# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes

For the tenant: MNSD
For the landlord: MNDL-S, FFL

Introduction

The tenant filed an Application for Dispute Resolution (the "tenant's Application") on February 7, 2020 for an order to return the security deposit. They provided the landlord notice of this hearing via registered mail. The landlord confirmed receipt of the hearing information and evidence provided by the tenant.

The landlord filed their Application for Dispute Resolution (the "landlord's Application) on May 20, 2020 for compensation for damage caused by the tenant, holding the pet or security deposits. Additionally, they applied for a return of the application filing fee. They provided their evidence to the tenant and the tenant confirmed the same in the hearing.

The matter proceeded to a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "*Act*") on June 18, 2020. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties presented oral testimony and evidence during the hearing.

Issue(s) to be Decided

Is the tenant entitled to an order granting a refund of the security deposit pursuant to section 38 of the *Act*?

Is the landlord entitled to a monetary order for damage or compensation pursuant to section 37 and 67 of the *Act*?

Is the landlord entitled to retain the security deposit held, pursuant to section 38 of the *Act*?

Is the landlord entitled to recover the filing fee for the landlord's Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, I only describe those relevant to the issues and findings in this matter.

The landlord provided a copy of the tenancy agreement. Both parties signed the agreement on July 10, 2019, for the tenancy that started on July 1, 2019. The rent amount of $1,075.00 was payable on the 1st of each month. The tenant paid the security deposit of $537.50 and the pet damage deposit of $537.50 on June 15, 2019.

The parties each signed a 'Mutual Agreement to End a Tenancy' on July 10, 2019, providing for the vacancy date of January 1, 2020. A note from the tenant to the landlord is in the evidence dated November 26, 2019 confirming the move-out on January 1, 2020.

The tenant provided a copy of the tenancy agreement. Both parties signed the agreement on May 8, 2016, for the tenancy beginning on May 15, 2016. The rent amount of $1,800.00 was due on the 1st of each month. The tenant paid the security deposit of $1,800.00 on May 8, 2016. An addendum to the agreement gives 9 extra terms; this includes the provision that "No additional tenants are allowed."

The tenant applied for a return of the security and pet damage deposits, totalling $1,075.00. On their Application, they provided that the landlord did not review the condition of the entire suite on their "final walk through". Then they would not specify an amount; instead, the landlord requested a "number" from the tenant. The tenant believes the only damage is "wear and tear". They state there was no condition inspection report, and they "didn't receive copies of the initial condition report or the final one."

The landlord presents a three-fold claim. The provided a monetary worksheet dated May 22, 2020 listing separate items for the total of $3,650.00. This is also the amount they filled out on their original application for this hearing. By my calculation of the items listed below, the accumulated claim amount is $4,372.09.

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|---|---|
| wool carpet replacement (est) | $3,400.00 |
| new carpet underlay | $117.94 |
| carpet cleaning | $180.00 |
| recycle dump fee | $24.15 |
| refuse removal | $50.00 |
| additional tenant | $600.00 |

First, the landlord claims for cleaning and replacement of the carpet in the unit. The cleaning for carpet took place on March 8, 2020. A receipt from the cleaner provides that there was urine, stains and odour and “both sides needed washing & disinfect & deodorize.”

The landlord summed up this issue in the hearing. This was chiefly due to the odour they feel was something attributable to the pet in the unit. The carpet was initially cleaned, and the odour seemed to dissipate, however it then returned. They then removed the carpet, replacing the carpet underlay and airing out the carpet. They did present a photo that shows this work being done. After the tenant’s move out, the landlord advised the tenant of this by email, stating: “At this point the odour is so offensive that it renders the living room unusable.” Previous dialogue between the parties shows a discussion on this issue, with the tenant making plans to hire a professional to clean the carpet on December 17, 2019.

The tenant also provides that prior to moving out they “got . . . carpets professionally cleaned before [they] moved out.” They provided an undated receipt from a carpet cleaning company showing the amount of $165.90. The cleaners noted “wear/tear, some light stains, old carpet”.

