



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlords under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

Both the Landlords and both the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlords and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter – Evidence

During the hearing, the Tenants testified that they had not received the Landlord’s full documentary evidence package. The Tenants submitted a copy of the email service they received from the Landlords into documentary evidence.

The Landlord testified that they had served their initial evidence package to the Tenants but that they agreed that they had not served all of the evidence submitted to the Residential Tenancy Branch to the Tenants.

The Tenants were asked to confirm what evidence they had received; the Tenants testified that they received one evidence package containing a 16-page document. I reviewed this document with the Tenants and determined that it was the same document that I had before me labelled “proof of damage.”

I noted that I had five other documents before me from the Landlord labelled, move-in inspection, move-out inspection, Proof of money owed, rtb37 monetary claim and tenancy agreement. The Tenants were asked if they had been served with these documents, and the Tenants testified that they did not have these documents.

The Landlord was asked to provide proof of service of these five documents to the Tenants. The Landlord testified that they had not submitted any documentation to support that they had served their evidence to the Tenants.

As the service of the Landlord’s documentary evidence cannot be verified, I find it appropriate that the Landlord’s documentary evidence labelled, move-in inspection, move-out inspection, Proof of money owed, rtb37 monetary claim and tenancy agreement will not be considered in my final decision. However, I accept the Tenants’ testimony that they had received one evidence package labelled “proof of damage” from the Landlords, and I will consider that evidence in my final decision.

The Landlords confirmed that they had received the Tenants’ evidence package.

Issues to be Decided

- Are the Landlords entitled to monetary order for damage?
- Are the Landlords entitled to retain the security deposit for this tenancy?
- Are the Landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the tenancy began on April 15, 2021, that rent in the amount of \$1,800.00 was payable on the fifteenth day of each month, and the Tenants had paid a security deposit of \$900.00 and a pet damage deposit of \$900.00 at the outset of this tenancy. The parties agreed that the move-in inspection document was completed by the Tenants, without the Landlords there, as requested by the Landlord. The Tenants submitted a copy of the tenancy agreement into documentary evidence.

The parties agreed that the Tenants moved out of the rental unit on March 28, 2021, and that the Landlord had a friend of theirs attend the rental unit with the Tenants on March 29, 2021, to take pictures of the rental unit. Both the Landlord and the Tenant agreed that no written move-out inspection was completed for this tenancy.

The Landlords testified that the Tenants returned the rental unit to them damaged and uncleaned at the end of the tenancy. The Landlords testified that the Tenants had patched nail holes in the walls of the rental unit with white spackle, which did not match the paint in the rental unit. The Landlord testified that it would cost them \$855.75 to have the walls repainted. The Landlord confirmed that they had not repainted the walls in the rental unit as of the date of these proceedings and that the amount they are requesting was based on two estimates, one for \$1,029.00 and the other for \$650.00.

The Landlord testified when asked by the Arbitrator that the paint in the rental unit had been four years old at the time this tenancy began.

The Tenants testified that they did not damage the walls, that they patched the holes they had made with nails and that they should not be responsible for the Landlords' repainting costs. The Tenants also testified that there were several patched parts of the walls that were present at the beginning of their tenancy. The Tenant submitted seven pictures of the rental unit taken at the beginning of their tenancy into documentary evidence.

The Landlords testified that the Tenants had returned the rental unit to them with uncleaned carpets. The Landlord testified that there were dark stains on the edges of the

carpet and a large stain in the middle of the carpet at the end of the tenancy. The Landlord confirmed that they had not cleaned the carpet in the rental unit as of the date of these proceedings and that the amount they are requesting was based on an estimate.

The Tenants testified that they did clean the carpet at the end of the tenancy but that the carpet was getting old and that some of the stains would not come out. The Tenant submitted their invoice for their carpet cleaning into documentary evidence.

The Landlord testified that there were two holes in the back of a door at the end of the tenancy. The Landlords claim the holes had been caused by the Tenants hitting the closet with the door each time they opened the door. The Landlords are requesting \$3.49 for caulking and \$4.99 for sandpaper to repair the door.

The Tenants testified that the room is designed in a way that the door can not be opened without hitting the closet and that the holes had been caused by normal wear.

The Landlord submitted a 16-page evidence package into documentary evidence to support their claim, containing nine pictures of the rental unit, four pages of text messages and the Landlord's written statement.

Analysis

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

I accept the testimony of the Landlords that they did not conduct the move-in inspection in the presence of the Tenants for this tenancy. Section 23 of the *Act* states the following:

Condition inspection: start of tenancy or new pet

23 (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*

- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and*
 - (b) a previous inspection was not completed under subsection (1).*
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
- (4) The landlord must complete a condition inspection report in accordance with the regulations.*
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
- (6) The landlord must make the inspection and complete and sign the report without the tenant if*
 - (a) the landlord has complied with subsection (3), and*
 - (b) the tenant does not participate on either occasion.*

I find that the Landlords breached section 23 of the *Act* when they did not conduct the move-in inspection with the Tenants at the beginning of this tenancy as required.

Section 24(2) of the *Act* outlines the consequence for a landlord when the inspection requirements are not met.

