



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: MNDL-S, FFL

Tenant: MNSDS-DR, FFT

Introduction

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

On December 21, 2021 the landlords applied for:

- an order for the tenant to pay to repair the damage they, their pets, or their guests caused during the tenancy, requesting to retain the security and/or pet damage deposit; and
- the filing fee.

On March 12, 2022 the tenant applied for:

- an order for the landlord to return the security deposit the landlord is retaining without cause; and
- the filing fee.

The hearing was attended by one of the landlords and the tenant. 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.

Neither party raised an issue regarding the service of documents.

Issues to be Decided

- 1) Are the landlords entitled to compensation for damage caused by the tenant, their pets, or their guests to the unit or property?
- 2) Are the landlords entitled to the filing fee?

- 3) Is the tenant entitled to the return of the security deposit?
- 4) Is the tenant entitled to the filing fee?

Background and Evidence

Relevant oral and documentary evidence complying with the Rules of Procedure was carefully considered in reaching this decision. Only the evidence needed to explain the decision is reproduced below.

The parties agreed on the following particulars regarding the tenancy. It began July 21, 2015, rent was due on the first of the month, the tenant paid a security deposit of \$375.00 which the landlords still hold, the tenancy ended on November 30, 2021, and the tenant provided a forwarding address to the landlords in writing, in person, on November 30, 2021.

The parties disagreed on how much rent was at the end of the tenancy. The landlord testified rent was \$800.00; the tenant testified it was \$750.00.

The landlords submitted as evidence a copy of an #RTB-27 Condition Inspection Report. On page 5, it states: "Inspection not done at start of tenancy other than photos submitted to tenant, no concerns." The report also states:

- "we are not concerned about damage to the carpet condition – but require that carpet is cleaned + sanitary"
- "unit was left in a filthy condition, charging against damage deposit for cleaning costs."

The report is signed by the landlord but not the tenant.

The landlord testified that there was a misunderstanding about what time the condition inspection would be done at the end of the tenancy. The landlord testified she thought they were meeting at 12:15 p.m., but as the tenant was not yet ready, and stated that she had until 1:00 p.m., the landlord returned at 1:00 p.m.

The landlord testified that by 1:00 p.m. the unit was still "quite dirty," the carpet had not been cleaned, and that there was garbage left behind. The landlord provided testimony regarding the unclean condition of the unit, and submitted photos in support.

The landlord submitted that she obtained a quote from a cleaning company for \$225.00 to \$300.00, but that the company did not clean carpets or inside cupboards. The

landlord submitted that the estimate to have the carpets cleaned was \$267.00, plus tax, bringing the total quote for cleaning to a maximum of \$567.00, plus tax.

The landlord testified she borrowed a neighbour's carpet cleaner, and cleaned the unit herself over the course of two days. The landlord submitted that her claimed cost included \$25.00 per hour for her time, and submitted as evidence a record of the associated costs, including daycare and carpet cleaning solution. The landlord's total cleaning costs were \$376.91.

The tenant testified that the whole unit needed a "deep clean" when she moved in. The tenant testified she was not asked to do a move-in or move-out inspection, and that at the end of the tenancy there were no issues the landlord asked her to address. The tenant testified that the landlord did not show the tenant the document completed during the final walkthrough. The tenant testified that she had not been aware that the landlord was filling out the inspection form during the move-out walkthrough.

The tenant testified that the landlord did not request the tenant's consent to withhold any of the security deposit, and that the landlord had applied late to retain the security deposit.

The tenant testified that the landlord had not asked her about a move-out time, and that the landlord entered the unit at 12:15 p.m. The tenant testified that she had less than 20 hours to move, and that by 1:00 p.m. on the last day of the tenancy, she and her helpers were still packing, moving, and cleaning.

The tenant testified that she had intended to leave the unit in good shape, and offered to continue cleaning after the walkthrough, but the landlord declined. The tenant testified she had intended to rent a carpet cleaner, but the landlord declined.

Analysis

Security Deposit

Section 24 of the Act provides that the right of a landlord to claim against a security 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.

The parties agree that a move-in inspection was not completed at the beginning of the tenancy.

I find the landlords did not complete a move-in inspection report in accordance with section 23 of the Act, and consequently have extinguished their right to make a claim against the deposit for this tenancy.

The parties agree that the tenant provided a forwarding address in writing on November 30, 2021, the day the tenancy ended.

The landlords made their application to retain the security deposit on December 21, 2021, 21 days after the tenancy ended and the tenant provided her forwarding address in writing.

Section 38(1) states:

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.

Section 38(6) states:

- (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.

As the landlord did not repay or make a claim against the security deposit within 15 days of receiving the tenant's forwarding address in writing on the day the tenancy

ended, I find the landlords are required to pay the tenant double the amount of the security deposit.

I find the tenant is entitled to a monetary award of \$750.00.

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. 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.

Section 37 of the Act includes the following:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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

Neither the landlord nor the tenant has provided evidence that the parties agreed to meet on the final day of the tenancy at a time other than 1:00 p.m.

The parties agree that by 1:00 p.m. on the last day of the tenancy, the tenant had not finished cleaning the unit, including cleaning the carpets at the end of this 6-year tenancy. The landlord has provided affirmed testimony and documentary evidence demonstrating that the unit was not left in a reasonably clean condition.

The landlord has provided evidence that doing the cleaning herself with a borrowed carpet cleaner was substantially less expensive than having it done by professionals.

I find the evidence presented by the landlords demonstrates that, on a balance of probabilities, the tenant failed to comply with section 37 of the Act as she did not leave the rental unit reasonably clean; the landlords' loss or damage resulted from this non-compliance; and that the landlords acted reasonably to minimize that damage or loss.

Consequently, I find that the landlords are entitled to a monetary award for \$376.91, the amount they paid for cleaning costs.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As both parties have had some success in this dispute, I decline to award the filing fees.

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

Double the security deposit	\$750.00
Landlords' cleaning costs	-\$376.91
Owed to tenant	\$373.09

Conclusion

The tenant is granted a monetary order in the amount of \$373.09.

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 18, 2022

Residential Tenancy Branch