Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenants: MNSDB-DR, FFT
For the landlord: MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with a cross application. The tenants' application pursuant to the Residential Tenancy Act (the Act) is for:

- an order for the landlord to return the pet damage deposit under section 38; and
- an authorization to recover the filing fee, under section 72.

The landlord's application pursuant to the Act is for:

- a monetary order for compensation for damage and loss under the Act, the Residential Tenancy Regulation (the Regulation) or tenancy agreement, under section 67;
- an authorization to retain the tenants' security and pet damage deposits (the deposits), under Section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants ND (the tenant) and TW and landlord MS attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

Preliminary Issue – Service of the tenants' application

The landlord confirmed receipt of the registered mail package containing the notice of hearing, the interim decision and the evidence (the tenants' materials) in August 2021. I

find the tenants served the tenants' materials in accordance with section 89(1)(c) of the Act.

Preliminary Issue – Service of the landlord's application

The tenant confirmed receipt of the registered mail packages containing the notice of hearing and the evidence (the landlord's materials) in August 2021. I find the landlord served the landlord's materials in accordance with section 89(1)(c) of the Act.

The landlord confirmed receipt of a second response evidence package in person on January 28, 2021. The landlord affirmed she did not have enough time to review this evidence.

Rule of Procedure 3.15 states:

> **3.15 Respondent's evidence provided in single package**
> Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.
> **The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.**
>
> (emphasis added)

The tenants served the January 28, 2021 evidence package seven days before the hearing.

Rule of Procedure states that: "In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded."

Thus, I find the tenants' package served on January 28, 2021 was served one day late and is excluded.

Issues to be Decided

Are the tenants entitled to:

1. an order for the landlord to return the pet damage deposit?
2. an authorization to recover the filing fee?

Is the landlord entitled to:

1. a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement?
2. an authorization to retain the deposits?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's and tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the applicants' obligation to present the evidence to substantiate their application.

Both parties agreed the tenancy started in September 2019 and ended on April 30, 2021. Monthly rent was $1,800.00, due on the last day of the prior month. At the outset of the tenancy a security deposit of $900.00 and a pet damage deposit of $900.00 were collected. The landlord returned $700.00 by May 25, 2021 and holds in trust $200.00 from the pet damage deposit and $900.00 from the security deposit. The tenancy agreement was submitted into evidence.

Both parties agreed to conduct the move out inspection on May 11, 2021. The tenants provided their forwarding address in writing on May 11, 2021 and authorized the landlord in writing to retain from the security deposit $100.00 for cleaning expenses during the move out inspection. The tenants authorized the landlord to hold in trust $800.00 for compensation for the garage damage until the tenant's insurance analyzes the claim for the garage damage. At the hearing the tenants authorized to permanently retain $800.00 for the garage damage.

The condition inspection report (the report) was submitted into evidence. It says:

> End of tenancy: Damage to the rental unit or residential property for which the tenant is responsible: Garage door, structure, entry door and possibly contents inside garage storage for moisture, rodents.
> Agree to the following deductions from the security deposit and/or pet damage deposit: Security deposit: 100 cleaning. 800 to be released after the garage door repairs.

Signed: ND.

The landlord affirmed she forgot to complete the condition at the end of the tenancy in the report.

The tenants are claiming for the return of double the pet damage deposit minus the $700.00 returned late.

The landlord is claiming cleaning expenses in the amount of $200.00, as the tenants did not clean the furnished one bedroom, 900 square feet rental unit when the tenancy ended. The landlord stated she cleaned the rental unit for 5 hours with her mother. The landlord testified the rental unit had stains on the countertop, the stove and the doors were not clean and there was dog hair on top of a table. The landlord submitted into evidence photographs showing the state of cleanliness on May 11, 2021.

The tenant said the rental unit was clean when the tenancy ended and that he authorized the landlord to retain $100.00 during the move out inspection because he was under duress.

The landlord affirmed she was very friendly during the move out inspection and there was no duress.

The landlord is claiming painting expenses in the amount of $50.00, as the tenants caused several chips in the walls of the living room, corridor and bedroom. The landlord painted the walls for about 30 minutes. The landlord is claiming the amount of $50.00 for her labour and for the painting supplies. The suite was painted before the tenancy started and it was in perfect conditions at the outset of the tenancy. The landlord submitted 5 photographs showing paint chips.

The tenant stated there were only 3 or 4 chips in the walls.

The landlord is claiming oil cleaning expenses in the amount of $50.00, as the tenants' vehicle leaked oil on the driveway. The tenants did not share the driveway. The landlord cleaned the driveway for about 2.5 hours. The landlord submitted three photographs into evidence showing an oil spill on the driveway.

The tenant testified he is not responsible for the oil spill and that the oil spill may have happened after the tenancy ended.

The landlord is claiming litigation expenses in the amount of $15.58 for registered mail and $10.50 for printing documents.

