



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-DR, FFT (Tenant)
 MNRL-S, MNDL-S, FFL (Landlords)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties (the “Applications”).

The Tenant filed their application April 06, 2021 (the “Tenant’s Application”). The Tenant applied as follows:

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

The Landlords filed their application December 03, 2021 (the “Landlords’ Application”). The Landlords applied as follows:

- For compensation for damage caused by the tenant, their pets or guests to the unit or property
- To recover unpaid rent
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

This matter initially proceeded by way of the direct request process but was adjourned to a participatory hearing. The Interim Decision on this was issued May 03, 2021, and should be read with this decision.

The matter was heard by a different Arbitrator on October 28, 2021, and both parties attended the hearing. The issue of jurisdiction arose at the October 28th hearing and

occupied the full hour set for the hearing; therefore, the matter was adjourned. The original Arbitrator found that the RTB has jurisdiction to decide this matter. The Interim Decision on this was issued November 22, 2021, and should be read with this decision.

The original Arbitrator was not available for the reconvened hearing on March 18, 2022, and therefore I heard the matter. I did not re-consider the jurisdiction issue as I find it was decided by the original Arbitrator and that decision stands.

The Tenant appeared at the hearing with their mother as a witness. I asked that the Tenant's mother step out of the room until required given they are acting as a witness and the Tenant's mother did. I did not hear from the Tenant's mother during the hearing because the Tenant did not seek to call their mother to provide relevant testimony at any point. The Landlords 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 Landlords' Application was filed between the first hearing on October 28, 2021, and the reconvened hearing on March 18, 2022. I raised the timing of the Landlords' Application with the parties. The Tenant agreed to the Landlords' Application being heard as a cross-application on the date of the reconvened hearing and therefore I did hear the Landlords' Application.

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

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

Tenant's Application

1. Is the Tenant entitled to return of double the security and pet damage deposits?
2. Is the Tenant entitled to reimbursement for the filing fee?

Landlords' Application

3. Are the Landlords entitled to compensation for damage caused by the tenant, their pets or guests to the unit or property?
4. Are the Landlords entitled to recover unpaid rent?
5. Are the Landlords entitled to keep the security and pet damage deposits?
6. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed the tenancy started February 01, 2020. The parties agreed rent was \$1,350.00 per month due on the first day of each month. The parties agreed the Tenant paid a \$675.00 security deposit and \$675.00 pet damage deposit.

Tenant's Application

The Landlords confirmed they hold both the security and pet damage deposits.

The Tenant testified that they moved out of the rental unit March 06, 2021. The Landlords testified that the Tenant moved out March 07, 2021.

The Tenant testified that they mailed their forwarding address to the Landlords on a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit on March 11, 2021. The Landlords testified that they do not recall receiving the Tenant's forwarding address and that maybe they received it but they do not remember. The Landlords testified that they did receive the Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit with the evidence for the Tenant's Application in mid-April of 2021.

The parties agreed the Landlords did not have an outstanding Monetary Order against the Tenant at the end of the tenancy.

The Landlords testified that the Tenant agreed in writing at the end of the tenancy that they could keep the security and pet damage deposits; however, the Landlords could

not point to documentary evidence of this. The Tenant denied that they agreed to the Landlords keeping the security and pet damage deposits.

The parties agreed the Landlords and Tenant did a move-in inspection together.

The parties agreed they did not do a move-out inspection together. The Landlords acknowledged they did not give the Tenant two opportunities, one on the RTB form, to do a move-out inspection.

In relation to the pet damage deposit, the Landlords acknowledged they have not claimed for pet-related damage to the rental unit.

Landlords' Application

The Landlords sought the following compensation:

Item	Description	Amount
1	BC Hydro	\$130.00
2	Wall repair and paint	\$635.00
3	Sink replacement	\$476.00
4	Damages on fridge door	\$100.00
5	Move out fee	\$50.00
6	Rent for 7 days in March	\$304.00
7	Filing fee	\$100.00
	TOTAL	\$1,795.00

#1 BC Hydro \$130.00

The Tenant agreed to pay the Landlords this amount.

