



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Penticton Realty Property
Management and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord"). The tenant TMB confirmed they represented both named respondents.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

During the hearing the landlord acknowledged that the tenants have paid outstanding utilities directly to the municipality that provides utility services and they withdrew that portion of their monetary claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposits for this tenancy?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began on August 1, 2019. Monthly rent was \$2,600.00 payable on the first of each month. A security deposit of \$1,300.00 and pet damage deposit of \$1,300.00 were paid at the start of the tenancy and are still held by the landlord. The parties prepared a condition inspection report at both the start and end of the tenancy.

There was a previous hearing under the file number on the first page of this decision dealing with the landlord's application seeking an Order of Possession. That hearing took place on September 2, 2021 where the parties confirmed that the tenancy had ended with the tenants vacating the rental unit on July 31, 2021.

The present application for dispute resolution, which includes an application for authorization to retain the deposits for this tenancy, was filed by the landlord on September 7, 2021.

The tenancy ended on July 31, 2021. The tenants provided a forwarding address in writing on the condition inspection report prepared on that date. The tenants did not authorize the landlord to make any deductions from the deposits. The report is signed by both parties and while it contains some comments, all of the elements of the rental property are checked off indicating that they are of good condition. The report does not note any damage to the rental unit or residential property for which the tenants are responsible.

The landlord submits that the rental unit required some cleaning, maintenance and work due to its condition at the end of the tenancy. The landlord submits 15 photographs in support of their claim and writes in their application:

excessive wear and tear to interior flooring and to exterior landscape, damage to exterior basement door. replaced kitchen wall oven without consent and replacement does not work, damaged soap dispenser on washer. Undisclosed water damage to ceilings below bathroom & laundry areas, excessive oil/petroleum stains and odours in the garage area of the house, unreported damage to kitchen counter tops due to water leakage, excessive wear and tear to hardwood flooring.

The landlord now seeks a monetary award in the amount of \$1,245.88 for the work done. The landlord submitted a receipt from an applicant company dated August 15, 2021 for a service call to inspect a washer and wall oven for a total cost of \$89.25.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

I accept the undisputed evidence of the parties that this tenancy ended on July 31, 2021 with the tenants providing a forwarding address in writing on that date. I accept that the landlord filed the present application seeking authorization to retain the deposits on September 7, 2021, outside of the 15 days provided under the *Act*.

I do not find the landlord's submissions regarding previous hearings to be relevant or to have extended the statutory timelines. The previous hearing dealt solely with a landlord's application for an Order of Possession. The presiding arbitrator notes that the tenancy had already ended on July 31, 2021 with the landlord obtaining vacant possession of the rental unit and dismissed that application. I find no reason why the landlord could not have filed their application for authorization to retain the deposits within 15 days of the end of the tenancy as required. There was no requirement to wait for the conclusion of the previous hearing which dealt with unrelated issues. There was no ambiguity that the tenancy had ended on July 31, 2021.

I find that the landlord failed to file their application for dispute resolution within the 15 days prescribed under the Act and therefore the tenants are entitled to a monetary award of \$5,200.00, double the value of the security and pet damage deposit for this tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Regulation 21 provides that:

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.

In the present case, the condition inspection report prepared by the parties at the end of the tenancy on July 31, 2021 indicates that all aspects of the rental property are in good condition. The report does not identify any damage to the rental unit.

I find the handful of photographs submitted into evidence by the landlord to be insufficient to refute the condition inspection report completed by the parties and demonstrate that the rental unit was damaged due to the tenancy. I find that much of the issues now claimed by the landlord would have been apparent during an inspection and could have been noted on the report. I find no reason that excessive wear and tear to flooring or exteriors or damage to fixtures would not have been observed and recorded at the time of the inspection. I find that the landlord's own photographic evidence shows a residential unit in an adequate state of repair and does not demonstrate any deficiencies that could be characterized as beyond the expected wear and tear from occupancy.

I also note that based on the submissions of the parties and evidence of correspondence the landlord consented to the tenants purchase some appliances and leaving them on the rental property at the end of the tenancy. I do not find the subsequent cost of inspection or repairs are attributable to the tenants.

I find that the landlord has failed to demonstrate on a balance of probabilities that there has been any damage or losses caused by a breach on the part of the tenants. I find the condition inspection report prepared by the parties to be an accurate and complete record of the state of the rental unit at the end of the tenancy. The report, signed by both parties, indicates all elements of the rental unit as being of good condition and I accept that evidence. I find the landlord's photographs and submissions are insufficient to dispute the evidence of the inspection report.

I find that the landlord has not established their claim on a balance of probabilities and consequently dismiss their application in its entirety without leave to reapply.

Conclusion

The landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$5,200.00, representing the return of double the security and pet damage deposit for this tenancy. The landlord must be served with this Order as soon as possible. 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: March 18, 2022

Residential Tenancy Branch