Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL (Landlords)
MNSDB-DR, FFT (Tenants)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties (the "Applications").

The Landlords filed the application May 04, 2021 (the "Landlords' Application"). The Landlords applied as follows:

- For compensation for damage
- To recover unpaid rent
- To keep the security deposit
- For reimbursement for the filing fee

The Tenants filed the application October 05, 2021 (the "Tenants' Application"). The Tenants applied as follows:

- For return of the security deposit
- For reimbursement for the filing fee

The Landlords and Tenants appeared at the hearing. I explained the hearing process to the parties. 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.

At the hearing, the Tenants advised that they are seeking double the security deposit back. The parties agreed the pet damage deposit has already been returned to the Tenants.

During the hearing, both parties sought compensation not outlined in the Applications, in Amendments or on Monetary Order Worksheets. I did not allow the parties to amend the Applications at the hearing given the lack of notice to the other party about the additional compensation sought.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Landlords confirmed receipt of the hearing package and evidence for the Tenants' Application.

At first, the Tenants confirmed receipt of the hearing package and evidence for the Landlords' Application and did not raise any issues about this. However, during the hearing, the Tenants stated that they did not receive page three of the Notice of Dispute Resolution Proceeding. Further, the Tenants took issue with when the Landlords served invoice evidence on them. The Tenants testified that they received the invoice evidence October 19, 2021.

The Landlords testified that all four pages of the Notice of Dispute Resolution Proceeding were served on the Tenants. The Landlords testified that they served the invoice evidence on an adult who lives with the Tenants on October 21, 2021.

In relation to the Notice of Dispute Resolution Proceeding, I am not satisfied based on the evidence provided that the Tenants did not receive page three of four of the Notice of Dispute Resolution Proceeding. The Landlords testified that they served all four pages of the Notice of Dispute Resolution Proceeding on the Tenants. There would be no reason for the Landlords to remove page three of four of the Notice of Dispute Resolution Proceeding when serving the package. The Tenants originally took the position that they received the hearing package from the Landlords and did not raise any issue about service until mid-way through the hearing. It would have been obvious to the Tenants when they received the hearing package that a page was missing, if it was, as the pages of the Notice of Dispute Resolution Proceeding are labelled 1/4, 2/4, 3/4 and 4/4. If the Tenants did not receive page 3/4, I would expect them to have contacted the Landlords or RTB about this in order to receive page 3/4 prior to the hearing. Further, I would expect the Tenants to have raised this issue at the outset of the hearing when I reviewed the Landlords' Application with the parties and confirmed service of the hearing package for the Landlords' Application. When the Tenants did raise an issue with service, they first testified that they did not receive the Notice of

Dispute Resolution Proceeding at all. The Tenants then changed their testimony and stated that they received the Notice of Dispute Resolution Proceeding but not page 3/4, the one page I was referring the Tenants to. In the circumstances, I am not satisfied the Tenants did not receive page three of the Notice of Dispute Resolution Proceeding and I am satisfied the Tenants were properly served with the Notice of Dispute Resolution Proceeding.

In relation to the invoice evidence, there is no issue that it was served October 19 or 21, 2021. The Landlords did not seem to remember the date the invoice evidence was served and therefore I prefer the evidence of the Tenants on this point. Rule 3.14 of the Rules required the Landlords to serve their evidence no later than 14 days before the hearing. Given the definition of "days" set out in the Rules, the first and last day are excluded when counting the timeline. The Landlords therefore had to serve their evidence on the Tenants no later than October 17, 2021. The Landlords served their evidence two days late and therefore failed to comply with the Rules.

Rule 3.17 of the Rules states that evidence not served in accordance with the Rules may be excluded. I heard the parties on this issue during the hearing. The Tenants took the position that the invoice evidence should be excluded because they received it after their ability to provide evidence to dispute it. The Landlords took the position that the invoice evidence should be admitted because the damages have not been repaired and there is still damage in the rental unit.

Pursuant to rule 3.17 of the Rules, I exclude the invoice evidence because it was served late and I am satisfied it would be unfair to consider evidence that the Tenants did not have sufficient time to respond to.

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

Issues to be Decided

Landlords' Application

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 deposit?

