Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT
MNDL-S, MNDCL-S, FFL

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution, filed on September 16, 2020, the Tenant requested a Order for double her security and pet damage deposit and to recover the filing fee. In the Landlord's Application for Dispute Resolution, filed on December 19, 2020, the Landlord requested monetary compensation from the Tenant, authority to retain her deposits, and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on January 21, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security and pet damage deposit?

2. Is the Landlord entitled to monetary compensation from the Tenant?

3. Should either party recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed the following: this tenancy began October 1, 2019; monthly rent was $2,000.00; the Tenant paid a security deposit of $1,000.00; and the Tenant paid a pet damage deposit of $430.00.

The tenancy ended on August 31, 2020.

The Tenant testified that she emailed her forwarding address to the Landlord on July 30, 2020 at the same time she gave the Landlord notice she wished to end her tenancy on August 31, 2020. A copy of this email was provided in evidence before me. She stated that the email address to which she sent her forwarding address was the same address that she sent her rent payments as well as the email address she used to communicate with the Landlord. The Tenant stated that he did not respond to the email, but he started showing the rental unit to prospective tenants such that it was clear he received her email.

The Tenant confirmed that the Landlord did not return her deposits and did not apply for Dispute Resolution until December 19, 2020. The Tenant sought return of double the deposits on the basis the Landlord did not apply for dispute resolution within the 15 days required by the *Act.*

In response to the Landlord's monetary claim the Tenant testified as follows.

The Tenant testified that the Landlord did not complete a move in or move out condition inspection report.

The Tenant further testified that the carpet had stains when she moved in and those stains were there when she moved out. She stated that she cleaned it as well as she could, but she could not get the stains out. She also estimated the carpet was at least 5-6 years old.

In terms of the Landlord's claim for compensation for the cost of the blinds, the Tenant stated that one of the bedroom blinds (which she used as an office) was broken when she moved in.

The Tenant stated that when she moved in the curtains also had stains.

In response to the Landlord's claim for landscaping costs, the Tenant stated that they tried to mow the front and backyard. She stated that they hired others, but they would not touch it because it was so "bumpy". She also claimed that she bought a lawnmower but broke the blade when she attempted to mow the lawn due to the uneven ground.

In terms of the "missing fridge" the Tenant told the Landlord that she brought a new fridge (which was a gift to her late husband) to the house as the old fridge was broken and she replaced it. The Tenant stated that at one point the Landlord tried to buy it off her and she refused as she didn't want to give it up.

The Landlord responded to the Tenant's testimony and submissions as follows.

The Landlord confirmed that he received the Tenant's notice to end tenancy on July 30, 2020 as well as her forwarding address. However, he argued that as she asked him to e-transfer the deposit funds, rather than mail, he believed she did not comply with the requirement to provide him with a forwarding address.

The Landlord stated that he completed a move in and move out inspection but did not "do it on the paper". He stated that he was not aware that he had to do a proper written report until he applied for dispute resolution and was asked to upload a copy of the formal report.

The Landlord claimed compensation for the following:

Carpet	$420.00
Blinds	$537.60
Curtains	$100.00
Backyard	$370.00
Missing fridge	$862.40
TOTAL	**$2,290.00**

The Landlord testified that the carpet was installed by the previous owners shortly before he purchased the property in March of 2018 such that the carpet was nearly new when the tenancy began. He also stated that the carpet was not stained. He stated that the Tenant had a dog and the carpet was very dirty when the tenancy ended and could not be cleaned.

In terms of the blinds, the Landlord stated that he installed the blinds in September 2019 just before the tenancy began. The Landlord stated that one blind in each bedroom was broken at the end of the tenancy.

In terms of the curtains the Landlord stated that the curtains were brand new as he installed them in 2019 before they moved in.

In terms of the backyard, the Landlord stated that he hired a gardener to mow the front and back yard and trimmed all the trees. The Landlord stated that when the Tenant moved out the yard was completely overgrown. The Landlord stated that the gardener was able to mow the lawn contrary to the Tenant's claim that the lawn was so bumpy that she could not mow it.

In terms of the refrigerator, the Landlord stated that there was a fridge in the rental unit when the tenancy began. He stated that he had no recollection of the Tenant informing him there was an issue with the fridge and further testified that he was unaware that she had disposed of the previous fridge. He confirmed that he offered to buy hers as he didn't want to argue with her.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at**:**

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I will first deal with the Tenant's request for return of her security and pet damage deposit. The Tenant applies for return of her security and pet damage deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

> **Return of security deposit and pet damage deposit**
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> **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
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> 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.
>
> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) 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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I accept the Tenant's evidence that she did not agree to the Landlord retaining any portion of her deposits.

I find that the Landlords received the Tenants forwarding address in writing on July 30, 2020 by email. While email is not generally accepted as a form of service under the *Act,* I find the Landlord was served with the Tenant's forwarding address for the following reasons. The Tenant testified that upon receipt of this email the Landlord began showing the unit to prospective tenants such that it is clear he received the email. The Landlord confirmed he received the Tenant's email advising she wished to end her tenancy effective August 31, 2020. This letter contained the Tenant's forwarding address. Although she asked the Landlord to send her deposits by e-transfer, this does

not negate her request for return of her deposit, nor does it support a finding that he did not comply with section 38.

