Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: MNDCL-S, FFL
For the Tenant: MNSDS-DR, FFT

Introduction

This hearing dealt with cross-applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant filed a claim for:

- $350.00 for the return of the security deposit; and
- recovery of the $100.00 Application filing fee.

The Landlords filed a claim for:

- $542.35 compensation for damage caused by the tenant, their pets or guests to the unit or property – holding the security deposit for this claim; and
- recovery of the $100.00 Application filing fee.

The Tenant's agent, J.A., (the "Agent"), and the Landlord, D.T., appeared at the teleconference hearing and gave affirmed testimony. A witness for the Landlord, D.W., also provided affirmed testimony in the hearing.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Agent and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Early in the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses in their applications, and in the hearing, they confirmed their understanding that the Decision would be emailed to both Parties and any monetary orders sent to the appropriate Party.

The Tenant submitted a statement authorizing his father, J.A., to act as his Agent in this matter. I note that the Tenant's name is on the tenancy agreement and that of the Agent is not; therefore, I have removed the Agent's name from the Tenant's application, pursuant to section 64(3)(c) of the Act and Rule 4.2.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Is either Party entitled to recovery of the filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on November 15, 2019, with a monthly rent of $700.00, due on the first day of each month. They agreed that the rental unit was the master bedroom in a house and that it had an *en suite* bathroom. They agreed that the Tenant paid the Landlords a security deposit of $350.00, and no pet damage deposit. The Parties agreed that the Tenant vacated the rental unit on February 20, 2020, and provided the Landlords with his forwarding address via text on March 4, 2020.

The Parties agreed that the Landlords conducted an inspection of the condition of the rental unit before or at the start of the tenancy; however, they also agreed that they did not inspect the condition of the rental unit together at the end of the tenancy.

> ***TENANT'S CLAIM*** → **$350.00** – return of security deposit

In his Application, the Tenant seeks the return of his $350.00 security deposit, as well as recovery of the $100.00 Application filing fee.

The Agent said:

> In our evidence at the top of page 2 is the first text with him sending the link

> about ending the tenancy and moving out. It outlines what's required. The texts show that [the Tenant] proposed a meeting for February 29, which was accepted by the Landlord on the same page. It said [D.T.] can meet you there at 11:30. But they cancelled that just ahead of that meeting – see page 3.
>
> They failed to provide an alternative time, pursuant to section 35(2) [of the Act]. They didn't offer the Tenant two opportunities [for the move-out condition inspection]; nothing was subsequently offered to him. We never did receive a [condition inspection report ("CIR")] on move out. There was no meeting, and no CIR suppled. So, their rights to make claims is extinguished.
>
> Aside from the details of that, no agreement was made about the security deposit. No agreement could be reached, so here we are – they have no right to make a claim about the security deposit.

The Landlord said:

> A couple things; as far as not setting up another meeting time, see in the text – he told [D.A.] he was on the 12:45 ferry, anyway. There was no opportunity to make another meeting. In our email evidence, he already admitted responsibility for the filth. It relates to the security deposit.

In the Landlord's evidence, the Tenant said the following in an email to the Landlord dated March 17, 2020:

> Hello, thanks for the note. On these items,
>
> I would agree to the cleaning charge as my cleaning plans did not work out before I had to go to the ferry.
>
> I do not agree with the locksmith charge as it was agreed on Saturday the 31st that the key could be returned on the Sunday (I have those texts), which was done. If you preferred to re-key that is your choice alone.
>
> That would leave me agreeing to a deduction of $220.50 and the return of $129.50 to me by the deadline outlined in the *Residential Tenancy Act* (or receipt of a dispute regulation filing by the deadline)

The Agent commented on this email in the hearing. He said:

Just briefly, our position is that that offer was not accepted. The email offer was not accepted, so the right to claim against the security deposit is extinguished. The offer made in that email - not accepted - and the offer is not on the table today.

LANDLORD'S CLAIMS → **$542.35**

The Landlord applied for compensation from the Tenant in the following claims:

	Receipt/Estimate From	For	Amount
1	Electricity bill	Cost of electricity for additional tenant	$115.10
2	Locksmith	Changing locks – no keys left	$106.75
3	Tenant's agreement	Cleaning rental unit	$220.50
4	RTB	Application filing fee	$100.00
		Total monetary order claim	**$542.35**

#1 Cost of Tenant Moving in His Girlfriend → $115.10 (Hydro for 6 weeks)

I asked the Landlord where in the tenancy agreement it requires the Tenant to pay for utilities. The Landlord said:

It doesn't say that in the tenancy agreement, but he isn't allowed to move someone into his room and that did happen. We can only assume we incurred a significant rise in cost. That room has its own shower. There's also wear and tear in the house. You can't move someone else in without the written approval of the Landlord. See the addendum to the tenancy agreement at the very back.

