



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) in which the Landlord seeks monetary compensation for repairing damages to the rental unit that the Tenants, their pets or their guests caused during the tenancy pursuant to section 67 of the Act.

The Landlord’s agent (“MK”) and the two Tenants (“AR” and “DS”) attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Matter – Service of Notice of Dispute Resolution Proceeding

MK stated the Landlord served the Notice of Dispute Resolution Proceeding and its evidence (“NDRP Package”) on each of the Tenants by registered mail on November 10, 2021. MK stated the NDRP Packages were mailed to the forwarding address provided by the Tenants to the Landlord in their notice to end tenancy dated October 26, 2022 (“Tenants’ Notice”). MK provided the Canada Post tracking numbers for service of the NDRP Packages on each of the Tenants. AR stated the Tenants did not receive the NDRP Packages from the Landlord by registered mail as they were out of the country working on a project. AR stated the Tenants did not become aware of the Application until they received an email from the Residential Tenancy Branch stating the hearing was being held on June 9, 2022 at 1:30 pm.

Subsections 88(d) and 89(1)(c) of the Act state:

- 88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be

given to or served on a person must be given or served in one of the following ways:

[...]

- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

[...]

89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

[...]

- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

[...]

MK stated the NDRP Packages were served by the Landlord on the Tenants by registered mail and she submitted the Canada Post tracking numbers to corroborate her testimony. MK submitted the Tenants' Notice to confirm that the NDRP Packages were mailed to the forwarding address provided by the Tenants. I find the Landlord served the NDRP Packages on the Tenants separately pursuant to sections 88 and 89(1) of the Act.

Section 90 of the Act states:

90 A document given or served in accordance with section 88 *[how to give or serve documents generally]* or 89 *[special rules for certain documents]*, unless earlier received, is deemed to be received as follows:

- (a) if given or served by mail, on the fifth day after it is mailed;
- (b) if given or served by fax, on the third day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the third day after it is attached;
- (d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the third day after it is left.

Pursuant to section 90 of the Act, I find the Tenants were deemed to have been served with the NDRP Packages on November 15, 2022.

MK stated the Tenants did not serve any evidence on the Landlord for this hearing.

Preliminary Matter – Correction of Rental Address

At the outset of the hearing, I noted rental address did not indicate a unit number for the rental unit. The Landlord stated this was an oversight when the Application was made and she requested I amend the Application to include the unit number in the rental address.

Residential Tenancy Branch Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served

The Tenants could reasonably have anticipated the Landlord would request an amendment to the Application to include the unit number in the rental address. As such, pursuant to Rule 4.2, I amended the Application to add the unit number in the rental address stated in the Application.

Issues to be Decided

Is the Landlord entitled to:

- monetary compensation for damages caused by the Tenants, their guests or pets during this tenancy?
- retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?
- recover the filing fee for the Application?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed to tenancy commenced on July 1, 2020, for a fixed term ending June 30, 2021, with rent of \$1,700.00 payable on the 1st day of each month. The Tenants were to pay a security deposit of \$850.00. MK stated the Landlord received the security deposit from the Tenants and that the Landlord was holding the deposit in trust on behalf of the Tenants.

MK stated the Tenants did not give the Landlord a minimum of one months' notice prior to vacating the rental unit. MK stated the Tenants emailed the Landlord with a notice dated October 26, 2021 ("Tenants' Notice") in which they advised they were vacating the rental unit on October 26, 2022. MK submitted a copy of an email dated October 26, 2021 from the Tenants to the Landlord in which they attached a signed copy of the Tenants' Notice.

MK submitted a copy of the Condition Move-In and Move-out Inspection Reports. The Move-In Report was signed by the Landlord and the Tenants on July 1, 2020. MK stated that, as the Tenants gave less than one day notice to vacate the rental unit, the Landlord did not have the opportunity to schedule a Move-Out Condition Inspection report nor did it have the opportunity to serve the Tenants with a Notice of Final Opportunity to Schedule a Condition Inspection on Form RTB-22 ("Inspection Notice"). MK referred to the Move-Out Inspection Report and stated the Move-Out Inspection had been performed by two employees of the Landlord on October 27, 2021 who had signed and witnessed the Move-Out Inspection Report. MK stated that, as outlined in the Inspection Report, the Tenants did not properly clean the rental unit, including failing to properly clean the refrigerator, range, walls and flooring. MK also submitted a copy of a signed note from the cleaners ("Cleaner's Note") that stated the rental unit was "very dirty, stove was really bad. Stuff was left behind. Took 4 hours to clean". MK stated the Tenants had failed to remove a washing machine from the rental unit which the Landlord arranged to have taken away for disposal. MK stated the Tenants did not return the keys to the rental unit which required the lock to be rekeyed.

