Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for unpaid rent of $1,500.00; for a monetary order of $300.00 for damage or compensation for damage under the Act; for a monetary order of $150.00 for damages for the Landlord, retaining the security and pet damage deposits to apply to these claims; and to recover the $100.00 cost of their Application filing fee.

The Tenant, D.A., and the Landlords, S.S. and V.D., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlords testified that they served each Tenant separately with the Notice of Hearing documents by Canada Post registered mail, sent on December 10, 2021. The Landlords provided Canada Post tracking numbers as evidence of service. The Landlords also said that they emailed a digital copy of these documents, as back-up.

However, the Tenant denied having received anything from the Landlords. He said they were informed about the Landlords' dispute resolution hearing when the Tenants reached out to the RTB on another matter. The Tenant denied having received the emails from the Landlords, as well. The Tenant confirmed that they had not submitted any evidence to the RTB or the Landlords for this proceeding.

I checked the respective registered mail tracking numbers in the Canada Post website and discovered that two notice cards were left for each package – a total of four notices - indicating where the packages could be picked up. However, the Canada Post website indicated that the packages were not picked up from the relevant post office; the packages were returned to the sender.

According to RTB Policy Guideline 12, "Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing." Accordingly, I find on a balance of probabilities that the Landlords served the Notice of Hearing documents and their evidence to the Tenants on December 15, 2021, five days after they were mailed, pursuant to section 90 of the Act. I find that the Tenants were deemed served with the Notice of Hearing documents and the Landlords' evidence in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Parties.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application, and the Parties confirmed these addresses, with the Tenant updating his email address in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on March 1, 2018, with a monthly rent of $1,500.00, due on the first day of each month. They agreed that the Tenants paid the Landlords a security deposit of $750.00, and a pet damage deposit of $750.00. The Landlords confirmed that they retained the security and pet damage deposits in full to apply to their Application.

The Landlords submitted a monetary order worksheet with their claims listed, as follows:

	Receipt/Estimate From	For	Amount
1	RTB-8 [Mutual Agreement to End Tenancy]	Tenancy to end Dec 1, 2021	$1,500.00
2	Carpet cleaning receipt	Dec. 1, 2021	$178.50
3	Strata bylaw fines	Bylaw violations	$200.00
		Total monetary order claim	**$1,878.50**

#1 UNPAID RENT FOR NOVEMBER → $1,500.00

I asked the Landlords to explain their first claim for unpaid rent, and they testified, as follows:

> We had a lease agreement with an RTB 8 for December 1 – a Mutual Agreement to End a Tenancy. There was some discussion of the Tenants possibly leaving early, but with no notice they moved out in October. They owed us November rent and they refused to pay it.

The Landlords submitted a copy of the Mutual Agreement to End a Tenancy, which was executed by the Parties on July 27, 2021 ("Mutual Agreement"). It states that the Tenants agree to vacate the premises at 12:00 p.m. on December 1, 2021.

The Tenant replied:

> We had first moved in on March 1, 2018, on a month-to-month basis. In May of 2021, they gave us notice that they were putting the property up for sale. On June 1st, we re-signed a fixed-term lease ending December 1, 2021.
>
> We vacated early, because we had to be out on December 1st, and there were no other rental units available in our city. We had to hop on the first one we found, and that started on November 1st. We couldn't afford to pay for two places. We loved it, but they were selling it and we jumped at the first available property.

I asked the Landlords if they found another tenant, and they said not for November – it was left vacant that month. I asked the Landlords what steps they took to find new

tenants, and they said: “We didn’t know they had moved out until October 21 or 25; November 1st was just a few days after.”

#2 CARPET CLEANING → $178.50

The Landlords explained this claim, as follows:

> It was just a company that services [the area]. It’s a small community, there’s not a ton out there - no competition. I think we called two places and chose the cheaper one. It might have related to the timing of when they could get in there.
>
> The carpets were shampooed prior the Tenants moving in. We built it into the tenancy agreement that they would do it on moving out. They didn’t. They had been there for two and a half years. The place was dirty.

The Tenant replied:

> We had done it ourselves. However, we did note on our move-in that they were dirty. They were original, and it was mentioned by [S.S.] that they would be pulling them out when they sold the unit, but that didn’t happen. Either way they were 15 years old.

The Landlords said:

> We never had a plan to do that. In the initial inspection there were spots, and you agreed to that. But dirt from footwear coming in from the deck was not there before.

In the CIR, it indicates that the carpets in the living room had “small bleach stains” and they were given a code “F” for being in “fair” condition. On the move-out side of the CIR, it says: “Dirty, red stains” and uses the codes: “P-DT-ST”, which means “Poor, Dirty, Stained”. On the move-out CIR, the Tenants signed agreeing to forego the return of their security and pet damage deposits, due to the condition of the rental unit.

The Tenant said: “We had offered to cover the $150.00 if they would like; we are not opposed to that. I’d like to know if the condition of the carpet affected the sale of the property or if they were able to sell it at full value?”

The Landlords said: “That is irrelevant to our claim. In my mind, we had agreed to clean

the carpets and they agreed to the carpet cleaning."

The Tenant said: "If you're no longer going to own the property, why was it needed to be cleaned?"

The Landlords said: "That's what we agreed on. It's just about the carpets that were supposed to be cleaned, being dirty."