The landlord is claiming garage repair expenses in the amount of $9,735.95, as she incurred the following expenses: $6,347.25 for the garage door carpentry repair, $2,211.28 for the installation, $815.85 for moving the belongings from the garage to a storage site, $300.00 for moving the belongings back to the garage after the repair, $44.79 for the garage door frame and $16.78 for tarps.

The landlord said that on April 29, 2021 the tenant backed his vehicle into the garage door and damaged it. The landlord was authorized to store her personal belongings in the garage. As the landlord could not open the garage door after the vehicle incident and she needed to remove her personal belongings from the garage, the landlord cut the garage door and covered it with tarps.

The landlord submitted into evidence a quote for the garage door repair in the amount of $13,808.55. This quote includes the repair, installation and moving cost of the belongings. The landlord was able to hire a contractor less expensive and her losses with the repair, installation and moving costs totalled $9,735.95. The landlord affirmed she paid the amount claimed and submitted the receipts to the tenant's insurance company.

The landlord is claiming $10,898.00 for her time to coordinate the repair.
The landlord stated she worked a substantial number of hours to coordinate the repair.

The landlord testified the tenant damaged 4 chairs, 1 office desk and 2 tabletops (the items) that were stored next to the garage door when he caused the accident. The landlord said the cost to replace damaged items was $1,201.92. The landlord submitted into evidence photographs showing the damaged items.

The total cost for the garage repair, the landlord's time to coordinate the repair and the damaged items is $21,835.87.

The landlord is also claiming $767.99 because she used her line of credit to pay for the garage repair and she paid this amount of interest. The landlord submitted into evidence part of a bank document stating: "line of credit: $38,282.95".

The landlord affirmed the tenant's insurance offered to pay $8,689.02 for the garage damages. The tenant's insurance email states:

> I have evaluated your file based on the information obtained to date and a fair, all-inclusive settlement at this time would be $8,689.02. We have considered the cost of your repairs based on the quotation supplied by [redacted for privacy] as this quotation covered all the work needed including the moving/storage of contents and the new garage door. Please note depreciation was not applied to these costs. Also please note the following items have not been considered as our Insured's policy will only considered the direct loss and damages sustained as a result of this motor vehicle incident.
> 1. Your costs associated with organization and time.
> 2. Moldy table top refinishing
> I have enclosed a Property Damage Release for your signature. Please sign the Release where indicated, have your signature witnessed, and then return the Release to my email address. Once the Release is received back I will have the cheque issued to you and this will conclude your file.

The tenant stated he does not agree to pay the amount claimed because the landlord did not prove the amount of the losses, the quote is not signed, and the insurance should cover the garage repair cost. The tenant testified the items were only removed four months after the accident and the landlord did not mitigate her losses.

The landlord submitted into evidence a monetary worksheet indicating a claim in the total amount of $22,261.95.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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. 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.

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 the case is on the person making the claim.

Report

Regulation 20 states:

> Standard information that must be included in a condition inspection report
> (1)A condition inspection report completed under section 23 or 35 of the Act must contain the following information:
> […]
> f) a statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable: (i)entry; (ii) living rooms; (iii) kitchen […]

The report does not contain a statement about the state of repair and general condition at the end of the tenancy.

I find the report does not comply with regulation 20.

Section 35(3) requires the landlord to complete the report in accordance with the regulations.

Section 36(2) of the Act states:

> 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.

I find the landlord extinguished her right to claim against the deposits when she finished the move out inspection and did not complete the report in accordance with regulation 20, per section 36(2)(c) of the Act.

Regulation 21 provides:

> Evidentiary weight of a condition inspection report
> 21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary

I find the report has no evidentiary weight, as the landlord did not complete it in accordance with the regulations.

Deposits

Section 38(1) of the Act requires the landlord to either return the deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The forwarding address was provided in writing on May 11, 2021 and the tenancy ended on April 30, 2021. The tenants authorized the landlord to retain the $900.00 security deposit. The landlord returned $700.00 from the pet damage deposit and retained the amount of $200.00.

Residential Tenancy Branch Policy Guideline 17 states:

> Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
> if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
> […]
> If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act.

I note the tenants authorized the landlord to retain the security deposit in the amount of $100.00 for cleaning expenses and to hold the amount of $800.00 for garage damages during the move out inspection and at the time the landlord's right to claim against the deposits had not yet been extinguished.

In accordance with section 38(6)(b) of the Act, as the landlord extinguished her right to claim against the deposits and did not return the full amount of the pet damage deposit within the timeframe of section 38(1) of the Act, the landlord must pay the tenants double the amount of the pet damage deposit she retained.

