



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vantage West Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNRL, MNDL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on January 06, 2021 (the "Application"). The Landlords applied as follows:

- For compensation for damage to the rental unit
- To recover unpaid rent
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

The Landlords filed an amendment March 25, 2021 changing the amount of compensation for damage claimed to \$34,409.90 (the "Amendment").

The Agent appeared at the hearing for the Landlords. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Agent who did not have questions when asked. I told the Agent they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Agent provided affirmed testimony.

During the hearing, I asked the Agent if the Landlords are seeking to keep the security and pet damage deposits as the online Application did not indicate they were. The Agent advised that the Landlords are seeking to keep the security and pet damage deposits. After the hearing, I looked at the original paper Application which does indicate that the Landlords are seeking to keep the security and pet damage deposits. Given this, I have considered whether the Landlords are entitled to keep the security and pet damage deposits.

The Landlords submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package, Amendment and Landlords' evidence.

The Agent testified that the hearing package, Amendment and Landlords' evidence were all served to the Tenants' email pursuant to the substituted service decision. The Agent testified that the hearing package was sent January 18, 2021. The Agent testified that the Amendment, Landlords' evidence and the substituted service decision were sent March 29, 2021. The Landlords submitted an email showing the hearing package and the substituted service decision were emailed to the Tenants January 18, 2021. The Landlords submitted emails showing the Amendment, Landlords' evidence and the substituted service decision were emailed to the Tenants March 29, 2021.

A substituted service decision was issued January 14, 2021 allowing the Landlords to serve the Tenants by email.

Based on the undisputed testimony of the Agent and emails in evidence, I am satisfied the Landlords served the Tenants with the hearing package, Amendment and Landlords' evidence in accordance with the substituted service decision. Pursuant to section 71(2)(b) of the *Residential Tenancy Act* (the "Act"), I find the Tenants were sufficiently served with the hearing package, Amendment and Landlords' evidence. Further, I find the Landlords complied with rule 3.1 of the Rules in relation to the timing of service of the hearing package. I also find the Landlords complied with rules 3.14 and 4.6 of the Rules in relation to the timing of service of the Amendment and Landlords' evidence.

I note that the Landlords had served a Condition Inspection Report and photos on the Tenants which were not before me. I allowed the Agent to upload these after the hearing given the Agent confirmed they were served on the Tenants.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for damage to the rental unit?
2. Are the Landlords entitled to recover unpaid rent?
3. Are the Landlords entitled to keep the security and pet damage deposits?
4. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	Damaged blinds, missing blind remote	\$2,000.00
2	Missing towel bars and toilet paper holders	\$95.98
3	Missing doorknob	\$26.97
4	Rail rod missing, damaged door weather stripping	\$57.19
5	Damaged carpets, two bedrooms, TV room, stairs	\$2,500.00
6	Painting garage floor	\$248.00
7	Duradeck replacement from cigarette butts on balcony	\$8,000.00
8	Paint entire house to repair wall damages and repairs to house	\$8,000.00
9	Repair damaged front door sweep	\$101.17
10	Replace missing fireplace screens and remotes, clean out fireplaces	\$751.59
11	Dump fees, repair gardens, repair tiles	\$3,029.00
12	Repair bleached and damaged grass and doorknob	\$7,000.00
13	Six bags of dog feces clean up	\$100.00
14	House cleaning	\$2,500.00
15	Filing fee	\$100.00
16	Unpaid rent	\$2,000.00
	TOTAL	\$36,509.90

A written tenancy agreement was submitted as evidence. The tenancy started October 01, 2019 and was for a fixed term ending August 31, 2020. It then became a month-to-month tenancy. Rent was \$5,290.00 per month due on the first day of each month. The Tenants paid a \$2,645.00 security deposit and \$2,645.00 pet damage deposit.

The Agent testified as follows.

The tenancy ended December 31, 2020.

The Tenants signed a mutual agreement to end the tenancy December 31, 2020. The Tenants were given free rent for November. For December, the Tenants wanted to pay \$2,000.00 in rent and have the remainder of rent come out of the security and pet damage deposits. In December, the Tenants did not pay any rent. Given this, the deposits would go towards the rent for December.

The Tenants never provided a forwarding address.

The Tenants agreed to the Landlords keeping \$3,290.00 of the security and pet damage deposits towards December rent on the mutual agreement.

