



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL (Landlords)
 MNDCT, MNSD, 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 Landlords filed their application June 13, 2021 (the “Landlords’ Application”). The Landlords applied as follows:

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

The Tenants filed their application November 27, 2021 (the “Tenants’ Application”). The Tenants applied as follows:

- For compensation for monetary loss or other money owed
- For return of double the security and pet damage deposits
- 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 are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Tenants confirmed they are only seeking return of double the security and pet damage deposits as well as the filing fee.

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.

The Tenants confirmed receipt of the hearing package and evidence for the Landlords' Application. The Tenants testified that they received the Landlords' materials November 03, 2021 and took issue with the timing of service. I told the Tenants I would consider an adjournment if necessary but asked whether this was necessary given the timeline involved. The Tenants acknowledged an adjournment was not necessary and that they had time to prepare for the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the 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

1. Are the Landlords entitled to compensation for damage to the rental unit?
2. Are the Landlords entitled to compensation for monetary loss or other money owed?
3. Are the Landlords entitled to keep the security and pet damage deposits?
4. Are the Landlords entitled to reimbursement for the filing fee?
5. Are the Tenants entitled to return of double the security and pet damage deposits?
6. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

Tenants' Application

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started March 01, 2020 and was for a fixed term ending February 28, 2021.

Rent was \$1,450.00 per month due on the first day of each month. The Tenants paid a \$725.00 security deposit and \$725.00 pet damage deposit.

The parties agreed the tenancy ended June 01, 2021.

The parties agreed the Tenants provided the Landlords their forwarding address in writing April 26, 2021.

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

The Landlords testified that the Tenants agreed as part of the lease that the Landlords could keep the security and pet damage deposits at the end of the tenancy. The parties agreed the Tenants did not agree in writing *at the end of the tenancy* that the Landlords could keep the security and pet damage deposits.

The parties agreed on the following. They did a move-in inspection March 01, 2020 and completed the Condition Inspection Report ("CIR"). The CIR was signed by the Landlords but not the Tenants. The Landlords provided the Tenants a copy of the CIR in person on the same day as the inspection.

The Landlords testified as follows in relation to a move-out inspection. The inspection was done May 31, 2021. The Tenants participated in the inspection. The CIR was completed. Neither party signed the CIR. A copy of the CIR was provided to the Tenants June 01, 2021 by email.

The Tenants disagreed with the Landlords' testimony about a move-out inspection and testified as follows. An inspection was done May 31, 2021. No CIR was completed. A move-out CIR was never provided to the Tenants.

In response to the Tenants' testimony, the Landlords changed their testimony and said no CIR was completed at move-out but notes about the condition of the rental unit were made on a separate piece of paper. I asked the Landlords if this separate piece of paper was submitted. Landlord F.C. said it was. Landlord K.B. said it is the photos in evidence. Landlord F.C. then said the Tenants sent it to the Landlords. The Landlords were unable to point to where in their evidence this separate piece of paper was.

I asked the Landlords why the pet damage deposit was kept. Landlord K.B. said it was kept due to pet urination and referred to the \$20.00 claimed for cleaning. The Landlords acknowledged there is no documentary evidence to support that pet urination was an issue at the end of the tenancy such that it resulted in cleaning. The Tenants denied that pet urination was an issue and said the cleaning relates to dirt under the stove.

The Tenants submitted the following relevant documentary evidence:

- Photos
- Invoice for mold remediation
- The CIR
- Correspondence between the parties
- Notes
- Notice to End Tenancy

Landlords' Application

The Landlords sought the following compensation:

Item	Description	Amount
1	Mold remediation	\$1,115.63
2	Cleaning	\$20.00
3	Painting	\$140.00
4	Can of paint	\$50.00
5	Filing fee	\$100.00
	TOTAL	\$1,425.63

#1 Mold remediation \$1,115.63

The Landlords sought compensation due to mold in the rental unit which required remediation. The Landlords testified that they were told that reasons for the mold included the low temperature of the rental unit and the level of moisture created by the Tenants who had misters and terrariums. The Landlords also suggested that the mold was caused by the Tenants storing potatoes in the rental unit.

The Tenants denied they were responsible for causing the mold.

#2 Cleaning \$20.00

The Landlords testified that this item relates to cleaning the stove, under the stove and window sills which were left dirty at the end of the tenancy.

The Tenants agreed to pay this amount.

#3 Painting \$140.00

#4 Can of paint \$50.00

The Landlords testified that the Tenants asked for paint to paint the walls of the rental unit at the end of the tenancy and they dropped off paint which ended up being the wrong color. The Landlords submitted that the Tenants should have painted the whole wall after painting portions and realizing the color was wrong but instead just left patches of darker paint. Landlord K.B. testified that there were a lot of holes in the walls at the end of the tenancy, the Tenants filled the holes and spot painted but given the color used, the entire walls had to be re-painted.

The Tenants testified that they did spot paint and the color was darker; however, they did not realize this until it was too late to paint the entire wall. The Tenants also testified that the Landlords made it sound like they had the correct color of paint.

The Landlords submitted the following relevant documentary evidence:

- Correspondence between the parties
- An unsigned letter from J.B.
- The CIR
- Invoice for mold remediation
- An invoice for the painting and cleaning

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 and pet damage deposits

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

Based on the testimony of the parties, 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 or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlords extinguished their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act* because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlords have claimed for cleaning which is not damage.

Based on the testimony of the parties, I accept that the tenancy ended June 01, 2021.