The landlord submits this is “basic damage” to the carpeting, which may require new a new carpet. They found and gave photos “around 12” pieces unravelling, pulled loops. They also described “chafed areas because of shoes.” Detailed photos show before and after in the same area. The landlord acknowledged there were noticeable burn marks on the carpet prior to the tenant move in.

Another person who had prior interest in the unit provided notes to the landlord stated they did not observe such damage when they viewed the unit prior to the tenant here moving in.

Secondly, the landlord also claims for an “Additional Tenant”. The amount of $600.00 is the landlord charging $5 per day for four months, 120 days. They referenced the “no additional tenant” clause of the tenancy agreement addendum. This additional tenant led to concerns with parking around the area, and the landlord has this clause in the

addendum in place to address the greater use of utilities, and wear and tear. They provided a handwritten not from another tenant in the property who stated their impression was there were “two full-time tenants in the basement suite.”

The landlord provided a copy of a message from the tenant to the landlord, sent after a friend of theirs consulted with the landlord on the issues. On this question of whether or not another tenant resided in the unit, the tenant advised the landlord in this email dated January 7, 2020 that: “at no time did you ever approach me and ask for additional rent.” Their statement is that the landlord did not bring it to their attention and offered an explanation for the increase in utilities over the colder months in the unit, which is a basement suite.

Thirdly, the landlord claims a total of $74.15 for recycling and refuse removal. A photo of the recycling left behind is in the landlord’s evidence. The tenant addressed this piece by saying their move out date did not coincide with the regularly scheduled blue bin recycling day.

A handwritten document sets out conditions at the unit on July 7, 2019, and then on January 1, 2020. In 2019, there is a “burn mark on carpet in bedroom”. By January 2020, there are two relevant points: “carpet has numerous pulled loops and strings, at area of 2’ sq. is badly chafed” and “full recycling bag and box left completely full at the premises”. Also, in January 2020 is listed: “additional occupant.”

Analysis

The *Act* section 38(1) states that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant’s forwarding address in writing, the landlord must repay any security or pet damage deposit to the tenant or make an application for dispute resolution for a claim against any security deposit.

Further, section 38(6) of the *Act* provides that if a landlord does not comply with subsection (1), a landlord must pay the tenant double the amount of the security and pet damage deposit.

I find the landlord has extinguished their right to make a claim against the security deposit. The tenant gave their forwarding address to the landlord on January 17, 2020. The tenancy ended on January 1, 2020, and the landlord applied for compensation against the security deposit on May 20, 2020.

The landlord did not pay back the security deposit to the tenant in that time, nor did they apply for dispute resolution for a claim. The evidence shows the landlord wanted to retain some portion of the security deposit and informed the tenant of this when both parties met on the final move out day; however, they did not follow through with this by claiming in the proper fashion. As such, the landlord has breached the *Act* by retaining the security deposit and shall not use the deposit to recover any monetary amounts. The tenant is entitled to return of double these amounts.

I find the landlord did not comply with section 38(1); therefore, they must pay to the tenant double the amount of the security and pet deposits in accord with section 38(6). This is twice of the amount paid by the tenant, totalling $2,150.00.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

To determine an outstanding amount of compensation owing, I shall first determine accountability for any damage that stemmed from the tenancy, then I may make a determination of the amount of compensation that is due. I establish this value by a review of the evidence presented.

The party seeking compensation should present compelling evidence of the value of damage or loss in question. Specifics on the landlord's claims, and my assessment of the finer points, are as follows:

- Carpet cleaning and carpet replacement
  <u>Amount: $3,697.94 total</u>

  Residential Tenancy Policy Guideline 40 covers the useful life of building elements. This is a guideline intended to provide a statement of the policy intent of the *Act*. I find this is a relevant consideration with respect to the carpet, and the question of its condition at the start and end of tenancy. The guideline provides that a useful life in years of carpets is 10 years.

  The landlord provided evidence that the carpet was brand new 10 years ago. Therefore, I find the damage or loss is not solely attributable to the actions or

inactions of the tenant. Also, I find the tenant was open and queried the landlord about a suitable cleaning service at the end of the tenancy; the tenant paid for this cleaning in line with the addendum forming part of the tenancy agreement.

