# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stevlow Ent. Ltd.
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes Landlord: MNDL-S, FFL
Tenant: MNSDB-DR, FFT

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for the return of the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenants and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email address for service of this decision and order.

Both parties testified that they received the other's application for dispute resolution and evidence. I find that both parties were sufficiently served for the purposes of this *Act,* pursuant to section 71 of the *Act* with the other's application for dispute resolution and evidence.

Issues to be Decided

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. Are the landlords entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
4. Are the landlords entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
5. Are the landlords entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 15, 2014 and ended on May 1, 2021. Monthly rent in the amount of $1,343.00 was payable on the first day of each month. A security deposit of $612.50 and a pet damage deposit of $200.00 were paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The landlord has not returned any portion of the security or pet damage deposits to the tenants. The tenants verbally provided their forwarding address to the landlord on May 1, 2021 and the landlord wrote it down.

Both parties agree that the landlord did not ask the tenants to complete a joint move in condition inspection report with the landlord on move in. Both parties agree that the agent left the tenants with a condition check list to fill in. Tenant O.K. testified that the

agent provided her with the check list to complete approximately 15 days after she moved in. Both parties agree that tenant O.K. filled out the check list and provided it to the agent. The check list was entered into evidence.

Both parties agree that the agent did not ask the tenants to complete a move out condition inspection report and that no move out condition inspection report was completed. Tenant O.K. testified that after the agent took a glance at the subject rental property, tenant O.K. signed the following notation on the bottom of the move in condition inspection check list:

Agree to the

- $30.00/hr to clean the bathroom and kitchen tiled floors.
- Behind the fridge
- Inside the oven

Both parties agree that a move out check list was not completed by either party.

The agent testified that the tenants left the subject rental property dirty and failed to remove fixtures installed during the tenancy and failed to fill in the drywall holes left by those fixtures. The agent testified that the following areas were left dirty:

- tile floors in the bathroom and kitchen,
- windows and windowsills,
- oven, and
- sides of refrigerator and floor under refrigerator

The agent entered into evidence photographs showing that the above areas were left dirty. The agent testified that the refrigerator was on rollers. The agent testified that even if the refrigerator wasn't on rollers, it was easy to pull out. The agent testified that she spent approximately eight hours cleaning the subject rental property, removing the fixtures and repairing the drywall and is seeking compensation from the tenants at a rate of $30.00 per hour for a total of $240.00.

Tenant O.K. testified that she agreed to the notation on the move in condition inspection check list under the following conditions:

- If the agent or cleaner was not able to get the oven or tiles cleaned, the tenants would not be responsible for those cleaning costs.
- The agent would send before and after photographs.
- The charges made by the agent were fair.

Tenant O.K. testified that the kitchen and bathroom tiles were tarnished due to wear and tear. Tenant O.K. testified that she tried multiple times to clean the tiles and the oven but the dirt and grime would not come off. The tenants testified that the refrigerator was not on rollers and that they did not move it to clean behind it because they were afraid of damaging the tiles. Tenant V.F. testified that on May 2, 2021 she emailed the agent about the refrigerator. The May 2, 2021 email was entered into evidence by the landlord and states:

> [Tenant O.K.] mentioned the walk through went well, just a few cleaning notes on behind the fridge, inside the oven and tiles in the kitchen/bathroom. I'm not sure if [tenant O.K.] mentioned but we didn't pull the fridge out because of potentially damaging the tiles since it's so snug against the wall.

The agent responded to the above email on May 8, 2021 as follows:

> [Tenants]
>
> As per your request the amount to be deducted from the security deposit as follows:
>
> The floor tiles in the kitchen and bathroom need to be scrubbed including those in the tub area. The area behind the fridge and inside the stove needs to be cleaned.
>
> The windows, sills and screen need to be cleaned.
>
> Although we are painting out the whole suite, the fixtures that were left behind need to be removed and the holes patched and prepared for painting.
>
> I estimate it will take a whole day, and the amount of $240.00 (8hrs X $30.00) will be deducted so that the amount due is:

| | |
|---|---|
| Security deposit received on June 1st, 2014 | $612.20 (no interest earned - see attached) |
| Pet security deposit | $200.00 |
| Cleaning charges deducted | ($240.00) |
| Amount owing | $572.50 |

> If you have any questions, let me know so that I may etransfer the funds as you have requested.

On May 10, 2021 tenant O.K. responded as follows:

> Hi [agent]
>
> This isn't what we agreed.
>
> When we did the final inspection, you were insistent that you could clean off the wear and tear from the tiles and the polymerised oil from inside the oven. I told you that [tenant V.F.] and I had each had put hours of hard work into both of those things and made numerous attempts at getting them as clean as possible, but you flatly refused to hear it and pressured me to agree to cleaning fees. However, I said that we would not pay for labour which does not clean these areas to an appreciable degree and you agreed to this caveat, saying you would send before and after pictures. There was no discussion of any fixtures on any holes in the walls.
>
> Eight hours is far too much time to reasonably expect a tenant to spend scrubbing tiles and over glass. You may deduct $60 to cover two hours for cleaning the fridge alcove, which is more than enough time to clean it twice. Please e-transfer the remaining $752.50 as soon as possible.

The agent testified that she was able to clean the tiles and the oven.

The tenants testified that most of the fixtures the agent is complaining of were present when they moved in. The tenants testified that they only installed three fixtures in the bathroom when the original fixtures broke. The agent testified that sometime fixtures are left after a tenancy ends if the new tenants want them. The agent testified that the fixtures may have been there when the tenants move in. The agent testified that she does not know as the tenants moved in seven years ago.