4. Are the Landlords entitled to reimbursement for the filing fee?

Tenants' Application

5. Are the Tenants entitled to return of double the security deposit?

6. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started March 15, 2020. Both parties agreed the tenancy was for a fixed term of one year. Rent was $1,650.00 per month due on the first day of each month. The Tenants paid a $825.00 security deposit and $250.00 pet damage deposit.

Tenants' Application

The parties agreed the tenancy ended April 16, 2021.

The parties agreed the Tenants provided the Landlords with their forwarding address on the Condition Inspection Report (the "CIR") on April 16, 2021.

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

The parties agreed the Tenants did not agree to the Landlords keeping the security deposit.

I told the Landlords they were one day late in filing the Landlords' Application and I heard the Landlords on this point. The Landlords testified that they were in a specific location around when they filed the Landlords' Application because Landlord C.A.'s brother was ill and they needed to assist him. The Landlords said they did not provide evidence of this for the hearing.

The CIR was submitted and the parties agreed it is accurate. The parties agreed the move-out inspection occurred April 16, 2021.

Landlords' Application

The Landlord sought the following compensation:

Item	Description	Amount
1	Damages to wall, ceiling and crown molding Discoloration of kitchen floor in three places Damage to driveway due to steel container being on it for extended period	$825.00
2	Recover unpaid rent	$825.00
3	Filing fee	$100.00
	TOTAL	**$1,750.00**

#1 Damages to wall, ceiling and crown molding

The Landlords sought compensation for damage to parts of a wall, the ceiling and the crown molding in the rental unit. The Landlords testified that the Tenants tried to remove a wall in the rental unit despite being told not to and damaged the areas noted as a result. The Landlords relied on photos in evidence. The Landlords sought $300.00 for this claim.

The Tenants denied that they damaged parts of a wall, the ceiling and the crown molding in the rental unit. The Tenants pointed to their photos; however, the Tenants did not have photos showing the same area as the Landlords' photos where the alleged damage was. The Tenants submitted that the Landlords' photos are out of focus and do not show the damage.

I referred to the CIR and asked the Tenants about their agreement to the CIR. The Tenants took the position that the CIR does not show the damage claimed.

#1 Discoloration of kitchen floor in three places

The Landlords sought compensation for a cigarette burn on the kitchen floor. The Landlords relied on photos in evidence. The Landlords acknowledged the cigarette

burn is not referenced on the CIR and took the position that they wanted to get the move-out inspection over with due to the hostile relationship between the parties.

The Tenants testified that they did not cause the cigarette burn on the kitchen floor. The Tenants testified that the burn was there prior to them moving in. The Tenants submitted that the floor damage is not properly supported by evidence. The Tenants pointed out that the CIR does not reference a cigarette burn. The Tenants also submitted that they do not know if the mark was caused by the Landlords.

#1 Damage to driveway due to steel container being on it for extended period

The Landlords sought compensation for damage to the driveway caused by the Tenants' storage bin. The Landlords testified that they plan to repair the damage for $55.00. The Landlords acknowledged the driveway damage is not shown on the CIR. The Landlords could not point to any documentary evidence to support that there was damage to the driveway at the end of the tenancy.

The Tenants testified that they did not see any damage to the driveway at the end of the tenancy.

#2 Recover unpaid rent

The Landlords withdrew this claim.

Analysis

Pursuant to rule 6.6 of the Rules, it is the applicant who has the onus to prove their 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.

Tenants' Application

Security deposit

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

Based on the CIR, 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 deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlords extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims that are solely for damage to the rental unit and the Landlords originally claimed for unpaid rent.

Based on the testimony of both parties, I accept that the tenancy ended April 16, 2021.

Based on the testimony of both parties, I accept that the Tenants provided the Landlords with their forwarding address April 16, 2021.

Pursuant to section 38(1) of the *Act*, 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 deposit or file a claim against it. The Landlords' Application was filed May 04, 2021, one day late.

