



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP WEST COAST
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenants: MNSDB-DR FFT
For the landlord: MNDL-S MNRL-S FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$1,850.00 for unpaid rent, damages to the unit, site or property, to retain the tenants' security deposit and pet damage deposit towards any amount owing, and to recover the cost of the filing fee. The tenants applied for a monetary order for double the return of their security deposit due to rat infestation and sewage problems.

Attending the teleconference hearing was an agent for the landlord, CH (agent) and tenant, LMS (tenant). The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) and that was presented; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

As both parties confirmed receiving evidence from the other party and had the opportunity to review that evidence, I find the parties were sufficiently served in accordance with the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

Finally, the parties agreed to amend the tenants' application to replace the name of the agent with the corporate landlord name. This amendment was also made pursuant to section 64(3)(c) of the Act.

Issues to be Decided

- Is either party entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the Act?
- Is either party entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on April 1, 2019 and ended on December 31, 2020, when the tenants vacated the rental unit. At the start of the tenancy the tenants paid a security deposit of \$600.00 and a pet damage deposit of \$600.00 (combined deposits). Monthly rent was \$1,200.00 per month.

Evidence for Landlord's claim

During the hearing, the landlord reduced their monetary claim from \$1,850.00 to the reduced amount described below. I find that a reduction in the monetary claim does not prejudice the tenants. The reduced monetary is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Garbage removal	\$600.00
2. Cleaning	\$270.00
3. Carpet cleaning	\$115.50
4. Unpaid rent for January 1-15, 2021 inclusive	\$600.00
5. Filing fee	\$100.00
TOTAL	\$1,685.50

Regarding item 1, the agent presented many colour photos showing both the outside and the inside of the rental home. The outdoor photos showed debris outside including chicken wire, snow shovel, broom, plates, overturned chair, small barbeque, and many garbage bags. The inside photos show a mattress with two box-springs, cobwebs, a table, a closet door that had been removed and laying against a wall, several garbage bags, a towel, cleaning products, boxes, bins, TV trays, vacuum, carpet cleaner, cords, and a storage room with many items on the shelving, a fridge and freezer with many items left inside, and items and food left inside the kitchen cupboards.

The agent presented two invoices for \$300.00 each and stated that two different workers from the same company made two trips to dispose of all of the garbage left behind, which had no value. The invoices total \$600.00 as claimed.

The tenant responded to this item by stating that the reason they left was due to a rat infestation. The tenant claims the rats destroyed everything and that the items left behind were either soiled with rat feces or rat urine. The tenant denied that birdseed was left outside, and that it was pet friendly ice melt. The photos are consistent with birdseed and not ice-melt, which I will address later in this decision. The tenant stated that a wooden barbeque base was already there when they moved in, as was the hockey net. The tenant stated that the rats defecated and urinated all over their food and dishes and ruined everything. The tenant admitted that they left food in the cupboards that was already ruined by rats so that the rats would not go for their good food that was in a different location.

Regarding item 2, the landlord has claimed \$270.00 for cleaning costs. The agent presented an invoice of 9 hours of cleaning at \$30.00 per hour for a total cost of \$270.00 from a cleaning company. The agent stated that photos presented during the hearing support that the rental unit was not cleaned by the tenants before vacating.

The tenant's response to this item was that they agreed that many items had been left inside the home but denied that all of it was theirs, including the hockey net and the wooden barbeque base. The remainder of the items the tenant claims were left due to being soiled by rat feces and urine.

Regarding item 3, the landlord has claimed \$115.50 for carpet cleaning. An invoice was presented from a carpet cleaning company that supports the amount being claimed. The outgoing Condition Inspection Report (CIR) supports the landlord's claim and the agent noted that the tenants refused to meet twice for the outgoing CIR. As a result, the agent stated that the tenants were sent a Notice of Final Opportunity to Schedule a Condition Inspection (Final Notice) by registered mail and the registered mail tracking information was submitted in evidence and reviewed. The Final Notice scheduled the final opportunity for the outgoing CIR for January 15, 2021 at noon. The agent stated that the tenant again failed to attend and as a result, the outgoing CIR was completed without the tenants being present.

The tenant's response to item 3 was that when they moved in they had to clean the carpets as they were not clean. The tenant also affirmed that they left a carpet cleaner there at the home after cleaning the carpets. The photo evidence from the landlord shows a carpet cleaning with dirty water still in it and the carpet do not look well cleaned as there is still staining visible.