The tenants testified that the windows were dirty when they moved in. The tenants testified that if the windows were dirty on move out, then the landlord would have noted them on the notation on the move in check list.

The tenants testified that the since the landlord failed to complete joint move in and out condition inspection reports with the tenants, the landlord's right to retain their deposits

is extinguished. The tenants are seeking the return of their deposits in the amount of $812.50.

Analysis

Section 67 of the *Act* states:

> Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline #1 (PG #1) states:

> If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.

In the refrigerator photographs entered into evidence, rollers cannot be seen. Based on the testimony of both parties and the emails entered into evidence, I find that the landlord has not proved, on a balance of probabilities, that the refrigerator was on rollers or that the tenants were told how to move the appliances without injuring themselves or damaging the floor. In the May 2, 2021 email tenant V.F. clearly states that the tenants did not know how to move the refrigerator without damaging the floors. Pursuant to my above findings and P.G. #1, I find that the landlord is not entitled to collect damages for cleaning the refrigerator sides and floor beneath it.

PG #1 states:

> The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould.

Based on the photographs entered into evidence I find that the windows and window sills of the subject rental property were left dirty. Pursuant to PG #1, I find that the tenants were responsible for cleaning the windows at the end of the tenancy, even if the windows were not clean at the start of the tenancy.

I find that in failing to clean the windows the tenants breached section 37(2)(a) of the *Act* and the landlord suffered a quantifiable loss from that breach. I find that the agent cleaning the windows at a rate of $30.00 per hour to be reasonable and that no mitigation issues are present. I find that the landlord is entitled to recover one hour of labour for the window cleaning in the amount of $30.00.

The tenants testified that most of the fixtures were installed when they moved in and that they only replaced three damaged fixtures that were already in place during the tenancy. The agent testified that the fixtures may have already been installed at the start of this tenancy. I find that the agent has not proved on a balance of probabilities that the tenants installed any fixtures other than the three fixtures the tenants testified

they replaced. I accept the tenants' testimony that they only installed the three fixtures in the bathroom to replace already installed broken fixtures. I find that the tenants were under no obligation to remove any of the fixtures or to repair holes left by those fixtures.

Based on the photographs entered into evidence of the tiles and the oven and the notation on the move in condition check list, I find that the tiles and oven were left dirty. I accept the agent's testimony that she was able to clean the tiles and the oven. I do not accept the tenants' submission that the dirt on the tiles and oven can be considered reasonable wear and tear. PG #1 states that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. I find that dirt is not reasonable wear and tear as it can be cleaned and is not a permanent deterioration caused by age.

I find that in failing to clean the tiles and the oven the tenants breached section 37(2)(a) of the *Act* and the landlord suffered a quantifiable loss from that breach. I find that the agent cleaning the tiles and oven at a rate of $30.00 per hour to be reasonable and that no mitigation issues are present. I find that the landlord is entitled to recover two hours of labour for the tile and oven cleaning in the amount of $60.00.

Security Deposit

Section 88 of the *Act* sets out how documents such as forwarding addresses are to be served:

> All documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
>
> (a)by leaving a copy with the person;
>
> (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
>
> (c)by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> (d)if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
>
> (e)by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f)by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g)by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h)by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i)as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*;

(j)by any other means of service prescribed in the regulations.

Section 38 of the *Act* states:

**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]*.

(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.

(7)If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8)For the purposes of subsection (1) (c), the landlord must repay a deposit

(a)in the same way as a document may be served under section 88 (c), (d) or (f) *[service of documents]*,

(b)by giving the deposit personally to the tenant, or

(c)by using any form of electronic

(i)payment to the tenant, or

(ii)transfer of funds to the tenant.

The tenants testified that they verbally provided their forwarding address to the agent on May 1, 2021. I find that the tenants have not served the landlord with their forwarding address, in writing, in accordance with section 88 of the *Act.* The triggering event which requires the landlord to return the tenants' deposits is the service of the tenants' forwarding address in writing. The tenants did not serve the landlord with their forwarding address in writing; therefore, the landlord is not yet required to return the tenants' deposits. The tenants' application for the return of their deposits is therefore dismissed with leave to reapply.

If the tenants wish to pursue this matter further, they must first serve the landlord with a copy of their forwarding address, in writing, in accordance with section 88 of the *Act.* The tenants must then file a new application for dispute resolution.

I note that even if the landlord's right to the return of the tenants' security deposit is extinguished under sections 24 or 36 of the *Act*, the landlord is not required to return the security or pet deposits until they receive the tenants' forwarding address in writing.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the $100.00 filing fee for this application from the tenants, pursuant to section 72 of the *Act.* As the tenants were not successful in this application for dispute resolution, I find that they are not entitled to recover the $100.00 filing fee from the landlord, pursuant to section 72 of the *Act.*

The landlords are entitled to a monetary award of $190.00 comprised as follows

- cleaning windows: $30.00
- cleaning tiles: $30.00
- cleaning oven: $30.00
- filing fee: $100.00.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain $190.00 from the tenant's security deposit.

Conclusion

The tenants' application for the return of the security deposit is dismissed with leave to reapply.

The tenants' application for the $100.00 filing fee is dismissed without leave to reapply

The landlord is entitled to retain $190.00 from the tenants' security deposit.

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: November 16, 2021