Residential Tenancy Branch Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

> The following examples illustrate the different ways in which a security deposit may be doubled when an amount has previously been deducted from the deposit:
> Example A: A tenant paid $400 as a security deposit. At the end of the tenancy, the landlord held back $125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held.
> The arbitrator doubles the amount paid as a security deposit ($400 x 2 = $800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $525.00 ($800 - $275 = $525).

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to a monetary award of $1,100.00 (double the pet deposit of $900.00 minus the $700.00 returned).

Cleaning expenses

The parties offered conflicting testimony about duress during the move out inspection. 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.

The tenants did not provide any documentary evidence to support their claim that they suffered duress during the move out inspection. The tenants did not call any witnesses. I find the tenants failed to prove, on a balance of probabilities, that they suffered duress during the move out inspection.

Section 37(2) of the Act states:

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

Residential Tenancy Branch Policy Guideline 1 states:

> The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Based on the landlord's convincing testimony and the photographs, I find the landlord proved, on a balance of probabilities, the tenants breached section 37(2) of the Act by not cleaning the rental unit when the tenancy ended and the landlord suffered a loss.

The landlord did not submit a receipt for the cleaning expenses. Based on the photographs submitted into evidence, I find it reasonable to award the landlord 3 hours of cleaning at $40.00 per hour.

I award the landlord $120.00 for cleaning expenses.

Painting expenses
Residential Tenancy Branch Policy Guideline 1 states:

> Nail Holes:
> 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
> **2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.**
> **3. The tenant is responsible for all deliberate or negligent damage to the walls.**
> PAINTING

> The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises.
> **The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.**
>
> (emphasis added)

I find the landlord's testimony about the number of chips was vague. Based on the tenant's convincing testimony and the photographs submitted, I find the tenants caused 4 chips in the walls.

I find that 4 chips in a 900 square feet rental unit are a reasonable number and that the landlord failed to prove, on a balance of probabilities, that the tenants breached section 37(2)(a) of the Act by failing to paint the walls.

I dismiss the landlord's claim for compensation for painting expenses.

Oil cleaning expenses

I find the tenant's testimony was not convincing.

Based on the convincing testimony offered by the landlord and the photographs, I find, on a balance of probabilities, the tenants breached section 37(2)(a) of the Act by failing to reasonably clean the rental unit's driveway when the tenancy ended and the landlord incurred a monetary loss because of the tenants' failure to comply with the Act in the amount of $50.00.

I award the landlord $50.00 for oil cleaning expenses.

Litigation expenses

The cost of prints needed to serve the application and registered mail are litigation costs are not recoverable under the Act.

Thus, I dismiss the landlord's claims for compensation for the costs of prints and registered mail.

Garage repair

Section 32(3) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

I find the tenant's testimony about the amount of the loss suffered by the landlord was vague.

Based on the convincing testimony offered by the landlord, the repair quote, the tenant's insurance email and the photographs, I find the tenants breached section 32(3) of the Act by damaging the garage door and the landlord suffered a loss in the amount of $9,735.95, including the garage door repair, installation and moving the belongings.

Based on the undisputed testimony offered by the landlord, I find the landlord suffered a loss because she coordinated the garage repair and because the tenants damaged the items.

Based on the landlord's testimony, I find the landlord failed to prove, on a balance of probabilities, the amount of the loss suffered. The landlord did not indicate how many hours she worked to coordinate the garage repair. The landlord did not submit a receipt or a quote for the cost to replace the damaged items.

Thus, I find the landlord suffered a loss of $9,735.95 for the garage repair.

Based on the tenant's insurance email, I find the tenant's insurance will pay the landlord $8,689.02. Thus, the landlord's loss is $1,046.93.

I award the landlord $1,046.93 for garage repair expenses.

Line of credit

Based on the landlord's testimony, I find, on a balance of probabilities, the landlord suffered a loss because the tenants failed to comply with section 32(3) of the Act by damaging the garage door and the landlord used her line of credit to pay for the repair expenses.

I find the bank document submitted by the landlord does not prove the amount of the loss, as the landlord claimed for $767.99 and the bank document does not reference this amount. I find the landlord failed to prove, on a balance of probabilities, the amount of her loss.

I dismiss the landlord's claim for compensation for line of credit expenses.

Filing fee and summary

As both parties were partially successful with their applications, each party will bear their own filing fee.

The tenants are awarded a monetary award of $1,100.00.

The landlord is awarded:

Item	**Amount $**
Cleaning expenses	120.00
Oil cleaning	50.00
Garage repair	1,046.93
Subtotal	1,216.93
Minus security deposit	900.00
Total	**316.93**

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

> 1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.
> 2. The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

In summary:

Award for the tenants	$1,100.00
Award for the landlord	$316.93
Final award for the tenants	**$783.07**

Conclusion

Pursuant to section 38 of the Act, I grant the tenants a monetary order in the amount of $783.07.

The tenants are provided with this order in the above terms and the landlords must be served with this order. 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: February 10, 2022

Residential Tenancy Branch