In paragraph 12 of the Addendum to the tenancy agreement, it states:

> **12. CLEANLINESS**
>
> a) The Landlord agrees to produce the property clean and clear of any debris or chattels upon the possession date.
>
> b) The Tenant agrees to produce the property clean and clear of any debris or chattels upon the ending date (move-out date). Furthermore, the Tenant agrees to have the property professionally cleaned including but not limited to floors and trim, inside cupboards and appliances, bathtubs/showers, sinks and toilets within 24 hours of vacating the property. Should the Tenant not fulfill the cleanliness term of this contract, part of the Deposit in the amount of $150.00 is forfeit by the Tenant to the Landlord's benefit. The Tenant agrees that this is the Tenant's written consent as per the Residential Tenancy Agreement page 3 section c.i.

#3 STRATA BYLAW FEES → $200.00

In the hearing, the Landlords explained this claim, as follows:

> When the Tenants moved in, they were provided with Strata Bylaws regarding how pets are to be handled. However, the Tenants dog was being off leash in common areas, it was defecating, and they were not picking up after the dog.
>
> I forwarded those complaints to the Tenants, and asked them to please don't do this, but it continued and we were eventually fined. There were four fines of $50.00 each – two were for being off leash on common property, and the other two for defecating and not picking up the feces.

The Tenant said: "Yes, we received notice about the fines, I and I do agree with that."
I confirmed that the Tenant was saying that they agreed to pay the Strata fines, as requested by the Landlord.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I advised them of how I analyze evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlords must prove:

1. That the Tenants violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlords to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlords did what was reasonable to minimize the damage or loss.

("Test")

#1 UNPAID RENT FOR NOVEMBER → $1,500.00

Based on the evidence before me overall on this claim, I find that the Parties had a fixed-term tenancy agreement running from August 1, 2021, to December 1, 2021.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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." There is no evidence before me that the Tenants had a right to deduct any portion of the rent from the monthly rent due to the Landlord in November 2021. The Tenants' difficulty paying rent at two properties is not relevant to this requirement.

Section 45 of the Act sets out a tenant's obligations regarding giving notice to end a tenancy. Section 45(2) of the Act deals with ending a fixed term tenancy, as follows:

> **45** (2) A tenant may end a fixed term 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,

> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
>
> (c) 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 find that the Act and the Mutual Agreement did not give the Tenants the right to vacate the residential property before the date specified in this tenancy agreement. I find that the Tenants were required to find new tenants to take over their tenancy agreement, or to compensate the Landlords for the rent owed to the Landlords on November 1, 2021.

The Landlords were required to mitigate or minimize the damage they faced by trying to find a new tenant; however, I find that the Tenants did not notify the Landlord of their departure in sufficient time to allow the Landlords to seek alternate tenants. Further, I find it more likely than not that it would be very difficult to find a tenant for one month only, which put the Landlords in a more difficult position to mitigate their loss.

Section 7 of the Act requires a party who does not comply with the Act, regulation, or tenancy agreement to compensate the other party for the resulting damage or loss. Pursuant to Policy Guideline #16, damage or loss is not limited to physical property only, but also includes less-tangible impacts, such as loss of rental income that was to be received under a tenancy agreement.

As a result, and pursuant to sections 7 and 67 of the Act, I award the Landlords with **$1,500.00** from the Tenants for rent arrears from November 2021.

#2 CARPET CLEANING → $178.50

Section 32 of the Act states that tenants "…must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." Section 37 states that tenants must leave the rental unit "reasonably clean and undamaged".

Policy Guideline #1, "Landlord & Tenant – Responsibility for Residential Premises" ("PG #1") helps interpret sections 32 and 37 of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit

or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

In addition to their obligations under the Act, I find that the Parties agreed in the tenancy agreement addendum that the Tenants would have the property professionally cleaned, including the floors/carpets. However, they also agreed that if the Tenants did not fulfill this requirement, that the Tenants would forfeit $150.00 for the Landlords' benefit.

As such, I find that the Tenants have not provided sufficient evidence that they had the residential property cleaned professionally, and therefore, I find that they are obliged by the addendum to pay the Landlords $150.00. Accordingly, I award the Landlords with **$150.00** for this claim, pursuant to sections 37 and 67 and PG #1.

#3 STRATA BYLAW FEES → $200.00

As the Tenant agreed to pay for this claim, I award the Landlords with **$200.00**, pursuant to section 67 of the Act.

Summary and Offset

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenants' $750.00 security deposit and $750.00 pet damage deposit in partial satisfaction of the Landlords' monetary awards.

	Receipt/Estimate From	For	Amount
1	RTB-8; Mutual Agreement	Tenancy to end Dec 1, 2021	$1,500.00
2	Carpet cleaning receipt	Dec. 1, 2021	$150.00
3	Strata bylaw fines	Bylaw violations	$200.00

		Total monetary order claim	**$1,850.00**

The Landlords have been awarded a total of **$1,850.00** for their claims. Given their success, I also award the Landlords with recovery of their **$100.00** Application filing fee from the Tenants, for a total award of **$1,950.00**.

I authorize the Landlord to retain the Tenants' **$750.00** security deposit and their **$750.00** pet damage deposit in partial satisfaction of these monetary awards. Pursuant to section 67 of the Act, I grant the Landlords a **Monetary Order** of **$450.00** from the Tenants for the remainder of the amount owing after retaining the deposits.

Conclusion

The Landlords are largely successful in their claims, as they provided sufficient evidence to meet their burden of proof on a balance of probabilities. The Landlords are awarded a total of **$1,950.00**, including recovery of the $100.00 Application filing fee from the Tenants.

The Landlords are authorized to retain the Tenants' **$750.00** security deposit and their **$750.00** pet damage deposit in partial satisfaction of these monetary awards.

I grant the Landlords a **Monetary Order** of **$450.00** from the Tenants for the remainder of the monetary awards owing after the deposit amounts are considered. This Order must be served on the Tenants by the Landlords and 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 *Residential Tenancy Act*.

Dated: July 06, 2022

Residential Tenancy Branch