#2 Wall repair and paint \$635.00

The Landlords sought compensation for the cost of repairing damage to the walls in the bathroom, bedroom and living room of the rental unit. The Landlords relied on an email dated March 07, 2021, containing an outline of issues with the rental unit as well as the invoice for the repairs.

The Tenant submitted that the condition of the walls, other than in the bedroom and bathroom, is not in the pre-move-in report. The Tenant testified that the Landlords had their own furniture in the rental unit and submitted that there is no evidence that the damage claimed was caused by the Tenant. The Tenant also relied on the RTB Policy Guidelines and submitted that there is no evidence showing the rental unit was painted prior to the Tenant moving in.

In reply, the Landlords testified that they only had one dining room table in the kitchen and one sofa in the living room. The Landlords acknowledged that the only evidence of the state of the rental unit at the start of the tenancy is the Room Rental Agreement at the bottom where it states, "Pre-Move In Inspection of room and Bathroom Notes".

#3 Sink replacement \$476.00

The Landlords sought compensation for replacing the sink in the rental unit. The Landlords testified that the sink was in good condition at the start of the tenancy and pointed out that the Tenant acknowledged damaging the sink during the tenancy in the Tenant's Application where it states:

Move-out condition inspection report - Email: the unit was cleaned. The final account: holes in the walls are from pushpins, unit not painted prior to move in, crack in sink from liquid plumber.

The Landlords relied on the quote in evidence to show the cost of replacing the sink.

The Tenant testified that they did not notice a crack in the sink. The Tenant testified that the sink was almost 50 years old. The Tenant testified that the sink was not draining and they used liquid plumber to fix it and followed the directions on the liquid plumber.

In reply, the Landlords testified that the sink was only six or seven years old because the bathroom was remodelled. The Landlords testified that they do not know of a commercial product that would cause the sink to crack.

In reply, the Tenant disputed that the sink was six or seven years old and stated that there is no proof or evidence showing this.

#4 Damages on fridge door \$100.00

The Tenant agreed to pay the Landlords this amount.

#5 Move out fee \$50.00

The Tenant agreed to pay the Landlords this amount.

#6 Rent for 7 days in March \$304.00

The Landlords sought compensation for seven days of rent because the Tenant held possession of the rental unit until March 07, 2021, when the keys were returned, and the Tenant did not pay March rent.

The Tenant disputed owing rent on the basis that the tenancy ended through a One Month Notice pursuant to section 47 of the *Act*.

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.

Tenant's Application

Security and pet damage deposits

I do not accept that the Tenant agreed in writing at the end of the tenancy that the Landlords could keep the security and pet damage deposits because the parties disagreed about this and there is no written agreement in evidence.

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 a security and pet damage deposit at the end of a tenancy.

Based on the testimony of the parties, I accept that the Tenant participated in a move-in inspection. Based on the testimony of the Landlords, I accept that they did not give the Tenant two opportunities, one on the RTB form, to do a move-out inspection. In the circumstances, I find the Tenant 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 BC Hydro, a move out fee and unpaid rent.

I accept that the Landlords received the keys to the rental unit March 07, 2021, based on the email of the same date in evidence. I find the tenancy ended March 07, 2021.

I accept that the Tenant mailed their forwarding address to the Landlords on March 11, 2021, because the Tenant submitted a copy of the Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit and the Landlords acknowledged they may have received the Tenant's forwarding address. I find the forwarding address was served on the Landlords in accordance with section 88(c) of the *Act* and therefore the Landlords are deemed to have received it March 14, 2021, pursuant to section 90(a) of the *Act*.

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 Tenant's 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 March 14, 2021. The Landlords' Application was filed December 03, 2021, well past the deadline. I find the Landlords failed to comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* states:

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The Landlords must pay the Tenant double the security and pet damage deposits being \$2,700.00. There is no interest owed on the deposits because the amount of interest owed has been 0% since 2009.

Filing fee

Given the Tenant was successful in their application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Landlords' Application

The Landlords are still entitled to claim for compensation pursuant to section 67 of the *Act* and I consider that now.

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.

#1 BC Hydro \$130.00

The Tenant agreed to pay the Landlords this amount.

#2 Wall repair and paint \$635.00

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...

