



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1700 PENDRELL HOLDINGS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on April 15, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for damage
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

R.S., G.C. and M.S. appeared at the hearing as agents for the Landlord. The Tenant appeared at the hearing and appeared for Tenant E.B.D. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

During the hearing, the Tenant provided the full legal names of the Tenants which are reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage?
2. Is the Landlord entitled to keep the security and pet damage deposits?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Damage to gate	\$4,100.00
2	Cleaning	\$300.00
3	Filing fee	\$100.00
	TOTAL	\$4,500.00

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started April 01, 2020 and was for a fixed term ending March 31, 2021. Rent was \$2,425.00 due on or before the first day of each month. The Tenants paid a \$1,212.50 security deposit and \$1,212.50 pet damage deposit.

The parties agreed the tenancy ended March 31, 2021.

R.S. testified that the Landlord received a forwarding address from the Tenants on the Condition Inspection Report (the "CIR") on March 31, 2021. The Tenant testified that they sent their forwarding address to the Landlord by text April 13, 2021.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy.

The parties agreed that there was no final written agreement between the parties about the Landlord keeping some or all of the security or pet damage deposits.

The CIR was submitted and the parties agreed it is accurate. The parties agreed the Tenants participated in the move-out inspection but did not sign the CIR.

R.S. testified that the Landlord claimed against the pet damage deposit for cleaning due to the nature of the cleaning required and it being related to a pet. M.S. testified that

they were at the move-out inspection and there was no pet damage in the rental unit. M.S. testified that the rental unit was dirty at the end of the tenancy; however, M.S. does not know if some of the cleaning required was due to pets. The Tenant disagreed that their pet caused any damage.

#1 Damage to gate \$4,100.00

R.S. testified as follows. The Tenants hit the garage gate during move-out. The gate was put out of service and needed repairs which cost \$4,100.00 as shown in the quote submitted. The gate was repaired.

The Tenant testified as follows. The Tenants are concerned about the cost of the repair to the garage gate. The Tenants have submitted a photo showing the gate was closing prior to the repair being done. The gate was working as shown in the Tenants' photo submitted.

In reply, R.S. testified as follows. The garage gate is fragile. The gate had to be straightened and further repairs were necessary. In relation to the Tenants' photo, the repair person attended the same day as on the photo and the repair person straightened out the gate. The initial damage to the gate is shown in the Landlord's photos. R.S. thinks the gate still went up and down after the Tenants hit it; however, the bottom bar was bent and had to be repaired.

M.S. testified as follows. Tenants could go in and out of the gate after the Tenants hit it; however, it was not safe to go in and out because the gate could close at any time.

#2 Cleaning \$300.00

M.S. testified as follows. M.S. did the move-out inspection. The Tenants were aware of the cleaning fee. The rental unit was not clean. The appliances, walls and bathroom were dirty.

The Tenant testified as follows. The rental unit was not thoroughly cleaned at move-out. The Tenant did a general wipe throughout the rental unit. The parties had an understanding about bringing cleaners in to finish cleaning the rental unit. The Tenants disagree with the cost of cleaning because the Cleaning/Move-out Instructions Checklist submitted shows cleaning would be \$240.00 for six hours. The Tenants do not

understand why the Landlord is claiming more than \$240.00 because the rental unit did not require more than six hours of cleaning.

In reply, R.S. testified that the \$240.00 for six hours of cleaning shown on the Cleaning/Move-out Instructions Checklist is a minimum charge and the Landlord can charge more if further cleaning is required.

Analysis

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has 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.

When 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.

Security and pet damage deposits

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the 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 CIR and testimony of the parties, I find the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims for damage and the Landlord has claimed for cleaning.

Based on the testimony of the parties, I accept that the tenancy ended March 31, 2021.

Based on the CIR and testimony of the parties, I accept that the Tenants provided their forwarding address to the Landlord March 31, 2021 or April 13, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security and pet damage deposits or file a claim against them. Here, the Landlord had 15 days from March 31, 2021 or April 13, 2021 to repay the security and pet damage deposits or file a claim against them. The Landlord's Application was filed April 15, 2021, within time whether the 15 days is calculated from March 31, 2021 or April 13, 2021.

However, Policy Guideline 31 addresses pet damage deposits and states:

The landlord may apply to an arbitrator to keep all or a portion of the deposit **but only to pay for damage caused by a pet**. The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing. (emphasis added)

I am not satisfied based on the evidence provided that there was cleaning required due to pets because M.S. testified that there was no pet damage and did not know whether some of the cleaning required was due to pets. R.S. took the position that some of the cleaning required was due to pets; however, it is my understanding from the testimony of the agents for the Landlord that M.S. was at the move-out inspection and not R.S. and therefore I am not satisfied of R.S.'s position. The Tenant denied that their pets caused any damage. The agents for the Landlord did not point to any documentary evidence to show that some of the cleaning required was due to pets and I do not see such evidence in the documents submitted. In the circumstances, I am not satisfied that some of the cleaning required was due to pets.

