Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL (Landlords)
MNSDB-DR, FFT (Tenants)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords November 01, 2021 (the "Application"). The Landlords applied as follows:

- For compensation for monetary loss or other money owed
- To keep the security and pet damage deposits
- To recover the filing fee

This matter came before me May 27, 2022, and was adjourned. An Interim Decision was issued May 27, 2022, and should be read with this Decision.

The Landlords and Tenants appeared at the reconvened hearing.

The Interim Decision states:

> As stated to the parties at the hearing, the Application cannot be amended, parties cannot submit further evidence and the Tenants cannot file an Application for Dispute Resolution that is crossed with the Application. Further, the parties cannot call witnesses at the next hearing which were not identified at this hearing.

The Tenants did file an Application for Dispute Resolution which was crossed with the Application on June 17, 2022. Given the Interim Decision, I did not hear the Tenants' Application for Dispute Resolution which would usually be dismissed with leave to

re-apply. However, the Tenants are seeking return of the security and pet damage deposits which will be decided on the Application and therefore this request is dismissed without leave to re-apply. Further, the Tenants are seeking to recover the filing fee which is dismissed without leave to re-apply because the Tenants' Application for Dispute Resolution is not being heard given the direction in the Interim Decision.

I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for monetary loss or other money owed?

2. Are the Landlords entitled to keep the security and pet damage deposits?

3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought the following compensation:

Item	Description	Amount
1	One month rental loss	$1,750.00
2	Liquidated damages	$1,750.00
3	Air mold test	$414.75
4	Unpaid utilities	$34.00
5	Tenants not completing clean up tasks	$150.00
6	Install towel rack	$50.00
7	Filing fee	$100.00
	TOTAL	**$4,248.75**

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started October 01, 2021, and was for a fixed term ending September 30, 2022. Rent was $1,750.00 per month due on or before the first day of each month. The Tenants paid a $875.00 security deposit and $875.00 pet damage deposit.

The Landlords testified that the tenancy ended October 30, 2021. The Tenants testified that they never moved into the rental unit and that the move-out inspection was done October 30, 2021.

The parties agreed the Tenants provided their forwarding address to the Landlords on the Condition Inspection Report (the "CIR") on October 30, 2021.

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

The Landlords submitted the CIR. The Landlords submitted that they are entitled to keep the security and pet damage deposits based on the Tenants' agreement on page five of the CIR. The Tenants testified that they did not agree to the Landlords keeping the security and pet damage deposits on the CIR and only agreed to the Landlords keeping $50.00 for installation of a towel rack.

The parties agreed they did a move-in inspection September 30 and October 01, 2021. The Landlords testified that the CIR was completed and signed by them on the Tenants' copy of the CIR. The Tenants agreed a CIR was completed and agreed they did not sign it. The Tenants testified that they were provided a copy of the CIR by email within a couple of days of the inspection. The Tenants testified that they also took a photo of the CIR.

The parties agreed they did a move-out inspection October 30, 2021. The parties agreed the Landlords did not sign the CIR. The Tenants testified that they received a copy of the CIR by email within a couple of days of the inspection.

#1 One month rental loss $1,750.00

The Landlords testified as follows. They learned October 23, 2021, that the Tenants were ending the tenancy when they received the Tenants' end of tenancy notice. They posted the unit for rent mid November once they received the keys from the Tenants

and completed the move-out inspection. The posted rent amount was $1,800.00. The unit was re-rented for December 01, 2021, for $1,800.00 in rent.

The Tenants testified as follows. They never moved into the rental unit. They found mold in the rental unit. They provided the Landlords a breach letter October 01, 2021, by email and on October 09, 2021. On October 23, 2021, the Tenants served the Landlords a letter ending the tenancy. They agree they ended the tenancy early; however, they complied with section 45(3) of the *Residential Tenancy Act* (the "*Act*"). There was a lot of mold in the rental unit which was confirmed by BC Mold who attended and did an inspection of the rental unit. An air sample was not taken because it was not needed, there was visible black mold in the rental unit. The Tenants told the Landlords that the rental unit was uninhabitable due to mold. The Landlords re-tested the unit October 22, 2022 for mold; however, only an air sample was done and the Landlords had remediated the mold as much as possible so the volume of spores had decreased.