MK submitted a Monetary Order Worksheet on Form RTB- 37 (“Worksheet”) setting out the individual items the Landlord is seeking compensation from the Tenants as follows:

Damage Claim	Amount
Cleaning	\$160.00
Cleaning Materials	\$32.00
Painting	\$150.00
Painting Materials	\$52.50
New Lock and Labour	\$50.00
Junk Removal	\$70.00
Total:	\$514.50

MK submitted into evidence a copy of the invoice from the cleaning company that performed the cleaning, painting and rekeying the lock and an invoice for the removal and disposal of the washing machine. MK stated the Landlord was seeking authorization to deduct the damages from the Tenants’ security deposit.

AR stated that it was not correct that the Tenants had given notice to vacate the rental unit on November 26, 2021. AR stated the Tenants had requested the Landlord to correct a number of things in the rental unit. In particular, AR stated the Tenants vacated the rental unit due to smoke from another rental unit that was causing both Tenants health complications due to their asthma. I noted that this hearing was only for consideration of the Landlord’s claims set out in the Application and that I would not consider any oral claims made by the Tenants against the Landlord at the hearing. I told the Tenants they have the option of making their own application for dispute resolution to seek compensation for any breaches of the Act, *Residential Tenancy Regulations* and/or tenancy agreement.

AR stated the Tenants moved out early on November 27, 2021. AR then stated that the Tenants told the former manager (“Former Manager”) of the residential property that they had to move out because they had a project outside of the country and the Tenants needed to vacate the rental unit. AR stated the Former Manager did not reside in the residential property and a Move-Out Inspection could not be arranged for November 27, 2021. AR stated the Former Manager told the Tenants they could take pictures of the rental unit. AR stated he had about 20 pictures and a video that showed the rental unit was in the same condition when they left as it was when they moved into it. However, the Tenants did not serve copies of those pictures or the video on the Landlord or submit them to the Residential Tenancy Branch prior to this hearing.

AR and DS disputed they did not properly clean the rental unit before they vacated it and disputed the Landlord's claims for damages to the rental unit. AR stated that the Tenants were told by the Former Manager, at the time of the move-in, that they could affix a television to the wall. AR stated the former manager said that, after the Tenants vacated, the Landlord would fill the holes and repaint the wall. However, the Tenants did not submit any evidence, or call any witnesses, to support their assertion that the former manager told them there would be no charges for repairing and repainting the wall. AR stated the washing machine was in the rental unit at the time they took possession. MK did not dispute AR's claim the washing machine was already in the rental unit when the Tenants took possession. AR stated the paint was approximately two years old when they moved into the rental unit and that they resided in the rental unit for almost two years. MK did not dispute the age of the interior paint at the time the Tenants vacated the rental unit.

Analysis

Rule 6.6 Residential Tenancy Branch Rules of Procedure ("RoP") states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on Rule 6.6, the onus to prove its case, on a balance of probabilities, is on the Landlord.

Sections 7 and 67 of the Act state:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
- 67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 ("PG 16") addresses the criteria for awarding compensation. PG 16 states in part:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlord must provide sufficient evidence that the four elements set out in PG 16 have been satisfied.

Section 35 and subsections 36(2), 37(2) and 45(1) of the Act state:

- 35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
 - (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
 - (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
 - (3) The landlord must complete a condition inspection report in accordance with the regulations.
 - (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
 - (5) The landlord may make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.
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- 36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
 - (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
 - (b) having complied with section 35 (2), does not participate on either occasion, or
 - (c) 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.

- 37(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, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.
- 45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

When assessing his testimony during the hearing, I found AR's demeanour to be confrontational, and his testimony to be evasive and inconsistent. As such, I give little weight to the credibility or reliability of his testimony and submissions.

The Landlord submitted a copy of the Tenant's Notice in which the Tenants gave notice they were vacating the rental unit on the same date as the date of the Tenants' Notice. AR testified the Tenants vacated the rental unit in the early morning of October 27, 2022. I find the Tenants effectively abandoned the rental unit by giving only one day written notice to the Landlord that they were vacating the rental unit. As a result, the Landlord did not have a reasonable opportunity to schedule a Move-Out Condition Inspection with the Tenants prior to them vacating the rental. Furthermore, the Landlord did not have the opportunity of serving the Tenants with an Inspection Notice pursuant to section 17(2)(b) of the *Residential Tenancy Regulations*. As such, I find the Landlord's right to claim against the security deposit for damages to the residential property was not extinguished by the failure of the Landlord to schedule a Move-Out Condition Inspection with the Tenants, or serving them with an Inspection Notice, pursuant to section 35(2).

