



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 August 10, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for damage caused by the tenant, their pets or guests to the unit or property
- To keep the security deposit
- For reimbursement for the filing fee

The Landlord and Tenant 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.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Tenant confirmed receipt of the hearing package and Landlord’s evidence. The Landlord confirmed receipt of the Tenant’s evidence. The Landlord said the Tenant’s evidence was received late; however, the Landlord provided the date it was received which complies with rule 3.15 of the Rules.

The parties were 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 damage caused by the tenant, their pets or guests to the unit or property?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Move out clean	\$790.00
2	Pick up dog feces	\$220.50
3	Filing fee	\$100.00
	TOTAL	\$1,110.50

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started April 01, 2021, and was a month-to-month tenancy. Rent was \$3,000.00 per month due on the first day of each month. The Tenant paid a \$1,375.00 security deposit.

The parties agreed the Tenant was already living in the rental unit when the Landlord purchased it and that they entered into a new tenancy agreement as outlined above.

The parties agreed the tenancy ended July 31, 2021.

The parties agreed the Tenant provided their forwarding address to the Landlord in writing on August 01, 2021.

The parties agreed the Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy and the Tenant did not agree to the Landlord keeping the security deposit.

The Landlord testified that the parties did not do a move-in inspection when they entered into a new tenancy agreement. The Landlord then testified that a form was

completed along with the new tenancy agreement but this was not submitted. The Tenant testified that no move-in inspection was done at the start of the tenancy.

The Landlord testified as follows. The parties started a move-out inspection but did not finish it together because the Tenant left. The Landlord completed a Condition Inspection Report ("CIR") in part with the Tenant and in part on their own. The Landlord did not provide the Tenant an opportunity on the approved RTB form to complete the inspection. The Tenant testified that they were not present for the move-out inspection and that they left. The Tenant confirmed they now have the move-out CIR.

#1 Move out clean

The Landlord testified as follows. Further to the photos submitted, the rental unit was in an awful state at the end of the tenancy. Nothing had been cleaned at move-out. It cost \$790.00 to get the rental unit clean enough so that the Landlord could take over and clean it further. The Landlord is not claiming for their time or their girlfriend's time spent cleaning the rental unit.

The Tenant testified as follows. The Tenant hired a cleaning company to clean the rental unit at the end of the tenancy. The freezer and the side of the stove was missed in the cleaning of the rental unit. The Tenant cleaned the floors of the rental unit multiple times. The showers and tubs were scrubbed. The rental unit was thoroughly cleaned at the end of the tenancy.

#2 Pick up dog feces

The Landlord testified as follows. The Tenant left dog feces by the front door of the rental unit. The Landlord had to have a load of garbage hauled from the yard. The Landlord hired someone to come remove the garbage but forgot to include the invoice for \$220.00.

The Tenant testified as follows. Most of the garbage left behind was household possessions and yard decorations that were there at the start of the tenancy and came with the house.

Documentary evidence

The Landlord submitted the following documentary evidence:

- Photos of the rental unit at the end of the tenancy
- An invoice for cleaning
- A list of cleaning completed at the end of the tenancy
- The CIR

The Tenant submitted the following documentary evidence:

- A reference letter from a prior landlord
- Photos of the rental unit at move-in
- A typed document titled a “record of communications” between the parties

Analysis

Security deposit

Pursuant to 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 testimony of the parties, I do not find this to be a situation where the Landlord offered the Tenant two opportunities, one on the approved RTB form, to do move-in or move-out inspections and the Tenant failed to participate. Given this, I do not find that the Tenant extinguished their rights in relation to the security deposit pursuant to sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security deposit 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 Landlord has claimed for cleaning as well as removal of dog feces and garbage, none of which is damage to the rental unit.

Based on the testimony of the parties, I accept that the tenancy ended July 31, 2021.