In reply, the Landlords stated that the Tenants alleged they breached a material term of the tenancy agreement because the rental unit was not habitable according to their mold test; however, the Landlords had an air test report done which shows the rental unit was habitable. The Tenants did not tell the Landlords which term of the tenancy was being breached, they simply told the Landlords the rental unit should be livable. The Landlords did not breach a material term of the tenancy agreement.

#2 Liquidated damages $1,750.00

The Landlords sought liquidated damages for the Tenants ending the tenancy early; however, the Landlords acknowledged there was no liquidated damages clause in the tenancy agreement.

#3 Air mold test $414.75

The Landlords sought compensation for the cost of their mold test. The Landlords submitted that they had to refute the Tenants' claim that there was mold in the rental unit and therefore had to pay for a mold test. The Landlords submitted that they had to get the mold test to refute the Tenants' notice to end tenancy.

The Tenants again relied on the BC Mold report to show mold was a problem in the rental unit. The Tenants also reiterated that there was a lot of time between the Tenants' report being done and the Landlords' report being done.

In reply, the Landlords disputed that the BC Mold report shows the level or concentration of mold in the rental unit. The Landlords submitted that their mold report is more accurate than the Tenants' mold report.

#4 Unpaid utilities $34.00

The Landlords sought utility fees incurred starting October 01, 2021, because the tenancy started October 01, 2021, and the Tenants were required to pay for electricity.

The Tenants acknowledged they were responsible for paying for utilities but took issue with doing so for October because they never moved into the rental unit.

#5 Tenants not completing clean up tasks $150.00

The Landlords sought $150.00 back from the Tenants which was given to the Tenants at the start of the tenancy to clean the rental unit. The Landlords testified that the Tenants did not actually do the cleaning and instead the Landlords cleaned the rental unit so are seeking return of this $150.00.

The Tenants testified that they spent days cleaning the rental unit at the start of the tenancy as it was clear the previous tenant did not clean at the end of their tenancy. The Tenants testified that they did ask the Landlords to clean the mold found in the rental unit.

#6 Install towel rack $50.00

The Landlords testified that the towel rack in the bathroom was broken at the end of the tenancy and had to be put back in place. The Landlords testified that they reinstalled the towel rack which took hours.

The Tenants agreed to the Landlords keeping this amount on the CIR. At the hearing, the Tenants denied that the towel rack was broken but agreed it was removed from the wall. The Tenants testified that they agreed to pay $50.00 for the Landlords to reinstall the rack to keep the peace.

Analysis

Security and pet damage deposits

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the 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 testimony of the parties, I accept that 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 under sections 24 or 36 of the *Act*.

Based on the testimony of the parties, I accept that the Landlords did not sign the move-out CIR and therefore did not comply with section 18 of the *Regulations* and did extinguish their right to claim against the security and pet damage deposits for damage to the rental unit pursuant to section 36(2) of the *Act*. Given this, the Landlords were only permitted to claim against the security deposit for items other than damage to the rental unit, which the Landlords did.

In relation to the pet damage deposit, RTB Policy Guideline 31 addresses pet damage deposits and states:

> The landlord may apply to an arbitrator to keep all or a portion of the deposit **but only to pay for damage caused by a pet.** The application must be made within the later of 15 days after the end of the tenancy or 15 days after the tenant has provided a forwarding address in writing. (emphasis added)

The Landlords did not claim for any pet related damage. Further, the Landlords' right to claim against the pet damage deposit for pet related damage was extinguished. Therefore, the Landlords had to return the pet damage deposit at the end of the tenancy in accordance with section 38(1) of the *Act*.

Based on the testimony of the parties, I find the tenancy ended October 30, 2021, the day of the move-out inspection.

Based on the testimony of the parties, I accept that the Tenants provided their forwarding address to the Landlords on the CIR October 30, 2021.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from the later of the end of the tenancy or the date the Landlords received the Tenants' forwarding address in writing to repay the security and pet damage deposits or claim against them. Here, the Landlords had 15 days from October 30, 2021. The Application was filed November 01, 2021, within time. I find the Landlords complied with the *Act* in relation to the security deposit. However, the Landlords did not comply with section 38(1) of the *Act* in relation to the pet damage deposit because they had to return the pet damage deposit within 15 days of October 30, 2021, and did not do so.