Both parties did a move-in inspection and a Condition Inspection Report ("CIR") was completed. Both parties signed the CIR.

The Tenants did not appear for the move-out inspection. The Tenants were given two opportunities, one on the RTB form, to do a move-out inspection. The RTB form was posted to the door of the rental unit December 31, 2020. The Agent returned to the rental unit January 04, 2021 and the RTB form was still posted to the door of the rental unit. The Agent entered the rental unit and completed the move-out inspection. The CIR was completed and signed on move-out.

The Tenants failed to pay \$2,000.00 of December rent.

In relation to the claims for damage, the amounts claimed account for the age of the damaged items. The rental unit was fully renovated a few years before the Tenants moved in. Everything in the rental unit was only a few years old. All items claimed were present and in good condition at the start of the tenancy.

In relation to item #1, the invoice for this has been submitted. The remotes for the blinds were missing at the end of the tenancy. The Tenants had broken blinds and chains on blinds. The blinds in the basement were tattered and wrecked. The blinds were not new at the start of the tenancy but were as good as new. The cost of replacing the blinds has been reduced to \$2,000.00 to account for blinds that were replaced but not broken and to account for the age of the blinds.

In relation to item #2, towel bars and toilet paper holders were missing at the end of the tenancy. There is a receipt for this item in evidence. The photos in evidence show these items were missing.

In relation to item #3, there was a missing doorknob at the end of the tenancy. The CIR shows this. The receipt for this item has been submitted.

In relation to item #4, one of the vertical posts on the stairs was missing at the end of the tenancy. There is a receipt in evidence for this item. Further, the Tenants had ripped up weather stripping around the door which had to be replaced. The receipt for this item has been submitted.

In relation to item #5, the carpets were very badly stained at the end of the tenancy and had to be replaced. The carpet in two bedrooms, the TV room and on the stairs had to be replaced due to damage. The stairs were wet with pet urine. There were burn marks on the carpets. The carpet was fraying due to the Tenants' dog. It appeared there were bleach stains on the carpet in the bedroom. The cost of replacing the carpets has been reduced to \$2,500.00 to account for the age of the carpets. The photos in evidence show the damage to the carpets.

In relation to item #6, the Tenants had their own painting company. The Tenants were painting things in the garage and there was overspray of red and white paint all over the floor at the end of the tenancy. The photos in evidence show this damage. Further, the Tenants washed paint off things in the garage sink and there was paint splatter all over the sink.

In relation to item #7, the Tenants threw cigarette butts on the balcony and there were hundreds of cigarette burns on the deck. There were cigarettes in the vinyl track. There were melted black marks all over. There were ashes on the window where the Tenants put cigarettes out on the glass door. The Landlords had someone come and look at the balcony and they said it could not be repaired. The Landlords had to replace the deck cover. The cost of replacing the deck cover has been reduced to account for the age of the deck.

In relation to item #8, the entire rental unit was re-painted at the end of the tenancy. There was substantial wall damage throughout the rental unit. The Tenants painted over damage but did not use the same color as the original paint and so the painted areas were obvious. The Tenants ripped paint off in some areas. The Tenants painted flames on the wall of one bedroom. There was damage to baseboards, doors and the

banister. The amount claimed has been reduced to account for areas of the rental unit that were not damaged and therefore did not have to be re-painted. The company who re-painted also took care of the other damage throughout the house such as reinstalling bi-fold doors that the Tenants had removed, replacing burnt out light bulbs, replacing broken outlet covers, fixing broken hinges and reinstalling shelving that the Tenants had removed.

In relation to item #9, the Tenants' dog scratched the bottom of the front door. The Landlords had to order a new front door sweep which had to be custom ordered. The photos and invoice in evidence support this.

In relation to item #10, the fireplaces were full of garbage and cigarette butts at the end of the tenancy. The fireplaces had to be cleaned out. The fireplace screens were missing and had to be replaced. The Tenants were given 10 remotes at the start of the tenancy and only returned one. The fireplace remotes were missing at the end of the tenancy.

In relation to item #11, the invoice in evidence is for the garbage removal and landscaping company. The amount claimed is for the cost of removing garbage and damaged items. The cost includes dump fees. The company also repaired damage to tiles in the shower. The garden was so full of dog feces and dug up from the Tenants' dog that the company had to dig up the old mulch and put down new mulch.