The Addendum to the tenancy agreement states:

1) The Tenant agrees that the occupant(s) as listed on the Residential Tenancy Agreement shall be the only resident occupant(s) of this suite (staying overnight more than two nights in any month) unless the Landlord agrees otherwise in writing.

The Agent said:

> I acknowledge that the tenancy agreement doesn't allow a guest for more than two nights. As for the amount, I dispute it was six weeks. Also, he can't decide on a penalty of utilities.
>
> There were no hydro bills provided and no calculation of the amount. The Landlord's remedy is to say the lease has been violated, not to impose the utility cost for the violation. [The Tenant] wasn't given the opportunity to have the guest for extra money, and retroactively: l don't see a calculation for the utility bill.

When I asked the Landlord about how he calculated this amount for his claim, he said:

> We did a rough calculation. We knew about this guest from other tenants. When they told us about it, we saw a dramatic increase – the costs went up about 40%, since she moved in. It was cold. The Witness can speak to that. In fact, we'd brought it to [the Tenant's] attention, and he said she'd moved out, but she was still living there until he moved out. There's a graph in the hydro bill. . . I believe I submitted a copy of the bill in evidence – I can't remember if it's in evidence.
>
> I have the authority to charge this, because it is a material term of the contract that you can't have a guest without our written consent. The house has seven rooms in it; it's maxed-out in capacity. When someone moves someone into the house, if they're living there, and the Tenant tells a big lie, too, I'd say it's a very important part of the contract.

The Agent said:

> There is no valid claim about extra utilities, unless it's retroactive and if we agree. I would dispute a 40% increase, lacking any evidence to establish this. Seven people and now you have eight? There's no evidence to prove that much of an increase, let alone to make the claim he has. [J.A.] wasn't allowed to have guests. He was to get rid of the guest. There's no valid claim for extra utilities for a guest, and not a claim for $115.00, even if he could charge for utilities for a guest.

The Landlord said:

> The reason why no opportunity was offered to pay extra, is because we don't allow that. It's not something we would say yes to, because he did it behind our backs. That being said, that's why we draw the amount from the hydro as our

only retribution for doing something done behind our back.

The Landlord called in the Witness for testimony at this point. The Witness testified that he lives in the rental unit and was there during the Tenant's tenancy. The Witness was asked if the Tenant had any guests during his tenancy. The Witness said:

> He moved in his girlfriend in December 2019; he had a buddy who hung out, too. The girlfriend was there all the time. A couple times she went [elsewhere] for a couple days; otherwise both [the Tenant and his girlfriend] were always home.

I asked if any other tenants had guests, and the Witness said: "Infrequently, sometimes to stop by and grab something, but not really. She lived there until [the Tenant] moved out. She was there until the end. She moved in sometime in December, because they put up Christmas lights, and until the end of February."

The Landlord said: "We called [the Tenant] and met him, and talked to him in person. He said 'yeah, I'll move her out.' It was an in-person conversation sometime in December before Christmas, I think."

The Agent said: "The Landlord's remedy is to file a notice to end tenancy – not claiming utilities; it is a notice to end the tenancy."

#2 Locksmith for Re-Keying the Locks→ $106.75

The Landlord submitted a copy of a paid invoice from a local locksmith company for the amount requested in this claim.

The Landlord said:

> Basically what happened, we weren't able to meet [the Tenant] face-to-face, but we told him you could leave the keys. We went to the house later that day and he hadn't left the keys. We're not in the position to have someone who doesn't live in the house with keys. [The Tenant] told us his friend was going to drop off the keys, but they were never returned until this day.
>
> This locksmith – we use them quite often, actually.

The Agent said:

> First, it was an agreement to leave the keys in the mailbox. [One of the Landlords said] leave them, or it is okay to return the keys the next day. A friend went back to the Island the next day, and left them in the mailbox the next day. We have no way to prove that, but the re-keying was already done independent of the agreement, so that cost was not [the Tenant's] responsibility. They didn't come back and say the keys aren't there, and we're going to bring in a locksmith. It was already done at the Landlords' choice.

The Landlord said:

> We gave him time; it was the next day that the locks were re-keyed. I had [the Witness] check in the afternoon. We would have preferred that he left the keys. It is a huge deal to re-key and give everyone the keys. They were never returned, anyway. Not at all.

When the Landlord asked him if he checked the mail box in the days after the Tenant left, the Witness said:

> Yes. You asked me to check for the keys, and his friend was supposed to drop them off. I checked all week, but you came the next day and re-keyed and I checked – continued to check everyday.

The Agent asked the Witness some questions, too:

> Were you there when the locks were re-keyed?
>
> > Yes, I was there, not exactly when they were done, but I checked when I woke up at around 1 or 2 o'clock And maybe the guy came on March 1 - the day after [the Tenant] moved out. [The Landlord] messaged me the next day and said they were supposed to be dropped off.
>
> You didn't seek any keys dropped of that day or any day?
>
> > Yes, not that day and I've never seen them in the mail box, if that's where they put them.

