



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, MNDCL-S

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on July 13, 2021, under the *Residential Tenancy Act* (the *Act*), seeking:

- Compensation for damage caused by the Tenants, their pets, or their guests to the unit, site, or property;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 PM on January 27, 2022, and was attended by the Landlord, who provided affirmed testimony. Neither the Tenants nor an agent for the Tenants attended. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Landlord was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Landlord was asked to refrain from speaking over me and any other participants and to hold their questions and responses until it was their opportunity to speak. The Landlord was also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent(s) must be served with a copy of the Application, Notice of Hearing, and

the documentary evidence intended to be relied upon by the applicant(s) at the hearing. As neither the Tenants nor an agent for the Tenants attended the hearing, I confirmed service of these documents as explained below.

The Landlord testified that the documentary evidence before me and the Notice of Dispute Resolution Proceeding Package (NODRP), which includes a copy of the Application and the Notice of Hearing, as well as the amendment(s) to the Application (the Amendments(s)) were sent to the Tenants at their forwarding address by registered mail and by email on July 27, 2021, which is within 3 days of receipt of the NODRP from the Residential Tenancy Branch (the Branch). The Landlord stated that the Tenants also confirmed receipt. As there is no evidence before me to the contrary and Branch records indicate that the NODRP was provided to the Landlord on July 26, 2021, by email and the Amendment(s) were provided to the Landlord on July 27, 2021, by email, I find that the Landlord complied with section 59(3) of the *Act* and rule 3.1 of the Rules of Procedure. I also find that the Tenants were deemed served with the above noted documents on August 1, 2021, by registered mail, if not earlier received by email as allowable under the *Act*, regulation, and tenancy agreement, in accordance with sections 88 and 89 of the *Act*.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. As I am satisfied that the Tenants were deemed served with proper notice of the hearing, the hearing therefore proceeded as scheduled despite the absence of the Tenants or an agent acting on their behalf.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Landlord, a copy of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage caused by the Tenants, their pets, or their guests to the unit, site, or property?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to withhold all or a portion of the security deposit and or pet damage deposit?

Background and Evidence

The tenancy agreement in the documentary evidence before me lists both respondents as tenants and states that the periodic (month-to-month) tenancy commenced August 1, 2018. The tenancy agreement states that \$1,800.00 in rent was due on the first day of each month and that a \$900.00 security deposit and a \$900.00 pet damage deposit were also required. At the hearing the Landlord confirmed that the security deposit and pet damage deposit were paid, neither of which has been returned to the Tenants.

The Landlord stated that the tenancy ended on July 1, 2021, after the Tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) and that on July 27, 2021, they received the Tenants' forwarding address by text. The Landlord stated that a move-in condition inspection and report were completed and served on the Tenants in compliance with the *Act* and the *Regulations* at the start of the tenancy. The Landlord stated that although the Tenants agreed to attend the move-out condition inspection on July 1, 2021, and showed up for the inspection on-time as scheduled, the Tenants walked-out part way through the inspection without signing the report. The Landlord stated that their daughter was present with them during the inspection as a witness, and that after the Tenants left, they completed the inspection and report without the Tenants as permitted under the *Act*. The Landlord stated that a copy of the move-out condition inspection report was then served on the Tenants at their forwarding address as required.

The Landlord stated that the Tenants did not leave the rental unit reasonably clean and undamaged at the end of the tenancy, as required, and that the Tenants and their pet(s) caused significant damage to the property. The Landlord stated that the total cost for cleaning and repairs is \$2,368.41, broken down as follows:

- \$300.00 for interior cleaning (12 hours x \$25.00/hour);
- \$56.00 in cleaning supplies;
- \$37.50 for patio cleaning (1.5 hours x \$25/hour);
- \$25.00 for yard cleaning (1 hour x \$25/hour);

- \$25.00 for garbage removal;
- \$116.00 for replacement and installation of a door damaged by pet scratches;
- \$182.94 for broken blinds;
- \$20.99 for a door lock;
- \$25.00 for re-installation of a door removed by the Tenants;
- \$79.98 for replacement of lilac bushes cut down by the Tenants; and
- \$1,500.00 for replacement of a fridge broken by the Tenants.

Over 30 photographs, a copy of the tenancy agreement, and a copy of the condition inspection report were submitted by the Landlord showing the condition of the rental unit in support of their claims.

Finally, the Landlord sought recovery of the \$100.00 filing fee paid for the Application and authorization to withhold the security deposit and pet damage deposit towards the above noted amounts owed. Although the teleconference remained open until 2:34 P.M., no one called in on behalf of the Tenants to provide any evidence or testimony for my consideration.

Analysis

As there is no evidence before me to the contrary, I find that a tenancy agreement to which the *Act* applies existed between the parties, the terms of which are set out in the tenancy agreement before me for consideration, as summarized above.

Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the *Act* states that if a tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying tenant must compensate the landlord for damage or loss that results. It also states that the landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the uncontested and affirmed testimony of the Landlord and the documentary evidence before me for consideration, which includes a condition inspection report and photographs, I am satisfied that the Tenants failed to leave the rental unit reasonably clean and undamaged at the end of the tenancy, except for pre-existing damage and reasonable wear and tear, as required by section 37(2)(a) of the *Act*. I am also satisfied that the Landlord suffered a loss in the amount of \$2,368.41 as a result, and that they

mitigated this loss by having the cleaning and repairs completed at a reasonably economic rate. As a result, I award the Landlord recovery of these costs.

As the Landlord was successful in their Application, I also award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*. As there is no evidence before me that the Landlord extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act*, I find that they did not. I accept the Landlord's affirmed and uncontested testimony that they received the Tenants' forwarding address by text, which I find is a form of written communication in compliance with section 38(1)(b) of the *Act*, on July 27, 2021. As the Landlord filed their Application seeking retention of the Tenants' deposits on July 13, 2021, I find that the Landlord complied with the requirements set out under section 38(1) of the *Act*. Pursuant to section 72(2)(b) of the *Act*, I therefore authorize the Landlord to retain the \$900.00 security deposit and the \$900.00 pet damage deposit in partial repayment of the above owed amounts. Pursuant to section 67 of the *Act*, I also award the Landlord a Monetary Order for the balance owed, in the amount of \$668.41.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$668.41**. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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.

The Landlord is also authorized to retain the \$900.00 security deposit and the \$900.00 pet damage deposit.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the *Act* states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated Monetary Order, nor my authority to render this decision and grant the Monetary Order, are affected by the fact that this decision and the associated Monetary Order were rendered more than 30 days after the close of the proceedings.

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: May 5, 2022

Residential Tenancy Branch