The Landlords submitted that the Tenants agreed to them keeping the security and pet damage deposits on the CIR. The Tenants disputed this and testified that they only agreed to the Landlords keeping $50.00 for the towel rack. I have looked at the CIR and I accept the Tenants' position because it is supported by the writing on the CIR. I do not accept that the Landlords can keep the security and pet damage deposits based on the Tenants' agreement.

I find the Landlords failed to comply with section 38(1) of the *Act* in relation to the pet damage deposit and therefore, pursuant to section 38(6) of the *Act*, the Landlords must return double the pet damage deposit to the Tenants. No interest is owed on the pet damage deposit because the amount of interest owed has been 0% since 2009.

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:
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> - 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.

Pursuant to rule 6.6 of the Rules, it is the Landlords as applicants who have the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

#1 One month rental loss $1,750.00

Section 45 of the *Act* sets out when tenants can end tenancies and states:

> (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice,
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> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
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> (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.
>
> (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant

> gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

RTB Policy Guideline 08 addresses ending a tenancy for breach of a material term.

I accept that there was mold in the rental unit at the start of the tenancy because the documentary evidence shows this. I accept that the Tenants had a mold assessment done by a company October 07, 2021, and that this showed there was a moderate mold problem in the rental unit because the documentary evidence shows this. It is my understanding from the documentary evidence that the Tenants received the mold report October 09, 2021, and I am satisfied the Tenants had a basis to send a breach letter to the Landlords pursuant to section 45(3) of the *Act* at this point because I accept that a moderate mold problem in the rental unit was a breach of the Landlords' obligation to provide the Tenants a habitable rental unit.

I find the Tenants sent the breach letter October 09, 2021, because this is what the documentary evidence shows. The October 09, 2021 breach letter gave the Landlords until October 22, 2021, to address the mold issue. I find the Landlords did address the mold issue by October 22, 2021. I find the Landlords attended the rental unit and dealt with the mold because the Landlords submitted photos showing this. Further, the Landlords had a company attend the rental unit October 22, 2021, and test for mold as this is what the Landlords' mold report shows. I acknowledge that the Landlords' mold report was not issued until October 28, 2021; however, I find the Landlords had taken sufficient steps to address the mold issue by October 22, 2021, as requested. The Landlords' mold report shows the rental unit was livable on October 22, 2021, and therefore, the Landlords addressed the mold issue by October 22, 2021, as requested.

The Tenants submitted documentary evidence to suggest the mold problem continued; however, given there were two mold reports done in relation to the rental unit, each coming to a different conclusion, I would expect to see further mold reports done by qualified professionals to show the mold issue continued such that the rental unit remained unlivable after October 22, 2021. There are no further mold reports from qualified professionals before me. I note that neither party submitted compelling evidence to call into question the reliability or credibility of the other's mold report.

In the circumstances, I find the Landlords addressed the Tenants' concerns by October 22, 2021, and therefore, the Tenants were not permitted pursuant to section 45(3) of the *Act* to end the tenancy October 23, 2021. Again, I acknowledge that the Landlords'

mold report was not received until October 28, 2021; however, the Tenants should have waited to see the results of the test done October 22, 2021.

Given the Tenants were not entitled to end the tenancy pursuant to section 45(3) of the *Act*, I find the Tenants breached section 45(2) of the *Act* by ending the tenancy prior to the end of the fixed term.

I accept that the Landlords lost November rent due to the Tenants' breach. I am satisfied the Landlords mitigated their loss by posting the unit for rent and re-renting it for December 01, 2021. I had no concerns about the reliability or credibility of the Landlords' testimony in relation to these points. Further, I find the timing reasonable given the Tenants did not end the tenancy until October 23, 2021. I do note that the Landlords re-rented the unit for $1,800.00, $50.00 more than the Tenants' rent. Given this, I deduct $500.00 from the Landlords' compensation being $50.00 per month from December 01, 2021, to September 30, 2022, the remaining term of the Tenants' fixed term tenancy because the Landlords made $50.00 more than they otherwise would have for these months. The Landlords are awarded $1,250.00.

#2 Liquidated damages $1,750.00

RTB Policy Guideline 04 addresses liquidated damages.

The Landlords are not entitled to liquidated damages because there is no liquidated damages clause in the tenancy agreement. This claim is dismissed without leave to re-apply.