In relation to item #12, the Tenants had one dog at the start of the tenancy and got two more dogs during the tenancy. The dogs did a lot of damage to the yard. There were hundreds of stains from dog urine. There were holes in the yard. There were dog feces everywhere. The photos show the damage done to the yard. The Landlords had to replace a huge portion of turf. The Landlords did not replace all of the turf, only the areas that were damaged. There are some items on the invoice that the Landlords could not prove the Tenants are responsible for, so these have been removed from the amount sought. The amount claimed has been reduced to account for the difficulty in determining the depreciation in the value of the grass.

In relation to item #13, the Landlords had to hire a company to clean up dog feces from the yard. The company cleaned up six garbage bags full of dog feces.

In relation to item #14, the Tenants did not clean anything in the rental unit at the end of the tenancy which is shown in the photos. The rental unit was filthy. Everything in the

rental unit had to be cleaned. The Tenants also left items behind that had to be cleaned up.

The Landlords submitted the following documentary evidence:

- A Notice of Final Opportunity to Schedule a Condition Inspection
- The CIR
- Move-in photos
- Invoices
- Photos from move-out
- Receipts

Analysis

Security and pet damage deposits

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

Based on the undisputed testimony of the Agent in relation to the move-in inspection, I do not find that either party extinguished their rights in relation to the security or pet damage deposits pursuant to section 24 of the *Act*.

Based on the undisputed testimony of the Agent and Notice of Final Opportunity to Schedule a Condition Inspection, I am satisfied the Tenants did extinguish their right to return of the security and pet damage deposits pursuant to sections 36 of the *Act*.

Further, section 38 of the *Act* states that the Landlords had 15 days from the later of the end of the tenancy or the date the Landlords received the Tenants’ forwarding address in writing to repay the security and pet damage deposits or file a claim against them. I accept the undisputed testimony of the Agent that the Tenants never provided a forwarding address. Therefore, section 38 of the *Act* has not been triggered and the Landlords were entitled to claim against the security and pet damage deposits when the Application was filed.

Section 38(4) of the *Act* states:

(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

I accept the undisputed testimony of the Agent that the Tenants agreed to the Landlords keeping \$3,290.00 of the security and pet damage deposits towards December rent on the mutual agreement. Therefore, the Landlords are entitled to keep this amount of the security and pet damage deposits pursuant to section 38(4) of the *Act*.

Compensation

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize 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.

Pursuant to rule 6.6 of the Rules, it is the Landlords as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Unpaid Rent

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept based on the written tenancy agreement that the Tenants were required to pay \$5,290.00 in rent per month by the first day of each month. Based on the undisputed testimony of the Agent, I am satisfied the Tenants failed to pay \$2,000.00 of December rent. There is no evidence before me showing that the Tenants had authority under the *Act* to withhold December rent. The Landlords are entitled to recover \$2,000.00 in unpaid rent for December.

Damages

Section 37 of the *Act* states:

- (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, 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.

I have reviewed the documentary evidence outlined above. I find the documentary evidence supports the testimony of the Agent. I had no concerns about the reliability or credibility of the Agent. The Tenants did not appear at the hearing to provide evidence or dispute any of the claims. The Agent's testimony is therefore undisputed.

Based on the undisputed testimony of the Agent and documentary evidence submitted, I am satisfied the rental unit was in good condition at the start of the tenancy with no major issues.

Based on the undisputed testimony of the Agent and documentary evidence submitted, I am satisfied the Tenants and their dogs caused the following damage during the tenancy:

- Remotes for blinds were missing
- The Tenants had broken blinds and chains on blinds
- The blinds in the basement were tattered and wrecked
- Towel bars and toilet paper holders were missing
- A doorknob was missing
- A vertical post on the stairs was missing
- The Tenants had ripped up weather stripping around the door
- The carpets were very badly stained
- The carpet on the stairs was wet with pet urine
- There were burn marks on the carpet
- The carpet was fraying due to the Tenants' dogs
- There were bleach stains on the carpet
- There was overspray of red and white paint all over the garage floor
- The Tenants left paint splatter all over the garage sink
- There were hundreds of cigarette burns on the deck
- There were cigarettes in the vinyl track on the deck
- There were melted black marks all over the deck
- There were ashes on the window where the Tenants put cigarettes out on the glass door
- There was substantial wall damage throughout the rental unit
- There were patches of paint that did not match the original paint throughout the rental unit
- The Tenants ripped paint off in some areas
- The Tenants painted flames on the wall of one bedroom
- There was damage to baseboards, doors and the banister
- Bi-fold doors had been removed
- Light bulbs were burnt out
- Outlet covers were broken
- Hinges were broken
- Shelving had been removed