The tenant provided their version of the move in condition of the carpet; this was that a burn mark was present, and the main thoroughfare area was well-worn. The areas of unlooping they attributed to vacuuming. I find it realistic that any carpet damage was not solely attributable to the tenant – this with regard to the useful life of the carpet. On a balance of probabilities, I find it more likely that the overall condition of the carpet had deteriorated, making it more susceptible to damage after ten years.

I conclude also that the odour present within the unit was likely exacerbated by the age of the carpet in the basement suite, with that area being more prone to moisture and other contributing factors over time.

There are two accounts from carpet cleaners: one notes “wear/tear. . . old carpet”; the other notes removing urine, stains and odours. A visit from January 11, 2020 shows “new issues”; however, I cannot determine when these issues became “new” from the carpet cleaner’s perspective.

Additionally, the cleaning paid for by the landlord took place in March 2020, three months after the tenancy ended. I find this is a questionable effort at mitigating the damage or loss. After this time, the landlord replaced the underlay and received an estimate for carpet replacement. I find it more likely than not the comprehensive issues with the carpet is due to the much longer undefined life cycle of the unit itself prior to this comparatively brief tenancy. It is not plausible that the extent of the issues claimed resulted from a violation of the *Act*, tenancy agreement or regulations by the tenant here.

For these reasons, I dismiss this portion of the claim involving replacement of the carpet ($3,400.00), which in any event is not a monetary amount actually paid by the time of the hearing. Further, given the age of the carpet, I find the replacement of the underlay ($117.94) is more attributable to the age and basement setting, rather than the actions or inactions of the tenant during the tenancy.

While there was a pet involved, I find the tenant’s explanation of all areas concerning the carpet is clearly set out in their message to the landlord on January 7, 2020. They referred to conditions present in the unit at the start of the tenancy. I find the tenant was diligent on this point, in addressing and replying to

the landlord's immediate concerns about the carpet soon after the move out. By contrast, the landlord retained a carpet cleaner service who provided their opinion, in March, close to three months after the end of the tenancy.

For these reasons, I dismiss this portion of the claim ($180.00) involving the cleaning of the carpet. The tenant fulfilled their part of the agreement in paying for carpet cleaning as per the addendum at the end of the tenancy.

- Additional tenant
  Amount = $600.00

  I find the landlord has not presented ample evidence to show a loss exists for this portion of the claim. The evidence presented is a note from another tenant which outlines their impressions of what was happening in another unit. Additionally, the landlord did not establish there was a significant increase in utilities due to another person living in the unit – there was no monetary amount presented in this regard. Further, as the tenant noted in their letter to the landlord after the tenancy ended, the landlord did not bring this to their attention during the entire time of the tenancy. This does not show mitigation on the part of the landlord.

  For these reasons, I dismiss this portion of the landlord's claim. There is no compelling evidence of the value of loss in question.

- Recycling and dump fees
  Amount = $74.15

  I find the landlord here has not presented compelling evidence of a loss. The value of $50.00 for what the landlord presented to be a full garbage can of doghair and a full bucket and bag of recycling is not a reasonable cost to impose on the tenant, and I do not see this amount as a loss borne by the landlord that is eligible for compensation.

  The $24.15 portion of this amount is for the cost of a recycling facility, for the landlord to dispose of the carpet. I am not awarding the carpeting costs to the landlord as I find they are not due to a violation of the *Act*, legislation or tenancy agreement by the tenant. This amount is for the disposal of carpet removed that is not the responsibility of the tenant.

In sum, the landlord has not presented ample evidence to show the damages or losses in question are due to the actions or inactions of the tenant during the tenancy. By my findings, the landlord receives no compensation on their claims.

In conclusion, the landlord has extinguished the right to claim against the security deposit – they did not properly comply with the time limits set within the *Act*. The security deposit amount incorrectly held by the landlord is $1,075.00. The landlord did not make a claim against this amount within the legislated time; therefore, by application of section 38(6), they must pay double this amount. This is $2,150.00; I am awarding the tenant this amount.

As the landlord was not successful in their application, the landlord's claim for the filing fee of $100.00 is denied.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a Monetary Order in the amount of $ 2,150.00 as outlined above. The tenant is provided with this Order in the above terms and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order 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: June 26, 2020

Residential Tenancy Branch