Based on the testimony of the parties, I accept that the Tenant provided their forwarding address to the Landlord in writing on August 01, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenant's forwarding address in writing to repay the security deposit or file a claim against it. Here, the Landlord had 15 days from August 01, 2021 to repay the security deposit or file a claim against it. The Application was filed August 10, 2021, within time. I find the Landlord complied with section 38(1) of the *Act*.

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...

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has 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 Move out clean

Based on the photos of the rental unit at the end of the tenancy, CIR and list of cleaning completed at the end of the tenancy, I accept that areas of the rental unit were not cleaned at the end of the tenancy in breach of section 37 of the *Act*. I note that none of the Tenant's documentary evidence is compelling evidence to support their position that the rental unit was thoroughly cleaned at the end of the tenancy. Given some areas of the rental unit were not cleaned, I accept that the Landlord had to hire cleaners to clean these areas. Based on the invoice for cleaning, I accept that the Landlord paid the cleaners \$790.00 for cleaning.

I find the issue here is the amount being sought for cleaning. The average cost for cleaners is around \$25.00 per hour meaning the Landlord paid for 30 hours of cleaning given the invoice shows cleaning cost \$750.00 and supplies cost \$40.00. I do not find that the photos provided by the Landlord support the need for 30 hours of cleaning to get the rental unit to a state of "reasonably clean", which is all the Tenant was required to do. The photos submitted are of very specific areas of the rental unit and do not show that the entire rental unit required cleaning. I acknowledge that the CIR supports that the entire rental unit required cleaning; however, the Tenant did not agree to the CIR and therefore I would expect the photos to support the CIR. I do accept based on the photos that the areas which required cleaning required more than a quick cleaning and therefore I award the Landlord half the amount sought being \$395.00. I find this amount reasonable given the state of the rental unit as shown in the photos.

#2 Pick up dog feces

I find the issue here is both dog feces and garbage removal at the end of the tenancy.

Based on the photos of the rental unit at the end of the tenancy and CIR, I accept that the Tenant left dog feces in the yard of the rental unit at the end of the tenancy in breach of section 37 of the *Act*.

In relation to other garbage left at the end of the tenancy, there is one photo in evidence of items outside which is labelled "dump run". The Tenant took the position that the items in the photo were there at the start of the tenancy. Given the nature of the items in the photo, I cannot determine whether they are items that were there at the start of the tenancy or not. The Landlord has the onus to prove the Tenant breached the *Act*. I am not satisfied based on the evidence provided that the Tenant breached the *Act* in relation to the items shown in the photo mentioned.

However, given I am satisfied the Tenant left dog feces in the yard, I am satisfied the Landlord had to have this cleaned up and removed. I accept that the Landlord hired someone to clean up and remove the dog feces, as well as the other items shown in the photo, from the yard. Further, I note that the Landlord could also have claimed for their own time spent removing the dog feces. The Landlord testified that they paid someone \$220.00 to remove the dog feces and items from the yard; however, the Landlord did not submit documentary evidence to support this.

In the circumstances, I award the Landlord \$25.00 for this item because there is no receipt or invoice showing the amount paid, I am not satisfied the Tenant is responsible to pay for removal of items other than the dog feces and the documentary evidence of the Landlord does not justify more than \$25.00 for the issue of removing dog feces from the yard.

#3 Filing fee

Given the Landlord was partially 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	Move out clean	\$395.00
2	Pick up dog feces	\$25.00
3	Filing fee	\$100.00
	TOTAL	\$520.00

The Landlord can keep \$520.00 of the security deposit pursuant to section 72(2) of the *Act*. The Landlord must return the remaining \$855.00 of the security deposit to the Tenant and I issue the Tenant a Monetary Order in this amount.

Conclusion

The Landlord is entitled to \$520.00 and can keep this from the security deposit. The Landlord must return the remaining \$855.00 of the security deposit to the Tenant and I issue the Tenant a Monetary Order in this amount. If the Landlord does not return \$855.00 to the Tenant, this Order must be served on the Landlord. If the Landlord fails 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: March 21, 2022

Residential Tenancy Branch