this regard. Legal Counsel submitted that the correspondence shows the Tenant told the Representative he would only vacate early if he was not penalized for doing so and that the Representative accepted this. Legal Counsel advised that it was not until the Tenant had vacated that the Representative emailed saying the owner still wanted the termination fee.

Legal Counsel further submitted that the Tenant did not create the loss claimed because the rental unit would have been re-rented at the end of August in any event.

In reply, the Representative testified that the owner would have taken back the house at the end of the tenancy agreement but that when the Tenant vacated the owner was out of the province and could not do so. He said the owner therefore had to hire the Landlord to rent out the house otherwise it would have been vacant for two months. The Representative took the position that he should not have had to remind the Tenant about what is stated in the tenancy agreement. He said the Tenant knew there would be a charge if he terminated the tenancy agreement early and he does not know why he should have to explain that to the Tenant again.

In response, Legal Counsel pointed out that there is no evidence submitted in relation to the owner taking back the house at the end of the tenancy agreement.

I asked the Representative about an email he sent June 25, 2018 to the Tenant about the owner still wanting the early termination fee. The Representative said he told the Tenant this fee would apply and he sent this email because it had not yet been paid.

I note that in the Landlord's written materials, it states that the owner was going to return in September and could have rented the rental unit out herself at that time.

Water bill

The Representative testified that the water bill was received after the Tenant moved out and that the Tenant is responsible for this payment. The Landlord submitted a copy of the bill.

The only issue raised by Legal Counsel in relation to the water bill was that it includes sewer.

The Representative pointed to term 40 in the tenancy agreement and submitted that this shows the Tenant was responsible for all utilities including sewer.

Doubling of Deposits

Legal Counsel submitted that the pet deposit should be doubled because the claims made against the deposits are not pet related.

Legal Counsel further submitted that the security deposit should be doubled if I find the Representative waived the liquidated damages clause because the Landlord should not have held the entire deposit. Legal Counsel took the position that the security deposit should be doubled where a landlord retains the entire deposit but only claims for part of the deposit.

The Representative submitted that the Landlord followed the *Residential Tenancy Act* (the “*Act*”) in relation to claiming against the deposits. The Representative said the carpet stain could have been caused by a pet.

Analysis

Section 7(1) of the *Act* states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate 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.

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

Based on the testimony of the parties, I find the Tenant did not extinguish his rights in relation to the security or pet deposit under sections 24(1) or 36(1) of the *Act*.

Based on the testimony of the parties, I find the Landlord did not extinguish their right in relation to the security or pet deposit under sections 24(2) of the *Act*.

Legal Counsel submitted that the Landlord extinguished their right to the security and pet deposit by failing to sign the move-out Condition Inspection Report. The Representative testified that he did sign the report electronically. The parties agreed the report was sent electronically to the Tenant. I am not satisfied that the Representative failed to sign the report in the circumstances and therefore do not find that the Landlord extinguished their right to the security and pet deposit under section 36(2) of the *Act*.

There was no issue that the tenancy ended June 23, 2018. I accept the submissions and evidence in relation to the Tenant’s forwarding address and find the Landlord received the Tenant’s forwarding address June 30, 2018.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from June 30, 2018, the date the Landlord received the Tenant’s forwarding address in writing, to repay the security and pet deposit or file the Application claiming against the deposits. Based on our records, the Landlord filed the Application July 9, 2018, within the 15-day time limit.

Carpet cleaning

Section 37(2) of the *Act* outlines the responsibility of a tenant when vacating a rental unit and states:

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

I accept that the carpet in the stairwell and hall were fine on move-in and stained on move-out based on the move-out Condition Inspection Report. However, I am not satisfied that the stain was beyond reasonable wear and tear or that it required the cleaning claimed by the Landlord. As noted by Legal Counsel, neither the stain nor the need for carpet cleaning is noted under the “damages” section of the move-out Condition Inspection Report. Further, the Representative acknowledged that he was not going to have the carpets cleaned unless the new tenants had an issue with them. I am not satisfied that the stain noted required the cleaning claimed when the Representative did not take issue with the stain at the time of move-out. I decline to award the Landlord reimbursement for the carpet cleaning.

