# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

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

1. A Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy - holding security deposit pursuant to Sections 38, 62, and 67 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords' Agent, SL, and the Tenant, DL, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlords served the Notice of Dispute Resolution Proceeding package and evidence to the Tenant via Canada Post registered mail on September 22, 2021 (the "NoDRP package"). The Landlords' Agent referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenant confirmed receipt of the NoDRP package. I find that the Tenant was deemed served with the NoDRP package on September 27, 2021 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Tenant gave a usb stick to the Landlords with all his evidence, but the Landlords could not open the usb. The Tenant printed all his evidence and personally served his evidence on the Landlords on February 28, 2022. The Landlord's Agent confirmed receipt, but was unsure of the date. I find that the Tenant's evidence was served on the Landlords on February 28, 2022 pursuant to Section 88(a) of the Act.

Issues to be Decided

1. Are the Landlords entitled to a Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy which can be taken from the security deposit?
2. Are the Landlords entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on September 1, 2017. The fixed term ended on August 31, 2018, then the tenancy continued on a month-to-month basis. Monthly rent was $1,550.00 payable on the first day of each month. A security deposit of $775.00 and a fob deposit of $100.00 were collected at the start of the tenancy and are still held by the Landlords. The Landlords and the Tenant completed a move-in condition inspection on August 30, 2017, and both parties uploaded a copy of this completed move-in inspection report. The Tenant and a man did a walk through of the rental unit at the end of the tenancy on August 31, 2021. The Tenant submitted that he was never given a move-out condition inspection report to review or sign. The Landlord's Agent submitted that the Tenant '*rejected to sign*' the move-out condition inspection report.

The Tenant moved out of the rental unit on August 31, 2021. The Tenant testified that he provided his forwarding address to the Landlord on September 9, 2021. The Landlord's Agent stated that the Tenant did not give written permission to withhold any of his security deposit.

The Landlord's Agent testified that the rental unit was very dirty after the Tenant left. The Landlord's Agent said the first cleaning company cleaned the floor and charged

them $200.00. That company left the floor with visible streaks from the previous tenant's cleaning products. A second cleaning company came in and re-cleaned the floor and charged the Landlord $250.00. The second cleaning was acceptable to the Landlord's Agent.

The Landlord's Agent stated that the Tenant left the hardwood floor with damage. The Landlord's Agent uploaded a repair estimate for the floor damage totalling $1,500.00. The Landlord is seeking 50% of this estimate.

The Tenant did a move-out inspection with a man on August 31, 2021. The Tenant was never asked to sign the move-out condition inspection report, which he stated he would have willingly, but none was provided. The Landlord's Agent sent a copy of the condition inspection report to the Tenant by registered mail on October 1, 2021.

The Tenant submits that he is not required to make repairs which are the result of reasonable wear and tear. The Tenant testified that dents and scratches in the hardwood floors existed prior to the Tenant moving in and these were noted on the move-in condition inspection report. The Tenant submits that the Landlord loses the right to claim against the security deposit if protocols are not followed. The Tenant alleges that the Landlord breached the Act in this regard. The Tenant stated he is agreeable to pay the $250.00 charge for the second cleaning of the hardwood floors.

The Tenant states according to the Act, the Landlord's right to claim against the security deposit was extinguished because the Landlord did not offer the Tenant at least two opportunities to do a move-out condition inspection of the rental unit. The Tenant testified that the person who signed on the Landlord's behalf for the move-out condition inspection was the Landlord's female Agent. The Tenant testified, this was not the person who did the move-out condition inspection with him. The Tenant stated that the person who did the move-out condition inspection was a middle aged male whose name the Tenant did not get. The Tenant uploaded an audio clip of the Tenant speaking with a man during the move-out condition inspection.

On August 31, 2021, the Tenant returned all the keys to the Landlord but the Tenant never received the $100.00 deposit he left for the fob for the rental unit at the beginning of the tenancy.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

On August 30, 2017, the Landlord completed a move-in condition inspection of the rental unit prior to the Tenant moving into the suite pursuant to Section 23 of the Act. The Landlord provided a copy of the move-in condition inspection to the Tenant in accordance with Section 18(1)(a) of the *Residential Tenancy Regulation* (the "Regulation").

On August 31, 2021, an agent for the Landlord did a move-out condition inspection with the Tenant at the end of his tenancy; however, the Tenant was never presented with a completed condition inspection report and he was never asked to sign the report. The Landlord did not give the Tenant a copy of the signed condition inspection report as required by Section 18(1)(b) of the Regulation.

The Tenant provided his forwarding address to the Landlord on September 9, 2021. The Tenant was to receive the signed move-out condition inspection report by September 24, 2021, but he never received an executed copy of this report. The Landlord applied for dispute resolution on September 22, 2021 claiming against the security deposit pursuant to Section 38(1)(d) of the Act.

Section 36(2)(c) of the Act specifies that the Landlord's claim against a security deposit for damage to residential property is extinguished if the Landlord *having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.* I find the Landlord's claim against the security deposit for damage to the rental unit is extinguished as the Landlord did not provide the Tenant with a copy of a signed move-out condition inspection report.

Section 38 of the Act requires a landlord to either return a tenant's security or pet damage deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy, and the date the landlord receives the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security and/or pet damage 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 as per Section 38(4)(a) of the Act. A landlord may also, under Section 38(3)(b) of the Act, retain a tenant's security or pet damage deposit if an order to do so has been issued by an arbitrator.

I find the tenancy ended on August 31, 2021 when a move-out condition inspection was done, albeit incompletely. The Tenant provided his forwarding address in writing on September 9, 2021. The Landlord applied to claim against the Tenant's security deposit on September 22, 2021, while they were within the 15 day window to return the deposit or apply to claim against it. I find the Landlord's right to claim against the deposit was extinguished pursuant to Section 36(2)(c) of the Act and they must therefore pay the Tenant twice the amount held in trust.

RTB Policy Guideline #17 provides as follows:

> *… the arbitrator will order the return of double the deposit … if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.*
>
> *…*
>
> *If a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit plus interest.*

The Tenant has agreed to pay the Landlord $250.00 for the second cleaning of the floors. Pursuant to Section 38(4)(b), I find the Landlord may retain $250.00 for the second cleaning of the floors in the rental unit. The Tenant is entitled to a Monetary Award representing repayment of his security deposit pursuant to Section 38(1)(c) of the Act. The Monetary Award is calculated as follows:

Monetary Award

| | |
|---|---|
| Security Deposit less amount agreed X 2<br>($775.00 – $250.00 = $525.00<br>$525.00 x 2 =): | $1,050.00 |
| Plus return of deposit for fob: | $100.00 |
| TOTAL Monetary Award: | $1,150.00 |

As the Landlord was unsuccessful in their claim, they must bear the cost of the application filing fee.

Conclusion

I grant a Monetary Order to the Tenant in the amount of $1,150.00. 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 of British Columbia 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: May 5, 2022

Residential Tenancy Branch