#3 Air mold test $414.75

I am not satisfied the Landlords are entitled to this compensation because the cost claimed did not result from a breach of the *Act*, *Regulations* or tenancy agreement by the Tenants. The Tenants were permitted to get their own mold test done and I find the Tenants were justified in doing so given the conclusion of their mold test. The Landlords chose to get their own mold test to refute the Tenants' mold test, which it was open to the Landlords to do. However, the Tenants did not breach the *Act*, *Regulations* or tenancy agreement in a way that resulted in the Landlords having to get their own mold test done. There is no basis for the Tenants to compensate the Landlords for this cost. This claim is dismissed without leave to re-apply.

#4 Unpaid utilities $34.00

Section 16 of the *Act* states:

> 16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Pursuant to the written tenancy agreement, the tenancy started October 01, 2021, and the Tenants were required to comply with the tenancy agreement as of this date until October 30, 2021, when the tenancy ended. The Tenants were required to pay for electricity pursuant to the written tenancy agreement. The Landlords submitted a BC Hydro bill showing it was $67.99 for the period October 01, 2021, to November 30, 2021. The bill shows more electricity was used from November 05 to 30, 2021 than from October 01 to November 04, 2021. The Tenants are only responsible for paying utilities between October 01 and 30, 2021. In the circumstances, I award the Landlords 1/3 of the total bill amount being $22.66.

I note that I do not find it relevant that the Tenants did not move into the rental unit. The Tenants obviously spent time in the rental unit because they had BC Mold attend and testified that they spent days cleaning the rental unit. I find the Tenants are responsible for utilities used during the tenancy.

#5 Tenants not completing clean up tasks $150.00

There is no issue that the Landlords gave the Tenants $150.00 to clean the rental unit at the start of the tenancy because the parties agreed on this. Although I do accept that the Landlords cleaned the mold from the rental unit, I do not accept that the Landlords did other cleaning of the rental unit because there is no compelling evidence of this before me. The Tenants submitted documentary evidence of other areas of the rental unit that were dirty at the start of the tenancy and the documentary evidence shows the Tenants left the rental unit reasonably clean. Further, the documentary evidence supports that the Tenants cleaned areas of the rental unit, other than the mold. In the circumstances, I am not satisfied the Landlords are entitled to the $150.00 back as I am not satisfied the Tenants failed to clean the rental unit as agreed, other than in relation to the mold which was the Landlords' responsibility to clean.

#6 Install towel rack $50.00

Section 37 of the *Act* states:

> (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…

Section 38(4) and (5) of the *Act* state:

> (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
>
> > (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant…
>
> (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].

The Landlords did extinguish their right to claim against the security and pet damage deposits as explained above. I therefore decline to rely on the Tenants' written agreement to the Landlords keeping $50.00 to install the towel rack.

However, I find the Tenants removed the towel rack from the bathroom and did not reinstall it at the end of the tenancy because the parties agreed on this. The Tenants were required to reinstall the towel rack at the end of the tenancy and breached section 37 of the *Act* by failing to do so. I find the Landlords had to reinstall the towel rack and I accept that this took time. I accept that the Landlords are entitled to $50.00 for this issue because I find this amount reasonable considering the potential cost of hiring someone to do this. I do not find that the Landlords are entitled to less because it is their time that was used in doing this task that the Tenants should have done.

#7 Filing fee $100.00

Given the Landlords have been partially successful in the Application, I award them reimbursement for the $100.00 filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlords are entitled to the following:

Item	Description	Amount
1	One month rental loss	$1,250.00
2	Liquidated damages	-
3	Air mold test	-
4	Unpaid utilities	$22.66
5	Tenants not completing clean up tasks	-
6	Install towel rack	$50.00
7	Filing fee	$100.00
	TOTAL	**$1,422.66**

The Landlords are considered to hold $2,625.00 in deposits being $875.00 for the security deposit and $1,750.00 as double the pet damage deposit. The Landlords can keep $1,422.66 of this pursuant to section 72(2) of the *Act*. The Landlords must return $1,202.34 to the Tenants as the remainder of the deposits. I issue the Tenants a Monetary Order for $1,202.34.

Conclusion

The Tenants are issued a Monetary Order for $1,202.34. This Order must be served on the Landlords. If the Landlords fail to comply with this Order, it 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 *Act*.

Dated: October 25, 2022

Residential Tenancy Branch