



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOSA BLUE SKY PROPERTIES (PANDORA-B)
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord December 14, 2021 (the “Application”). The Landlord applied as follows:

- For compensation for damage to the rental unit
- To recover unpaid rent
- For compensation for monetary loss or other money owed
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

The Agents for the Landlord (the “Agents”) appeared at the hearing. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Agents. I told the Agents they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agents provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenants did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Agents testified that the hearing package and Landlord’s evidence were sent to the Tenants December 22, 2021, by registered mail to a forwarding address provided by the Tenants on the Condition Inspection Report (the “CIR”). The Landlord submitted documentary evidence of service with Tracking Numbers 2003 and 1000 on it. I looked Tracking Numbers 2003 and 1000 up on the Canada Post website which shows the packages were delivered December 29, 2021. I cannot tell from the Canada Post

website whether signatures were required for the packages. The Agents did not know whether signatures were required for the packages.

Based on the undisputed testimony of the Agents, documentary evidence of service and Canada Post tracking information, I am satisfied the Tenants were served with the hearing package and Landlord's evidence in accordance with sections 88(d) and 89(1)(d) of the *Act*. Based on the Canada Post tracking information, I am satisfied the Tenants received the hearing packages and Landlord's evidence December 29, 2021. I am also satisfied based on the evidence provided that the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenants. The Agents were given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to compensation for damage to the rental unit?
3. Is the Landlord entitled to recover unpaid rent?
4. Is the Landlord entitled to keep the security or pet damage deposits?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Unpaid rent from September to November 2021	\$5,550.00
2	Loss of rent for December 2021	\$1,850.00
3	Cleaning	\$80.00
4	Wall damage	\$350.00
5	Filing fee	\$100.00
	TOTAL	\$7,930.00

A written tenancy agreement was submitted. The tenancy started July 01, 2020, and was for a fixed term ending June 30, 2021. The tenancy then became a month-to-month tenancy. Rent was \$1,850.00 per month due on or before the first day of each month. The Tenants paid a \$925.00 security deposit and \$925.00 pet damage deposit.

The Agents testified as follows.

The Tenants moved out of the rental unit November 30, 2021.

The Tenants provided their forwarding address to the Landlord November 30, 2021, on the CIR.

The Landlord did not have an outstanding Monetary Order against the Tenants at the end of the tenancy.

The Tenants agreed in writing at the end of the tenancy on the CIR that the Landlord could keep \$430.00 of the security deposit being \$80.00 for cleaning and \$350.00 for wall damage repairs.

The CIR submitted is accurate. It is standard procedure that the Landlord provides a copy of the move-in CIR to tenants in person at the move-in inspection. The Landlord emailed a copy of the move-out CIR to the Tenants November 30, 2021.

The pet damage deposit was kept for cleaning required due to the Tenants' pet.

#1 Unpaid rent for September to November 2021 \$5,550.00

The Landlord seeks unpaid rent from September to November of 2021 because the Tenants failed to pay rent for these months. The Agents testified that the Tenants did not have authority under the *Act* to withhold rent for September to November of 2021.

#2 Loss of rent for December 2021 \$1,850.00

The Landlord sought loss of rent for December. The Agents testified that the Tenants gave notice on November 04, 2021, ending the tenancy and therefore the notice was effective December 31, 2021; however, the Tenants did not pay December rent. The

Agents testified that the rental unit would have been posted for rent immediately in early December.

#3 Cleaning \$80.00

The Tenants agreed to the Landlord keeping \$80.00 from the security deposit for cleaning on the CIR.

The Agents testified that the Tenants did not leave the rental unit reasonably clean and P.F. cleaned the rental unit for at least three hours.

#4 Wall damage \$350.00

The Tenants agreed to the Landlord keeping \$350.00 from the security deposit for wall damage on the CIR.

The Agents testified that the Tenants damaged the walls of the rental unit beyond reasonable wear and tear and the walls had to be patched and painted by their maintenance team which took five hours. The Agents testified that the cost claimed accounts for labour and materials.

Documentary Evidence

The Landlord submitted the following relevant documentary evidence:

- Lease ledger
- CIR
- Emails to the Tenants about monies owing
- Email to the Tenants about their late notice ending the tenancy
- Tenants' Notice to End Tenancy dated November 01, 2021

Analysis

I accept the undisputed testimony of the Agents and based on it, as well as the documentary evidence submitted, I find the following.

Security and pet damage deposits

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to 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 security and pet damage deposits at the end of a tenancy.

Based on the CIR, I find the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

Based on the CIR and undisputed testimony of the Agents, I find the Landlord complied with their obligations in relation to move-in and move-out inspections and therefore did not extinguish their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the *Act*.

I find the tenancy ended November 30, 2021.

I find the Tenants provided their forwarding address to the Landlord in writing November 30, 2021.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants’ forwarding address in writing to repay the security and pet damage deposits or file a claim against them. Here, the Landlord had 15 days from November 30, 2021, to repay the security and pet damage deposits or file a claim against them. The Application was filed December 14, 2021, within time. I find the Landlord complied with section 38(1) of the *Act*.

I accept that the Landlord kept the pet damage deposit for cleaning required due to the Tenants’ pet and I find the Landlord was permitted to keep and claim against the pet damage deposit for this purpose.

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 Unpaid rent September to November 2021 \$5,550.00

Section 26 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.

I accept the Tenants owed \$1,850.00 per month in rent pursuant to the written tenancy agreement. I accept the Tenants failed to pay rent for September to November of 2021.

I accept the Tenants did not have authority under the *Act* to withhold rent for September to November of 2021. I find the Tenants owe the Landlord \$5,550.00 in unpaid rent.

#2 Loss of rent December 2021 \$1,850.00

Section 45 of the *Act* states:

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.

I accept the Tenants gave notice on November 04, 2021, ending the tenancy for November 30, 2021. I accept the Tenants moved out of the rental unit November 30, 2021, and did not pay December rent. I find the Tenants breached section 45(1) of the *Act* by ending the tenancy early. I accept the Landlord lost December rent due to the Tenants' breach. I accept the Landlord mitigated their loss by posting the unit for rent soon after receiving the Tenants' notice ending the tenancy. I acknowledge that the Agents said the unit would have been posted for rent in early December; however, they also said it would have been posted for rent immediately and therefore I accept that the Landlord mitigated their loss. Further, the Tenants did not appear at the hearing to dispute this claim. The Landlord is awarded \$1,850.00 for loss of rent for December.

#3 Cleaning \$80.00

#4 Wall damage \$350.00

The Tenants agreed to the Landlord keeping these amounts on the CIR and therefore the Landlord can keep these amounts pursuant to section 38(4)(a) of the *Act*.

#5 Filing fee \$100.00

Given the Landlord has been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Unpaid rent for September to November 2021	\$5,550.00
2	Loss of rent for December 2021	\$1,850.00
3	Cleaning	\$80.00
4	Wall damage	\$350.00
5	Filing fee	\$100.00
	TOTAL	\$7,930.00

The Landlord is entitled to \$7,930.00. Pursuant to section 72(2) of the *Act*, the Landlord can keep the security and pet damage deposits. The Landlord is issued a Monetary Order for the remaining \$6,080.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlord is entitled to \$7,930.00. The Landlord can keep the security and pet damage deposits. The Landlord is issued a Monetary Order for the remaining \$6,080.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: July 29, 2022

Residential Tenancy Branch