Consequences for tenant and landlord if report requirements not met

- 24** *(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
- (a) does not comply with section 23 (3) [2 opportunities for inspection],*
 - (b) having complied with section 23 (3), does not participate on either occasion, or*
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Pursuant to section 24(2) of the *Act*, I find that the Landlords extinguished their right to make a claim against the security deposits for damage to the residential property for this tenancy.

Additionally, I also accept the testimony of both parties that the Landlord did not conduct a written move-out inspection at the end of this tenancy. Section 35 of the *Act* states the following:

Condition inspection: end of tenancy

35 (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

*(a) on or after the day the tenant ceases to occupy the rental unit,
or*

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

I find that the Landlord breached section 35 of the *Act* when they did not conduct a written move-out inspection with the Tenants at the end of this tenancy as required. Section 36(2) of the *Act* outlines the consequence for a landlord when the inspection requirements are not met.

Consequences for tenant and landlord if report requirements not met

36 (2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Pursuant to section 36(2) of the *Act*, I find that the Landlord had again extinguished their right to make a claim against the security deposits for damage to the residential property for this tenancy.

Section 38 of the *Act* sets the requirements on how a security deposit is handled at the end of a tenancy, stating the following:

Return of security deposit and pet damage 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.*

(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].*

I accept the agreed-upon testimony of these parties, and I find that this tenancy ended on March 28, 2021. In addition, I also accept the documentary evidence submitted by

the Tenants, which shows that the Tenants provided their forwarding address to the Landlord as of March 28, 2021. Accordingly, these Landlords had until April 12, 2021, to comply with sections 38(1) and 38(5) of the *Act* by repaying the security and pet damage deposits for this tenancy in full to the Tenants, as the Landlords had extinguished their right to claim against either of these deposits for damages caused during this tenancy.

However, in this case, the Landlords did not return the security deposits, as required, but instead made a claim against the security deposit for damages even though they had extinguished their right to make this claim when they did not complete the move-in or move-out inspections as required by the *Act*.

Section 38(6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return the deposit within 15 days, the landlord must pay the tenant double the security deposits.

Return of security deposit and pet damage deposit

- 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.*

I accept the agreed-upon testimony of these parties that the Landlords had returned the \$900.00 of the pet damage deposits for this tenancy to the Tenants before the date of these proceedings. Therefore, I find that the Landlords continue to hold the \$900.00 security deposits for this tenancy in breach of the *Act* and that pursuant to section 38(6) of the *Act*, the security deposit for this tenancy has double in value to the amount of \$1,800.00 due to the Landlords breaches of the *Act*.

As for the Landlords' claims. the Landlords have requested compensation to in the amount of \$966.95, consisting of \$855.75 for painting, \$132.72 for professional carpet cleaning, \$3.49 for caulking and \$4.99 for sandpaper. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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 who is claiming compensation to provide evidence to establish that compensation is due. 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.

An Arbitrator normally looks to the move-in/move-out inspection report (the “inspection report”) as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy as it is required that this document is completed in the presence of both parties and is seen as a reliable account of the condition of the rental unit. However, as it has already been determined that this document was not completed in accordance with the *Act*, I am unable to rely on this document.

In the absence of a reliable move-in/move-out inspection report, I must rely on verbal testimony given during this hearing and the remaining documentary evidence regarding the condition of the rental unit at the beginning and the end of the tenancy.

However, throughout these proceedings, the parties, in this case, offered conflicting verbal testimony regarding the condition of the rental unit at the beginning and end of the tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As it is the Landlord who filed this claim, the Landlord holds the burden to prove this claim over and above their testimony.

I have reviewed the 16-page evidence submission made by the Landlords in its entirety, and I find that the pictures of the rental unit contained in their submissions show a reasonably clean rental unit with minor areas of wear and tear. Section 37(2) of the *Act* states the following regarding the condition of the rental unit at the end of a tenancy:

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, 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.*

After reviewing the Landlords documentary evidence, I find that the Tenants were in compliance with section 37(2) of the *Act* when they return this rental unit to the Landlords in a reasonably clean state, with a reasonable amount of wear and tear at the end of this tenancy. Additionally, I noted that the Landlord has failed to submit a copy of their invoice or estimates with their documentary evidence, that would have supported the dollar value of their claim in these proceedings.

Overall, I find that there is a lack of evidence to show that the Tenants breached the *Act* in any way during their tenancy. Therefore, I dismiss the Landlords' claim in its entirety.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in this application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I find that the Landlords breached section 23 of the *Act* when they failed to conduct the move-in inspection with the Tenants as required for this tenancy.

I find that the Landlords breached section 35 of the *Act* when they failed to conduct the move-out inspection with the Tenants as required for this tenancy.

I find that the Landlords breached section 38 of the *Act* when they failed to repay the security deposits for this tenancy to the Tenants, as required after they extinguished their right to make a claim against the deposits for this tenancy.

I find that the value of the security deposits paid for this tenancy has doubled in value due to the Landlord's breach of sections 23, 35 and 38 of the *Act*.

I order the Landlords to return the \$1,800.00 security deposits they are holding for this tenancy to the Tenants within 15 days of the date they received this decision.

I grant the Tenants a **Monetary Order** in the amount of **\$1,800.00** for the return of their remaining security deposit pursuant to section 38 of the *Act*. The Tenants are provided with this Order in the above terms, and the Landlords must be served with this Order as soon as possible. Should the Landlords fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: October 15, 2021

Residential Tenancy Branch