Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC MNRL-S MNDL FFL**

Introduction

This hearing was convened as a result of the Landlords' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an order of possession for cause pursuant to sections 47 and 55;
- a monetary order for unpaid rent in the amount of $2,200.00 pursuant to section 55;
- authorization to keep the Tenants' security and/or pet damage deposit(s) under section 38;
- an order for compensation to make repairs to the rental unit that the Tenants, their pets or their guests caused during the tenancy pursuant to section 67; and
- authorization to recover the filing fee of the Application pursuant to section 72.

The Tenants did not attend this hearing scheduled for 11:00 am. I left the teleconference hearing connection open for the entire hearing, which ended at 11:37 am, in order to enable the Tenants to call into this teleconference hearing. The two Landlords ("MO" and "CR") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that MO, CR and I were the only ones who had called into this teleconference.

CR testified the Landlords served the NDRP and their evidence (collectively the "NDRP Package") on each of the Tenants registered mail on May 3, 2022. CR submitted the Canada Post tracking numbers to corroborate her testimony the NDRP Package was served on each of the Tenants. Based on the undisputed testimony of CR, I find that NDRP Package was served on each of the Tenants in accordance with sections 88 and

89 of the Act. I find that, pursuant to section 90, the Tenants were deemed to have been served with the NDRP on May 8, 2022.

CR testified the Tenants did not serve any evidence on the Landlords.

Preliminary Matter – Tenants Have Vacated Rental Unit

CR stated the Tenants abandoned the rental unit on June 22, 2022 and the Landlords have taken back possession of the rental unit. As such, the Landlords no longer require an Order of Possession. Based on the foregoing, I dismiss the Landlords' claim for an Order of Possession.

Issues to be Decided

Are the Landlords entitled to:

- a monetary order for unpaid rent?
- authorization to apply the security and pet damage deposits to the unpaid rent?
- a monetary order for compensation for damage caused to the rental unit by the Tenants, their guests or their pets?

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.

CR submitted into evidence a copy of the tenancy agreement dated December 12, 2022 and the addenda thereto. CR testified the tenancy commenced on December 12, 2021, or a fixed term ending December 11, 2022, with rent of $2,200.00 payable on the 12th day of each month. The Tenants were to pay a security deposit $550.00 and a pet damage deposit of $550.00 by December 12, 2022. CR stated the Tenants paid the security and pet damage deposits and that the Landlords were holding the deposits in trust for the Tenants.

CR submitted into evidence a copy of a One Month Notice to End Tenancy for Cause dated March 31, 2022 ("1 Month Notice"). CR stated the 1 Month Notice was served on the Tenants' door on March 31, 2022. DR submitted into evidence a signed and

witnessed Proof of Service certifying the 1 Month Notice was served on the Tenants' door to corroborate her testimony. CR stated the Landlords were unaware of the Tenants making an application for dispute resolution to dispute the 1 Month Notice.

CR stated the Landlords are seeking $6,600.00 for unpaid rent owing by the Tenants for rent owing for the months of April, May and June, 2022 calculated as follows:

Date	Rent Owed	Paid	Balance
April 13, 2022	$2,200.00	$0.00	$2,200.00
May 13, 2022	$2,200.00	$0.00	$2,200.00
June 13, 2022	$2,200.00	$0.00	$2,200.00
Total	**$6,600.00**	**$0.00**	**$6,600.00**

CR stated the Landlords were seeking compensation of $2,103.33 for damages caused to the rental unit as follows:

Description of Damage	Amount Claimed for Damage
Sliding door screen	$169.00
Sliding door blinds	$90.00
Two Window blinds	$46.95
Sliding Glass Door	$900.00
Roll of Landscape Fabric	$51.29
Doorbell Camera	$47.99
Two Windows	$605.61
Two Window Screens	$42.50
Printer Ink	$59.99
Total:	$2,013.33

CR admitted the Landlord's did not perform a move-in or move-out condition inspection with the Tenants. CR submitted into evidence pictures of the damages to the rental unit that she said were taken after the Tenants vacated the rental unit.

CR submitted into evidence a text dated February 3, 2022, from a neighbour who advised the Landlords that the Tenants were "pretty rowdy" and it "looks like they have broken a number of windows …" in the rental unit. CR submitted into evidence a text from February 13, 2022 in which the Landlords inquired about whether the Tenants had "made any progress with the windows" to which JD responded "hey yes I actually have a friend at all glass who came over took the measurements and as far as I know was ordering some of the glass…". CR submitted into evidence copies of invoices for repairs

they have made to the rental unit and an estimate for replacement of the sliding glass door.

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.

Subsections 47(4) and 47(5) of the Act provide:

> 47 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
>
> (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
>
> (a) is *conclusively presumed* to have accepted that the tenancy ends on the effective date of the notice, and
>
> (b) must vacate the rental unit by that date.
>
> [emphasis added in italics]

CR stated the 1 Month Notice was served on the Tenants' door on March 31, 2022. Based on the undisputed testimony of CR, I find the 1 Month Notice was served on the Tenants in accordance with section 88 of the Act. Pursuant to section 90 of the Act, I find the Tenants were deemed to have been served with the 1 Month Notice on April 5,

2022. Pursuant to section 47(4), the Tenants had 10-days, or until April 15, 2022, within which to make an application for dispute resolution to dispute the 1 Month Notice. As the Tenants did not dispute the 1 Month Notice, they were conclusively presumed to have accepted that the tenancy ended on the effective date of the 1 Month Notice, being May 11, 2022. As such, the Landlords are entitled to an Order of Possession pursuant to section 55(4)(a) of the Act. However, the Tenants have vacated the rental unit and the Landlords no longer require an Order of Possession.