The Agent asked the Landlord when the locksmith was called, and the Landlord said:

> We waited that day hoping to get the keys back. It was the day after that. . . the

> locksmith was called mid-day on March 1 – whatever day after [the Tenant] left. I'm pretty sure he left on a Saturday, and we had them re-keyed on the Sunday.

The Agent said: "My understanding that the keys were dropped off later that day. That's the extend of the comment on that point."

#3 Cleaning Bill → $220.50

As noted above, in an email dated March 17, 2020, the Tenant acknowledged that he had not cleaned the rental unit prior to vacating the premises. He said he agreed to the Landlord deducting this amount from his security deposit to cover the cost of the cleaning.

An invoice submitted by the Landlords, dated March 1, 2020, states:

[Local Cleaning Company
Telephone number
Email address]

Item	Details		Amount
Clean up and garbage removal	Invoice [# provided]		$210.00
Sunday overtime rates apply			
		Subtotal	$210.00
		GST	$10.50
		Total	$220.50
Payments			
March 1, 2020 – 11:50 am	Cash		$220.50

The Landlords submitted photographs of the rental unit, which the Landlord said illustrated how the Tenant left the room.

A photograph labeled "How_room_was_left" shows one side of the room with garbage and other debris strewn all over the floor. Other photographs show a large carpet roll leaning against the wall in the bedroom and a mattress leaning against the bedroom closet, and dirt and holes in the wall around the light switch.

Other photographs of the *en suite* bathroom show dirt and toilet paper left on the floor

behind the toilet, an unclean toilet bowl, a jug of something left on top of the medicine cabinet/bathroom mirror.

The Landlord said:

> I left quite a few photos for evidence of that one. The place was left a complete disaster. They already acknowledged that the cleaning bill was under his responsibility.

The Agent said:

> First, if the Landlord's right to the security deposit isn't extinguished, then the cleaning is the only charge we've ever offered. . . if the Landlord's right is extinguished, we've never disputed the cleaning bill. But we only wanted to pay the cleaning bill in terms of resolving the security deposit. If it's the only legitimate charge, then I dispute the filing fee, because we've always offered the cleaning bill, so I shouldn't have had to pay the filing fee, since it was offered. It was always offered and refused.

The Landlord said:

> Yeah, he did originally extend an offer for just the cleaning. Part of the reason we turned that down was because it didn't include the other stuff. As far as the right to the filing fee claim, that's for you to decided for sure.
>
> [The Tenant's] mess was mostly contained in his room. There were some boxes, a piece of a bed, Christmas lights in the hall…. That would be the extent of the stuff he would have seen.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Before the Parties testified, I let them know how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline #16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, each Party, as Applicant, must prove:

1. That the other Party violated the Act, regulations, or tenancy agreement;
2. That the violation caused you to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That you did what was reasonable to minimize the damage or loss.

(“Test”)

TENANT’S CLAIM → **$350.00** – return of security deposit

From the evidence before me, I find that the tenancy ended on February 20, 2020, and that the Tenant provided his forwarding address in writing to the Landlord on March 4, 2020. Section 38(1) of the Act states the following about the connection between these dates and the security deposit:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> > (a) the date the tenancy ends, and
> >
> > (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> > (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> >
> > (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlords were required to return the $350.00 security deposit within fifteen days after March 4, 2020, namely by March 19, 2020, or to apply for dispute resolution to claim against the security deposit, pursuant to section 38(1). The Landlords provided no evidence that they returned any amount. Further, the Landlords did not apply for dispute resolution to claim against the security deposit until August 5, 2020. I, therefore, find the Landlords failed to comply with their obligations under section 38(1) of the Act.

Further, section 38(6) of the Act addresses the situation in which a landlord fails to comply with section 38(1):

38 (6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The Landlord failed to comply with the requirements of section 38(1); therefore, pursuant to section 38(6)(b) of the Act, I find the Landlord must pay the Tenant double the amount of the security deposit. There is no interest payable on the security deposit. I award the Tenant with **$700.00** from the Landlords pursuant to section 67 of the Act.

LANDLORD'S CLAIMS

#1 Cost of Tenant Moving His Girlfriend In → $115.10 (Hydro for 6 weeks)

I find that according to the tenancy agreement, the Tenant was not authorized to have a guest staying in the rental unit for more than two nights in a month. However, I find from the evidence before me that the Tenant's girlfriend moved into the rental unit with the Tenant sometime in December 2019, and that she stayed until the Tenant moved out near the end of February 2020. I, therefore, find that the Tenant breached clause 1 of the Addendum to the tenancy agreement, and that the Landlords proved the first step of the Test in this regard.