MK submitted a copy of the Move-In and Move-Out Condition Inspection Reports. MK stated that Move-In Condition Inspection Report indicated the rental unit was clean at the time the Tenants moved in and that there was no damage to the walls. MK stated the Move-Out Condition Inspection was performed by two employees of the Landlord and that the Move-Out condition Inspection Report had been signed and witnessed by

those employees. The Move-Out Condition Inspection Report indicated that the rental unit was not clean when the inspection was performed and that the Tenants and that the Tenants had failed to clean the refrigerator, range, walls and flooring. MK submitted the Cleaner's Notice to corroborate her testimony that the rental unit required cleaning after the Tenants vacated it. MK submitted copies of invoices for the expenses incurred by the Landlord to clean and repair the rental unit, replace the lock and to remove the washing machine. I reviewed the Worksheet submitted by MK on a line-by-line basis as set out below.

AR admitted the Tenants vacated the rental unit quickly because of a job opportunity they received. AR admitted the Tenants served the Landlord with the Tenants' Notice the day before they vacated the rental unit. AR stated the Tenants vacated the rental unit early on the morning of October 27, 2021. Given the Tenants vacated less than 24 hours after they served the Landlord with the Tenants' Notice, I find it unlikely the Tenants had the opportunity to reasonably clean the rental unit before they vacated it. Based on the Move-Out Inspection Report and the Cleaner's Notice, I find the Tenants did not comply with section 37(2)(a) of the Act. As such, I find the Landlord is entitled to the compensation of \$160.00 for cleaning the rental unit and \$32.00 for cleaning materials.

The Landlord claimed \$150.00 for repainting the damage wall and 52.50 for painting materials on the wall on which the television was located. Based on the evidence of the MK and AR, I find the paint on the wall that was repaired and repainted was approximately four years old. *Residential Tenancy Policy 40 – Useful Life of Building Elements* provides that the estimated useful life of interior paint is five years. I find that the paint was approximately four years old when the Tenants vacated the rental unit. As such, I have depreciated the Landlords claim for painting and supplies by 80% and find the Landlord is entitled to \$30.00 for repainting and \$10.50 for painting materials.

MK stated the Tenants did not return the keys when they vacated the rental unit. The Tenants did not dispute this claim. Although I was disinclined to award the Landlord the \$50.00 claimed for rekeying the door to the rental unit, I have reconsidered my position. Section 37(2)(b) of the Act clearly states the Tenants were required to return the keys when they vacated the rental unit. As the Tenants did not return the keys, I find the Landlord is entitled to compensation of \$50.00 to rekey the lock.

MK did not dispute the Tenants' claim that the washing machine was already located in the rental unit when the Tenants took possession of the rental unit. MK did not provide any evidence that the Tenants had agreed to remove the washing machine when they

vacated the rental unit. As such, I decline to award the Landlord \$70.00 to remove and dispose of the washing machine.

In total, I find the Landlord has established a claim for \$282.50 in compensation for damages caused by the Tenants, their guests or pets calculated as follows:

Damage Claim Awarded	Amount
Cleaning	\$160.00
Cleaning Materials	\$32.00
Painting	\$30.00
Painting Materials	\$10.50
Rekeying Locks	\$50.00
Total:	\$282.50

Pursuant to section 67 of the Act, I award the Landlord \$282.50 to compensate it for its loss. Pursuant to section 72(2) of the Act, I order that the Landlord may retain \$282.50 from the Tenants' security deposit of \$850.00 in satisfaction of the award.

As the Landlord has been successful for a portion of the monetary claim made in its Application, pursuant to section 72 of the Act, I award the Landlord \$100.00 from the Tenants for the filing fee of the Application. Pursuant to section 72(2) of the Act, I order that the Landlord may retain \$100.00 from the Tenants' security deposit of \$850.00 in satisfaction of the award of the filing fee for the Application.

The Landlord is ordered to pay the Tenants, within 15 days of receipt of this decision, the sum of \$467.50, being the balance of the security deposit after deduction of the damages and filing fee awarded to the Landlord.

Conclusion

The Landlord is awarded \$282.50 from the Tenants to compensate it for its loss.

The Landlord is awarded \$100.00 from the Tenants for the filing fee of the Application.

The Landlord may retain \$382.50 from the Tenant's security deposit in satisfaction of the monetary awards set out above.

The Landlord is ordered to pay the Tenants, within 15 days of receipt of this decision, the sum of \$467.50, being the balance of the security deposit calculated as follows:

Description	Amount
Compensation awarded to Landlord	\$282.50
Recovery of Filing Fee of Application	\$100.00
Less Tenant's Security Deposit	-\$850.00
Total	-\$467.50

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 15, 2022

Residential Tenancy Branch