



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ENGEL & VOLKERS WHISTLER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL (Landlord)
MNSDB-DR, 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 Landlord filed their application September 05, 2021 (the “Landlord’s 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 and pet damage deposits
- For reimbursement for the filing fee

The Tenants filed their application September 17, 2021 (the “Tenants’ Application”). The Tenants applied as follows:

- For return of double the security and pet damage deposits
- For reimbursement for the filing fee

J.B. appeared at the hearing as agent for the Landlord. The Tenant appeared at the hearing and appeared for Tenant L.P. I explained the hearing process to the parties who did not have questions when asked. 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.

In their materials, the Tenants seek reimbursement for lawyer's fees. As explained to the Tenant at the hearing, lawyer's fees are not recoverable in these proceedings.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

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 and pet damage deposits?
3. Is the Landlord entitled to reimbursement for the filing fee?
4. Are the Tenants entitled to return of double the security and pet damage deposits?
5. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started July 27, 2020. Rent was \$5,000.00 per month. The Tenants paid a \$2,500.00 security deposit and \$2,500.00 pet damage deposit.

Tenants' Application

The parties agreed the tenancy ended July 31, 2021.

The parties agreed the Tenants provided their forwarding address to the Landlord by email August 22, 2021.

The parties agreed 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 deposit.

A Condition Inspection Report (the "CIR") was submitted and the parties agreed it is accurate as it relates to the move-in and move-out inspections.

J.B. testified that the Landlord kept the pet damage deposit because some of the cleaning required at the end of the tenancy was due to the Tenants' dog and dog hair. The Tenant acknowledged there may have been dog hair left in the rental unit at the end of the tenancy.

Landlord's Application

The Landlord sought the following compensation:

| Item | Description | Amount |
|-------------|-------------------------|-------------------|
| 1 | Cleaning | \$665.15 |
| 2 | Garage door replacement | \$2,994.60 |
| 3 | Filing fee | \$100.00 |
| | TOTAL | \$3,759.75 |

#1 Cleaning \$665.15

The Landlord sought compensation for having to hire cleaners at the end of the tenancy. J.B. testified that the rental unit was not deep cleaned at the end of the tenancy. J.B. testified that Tenant L.P. agreed further cleaning was required at the end of the tenancy. J.B. relied on two separate invoices in evidence and testified that the Landlord had to hire two separate cleaners because the first cleaner only had a set amount of time to clean and the cleaning was not finished within this time.

The Tenant acknowledged there were a few areas of the rental unit that could have been cleaned better at the end of the tenancy. The Tenant took issue with the extent of the cleaning done by the cleaners hired by the Landlord.

#2 Garage door replacement \$2,994.60

The Landlord sought compensation for having to replace the garage door due to damage done to it. J.B. testified that the Tenants' son accidentally drove their car into the garage door and dented it. J.B. testified that the Tenants agreed to pay for the damage and that the invoice is in the evidence.

The Tenant agreed the Tenants are responsible for the damage done to the garage door. The Tenant took issue with the fact that they only have an invoice for replacement of the garage door and not the final receipt showing the Landlord has paid to replace the garage door.

In reply, J.B. testified that the owner of the rental unit has replaced the garage door and paid the invoice submitted.

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.

Based on the testimony of the parties and CIR, 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 Landlord 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 Landlord has claimed for cleaning, which is not damage.

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 Tenants provided their forwarding address to the Landlord by email August 22, 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 Tenants' forwarding address in writing to repay the security and pet damage deposits or file a claim against them. Here, the Landlord had 15 days from August 22, 2021, to repay the security and pet damage deposits or file a claim against them. The Application was filed September 05, 2021, within time. Further, I accept that the Landlord claimed against the pet damage deposit for pet related cleaning and I find the Landlord was permitted to do so. I find the Landlord complied with section 38(1) of the *Act* and was entitled to claim against the security and pet damage deposits when the Application was filed. Given this, the Tenants are not entitled to return of double the security or pet damage deposit.

Further, given the Tenants have not been successful in their application, they are not entitled to reimbursement for the filing fee.

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.

Policy Guideline 1 defines reasonable wear and tear as follows (page 1):

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 or Manufactured Home Park Tenancy Act (the Legislation).

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.

#1 Cleaning \$665.15

I have reviewed the Landlord's photos, the CIR and an email dated September 14, 2021, from the first set of cleaners the Landlord hired to clean the rental unit. Based on the photos and CIR, I accept that cleaning touch ups were required at the end of the tenancy. The cleaner's email suggests that extensive cleaning was required at the end

of the tenancy; however, I do not accept this because the photos and CIR do not support this.

I am satisfied the Tenants breached section 37 of the *Act* by leaving some areas of the rental unit dirty at the end of the tenancy as shown in the photos and CIR. I accept that the Landlord had to have cleaners finish the cleaning. I accept that the first set of cleaners cost \$350.00 and I award the Landlord this amount. I find the \$350.00 is fair based on the photos and CIR. I am not satisfied the Landlord is entitled to more than \$350.00 because I am not satisfied given the photos and CIR that further cleaning was required. As stated in section 37 of the *Act*, the Tenants were only required to leave the rental unit reasonably clean, not perfectly clean. The Landlord is awarded \$350.00.

#2 Garage door replacement \$2,994.60

Based on the testimony of both parties, I am satisfied the Tenants breached section 37 of the *Act* by leaving the garage door damaged at the end of the tenancy. Based on the invoice, I am satisfied the Landlord has suffered loss in the amount of \$2,994.60 due to the damage. I find the loss suffered to be \$2,994.60 whether the Landlord has paid the invoice or not because the invoice shows the cost to fix the damage and therefore the damage has devalued the garage door by \$2,994.60. I am satisfied the Tenants caused \$2,994.60 worth of damage to the garage and award the Landlord this amount.

#3 Filing fee \$100.00

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 | Cleaning | \$350.00 |
| 2 | Garage door replacement | \$2,994.60 |
| 3 | Filing fee | \$100.00 |
| | TOTAL | \$3,444.60 |

The Landlord can keep \$3,444.60 of the security and pet damage deposits pursuant to section 72(2) of the *Act*. The Landlord must return the remaining \$1,555.40 to the Tenants and the Tenants are issued a Monetary Order for this amount.

Conclusion

The Landlord can keep \$3,444.60 of the security and pet damage deposits. The Landlord must return the remaining \$1,555.40 to the Tenants and the Tenants are issued a Monetary Order for this amount. 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: April 14, 2022

Residential Tenancy Branch