



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNDL-S, FFL

Tenant: MNSDB-DR, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear two crossed applications regarding a residential tenancy dispute.

The landlord applied on October 26, 2021 for:

- compensation for damage caused by the tenant, their pets, or their guests to the unit or property, requesting to retain the security and/or pet damage deposit; and
- recovery of the filing fee.

The tenant applied on November 4, 2021 for:

- return of the security and pet damage deposit that the landlord is holding without cause; and
- recovery of the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified he served his Notice of Dispute Resolution Proceeding (NDRP) and evidence on the tenant by sending it registered mail on October 28, 2021 to the forwarding address provided by the tenant. The landlord provided proof of service, including a tracking number. The tenant advised she did not receive the landlord's documents, but obtained a copy of the NDRP from the Residential Tenancy Branch (RTB). Having checked the tracking number, I find the landlord served the tenant on October 28, 2021 in accordance with section 89 of the Act, and deem the documents received by the tenant on November 2, 2021 in accordance with section 90 of the Act.

The tenant testified she served her NDRP and evidence on the landlord by placing it in the mailbox on an unknown date. The landlord confirmed receipt of the tenant's documents. I find the tenant's application sufficiently served on the landlord, in accordance with section 71 of the Act.

Issues to be Decided

- 1) Is the landlord entitled to compensation for damage caused by the tenant, their pets, or their guests to the unit or property?
- 2) Is the landlord entitled to the filing fee?
- 3) Is the tenant entitled to return of the security and pet damage deposit?
- 4) Is the tenant entitled to the filing fee?

Background and Evidence

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

The parties agreed on the following facts. The tenancy began July 1, 2015; rent was \$1,900.00, due on the first of the month; the tenant paid a security deposit of \$837.50 and a pet damage deposit of \$837.50, which the landlord still holds; the tenancy ended on September 30, 2021; and the tenant provided a forwarding address in writing on October 12, 2021. The parties agreed that no move-in inspection was completed, and that the tenant was not provided with a copy of a move-in inspection report.

The landlord provided testimony describing damage done to the property during the tenancy by the tenant and her pets, and testified that areas of the rental unit were not cleaned at the end of the tenancy. The landlord testified that the tenant made changes to the property without his permission, and in some cases made repair efforts the landlord found insufficient and unacceptable. The landlord submitted numerous photos as evidence.

The landlord submitted as evidence a letter from a cleaning company, which states:

We were hired to come and complete a move-out clean October 6, 2021. During our initial walk through we noted that there was a significant amount of build up throughout the home. In our opinion the previous tenant had neglected the cleaning duties for quite some time. There were large deposits of dirt and grime in every area of the accommodation including but not limited to the bathrooms, kitchen, walls, windows, floors, surfaces, and doors. All areas of the home needed to be thoroughly cleaned and sanitized. This amount of build up could only have been caused by several months of neglect.

It is of our opinion that there was no cleaning done prior to the tenant vacating the residence leaving the new occupant with a significant amount of work to complete in order to make the home inhabitable.

The landlord also submitted as evidence a quote from the cleaning company, a receipt from the cleaning company for \$236.25, and a receipt for \$189.50 for sod.

The landlord testified he came to the claimed amount of \$1,675.00 as that was the amount of the security and pet deposits paid, and though “the damage is greatly in excess of the deposits,” he was seeking only to retain the amount of the deposits “for simplicity’s sake.”

The tenant testified that she entirely disagreed with the landlord’s claim, that the landlord was exaggerating, that it was an old house and “not in the best shape” when she moved in, and that the rental unit was cleaned at the end of the tenancy, though it is possible a few spots were missed.

The landlord testified it was not possible to do a move-in inspection report as the tenancy was arranged by phone, as the tenant was living out of province at the time.

The tenant testified she did not authorize the landlord to keep any portion of the security or pet damage deposit.

Analysis

Security and Pet Damage Deposits

Section 38 of the Act requires the landlord to either return the tenant’s security and pet damage deposit in full or file for dispute resolution for authorization to retain the deposits 15 days after the later of the end of a tenancy or upon receipt of the tenant’s forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security and pet damage deposit.

Section 24 of the Act provides that the right of a landlord to claim against a security and pet damage deposit is extinguished if they do not comply with the requirements of section 23 in offering the tenant 2 opportunities for an inspection and completing a condition inspection report.

I accept the undisputed evidence of the parties that no condition inspection report was prepared at any time for this tenancy. Consequently, I find that the landlord has extinguished his right to make a claim against the deposits for this tenancy.

Based on the undisputed evidence before me, I find that the landlord has extinguished his right to claim against the security and pet damage deposit by failing to complete a condition inspection report in accordance with the Act and has failed to return the deposits in full within 15 days of receipt of the tenant's forwarding address. I accept the tenant's evidence that she has not waived her right to obtain a payment pursuant to section 38 of the Act as a result of the landlord's failure to abide by the provisions of that section of the Act. Under these circumstances and in accordance with section 38(6) of the Act, I find that the tenant is entitled to double the value of the security and pet damage deposits paid for this tenancy. No interest is payable over this period.

Damages

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 or 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.

[Policy Guideline 17](#) includes that a landlord who has lost the right to claim against the security deposit for damage to the rental unit retains the rights to file a claim against the deposit for any monies owing for other than damage to the rental unit; and to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

While the landlord submitted evidence about the condition of the unit, I find there is insufficient evidence demonstrating that the damage was done by the tenant, or, in other areas of the rental, that there is anything more than the wear and tear that one would expect from a tenancy. In order to make a claim for a monetary award for damages, the applicant must show, on a balance of probabilities, that the damage arose during the tenancy, and is greater than that which would be expected in the ordinary course of occupying a rental suite. I find that the evidence presented does not meet that evidentiary burden.

I find the undated photographs submitted by the landlord to be of little assistance in determining the state of the rental unit and, in the absence of a condition inspection report prepared and signed by the parties at the start of the tenancy, there is insufficient evidence that any damage found within the rental unit is attributable to the tenancy.

With respect to cleaning costs, based on the landlord's evidence, I find the landlord has established, on a balance of probabilities, that the rental was not left in a clean condition by the tenant.

Consequently, I find that the landlord is entitled to a monetary award for \$236.25, the amount he paid the cleaning company for their work after the tenant vacated the rental unit.

As both parties have been at least partially successful in their applications, I decline to award the filing fees the parties paid to apply for dispute resolution.

I find the tenant is entitled to a monetary order as follows:

Double the security deposit	\$1,675.00
Double the pet damage deposit	\$1,675.00
Less cleaning costs paid by the landlord	- \$236.25
Amount owed to tenant	\$3,113.75

Conclusion

The tenant is granted a monetary order in the amount of \$3,113.75.

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: June 13, 2022

Residential Tenancy Branch