Regarding item 4, the landlord has claimed \$600.00 for unpaid rent for January 1-15, 2021, inclusive. The agent stated that the tenants gave their notice on December 15, 2020 with an effective vacancy date of January 15, 2021. However, rent is due on the first day of each month and no rent was paid for January 2021. The agent stated that to be accommodating, the landlord accepted the January 15, 2021 effective vacancy date and were surprised that the tenant messaged on January 1, 2021 that they had dropped off the keys to the rental unit at the agent's office. The tenant did not dispute that rent for January 1-15, 2021 was not paid. The landlord filed their claim on January 15, 2021.

Evidence for Tenant's Claim

The tenants have claimed for twice the return of their combined deposits of \$1,200.00 for a total claim of \$2,400.00 plus the filing fee. The tenant stated that they are claiming \$2,400.00 as compensation for having to live with rats in the rental unit and with plumbing issues.

Regarding rats, the tenant stated that they never wrote to the landlord during the tenancy regarding rats but did text the agent on in November 2019. The tenant was unable to provide a copy of the text during the hearing but was able to refer to a text dated January 23, 2020. The tenant confirmed that after the January 23, 2020 text, the landlord arranged for pest control who attended and set up traps and a large rat was caught, which is shown in the photo evidence reviewed. The agent testified that they immediately dealt with the rat concern when it was raised and had pest control attend the same day. The landlord submitted a receipt for \$367.50 for one-year of pest control paid for by the landlord. The agent also stated that food was left open, which attracted the rats, which is supported by open food containers shown in the outgoing CIR photos and the many rotten bananas shown inside a cupboard.

The tenant referred an October 14, 2019 text to the agent to complain about the washing machine has backed up in the bathtub and the toilet is flooding. The same day the agent responds to say the septic tank may be full and that the agent will checked the last time it was pumped out. The same day the agent put in a Service Request to have the tank pumped out the next day and hoping that the line could be cleared in the meantime as they are not positive if the septic tank is full. Although the tenant state they were without their toilet for 4 or 5 days, the agent stated it was 1.5 days and later in the hearing, the tenant stated, it was 3 days and that even if it was for only 1.5 days, "we were still without our toilet" and complained that the landlord did not compensate them.

The agent stated that regarding the septic tank, the plumbing company was called the same day and they could not find the cover for the septic tank and found it the next day and within 1.5 days the lines were cleared and the septic tank was pumped out. The texts submitted in evidence do not support that the septic issue went longer than 1.5 days.

The agent stated that the mobile home being rented under the Act was made in the 1970s and that the mobile home is located on a farm so rats are not uncommon and they were addressed at the first complaint with a year-long pest control contract.

Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

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

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's Claim: Item 1

Section 37(2)(a) of the Act applies and states:

Leaving the rental unit at the end of a tenancy

37 (2) 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...

[emphasis added]

As the rental unit also includes the yard in the matter before me, and having considering the many colour photos showing both the outside and the inside of the rental home I am satisfied that the tenants breached section 37(2)(a) of the Act by failing to leave the rental unit and yard in a reasonably clean condition. Given the outside debris and the inside items of no value such as self-described mattress with rat feces according to the tenants, which also included two box-springs, a table, garbage bags, a towel, TV trays and many other items, I find the tenants are liable for the \$600.00 for garbage removal. I afford little weight to the tenant's response to this item as the Act still requires the tenants to leave the rental unit in a reasonably clean condition, regardless of their response related to rats in the rental unit. Therefore, I find the landlord has met the burden of proof and as a result I grant the landlord **\$600.00** as claimed for this item.

Landlord's Claim: Item 2

Consistent with my finding regarding item 1 above, I find the photo evidence supports that the tenants breached section 37(2)(a) of the Act by failing to leave the rental unit in a reasonably clean condition at the end of the tenancy. In addition, I find the tenants were negligent by leaving what the tenants described as "soiled" items behind for the landlord to deal with. Therefore, having considered the invoice before me, I find the tenants are responsible for the \$270.00 cleaning costs. As a result, I find the landlord has met the burden of proof and I grant the landlord **\$270.00** as claimed for this item.

Landlord's Claim: Item 3

The landlord has claimed \$115.50 for carpet cleaning, which was supported by the invoice before me. I find the photo evidence does not support that the carpets were left in a reasonably clean condition. In fact, the photo with the carpet cleaner shows the carpet cleaner was left with dirty water in it and that carpet was still dirty in the photo. Therefore, I find the landlord has met the burden of proof for this portion of this claim and I grant the landlord **\$115.50** for carpet cleaning as claimed. I also find that leaving a vacuum and carpet cleaner behind for disposal by the landlord to be unreasonable.