Sections 7, 37(2) 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.
>
> 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.
>
> 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.

Based on the foregoing, the Landlord must prove it is more likely than not that the Tenant breached section 37(2) of the Act, that he suffered a quantifiable loss as a result of this breach, and that he acted reasonably to minimize his loss.

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. However, before I can consider the Landlords' testimony and evidence regarding the damages claimed, I must firstly consider the ramifications of the Landlords' failure to perform move-in and move-out condition inspections on the rental unit with the Tenants.

Sections 23, 24(2), 35, 36(2) and 38(1) of the Act state:

23(1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) 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.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

24(2) The right of a 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 23 (3) *[2 opportunities for inspection]*,

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

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.

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.

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of

the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis in italics added]

The Landlords admitted they did not arrange for, or perform, move-in and move-out condition inspections with the Tenants. As such, the Landlords did not comply with the provisions of sections 23(1) and 35(1) of the Act. Sections 24(2) and 36(2) provide a landlord's right to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished. In the present case, the Landlords are not only seeking compensation for damages to the rental unit but they are also seeking recovery of unpaid rent. As such, the Landlords' right to claim against the security and pet damage deposits for unpaid rent is not extinguished by sections 24(2) and 36(2).

CR stated the Tenants owed $2,200.00 for rental arrears for each of the months of April, May and June 2022. As noted above, the Tenants were conclusively presumed to have accepted the tenancy ended on the effective date of the 1 Month Notice, being May 11, 2022. Subsection 57(3) of the Act states:

57(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Residential Tenancy Policy Guideline 3 ("PG 3") provides guidance, among other things, on situations where a landlord may seek unpaid rent or, where the tenancy has ended pursuant to conclusive presumption under section 46(5)(a) of the Act. PG 3 states in part:

B. Overholding tenant and compensation

> Section 44 of the RTA (section 37 of the MHPTA) sets out when a tenancy agreement will end. *A tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.* In certain circumstances, a tenant may be liable to compensate a landlord for other losses associated with their overholding of the unit or site, such as for loss of rent that the landlord would have collected from a new tenant if the overholding tenant had left by the end of the tenancy or for compensation a landlord is required to pay to new tenants who were prevented from taking occupancy as agreed due to the overholding tenant's occupancy of the unit or site.
>
> [emphasis in italics added]

Accordingly, the landlord must seek compensation where the tenant overholds the rental unit after the tenancy has ended pursuant to subsection 47(5) of the Act. In the Application, the Landlords made a claim for unpaid rent for the month of April 2022, but they did not make a claim to seek monetary compensation for the Tenants overholding the rental unit. As such, the Landlords are not entitled to seek rental arrears after the effective date of the 1 Month Notice. In these circumstances, the Landlords have the option of making an application for dispute resolution to seek compensation for the time the Tenants overhold the rental unit rental after the effective date of the 1 Month Notice, on May 11, 2022, as stated in PG 3.

Based on the undisputed testimony of CR, I find the Tenants owed the Landlords $2,200.00 for unpaid rent for April 2022. Pursuant to section 67 of the Act, I order the Tenants pay $2,200.00 for unpaid rent owed to the Landlords pursuant to the terms of the tenancy agreement. Pursuant to section 72(2) of the Act, I order that the Landlords may retain the security and pet damage deposits of $1,100.00 in partial satisfaction of the monetary order.

CR stated the Landlords were claiming $2,103.33 for damages caused by the Tenants to the rental unit. The Landlords did not submit copies of move-in and move-out conditions inspection reports. As such, I do not have evidence of the condition of the items the Landlord's claim were damaged before the Tenants moved into the rental unit. However, I find that it would be unreasonable for the Tenants to move into a rental unit if there were three broken windows in the rental unit. The Landlords submitted a text dated February 3, 2022 from a neighbour who reported the Tenants had broken a number of windows in the rental unit. The Landlords also submitted a text dated February 13, 2022, in which they asked JD what progress the Tenants had made with the windows and JD responded that a friend had taken measurements and, as far as he knew, the glass had been ordered. CR submitted into evidence invoices for two windows for $605.61 and an estimate for replacement of the sliding glass door for $900.00 which I find to be reasonable. As such, I find that the Landlords have demonstrated, on a balance of probabilities, the Tenants were responsible for breaking two glass windows and a sliding glass door in the rental u nit. Based on the foregoing, I find the Tenants are responsible for reimbursing the Landlords $1,505.61 as follows:

Description of Damage	Amount Claimed for Damage
Sliding Glass Door	$900.00
Two Windows	$605.61
Total:	$1,505.61

As there was no move-in and move-out inspection reports, I find the Landlords have not proven, on a balance of probabilities, the Tenants were responsible for the damage to the other items claimed by the Landlords. I also find the Landlords are not entitled to recovery of the printer ink they used to prepare the materials for the Application.

As the Landlords have been substantially successful in their claims, pursuant to section 72 of the Act, I award the Landlords $100.00 for the filing fee of the Application.

Conclusion

I order the Tenants pay the Landlords $2,705.61 as follows:

Purpose	Amount
Unpaid rent owing on April 13, 2022	$2,200.00
Compensation payable to Landlord	$1,505.61
Filing Fee of Landlord's Application	$100.00
Less: Tenants' Security and Pet Damage Deposits	-$1,100.00
Total:	$2,705.61

The Landlords must serve the Monetary Order on the Tenants as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: August 28, 2022

Residential Tenancy Branch