Given the above, I am not satisfied the Landlord was entitled to keep or claim against the pet damage deposit. Therefore, the Landlord was required to return the pet damage deposit within 15 days of the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing pursuant to section 38(1) of the *Act*. The Landlord had not returned the pet damage deposit by October 18, 2021, the date of the hearing, and therefore did not comply with section 38(1) of the *Act* in relation to the pet damage deposit. Given this, and pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the pet damage deposit and must return double the pet damage deposit to the Tenants. The Landlord therefore must return \$2,425.00 to the Tenants. No interest is owed on the pet damage deposit as the amount of interest owed has been 0% since 2009.

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.

#1 Damage to gate \$4,100.00

Section 32 of the *Act* states:

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I accept that the Tenants hit the garage gate during move-out as I understood the parties to agree on this.

I am not satisfied based on the evidence provided that the garage gate was damaged to such an extent that repairs at a cost of \$4,100.00 were required. The Tenant raised concerns about the cost of the repairs claimed. I do not find the evidence submitted by the Landlord about damage to the garage gate compelling.

The Landlord submitted photos of the garage gate after it was hit. The photos show that the right side of the gate was higher off the ground than the left side of the gate. The photos do not show any other damage to the gate. The Landlord has indicated that the photos were taken March 30, 2021.

The Landlord submitted a quote for repair of the garage gate. The quote is dated April 08, 2021. The quote implies that a "new bottom bar and pneumatic edge for existing rolling grill" was required. The quote does state "All prices submitted based on drawings received and our site inspection". However, the quote does not provide further details such as when someone from the company attended the rental unit building to look at the garage gate, what they observed or what was wrong with the gate. I also note that the Landlord submitted a quote and not an invoice for work done.

The Tenants submitted a photo of the garage gate from March 30th at 3:29 p.m. showing that the garage gate is closed properly and the right side is no longer higher off the ground than the left side. There is no visible damage to the garage gate shown in the Tenants' photo.

R.S. testified that a repair person attended the rental unit building March 30, 2021 and straightened out the gate; however, this is not reflected in the quote dated April 08, 2021 or in other documentary evidence.

R.S. testified that the garage gate still opened and closed after the Tenants hit it but that the bottom bar was bent and had to be repaired. However, none of the photos submitted show that the bottom bar was bent and in fact the photos support that the bottom bar was not bent as there is no visible damage to the bottom bar shown in the photos.

M.S. testified that the garage gate could still open and close after the Tenants hit it but that it was not safe because the gate could close at any time. However, this is not stated in or supported by documentary evidence. Further, I find it unlikely that the Landlord waited nine days before obtaining a quote to fix the garage gate if it posed a safety risk to tenants of the building.

In the circumstances, I am not satisfied the Landlord has provided sufficient compelling evidence to justify the claim of \$4,100.00 for damage to the garage gate. This claim is dismissed without leave to re-apply.

#2 Cleaning \$300.00

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...

I accept that the rental unit was not left reasonably clean at the end of the tenancy because the Tenant acknowledged that only a general wipe down of the rental unit was done and the Tenants agreed to cleaners attending to finish cleaning. I am satisfied the Tenants breached section 37 of the *Act*.

I am satisfied the Landlord had to have cleaners attend the rental unit to finish cleaning given the parties had agreed that this would occur.

In relation to the cost of cleaning, the Landlord has not submitted an invoice or bill for cleaning.

Both parties submitted the Cleaning/Move-out Instructions Checklist which shows that cleaning for six hours would cost \$240.00. The document does state that "Charges may vary given the extent of cleaning needed."

The parties disagreed about the extent of cleaning needed and whether six hours was sufficient given the state of the rental unit at the end of the tenancy. The CIR does show that many areas of the rental unit were dirty at move-out. However, the Tenants did not indicate on the CIR that they agreed with it. Further, it is difficult to tell from the CIR the extent of cleaning required.

The Landlord has not submitted further documentary evidence to show the extent of cleaning required, such as photos of the rental unit at move-out.

M.S. provided testimony about three areas of the rental unit which required cleaning at move-out. I do not find M.S.'s testimony sufficient to prove that more than six hours of cleaning was required as I did not find the testimony sufficiently detailed to explain this.

In the circumstances, I am satisfied the Landlord is entitled to \$240.00 for six hours of cleaning based on the testimony of the parties and the Cleaning/Move-out Instructions Checklist. I am not satisfied based on the evidence that the Landlord has provided sufficient compelling evidence to prove that more than six hours of cleaning was required. Given this, I am not satisfied the Landlord is entitled to the additional \$60.00 claimed.

#3 Filing fee \$100.00

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

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Damage to gate	-
2	Cleaning	\$240.00
3	Filing fee	\$100.00
	TOTAL	\$340.00

The Landlord holds \$2,425.00 in deposits. However, as explained above, the Landlord must return double the pet damage deposit to the Tenants and therefore is considered to hold \$3,637.50 in deposits. The Landlord can keep \$340.00 of the amount held pursuant to section 72(2) of the *Act*. The Landlord must return \$3,297.50 to the Tenants and the Tenants are issued a Monetary Order in this amount.

Conclusion

The Landlord is considered to hold \$3,637.50 in deposits. The Landlord is entitled to \$340.00 and can keep this from the deposits. The Landlord must return \$3,297.50 to the Tenants who are issued a Monetary Order in this amount. This Order must be

served on the Landlord. If the Landlord fails to comply with the Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 20, 2021

Residential Tenancy Branch