Landlord's Claim: Item 4

Section 26 of the Act applies and states that rent must be paid on the date that it is due in accordance with the tenancy agreement. As a result, January 2021 rent was due on January 1, 2021. Furthermore, section 45(1) of the Act applies and states:

Tenant's notice

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) **is not earlier than one month after the date the landlord receives the notice, and**

(b) **is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.**

[emphasis added]

Given the above, I find the earliest the tenancy could have ended for a notice from the tenants issued on December 15, 2020, was January 31, 2021 and not January 1, 2021. I also accept that the landlord accepted the January 15, 2021 effective vacancy date to

be accommodating. Although the tenants may have returned the keys on January 1, 2021, I find the tenants are liable for the unpaid rent for January 1-15, 2021, inclusive as claimed as I find the tenants breached sections 26 and 45(1) of the Act. Therefore, I find the landlord met the burden of proof and I grant the landlord **\$600.00** as claimed for this item.

As the landlord's claim had merit, I grant the landlord the recovery of their filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

Tenant's Claim

Although the tenants have claimed for twice the return of their combined deposits of \$1,200.00 for a total claim of \$2,400.00 plus the filing fee, I find the tenants have provided insufficient evidence to support how they arrived at that amount.

Furthermore, regarding rats, the tenant stated that they never wrote to the landlord during the tenancy, which I find the tenants should have done to ensure their concerns were in writing. Instead, the tenants relied on texting, and I find the landlord's response to be reasonable as the landlord has provided sufficient evidence that they hired a pest control company for a period of one year to address the tenants' concerns about rats. As a result, I find the tenants have failed to prove all four parts of the test for damages or loss regarding rats.

As a result, I will now deal with the tenants concerns about the septic tank. I find the agent to be more credible than the tenant as the tenant's testimony changed several times in terms of the number of days the tenants were without a toilet. Originally, the tenant said 4 or 5 days, then 3 days and then said even if it was for 1.5 days, it is still too long.

I prefer the agent's version of events which the agent stated that regarding the septic tank, the plumbing company was called the same day and they could not find the cover for the septic tank and found it the next day and within 1.5 days the lines were cleared and the septic tank was pumped out. I also find the texts submitted in evidence do not support that the septic issue went longer than 1.5 days.

RTB Policy Guideline 6 – Entitlement to Quiet Enjoyment states in part:

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has

made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

[emphasis added]

Given the above, while I find the landlord did not breach the Act in terms of dealing with the septic tank issue in the matter before me, and acted within what I find to be a reasonable timeframe, I do find the tenants are entitled to compensation for the 1.5 days they were without use of the bathroom of the rental unit. Therefore, I award the tenants a nominal amount of **\$100.00** to acknowledge the loss of use and impact to their entitlement to quiet enjoyment for the 1.5 days they were without the use of the bathroom. I dismiss any further amount of the tenants' claim due to insufficient evidence, without leave to reapply.

As the tenants' application had some merit, I also grant the tenants **\$100.00** for their filing fee pursuant to section 72 of the Act.

Given the above, I find the landlord's established a total monetary claim of **\$1,685.50** comprised of \$600.00 for item 1, \$270.00 for item 2, \$115.50 for item 3, \$600.00 for item 4, plus the \$100.00 filing fee. I find the tenants' established a total monetary claim of **\$200.00** comprised of \$100.00 nominal for loss of use of their toilet for 1.5 days, plus the \$100.00 filing fee.

As the tenancy began on April 1, 2019, I find the combined deposits of \$1,200.00 have accrued \$0.00 in interest under the Act and regulation. Pursuant to section 38 of the Act, I authorize the landlord to retain the tenants' full \$1,200.00 in combined deposits to offset the landlord's monetary claim of \$1,685.50, for a monetary claim balance for landlord of **\$485.50**.

As a result, I have offset the tenants' \$200.00 claim from the landlord's remaining \$485.50 monetary claim balance and I award the landlord a net monetary order pursuant to section 67 of the Act in the balance owing by the tenants to the landlord of **\$285.50**.

Conclusion

The landlord's claim is fully successful.

The tenants' claim is partially successful.

After authorizing the landlord to retain the tenants' combined deposits of \$1,200.00 from the landlord's \$1,685.50 monetary claim and then offsetting the tenants' \$200.00 claim from the landlord's monetary claim balance of \$485.50, the landlord is granted a monetary order in the net amount of \$285.50 owing by the tenants to the landlord. The monetary order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

I caution the tenants that they may be liable for all costs related to enforcing the monetary order.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenants.

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: May 26, 2021

Residential Tenancy Branch