- The Tenants' dogs scratched the bottom of the front door and damaged the front door sweep
- The fireplaces were full of garbage and cigarette butts
- The fireplace screens were missing
- The fireplace remotes were missing
- Tiles in the shower were damaged
- The garden was full of dog feces and dug up from the Tenants' dogs
- The Tenants' dogs had done a lot of damage to the yard
- There were hundreds of stains from dog urine in the yard
- There were holes in the yard
- There were dog feces everywhere in the yard
- The Tenants did not clean anything in the rental unit
- The rental unit was filthy
- The Tenants left items behind

I am satisfied based on the undisputed testimony of the Agent and documentary evidence that the Tenants breached section 37 of the *Act* in relation to the above issues.

I am satisfied based on the undisputed testimony of the Agent and documentary evidence that the Landlords had to address the above issues by repairing items, replacing items and cleaning. Therefore, I am satisfied the Landlords experienced loss because of the Tenants' breaches of section 37 of the *Act*.

I am satisfied based on the undisputed testimony of the Agent and documentary evidence that the amount or value of the loss was as claimed and set out in the table above and that it totalled \$34,409.90.

I am satisfied based on the undisputed testimony of the Agent and documentary evidence that the amounts claimed are reasonable and that the Landlords mitigated their loss. Many of the invoices are for more than the amount claimed. I accept that the Landlords have reduced the amounts claimed to account for the age of items. I also accept that the Landlords have reduced the amounts claimed where the invoice or receipt includes items that were not damaged by the Tenants or did not have to be replaced due to damage caused by the Tenants. Further, the Tenants did not appear at the hearing to provide evidence or argument about why the amounts claimed are not reasonable or how the Landlords failed to mitigate their loss. Therefore, I am left with the undisputed testimony of the Agent and the documentary evidence which tends to support it. In the circumstances, the Landlords have met their onus to prove on a

balance of probabilities that the amounts claimed are reasonable and that they mitigated their loss.

Given the above, I am satisfied the Landlords have proven on a balance of probabilities breaches of section 37 of the *Act* by the Tenants, that loss occurred, the amount or value of the loss and that the Landlords mitigated their loss. Therefore, I am satisfied the Landlords have proven they are entitled to the amount claimed being \$34,409.90.

Filing fee

Given the Landlords were successful in the Application, I award the Landlords reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlords are entitled to the following:

Item	Description	Amount
1	Damaged blinds, missing blind remote	\$2,000.00
2	Missing towel bars and toilet paper holders	\$95.98
3	Missing doorknob	\$26.97
4	Rail rod missing, damaged door weather stripping	\$57.19
5	Damaged carpets, two bedrooms, TV room, stairs	\$2,500.00
6	Painting garage floor	\$248.00
7	Duradeck replacement from cigarette butts on balcony	\$8,000.00
8	Paint entire house to repair wall damages and repairs to house	\$8,000.00
9	Repair damaged front door sweep	\$101.17
10	Replace missing fireplace screens and remotes, clean out fireplaces	\$751.59
11	Dump fees, repair gardens, repair tiles	\$3,029.00
12	Repair bleached and damaged grass and doorknob	\$7,000.00
13	Six bags of dog poop clean up	\$100.00
14	House cleaning	\$2,500.00
15	Filing fee	\$100.00
16	Unpaid rent	\$2,000.00
	TOTAL	\$36,509.90

Pursuant to section 58(2) of the *Act*, the claim limit for the RTB is \$35,000.00. The Landlords chose to file the Application with the RTB. The Landlords proceeded with the

Application at the hearing. The Agent did not raise the issue of the claim exceeding the RTB limit or make submissions in this regard. Therefore, I have decided the matter and award the Landlords the maximum amount of \$35,000.00. The Landlords can keep the remaining \$2,000.00 of the security and pet damage deposits pursuant to section 72(2) of the *Act*. The Landlords are issued a Monetary Order for the remaining \$33,000.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlords are entitled to \$35,000.00. The Landlords can keep the remaining \$2,000.00 of the security and pet damage deposits. The Landlords are issued a Monetary Order for the remaining \$33,000.00. This Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 14, 2021

Residential Tenancy Branch