The Landlord said that the electricity in the residential property rose by 40% during the time that the Tenant's girlfriend lived there; however, while he spoke of documentary evidence to prove the loss they suffered in this regard, he failed to upload this evidence to support this claim. As such, I find that the Landlord failed to prove the second and third steps of the Test. Accordingly, I find that the Landlords failed to provide sufficient evidence to establish this claim on a balance of probabilities. Therefore, I dismiss this claim without leave to reapply.

#2 Locksmith for Re-Keying the Locks→ $106.75

Section 25 of the Act addresses landlords' obligations for rental unit locks and keys. It states:

Rekeying locks for new tenants

> **25** (1) At the request of a tenant at the start of a new tenancy, the landlord must
>
> (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
>
> (b) pay all costs associated with the changes under paragraph (a).
>
> (2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

People have the ability to copy most keys; therefore, if a tenant returns the rental unit keys to the landlord at the end of the a tenancy, it does not mean that the tenant has not had more keys copied for the residential property. Regardless, according to Policy Guideline #1, "The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense."

However, as set out in section 25 of the Act, it is a landlord's responsibility to re-key locks to the rental unit, if they are so requested by subsequent tenant(s). As a result, I find that the Landlord does not have the authority under the Act to charge the Tenant for the cost to re-key the rental unit; therefore, I dismiss this claim without leave to reapply.

#3 Cleaning Bill → $220.50

Pursuant to sections 23, and 35 of the Act, a landlord must complete a CIR at both the beginning and the end of a tenancy, in order to establish that any damage claimed actually occurred as a result of the tenancy. Landlords who fail to complete move-in or move-out inspections and CIRs extinguish their right to claim against the security and/or pet damage deposits for damage to the rental unit, pursuant to sections 24 and 36 of the Act.

Section 32 of the Act requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property, or the tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged and reasonably clean. However, sections 32 and 37 also provide that reasonable wear and tear is not damage, and that a tenant may not be held responsible for repairing or replacing items that have suffered reasonable wear and tear.

Policy Guideline #16 ("PG #16") states: "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss

had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due." [emphasis added]

Based on the Landlords' photographs of the rental unit at the end of the tenancy, as well as the Parties' testimony in the hearing, I find that the residential property was not left "reasonably clean" by the Tenant. This was a matter on which the Parties agreed – that the Tenant did not do a reasonable job cleaning at the end of the tenancy.

Based on the evidence before me overall, I find that the Landlord established the first two steps in the Test on a balance of probabilities - that the Tenant violated the Act by not leaving the residential property reasonably clean, and that the Landlord suffered a loss as a result of this violation.

However, the Parties agreed that the rental unit consists of one bedroom and a bathroom (plus some common areas). A standard rate for professional cleaning is $30.00 per hour, which would mean that it took the cleaners approximately seven hours to clean this small rental unit. The charges are not broken down into details of what the cleaning consisted of – vacuuming, mopping, other cleaning, and removing garbage, including a carpet and a mattress. I find that approximately a quarter of the seven hours would be a more reasonable amount to charge for this size unit. I also find that the cost to haul and dump the garbage would have been necessary in this case.

Accordingly, I find that two hours to clean at $30.00 per hour and $100.00 to haul and dump the garbage is more reasonable in the circumstances (plus GST). As such, I award the Landlord with **$168.00** for this claim, pursuant to section 67 of the Act.

Given that both Parties are at least partially successful in their respective application, I decline to award either Party with recovery of the $100.00 Application filing fee.

Summary and Set-Off of Claims

	Item	For	Amount
1	Tenant's Award	Return of double the security deposit	$700.00
		Less	
2	Electricity bill	Cost of electricity for additional tenant	$0.00
3	Locksmith	Changing locks – no keys left	$0.00

4	Tenant's agreement	Cleaning rental unit	$168.00
5	RTB	Application filing fee	$0.00
		Total monetary award	**$532.00**

I awarded the Landlord $168.00 in compensation from the Tenant, and the Tenant $700.00 in compensation for the return of double the security deposit from the Landlord. After setting off these two awards, I grant the Tenant a Monetary Order of **$532.00**.

Conclusion

The Landlords' claim for compensation from the Tenant is successful in the amount of $168.00 for cleaning and garbage removal costs. The Landlords provided insufficient evidence to support the other claims in their application.

The Tenant's claim for recovery of the security deposit is successful in the amount of $700.00, as the Landlord breached section 38 of the Act by not returning the security deposit or apply for dispute resolution within the timeframe set out in the Act.

Neither Party is awarded recovery of the $100.00 Application filing fee. After setting off the awards, I grant the Tenant a Monetary Order under section 67 of the Act from the Landlord in the amount of **$532.00**.

This Order must be served on the Landlords by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 12, 2020

Residential Tenancy Branch