As the tenancy ended on August 31, 2020, the Landlord had 15 days from this date in which to apply for Dispute Resolution pursuant to section 38 of the *Act.* The evidence confirms that the Landlord failed to return her deposits and did not apply for arbitration until December 15, 2020, which was well outside the 15 days.

Further, by failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord also extinguished his right to claim against the deposits for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

As discussed during the hearing, the security and pet damage deposits are held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes he is entitled to monetary compensation from the Tenant, he must either obtain the Tenant's consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's deposits. Here the Landlord did not have any authority under the *Act* to keep any portion of the Tenant's deposits.

Having made the above findings, I Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenants the sum of **$2,860.00** , comprised of double the security and pet damage deposit ($1,000.00 + $430.00 = $1,430.00 x 2 = $2,860.00).

I will now address the Landlord's claim for monetary compensation for cleaning, repair and replacement costs.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

> **37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
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> (2) When a tenant vacates a rental unit, the tenant must
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> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
>
> (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The Landlord alleged the Tenant damaged the carpet, blinds and curtains, failed to care for the back yard and removed the refrigerator. The Landlord sought compensation in the amount of $2,290.00 for amounts he claims he spent addressing these deficiencies.

The Tenant testified that the rental unit was left in the same condition as when she first moved in.

As noted, the Landlord did not perform a formal move in condition inspection when the tenancy began. As such, there was no evidence before me, aside from the parties' testimony as to the condition of the rental unit at that time.

Pursuant to section 23 and 35 of the *Act,* a landlord is required to complete a move in and move out condition inspection report at the start of a tenancy and when a tenancy ends. Such reports, when properly completed, afford both the landlord and tenant an opportunity to review the condition of the rental unit at the material times, and make note of any deficiencies.

Section 21 of the *Residential Tenancy Regulation* affords significant evidentiary value to condition inspection reports and reads as follows:

> **21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The importance of condition inspection reports is further highlighted by sections 24 and 36 of the *Act* as these sections provide that a party extinguishes their right to claim against the deposit if that party fails to participate in the inspections as required (in the case of the landlord this only relates to claims for damage; a landlord retains the right to claim for unpaid rent.)

I accept the Tenant's evidence that the Landlord failed to perform a move in condition inspection. Neither party submitted any photos of the rental unit as to its condition at the start of the tenancy. Without a move out condition inspection report or compelling evidence as to the condition of the rental at the start of the tenancy, I find the Landlord has failed to prove the carpets required cleaning, that the blinds were damaged by the Tenant and the curtains were stained by the Tenant. **I therefore dismiss this portion of the Landlord's claim.**

The photos of the yard confirm the yard was significantly overgrown at the end of the tenancy. The Landlord submitted an estimate for the yard clean up which included mowing the lawn and tree pruning.

Policy Guideline 1—Landlord & Tenant Responsibility for Residential Premises, provides the following guidance with respect to yard maintenance:

> **PROPERTY MAINTENANCE**
> 1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
> 2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate. 3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.
> 3. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.
> 4. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.
> 5. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

AS this was a single family dwelling, I find the Tenant was responsible for mowing the lawn. I do not accept her evidence that she tried to mow the lawn and broke her lawn mower. I find it more likely the Tenant let the lawn grow to such an extent it was nor possible to use a residential lawn mower.

The tree maintenance and pruning of what appears to be blackberries, is the responsibility of the Landlord. As I was not provided with a breakdown of the amounts for each landscaping task, I award the Landlord the nominal sum of **$100.00** for the cost to cut and mow the lawn at the end of the tenancy.

The parties agree the rental unit was equipped with a refrigerator. The Tenant conceded that she replaced the refrigerator during the tenancy and took hers with her when she moved out. The Landlord testified that he was not informed the refrigerator was in need of repairs, nor was he informed of its disposal. The Landlord claimed the replacement cost in the amount of $862.40.

Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item.

In order to estimate depreciation of the replaced item, where necessary, guidance can be found in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* which provides in part as follows:

> When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.
>
> If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.
> …

Policy Guideline 40 also provides a table setting out the useful life of most building elements. Pursuant to this table refrigerators have a 15 year useful building life. I was not provided with any evidence as to the age of the refrigerator. I therefore award the Landlord the nominal sum of $500.00 towards the replacement cost of the refrigerator.

As the parties have enjoyed divided success, I find they should each bear the cost of their own filing fees.

Conclusion

The Tenant's claim for return of double the security and pet damage deposit is granted. She is entitled to the sum of **$2,860.00.**

The Landlord's claim for the cost to clean the carpet and replace the blinds and curtains is dismissed.

The Landlord is entitled to the nominal sum of **$600.00** for the cost to mow the lawn and the replacement cost of the refrigerator which was removed by the Tenant during the tenancy.

The parties shall bear the cost of their filing fee.

The amounts awarded to each party are offset against the other such that the Tenant is entitled to the sum of **$2,260.00.** In furtherance of this I grant her a Monetary Order in the amount of **$2,260.00.** This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: January 26, 2021

Residential Tenancy Branch