The documentary evidence of the state of the rental unit at the start of the tenancy includes the Room Rental Agreement and notation at the bottom about the inspection of the bedroom and bathroom stating everything looks good. The documentary evidence of the state of the rental unit at the end of the tenancy includes photos. The photos show bathroom and bedroom wall holes not repaired. I am satisfied the Tenant caused the damage to the bathroom and bedroom walls based on the Room Rental Agreement, email dated March 07, 2021, outlining issues with the rental unit and the photos. I am not satisfied based on the evidence provided that the Tenant caused the additional damage to the walls shown in the photos because the Room Rental Agreement does not address the condition of the living room at the start of the tenancy. In the circumstances, I accept that the Tenant caused damage to one wall in the bathroom and one wall in the bedroom in breach of section 37 of the *Act*.

I accept that the Landlords had to fix the damage to the walls caused by the Tenant. However, the invoice submitted includes work done to the hall and living room, which I am not satisfied was caused by the Tenant.

In the circumstances, I award the Landlords \$200.00 for the damage to the bathroom and bedroom walls. I find \$200.00 appropriate based on the nature of the damage as

shown in the photos, the fact that the invoice includes additional work, the fact that there is no compelling evidence before me about when the rental unit was last painted and RTB Policy Guideline 40 which states that the useful life of paint is four years.

#3 Sink replacement \$476.00

Section 37 of the *Act* also applies to this claim.

I accept that the bathroom sink was in good condition at the start of the tenancy based on the Room Rental Agreement and notation at the bottom about the bathroom looking good. I accept that the sink was damaged at the end of the tenancy based on the email dated March 07, 2021, and photos. Further, I accept that the Tenant acknowledged in their application that the sink was cracked during the tenancy due to liquid plumber. I do not accept that the sink was cracked due to liquid plumber because I find it very unlikely that a commercial product intended for use in sinks would cause a crack in the sink. I accept that the Tenant cracked the sink in breach of section 37 of the *Act*.

I accept that the Landlords had to replace the sink and accept based on the quote in evidence that this cost \$476.00. However, the Tenant raised the issue of the age of the sink and provided documentary evidence showing the building is 49 years old. The Landlords did not provide documentary evidence to prove the age of the sink. RTB Policy Guideline 40 states that the useful life of sinks is 20 years. In the circumstances, I find the Landlords are entitled to some compensation for having to replace the sink but I am not satisfied the Landlords are entitled to the full cost of replacing the sink because even the Landlords acknowledged the sink was six or seven years old. Further, the Tenant has raised the issue of the age of the sink and the Landlords have not provided compelling evidence showing the sink was only six or seven years old. In the circumstances, I award the Landlords \$238.00 being half of the cost of replacing the sink to account for the age of the sink. I find \$238.00 reasonable given the nature of the damage shown in the photo and given I agree the Landlords had to replace the sink due to the damage.

#4 Damages on fridge door \$100.00

The Tenant agreed to pay the Landlords this amount.

#5 Move out fee \$50.00

The Tenant agreed to pay the Landlords this amount.

#6 Rent for 7 days in March \$304.00

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 57(3) of the *Act* states:

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

I have already accepted that the Tenant remained in possession of the rental unit until March 07, 2021. The Tenant was required to pay rent while in possession of the rental unit. Being issued a One Month Notice pursuant to section 47 of the *Act* did not change the Tenant's obligation to pay rent. The Landlords are entitled to \$304.00.

#7 Filing fee \$100.00

Given the Landlords were partially successful in their application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlords are entitled to the following:

Item	Description	Amount
1	BC Hydro	\$130.00
2	Wall repair and paint	\$200.00
3	Sink replacement	\$238.00
4	Damages on fridge door	\$100.00
5	Move out fee	\$50.00

6	Rent for 7 days in March	\$304.00
7	Filing fee	\$100.00
	TOTAL	\$1,122.00

The Landlords owe the Tenant \$2,800.00. However, the Tenant owes the Landlords \$1,122.00 and therefore the Landlords can keep this from the \$2,800.00 owed to the Tenant. The Tenant is issued a Monetary Order for \$1,678.00.

Conclusion

The Tenant is issued a Monetary Order for \$1,678.00. 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: April 20, 2022

Residential Tenancy Branch