



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL (landlord)
 MNSDB-DR, FFT (tenant)

Introduction

This hearing dealt with applications from both parties for compensation under the *Act*:

The landlord applied for:

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the tenant's security and pet deposits pursuant to section 38; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants applied for:

- a return of the security and pet deposits pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing. All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenants' application for dispute and evidentiary package after they were sent by way of Canada Post Registered Mail. Pursuant to sections 88 and 89 of the *Act*, the landlord is found to have been duly served with all applicable documents.

The landlord stated he sent a copy of his evidence to the tenants by way of email. The landlord confirmed he did not serve a copy of the application for dispute to the tenants. The tenants confirmed receipt of the evidentiary package and stated they were comfortable proceeding with the hearing. While the landlord failed to serve the application for dispute, I find pursuant to section 71(2)(b) of the *Act* that the tenants were sufficiently served with all applicable documentation.

I advised the parties of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

Issue(s) to be Decided

Are the tenants entitled to a return of their deposits?

Is the landlord entitled to a monetary award?

Can either party recover their filing fee?

Background and Evidence

Both parties confirmed this tenancy began on May 1, 2020 and ended on March 31, 2021. Rent was paid in advance in the amount of \$87,600.00 for the entire year/term of the tenancy. A security deposit of \$10,000.00 (pet and security) was paid at the outset of the tenancy. Following discussions with the Residential Tenancy Branch, the tenants discovered they had been overcharged for deposits and asked the landlord for a return of their deposit overpayment. The landlord acknowledged charging the equivalent to 1.5 months for a security deposit and following discussions between the parties during the tenancy, the landlord returned the portion which was overpaid. The landlord confirmed that he continued to hold a security deposit of \$3,650.00 and a pet deposit of \$3,650.00.

The tenants are seeking a return of both the pet and security deposit which the landlord continues to hold. Both parties agree the tenancy ended on March 31, 2021 and the landlord acknowledged receiving the tenants forwarding address after it was placed on the counter (with the keys and fob) in the rental home on March 31, 2021. The landlord testified that he acknowledged receipt of the address on April 3, 2021 in correspondence with the tenants, while both parties testified that some further communication regarding amounts outstanding were received on April 6 and April 26, 2021. The landlord applied to retain the security and pet deposit on April 15, 2021.

All parties present at the hearing confirm no formal inspection of the property was performed at the start or conclusion of the tenancy and no condition inspection report was signed by either party.

The landlord has applied to retain the tenants' security and pet deposits in full. The landlord presented an invoice for repairs to the rental home which he alleged were required following the tenants' departure. This invoice presented a figure of \$8,799.00 while the deposits totalled \$7,300.00. I advised the landlord that I could only consider

the \$7,300.00 figure as the landlord did not provide a monetary order worksheet nor did he serve his application for dispute on the tenants indicating a desire to claim a monetary order of \$8,799.00.

The landlord argued the rental home in question was a new unit which had never been occupied. The landlord spoke specifically to the walls, trim and baseboards that had allegedly been damaged during the tenancy. Further the landlord alleged that numerous repairs were required to fix holes in the walls, to repair scratches to the stairs, disfigurement to the hardwood on the main floor, water damage in the master bedroom and a broken bedroom railing. In addition, the landlord sought to recover costs associated with power washing to remove mould from the outside of the rental home, window cleaning and snow removal. The landlord argued that the alleged damage in the property went beyond 'normal wear and tear' and required a significant amount of effort to return the property to an acceptable state.

The landlord claimed the following as damages during the course of the tenancy:

ITEM	AMOUNT
Fix walls/patch/trim/materials/paint damage to walls	2,300.00
Materials to fix hardwood flooring in the main floor	780.00
Resurface walnut floating stairs	2,300.00
Power washing	870.00
Damaged baseboard in en-suite + painting	150.00
Laundry room broken railing	50.00
Power washing in January	850.00
Snow removal and salt spreading	380.00
TOTAL	8,799.00
=	(inclusive of 5% GST)

The tenants disputed all aspects of the landlord's application to retain their deposits. Tenant E.W. confirmed she agreed to allow the landlord to retain \$300.00 from their deposits but explained she never received a confirmation from the landlord to retain this amount. Tenant E.W. explained this amount represented payment for mis-painted walls that she had attempted to repair at the end of the tenancy. The tenants provided a detailed written response to the landlord's application, along with a detailed response to the landlord's submissions. The majority of the tenants' submissions focused on their argument that these alleged damages were the result of 'normal wear and tear' and in their written response, they spoke to each of the above noted items.

Analysis – Tenants' application for return of deposits

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit and pet deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the "*Regulations*") as required at the move-in and move-out of a tenancy. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit and pet deposit at the end of a tenancy.

Based on the testimony of the landlord about the move-in and move-out inspections, I find the tenants were not offered two opportunities to do these inspections. I find the tenants did not extinguish their rights in relation to the security deposit and pet deposit under sections 24 or 36 of the *Act*.

The landlord testified that a condition inspection report was not completed on move-in or move-out as required by sections 24 and 36 of the *Act*, however, I find the landlord did not extinguish his right to claim against the security deposit because per section 24 and 36 of the *Act* extinguishment is only triggered when a landlord has applied solely for compensation related to damages. I note the landlord's claim seeks reimbursement for matters related to damages and cleaning, and therefore needs to be considered in light of their entire application.