Liquidated damages

The Landlord did not seek the two months rent as set out in the liquidated damages clause and instead sought \$3,150.00 as the actual loss that resulted from the Tenant ending the tenancy early.

It is the Landlord, as applicant, that must prove they are entitled to the amount claimed.

The parties focused on whether the Representative waived the liquidated damages clause. I have reviewed the correspondence between the Tenant and Representative. I am not satisfied that the Representative did not waive the liquidated damages clause. I find the emails from the Tenant clear that a condition of vacating the rental unit early was waiver of the liquidated damages clause. I do not find that the Representative was clear in his emails that the liquidated damages clause would still apply. I do not accept the position of the Representative that he should not have to remind the Tenant about the terms of the tenancy agreement given the nature of the communications. Given the emails of the Tenant, I find the Representative should have been clearer about his position.

Legal Counsel submitted that the Landlord cannot now claim for the \$3,150.00 when the Representative waived the liquidated damages clause. I accept this position given the nature of the correspondence between the Tenant and Representative.

Water bill

The only issue Legal Counsel took with the water bill was that sewer was included. Based on the tenancy agreement, and testimony of the Representative, I accept that the Tenant was responsible for paying for the water and sewer during the tenancy. The position of the Representative is supported by term 40 in the tenancy agreement. I find the Tenant is responsible for paying the bill submitted and award the Landlord the \$327.55 requested.

Doubling of Deposits

Policy Guideline 17 deals with doubling deposits and states:

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 filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;

Policy Guideline 31 deals with pet deposits and 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...

I do not accept that the claims made by the Landlord relate to a pet. The Representative said nothing about the stain on the carpet being pet related until after Legal Counsel submitted that the pet deposit should be doubled given the claims are not pet related. Even then, the Representative said the stain "could" have been caused by a pet. I found the Representative's answers in relation to this issue to be flippant. I note that there is no evidence before me that the stain was caused by a pet.

I am not satisfied that the Landlord was entitled to retain the \$3,000.00 pet deposit in the circumstances. I find the Landlord should have returned the pet deposit within 15 days of receiving the Tenant's forwarding address. The Landlord did not do so. I find the Landlord failed to comply with section 38(1) of the *Act* in relation to the pet deposit. Pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the pet deposit and must return double the deposit to the Tenant. I find the Landlord must pay the Tenant \$6,000.00 for the pet deposit.

I do not accept that the security deposit should be doubled. I do not accept that the Application is frivolous. I acknowledge that the Landlord was not fully successful on the Application; however, this is not sufficient to find the Application frivolous. I note that the requested amount on the Application is more than the security deposit amount.

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Carpet cleaning	\$0.00
2	Light bulbs	\$180.73
3	Garage remote	\$52.28
4	Liquidated damages	\$0.00
5	Water bill	\$327.55
	TOTAL	\$560.56

Given the Landlord was partially successful in this application, I grant them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, I find the Landlord is entitled to compensation in the amount of \$660.56. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$660.56 from the security deposit. The Landlord must return the remaining \$2,339.44 of the security deposit to the Tenant. The Landlord must also return \$6,000.00 being double the pet deposit to the Tenant. In total, the Landlord must return \$8,339.44 to the Tenant. I note that there is no interest owed on the deposits as the amount owing has been 0% since 2009.

Conclusion

The Landlord is entitled to compensation in the amount of \$660.56. The Landlord is authorized to retain this amount from the security deposit. The Landlord must return the remaining \$2,339.44 of the security deposit to the Tenant. The Landlord must also

return \$6,000.00 being double the pet deposit to the Tenant. In total, the Landlord must return \$8,339.44 to the Tenant. The Tenant is granted a Monetary Order in this amount. This Order must be served on the Landlord as soon as possible. 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 14, 2018

Residential Tenancy Branch