Based on the testimony of the parties, I accept that the Tenants provided their forwarding address to the Landlords in writing April 26, 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 and pet damage deposits or file a claim against them. Here, the Landlords had 15 days from June 01, 2021 to repay the security and pet damage deposits or file a claim against them. The Landlords' Application was filed June 13, 2021, within time.

However, Policy Guideline 31 addresses pet damage deposits and 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. (emphasis added)

I am not satisfied based on the evidence provided that the Landlords claimed against the pet damage deposit for pet damage. I do not find the testimony of Landlord K.B. on this point credible because Landlord K.B. testified that the pet damage deposit was kept for pet urination which required cleaning when specifically asked why the pet damage deposit was kept yet the Landlords did not mention pet urination or cleaning required due to a pet when providing testimony about the basis for the cleaning claim, which they stated was for the stove, under the stove and window sills. I find Landlord K.B. changed their testimony during the hearing and therefore find I cannot rely on this testimony. Further, the Landlords acknowledged there is no documentary evidence before me showing the pet damage deposit was kept due to pet urination which required cleaning. As well, the Tenants denied that there was an issue of pet urination at the end of the tenancy. In the circumstances, I am not satisfied based on the evidence provided that any of the claims made by the Landlords relate to pet damage.

Given the above, I am not satisfied the Landlords were entitled to keep or claim against the pet damage deposit. Therefore, the Landlords were required to return the pet damage deposit within 15 days of June 01, 2021 pursuant to section 38(1) of the *Act*. The Landlords had not returned the pet damage deposit by January 04, 2022, the date of the hearing, and therefore did not comply with section 38(1) of the *Act* in relation to the pet damage deposit. Given this, and pursuant to section 38(6) of the *Act*, the Landlords cannot claim against the pet damage deposit and must return double the pet damage deposit to the Tenants. The Landlords therefore must return \$1,450.00 to the Tenants. No interest is owed on the pet damage deposit as the amount of interest owed has been 0% since 2009.

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 Mold remediation \$1,115.63

The parties disagreed about whether the Tenants caused mold in the rental unit. Given this, I have focused on the documentary evidence before me to support each position.

The letter from J.B. relates to mold; however, I place no weight on it because it is a typed letter which is not signed by the purported author.

I find the invoice for mold remediation to be the most reliable and credible evidence of the cause of the mold. The invoice states:

Extremely high aspergillus mold count. Typical counts range well below 1,000. There is also **evidence of mold commonly found in water damaged buildings**. As this mold (ulocladium) **requires very wet (not just high humidity) conditions to grow, mitigating the water intrusion should be a priority**. Recommend running a dehumidifier constantly, adding some air circulating fans and a consistent level of heat.

(emphasis added)

I find the invoice supports the Tenants' position that they did not cause the mold and does not support the Landlords' position that the Tenants did cause the mold.

I do not accept the testimony of the Landlords about what they were told in relation to the cause of the mold because it is not reflected in the invoice and I did not find the testimony of the Landlords particularly credible given they changed their testimony during the hearing on issues such as a move-out CIR and the pet damage deposit.

In the circumstances, I am not satisfied based on the evidence provided that the Tenants caused the mold and therefore am not satisfied the Tenants breached the *Act*, *Regulations* or their tenancy agreement. Nor am I satisfied the Landlords are entitled to compensation for this item. This request is dismissed without leave to re-apply.

#2 Cleaning \$20.00

The Tenants agreed to pay this amount and therefore the Landlords are awarded this amount.

#3 Painting \$140.00

#4 Can of paint \$50.00

There is no issue that the Tenants spot painted the walls in the rental unit at the end of the tenancy and that the color used was the wrong color because the parties agreed on this. The parties disagreed about which was responsible for this issue.

I find the Tenants are responsible for the paint issue because they painted large areas of the rental unit the wrong color such that the Landlords were left with no choice but to paint all the walls. I base this finding on the photos of the walls in evidence. In my view, the Tenants should have either painted all the walls so that this issue did not occur or tested a small patch of the paint to ensure it was the right color if they were only going to spot paint. When the Tenants undertook to paint the walls, they were responsible for leaving the walls undamaged. It was not the Landlords' responsibility to ensure the Tenants left the walls undamaged. I find the Tenants did leave the walls damaged by leaving them with large patches of the wrong paint color on them. I agree with the Landlords that the Tenants should not have left this painting project late enough that they could not complete it in an appropriate manner. I am satisfied the Tenants breached section 37 of the *Act*.

I am satisfied based on the photos in evidence that the Landlords had to paint all the walls due to the Tenants' breach. I accept based on the invoice that the painting cost \$190.00 for materials and labour and I find this amount reasonable. I award the Landlords the amount sought.

Filing fees

Both parties sought reimbursement for their filing fees. Both parties were partially successful in their claims and therefore each party can bear the cost of their own filing fee.

Summary

The Landlords are entitled to:

Item	Description	Amount
1	Mold remediation	-
2	Cleaning	\$20.00
3	Painting	\$140.00
4	Can of paint	\$50.00
5	Filing fee	-
	TOTAL	\$210.00

In summary, the Landlords are considered to hold \$2,175.00 in deposits being the original security deposit amount and double the pet damage deposit amount (given the decision above). The Landlords can keep \$210.00 of the \$2,175.00 pursuant to section 72(2) of the *Act* and must return the remaining \$1,965.00 to the Tenants. The Tenants are issued a Monetary Order for \$1,965.00.

Conclusion

The Landlords are considered to hold \$2,175.00 in deposits. The Landlords can keep \$210.00 of the \$2,175.00 and must return the remaining \$1,965.00 to the Tenants. The Tenants are issued a Monetary Order for \$1,965.00. 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: February 03, 2022

Residential Tenancy Branch