I do however, note that the landlord had no right to claim against the tenants' pet deposit. The damages for which the landlord seeks compensation do not relate to any purported issues related to a pet. The landlord's testimony and evidence relate to issues allegedly caused by the tenants and their own interactions with the home. I note Policy Guideline #31 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."

Based on the testimony of both parties, I accept that the tenants provided the landlord with their forwarding address on March 31, 2021, the same day the tenancy ended.

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 deposit and pet damage deposit, or file a claim against the security deposit. Here, the landlord had 15 days from March 31, 2021. The landlord's Application was filed April 15, 2021, within time. I find the landlord complied with

section 38(1) of the *Act* and was entitled to claim against the security deposit, but I find pursuant to *Policy Guideline #31* that the landlord had no right to withhold or apply against the pet deposit following the conclusion of the tenancy.

I find the landlord has failed to return the pet deposit within 15 days of the conclusion of the tenancy or within 15 days of having received the tenants' forwarding address in writing (March 31, 2021). Therefore, pursuant to section 38(6) the landlord must pay the tenants double the amount of the pet damage deposit. I note again, the landlord had no right to withhold or claim against the deposit as none of his claims relate to any pet related damage.

I order the landlord to return double the tenants' pet deposit. The landlord's ability to retain the security deposit will be considered below, in light of the landlord's claim.

Analysis – Landlord's Claim

As noted above, the landlord is seeking a monetary award of \$7,300.00. Section 67 of the *Act* establishes that if damage or loss results from a breach of the *Act*, Regulations or tenancy agreement, an Arbitrator may determine the amount of that damage or loss and order a party to pay compensation to the other party.

In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. As per *Policy Guideline #16* the claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act*, Regulations or tenancy agreement on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove his entitlement to a monetary award.

The landlord argued that the damage purportedly done by the tenants rose above 'normal wear and tear,' while also providing submissions on the tenants' failure to properly clean mould from the outside of the rental home, their failure to clear the walkways of snow and their failure to clean the windows in the home.

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...

As noted above the landlord sought compensation for repairs, specifically:

- Fix walls/patch/trim/materials/paint damage to walls
- Fix hardwood flooring (stairs)
- Resurface walnut floating stairs
- Damaged baseboard
- Painting
- Broken railing

While the landlord has applied for the following cleaning charges:

- Power washing (January)
- Power washing – end of tenancy
- Snow removal and salting of property

The parties provided conflicting testimony on the point of pre-existing damages, with the tenants arguing some damage to the stairs was present at the outset of the tenancy, while also noting minor scratches to the walls and baseboards were present when they first took occupancy of the home.

In relation to the repairs required following the tenancy, the landlord has submitted photos purporting to show the damage for which he seeks compensation. The photos show wall damage, a broken baseboard, minor scratches to the floor, stairs and areas where the landlord argued required repainting. I decline to award the landlord any amount for the requested repairs. I find the landlord's failure to complete a detailed condition inspection report at the outset of the tenancy to be detrimental to his claim that the tenants caused damage that went beyond reasonable wear and tear. Further, I find the landlord has failed to prove his claim pursuant to the four-point test as outlined by *Policy Guideline #16*.

I note there are no large, obvious holes in the walls or flooring and I find the damage claimed can be reasonably anticipated by a landlord when renting a home. For these reasons, I dismiss the landlord's claim as it relates to painting, baseboards, stairs, walls and flooring. I grant the landlord compensation due to a broken railing in the bathroom as the tenants acknowledged inadvertently damaging this during the tenancy.

The remainder of the landlord's claim relates to cleaning in the form of power washing and snow removal.

Residential Tenancy *Policy Guideline #1* provides direction on the responsibilities of the landlord and tenants regarding maintenance, cleaning, and repairs of the residential property. At page 1-7 under 'Property Maintenance' it states, "Generally the tenant who lives in a single-family dwelling is responsible for...clearing snow," while it goes on to say, "The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control." While I note no specific direction is given regarding power washing, I find that power washing to remove mould would generally be considered a "major project" in line with tree cutting/pruning.

While the parties disagreed on the necessity of the snow removal during the tenancy, I accept that the tenants are generally responsible for this and that the landlord incurred expenses related to this activity as the tenants failed to remove the snow when it did fall. I decline to award any amount related to power washing, as noted above, I find this falls within the "major projects" as contemplated by *Policy Guideline #1*.

Using the invoice included in the landlord's evidence package, I grant the landlord a monetary award as follows:

- Broken Bathroom railing - \$50.00
- Snow removal and salting - \$380.00

= \$430.00

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to deduct this amount from the security deposit currently held. I order the landlord to return the balance of the security deposit.

As neither party were completely successful with their application, they must bear the cost of their own filing fee.

Conclusion

The landlord is ordered to return double the tenants' pet deposit. The landlord may retain \$430.00 from the tenants' security deposit. I grant the tenants' a monetary award as follows:

ITEM	AMOUNT
Return of Pet Deposit (2 x \$3,650.00)	7,300.00
Return of Security Deposit	3,650.00
Less Broken Bathroom railing	(-50.00)
Less Snow Removal and Salting	(-380.00)
TOTAL	10,520.00
=	

The tenants are provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 28, 2021

Residential Tenancy Branch