Section 66(1) of the *Act* states:

> 66 (1) The director may extend a time limit established by this Act **only in exceptional circumstances**, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review]. (emphasis added)

Policy Guideline 36 deals with extending a time period and states:

> Exceptional Circumstances
>
> The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. **Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.**
>
> Some examples of what might not be considered "exceptional" circumstances include:
>
> - the party who applied late for arbitration was not feeling well
> - the party did not know the applicable law or procedure
> - the party was not paying attention to the correct procedure
> - the party changed his or her mind about filing an application for arbitration
> - the party relied on incorrect information from a friend or relative
>
> Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:
>
> - the party was in the hospital at all material times
>
> **The evidence which could be presented** to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.
>
> The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:
>
> - the party did not wilfully fail to comply with the relevant time limit
> - the party had a bona fide intent to comply with the relevant time limit
> - reasonable and appropriate steps were taken to comply with the relevant time limit

- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

(emphasis added)

I decline to extend the time limit for the Landlords to file their claim against the security deposit because the Landlords have not provided compelling evidence to show that they could not have filed the Landlords' Application within 15 days of April 16, 2021.

I find the Landlords failed to comply with section 38(1) of the *Act*. Section 38(6) of the *Act* states:

> (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.

The Landlords must pay the Tenants double the security deposit being $1,650.00. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

The Landlords are still entitled to claim for compensation pursuant to section 67 of the *Act* and I consider that now.

Landlords' Application

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.

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…

#1 Damages to wall, ceiling and crown molding

I find the CIR does refer to the damage claimed by the Landlords as it states, “wall removal repair” and shows the area as “Good” on move-in and “Poor” on move-out. Further, there is an arrow to another line of the CIR which states, “marks as listed above” and again shows the area as “Good” on move-in and “Poor” on move-out. The Tenants agreed with the CIR at move-out as indicated on page three.

I note that the Landlords’ text messages show that the Tenants asked to remove a wall in the rental unit during the tenancy.

I note that there is a letter in the Landlords’ materials dated January 31, 2021 that references the Tenants trying to remove a wall in the rental unit.

The Landlords have submitted photos of the damage claimed and I find these photos clear.

The Tenants’ photos do not assist in relation to the damage claimed because none of them show the same area as the Landlords’ photos, being the area of the damage.

The Tenants did not point to other documentary evidence to support their position and I do not see such documentary evidence in their materials.

I am satisfied based on the evidence of the Landlords that the Tenants damaged parts of a wall, the ceiling and the crown molding in the rental unit. The Landlords sought $300.00 for this issue and I find this amount reasonable when I consider the cost of hiring someone and paying them for their time, labour and materials to repair the damage shown in the photos. I award the Landlords $300.00.

#1 Discoloration of kitchen floor in three places

I decline to award the Landlords compensation for this item given the damage claimed is not noted on the CIR and therefore the Landlords have failed to prove the Tenants caused the damage. I note that the Landlords were required pursuant to the *Act* to conduct move-in and move-out inspections and are expected to conduct these properly and thoroughly regardless of the relationship between the parties.

This request is dismissed without leave to re-apply.

#1 Damage to driveway due to steel container being on it for extended period

I decline to award the Landlords compensation for this item given the conflicting testimony of the parties about whether the Tenants caused damage to the driveway and the lack of further evidence to support the Landlords' position.

This request is dismissed without leave to re-apply.

#2 Recover unpaid rent

This claim is withdrawn at the request of the Landlords.

#3 Filing fee (both Applications)

The filing fee is awarded when parties are successful in their claim. Here, the Landlords were partially successful in their claim and the Tenants were partially successful in their claim. In the circumstances, the parties can bear the cost of their own filling fees.

Summary

In summary, the Landlords are entitled to the following:

Item	Description	Amount
1	Damages to wall, ceiling and crown molding Discoloration of kitchen floor in three places Damage to driveway due to steel container being on it for extended period	$300.00
2	Recover unpaid rent	Withdrawn
3	Filing fee	-
	TOTAL	**$300.00**

The Landlords must pay the Tenants double the security deposit being $1,650.00. However, the Tenants owe the Landlords $300.00 and this can be deducted from the $1,650.00 pursuant to section 72(2) of the *Act*. Therefore, the Landlords are only required to return $1,350.00 to the Tenants. The Tenants are issued a Monetary Order in this amount.

Conclusion

The Tenants are issued a Monetary Order for $1,350.00. This Order must be served on the Landlords. If the Landlords fail to comply with this 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: November 05, 2021

Residential Tenancy Branch