



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, 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 June 19, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for monetary loss or other money owed
- For compensation for damage to the rental unit
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

The Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Landlord. I told the Landlord they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that the hearing package and evidence were sent to the Tenants on July 16, 2021 by registered mail to a forwarding address provided by the Tenants. The Landlord submitted documentary evidence of service which includes Tracking Numbers 1 and 2. I looked Tracking Numbers 1 and 2 up on the Canada Post website which shows the packages were delivered July 19, 2021.

Based on the undisputed testimony of the Landlord, documentary evidence of service and Canada Post website information, I am satisfied the Tenants were served with the

hearing package and Landlord's evidence in accordance with sections 88(d) and 89(1)(d) of the *Act*. Based on the Canada Post website information, I am satisfied the Tenants received the hearing package and Landlord's evidence July 19, 2021. I am also satisfied the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

The Landlord was 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 monetary loss or other money owed?
2. Is the Landlord entitled to compensation for damage to the rental unit?
3. Is the Landlord entitled to keep the security or pet damage deposits?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Lock re-key	\$62.17
2	Carpet replacement	\$4,200.00
3	Garbage removal	\$1,600.00
4	Painting	\$3,360.00
5	Cleaning	\$540.00
6	Loss of use	\$1,768.00
7	Filing fee	\$100.00
	TOTAL	\$11,630.17

A written tenancy agreement was submitted as evidence. The tenancy started May 01, 2015 and was for a fixed term ending April 30, 2016. The tenancy then became a month-to-month tenancy. Rent at the start of the tenancy was \$1,700.00 per month. The Tenants paid a \$850.00 security deposit and \$850.00 pet damage deposit.

The Landlord testified as follows.

The Tenants moved out of the rental unit around May 31, 2021.

The Tenants provided their forwarding address to the Landlord June 02, 2021.

The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy and the Tenants did not agree to the Landlord keeping the security or pet damage deposits.

The Condition Inspection Report (the "CIR") in evidence is accurate. A copy of the move-in CIR was provided to the Tenants by email within a few days of the move-in inspection.

The Landlord did a move-out inspection on their own June 11, 2021. The Tenants did not participate in the move-out inspection. The Tenants were given two opportunities, one on the RTB form, to do a move-out inspection. The Landlord completed the CIR and provided a copy to the Tenants with the evidence for the hearing by registered mail to the Tenant's forwarding address July 16, 2021.

The Landlord kept the pet damage deposit due to the stained carpet which was soaked with pet urine and feces.

#1 Lock re-key \$62.17

The Landlord sought the cost to rekey locks because the Tenants did not return keys to the rental unit at the end of the tenancy. The Landlord relied on term three in the addendum and a receipt for \$62.17 in evidence.

#2 Carpet replacement \$4,200.00

The Landlord sought the cost of replacing carpets in the rental unit because the Tenants left the carpets dirty and soaked with pet urine and feces. The Landlord testified that the pet urine and feces had soaked through the carpet to the underpad and the carpet had to be replaced. The Landlord relied on photos showing the condition of the carpet at the start and end of the tenancy. The Landlord relied on an invoice showing the cost of replacing the carpet as \$4,200.00.

#3 Garbage removal \$1,600.00

The Landlord sought the cost of garbage removal because the Tenants left items in the rental unit at the end of the tenancy. The Landlord relied on photos of the items left behind by the Tenants. The Landlord testified that they hired someone to remove, store and then get rid of the items. The Landlord relied on an invoice showing the cost of \$1,600.00 for garbage removal.

#4 Painting \$3,360.00

The Landlord sought the cost of painting the rental unit due to the Tenants leaving marks and damage on walls throughout the unit. The Landlord testified that there was damage in every room of the rental unit at the end of the tenancy. The Landlord relied on photos showing the damage. The Landlord testified that some of the damage resulted from water damage caused by the Tenants. The Landlord relied on a receipt for \$3,360.00 for painting.

#5 Cleaning \$540.00

The Landlord sought the cost of cleaning the rental unit because the Tenants did not do any cleaning at the end of the tenancy. The Landlord testified that they had to hire cleaners which cost \$540.00 and relied on photos and an estimate in evidence.

#6 Loss of use \$1,768.00

The Landlord sought the equivalent of June rent. The Landlord testified that they served the Tenants with a Two Month Notice pursuant to section 49 of the *Act* with an effective date of May 31 or June 01, 2021. The Landlord testified that the Tenants did not pay May rent and therefore received one month of free rent pursuant to the Two Month Notice. The Landlord testified that their mother was supposed to move into the rental unit and did; however, their mother could not use the upstairs of the rental unit for June and part of July due to the damage caused by the Tenants and the required repairs. The Landlord also testified that they could not access the rental unit until June 11, 2021 given how the Tenants ended the tenancy.

Documentary Evidence

The Landlord submitted the following relevant documentary evidence:

- Written submissions
- Photos
- The CIR
- Invoices, estimates and receipts
- The tenancy agreement

Analysis

Security and pet damage deposits

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to 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.

Section 24 of the *Act* states:

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

(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.

Section 18 of the *Regulations* states:

18 (1) The landlord must give the tenant a copy of the signed condition inspection report

- (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and

- (b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of

- (i) the date the condition inspection is completed, and
 - (ii) the date the landlord receives the tenant's forwarding address in writing.

(2) The landlord must use a service method described in section 88 of the Act [service of documents].

Based on the undisputed testimony of the Landlord and CIR, I find the Tenants participated in the move-in inspection and therefore did not extinguish their rights in relation to the security or pet damage deposits pursuant to section 24 of the *Act*.

Based on the undisputed testimony of the Landlord and CIR, I accept that the Landlord participated in the move-in inspection, completed the CIR and provided a copy of the move-in CIR to the Tenants as required. I note that the Landlord emailed the move-in CIR to the Tenants which was not a form of service permitted under section 88 of the *Act* at the time; however, it is currently a permitted form of service under section 88 of the *Act* and I find pursuant to section 71(2) of the *Act* that the CIR was sufficiently served on the Tenants at move-in. I find the Landlord did not extinguish their rights in relation to the security or pet damage deposits pursuant to section 24 of the *Act*.

Section 36 of the *Act* states:

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [2 opportunities for inspection],
and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the 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 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

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

Based on the undisputed testimony of the Landlord and CIR, I accept that the Landlord gave the Tenants two opportunities to do a move-out inspection as required. Based on the same evidence, I accept that the Landlord completed a move-out inspection, completed the CIR and provided a copy of the CIR to the Tenants as required. Based on the same evidence, I accept that the Tenants did not participate in the move-out inspection and therefore extinguished their right to return of the security and pet damage deposits pursuant to section 36(1) of the *Act*.

Given the Tenants extinguished their right to return of the security and pet damage deposits, it is not necessary to consider whether the Landlord complied with section 38(1) of the *Act* because section 38(2) of the *Act* states:

(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].

The Landlord can keep the security and pet damage deposits because the Tenants extinguished their right to return of these.

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, 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.

The meaning of “reasonable wear and tear” is set out in Policy Guideline 1 as follows:

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. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

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

#1 Lock re-key \$62.17

Based on the undisputed testimony of the Landlord and CIR, I accept that the Tenants did not return keys to the rental unit at the end of the tenancy in breach of section 37(2)(b) of the Act. I accept that the Landlord had to rekey the locks in the rental unit due to the Tenants' breach. Based on the receipt, I accept that it cost \$62.17 to rekey the locks and I find this amount reasonable. Further, the Tenants did not attend the hearing to dispute this amount. I award the Landlord \$62.17.

#2 Carpet replacement \$4,200.00

#3 Garbage removal \$1,600.00

#4 Painting \$3,360.00

#5 Cleaning \$540.00

Based on the undisputed testimony of the Landlord, photos and CIR, I accept that the Tenants left the carpet dirty and damaged at the end of the tenancy, left items in the rental unit, caused wall damage and did not clean the rental unit at the end of the

tenancy in breach of section 37(2)(a) of the *Act*. I accept that the Landlord had to replace the carpets, have items removed from the rental unit, paint the rental unit and hire someone to clean the rental unit due to the Tenants' breaches. Based on the invoices, receipts and estimates, I accept that it cost the Landlord \$4,200.00 in relation to carpet replacement, \$1,600.00 in relation to garbage removal, \$3,360.00 in relation to painting and \$540.00 in relation to cleaning and I find these amounts reasonable. Further, the Tenants did not attend the hearing to dispute the amounts sought. I award the Landlord the amounts sought.

#6 Loss of use \$1,768.00

In relation to loss of use, I have accepted that the Tenants breached section 37 of the *Act* in relation to the condition in which they left the rental unit. I accept the undisputed testimony of the Landlord that the Tenants' breaches resulted in further loss being loss of use of the rental unit, or a portion of the rental unit, for June and into July of 2021. I am satisfied the amount claimed for the loss of use is reasonable and note that the Tenants did not appear at the hearing to dispute the amount. I award the Landlord \$1,768.00.

#7 Filing fee

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

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Lock re-key	\$62.17
2	Carpet replacement	\$4,200.00
3	Garbage removal	\$1,600.00
4	Painting	\$3,360.00
5	Cleaning	\$540.00
6	Loss of use	\$1,768.00
7	Filing fee	\$100.00
	TOTAL	\$11,630.17

The Landlord is entitled to \$11,630.17. Pursuant to section 72(2) of the *Act*, the Landlord can keep the security and pet damage deposits. The Landlord is issued a Monetary Order for the remaining \$9,930.17 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$11,630.17. The Landlord can keep the security and pet damage deposits. The Landlord is issued a Monetary Order for the remaining \$9,930.17. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: January 12, 2022

Residential Tenancy Branch