



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the Act) on February 18, 2022, seeking:

- Monetary compensation for the cost of repairs to the rental unit;
- Recovery of the filing fee; and
- Retention of all or a portion of the security and pet damage deposits.

The hearing was convened by telephone conference call on October 11, 2022, at 1:30 P.M. (Pacific Time), and was attended by the Landlord, the Landlord's interpreter, and an agent for the Landlord K.A. (the Agent). All testimony provided was affirmed. No one appeared on behalf of the Tenants. The Landlord and their agents were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondents must be served with a copy of the Application, the Notice of Hearing, and any documentary evidence intended to be relied upon by the applicant at the hearing. As neither the Tenants nor an agent for the Tenants attended the hearing, I confirmed service of these documents as explained below.

The Landlord and their Agents stated that the notice of dispute resolution proceeding (NODRP) was placed in the Tenants' mailbox on March 3, 2022, and that they witnessed one of the Tenants retrieving these items from their mailbox on the same date. Photographs were submitted by the Landlord in support of this testimony. The Landlord stated that they used the forwarding address provided to them in writing by the Tenants on February 17, 2022. Branch records indicate that the NODRP was sent to the Landlord by e-mail on February 28, 2022. As a result, I find that the Tenants were

served with the NODRP for the purpose of the Act and the Rules of Procedure, on March 3, 2022. The agent K.A. stated that the documentary evidence before me was emailed to the Tenants on March 4, 2022, at 1:29 PM. K.A. stated that they used the e-mail address provided to them by the Tenants via text message on March 1, 2022, for the purpose of service. The Landlord and the Agents stated that the Tenants subsequently confirmed receipt of the documentary evidence via text message. As a result, I find that the documentary evidence before me from the Landlord was deemed served on the Tenants on March 4 2022, unless earlier received, at the pre-agreed e-mail address and I therefore accept it for consideration.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. I verified that the hearing information contained in the NODRP was correct, and I note that the Landlord and their agents had no difficulty attending the hearing on time using this information. As the Landlord, their Agents, and I attended the hearing on time and ready to proceed, and I was satisfied as set out above that the Tenants were served with the NODRP for the purpose of the Act on March 3, 2022, I therefore commenced the hearing as scheduled at 1:30 P.M. on October 11, 2022, despite the absence of the Tenants, pursuant to rule 7.3 of the Rules of Procedure. Although the teleconference remained open for the full duration of the 38-minute hearing, no one attended the hearing on behalf of the Tenants.

The participants were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants asked to refrain from speaking over myself and to hold their questions and responses until it was their opportunity to speak. The participants were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address listed in the Application and confirmed at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to retain of all or a portion of the security and pet damage deposits?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the one-year fixed term tenancy commenced on February 1, 2021, and that rent in the amount of \$3,700.00 was due on the first day of each month. The tenancy agreement states that security and pet damage deposits in the amount of \$1,850.00 each were required and at the hearing the Landlord confirmed that these amounts were paid and are held in trust.

The Landlord stated that when the tenancy ended on January 31, 2022, the Tenants failed to leave the rental unit reasonably clean and undamaged, except for reasonable wear and tear and pre-existing damage. The Landlord's agent K.A. stated that when they attended the rental unit at the end of the tenancy for the condition inspection, the Tenant W.P. was present but refused to participate. The agent K.A. stated that W.P. simply handed back the keys to the rental unit and left. The Landlord and their agents stated that although a move-in condition inspection and report were completed in accordance with the Act, no move-out condition inspection report was completed and only photographs were taken as the Tenants refused to participate in the move-out condition inspection. The Landlord and their agents stated that the Tenants provided their forwarding address to the Landlord in writing on February 17, 2022.

The Landlord stated that the rental unit was exceptionally dirty and required professional cleaning at a cost of \$868.35. The Landlord stated that the Tenants failed to advise them that the rental unit had sustained a leak which resulted in water damage to several areas of the rental unit including the ceiling and flooring. The Landlord stated that the water damage repairs were expensive but sought only \$525.00 from the Tenants towards the total repair costs. The Landlord stated that although the dishwasher present in the rental unit at the start of the tenancy was no more than 2.5 - 3 years old, it was damaged and inoperable at the end of the tenancy necessitating

replacement at a cost of \$1,638.00. Finally, the Landlord stated that the Tenants had failed to maintain the property as required in the tenancy agreement and sought recovery of landscaping costs in the amount of \$50.00.

The Landlord stated that they have tried to be very reasonable and although the amounts incurred for cleaning, repair, and landscaping costs far exceeded the amounts claimed, they are not seeking the full amounts from the Tenants. The Landlord also sought recovery of the \$100.00 filing fee.

In total the Landlord sought \$3,181.35 and authorization to withhold this amount from the \$3,700.00 in deposits held in trust. In support of their Application and testimony, the Landlord submitted a monetary order worksheet, receipts/invoices, photographs, a video, and a condition inspection report.

### Analysis

Section 37(1)(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged, except for reasonable wear and tear. Section 7 of the Act states that if a landlord or tenant does not comply with the Act, regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

From the uncontested affirmed testimony of the Landlord and the documentary evidence before me, I am satisfied on a balance of probabilities that the Tenants failed to leave the rental unit reasonably clean and undamaged, except for pre-existing damage and reasonable wear and tear, at the end of the tenancy, as required by section 37(2)(a) the Act. I am also satisfied that the Landlord incurred the costs sought at the hearing, if not more, to return the rental unit to the required level of cleanliness and repair after the end of the tenancy. As a result, I grant the Landlord the \$3,181.35 sought at the hearing for cleaning, repair, and landscaping costs. Pursuant to section 72(1) of the Act, I also grant them recovery of the \$100.00 filing fee.

Having made these findings, I will now turn to the matter of the security deposit. I accept the uncontested and affirmed testimony before me that a move-in condition inspection and report were completed in accordance with the Act at the start of the tenancy. I also accept the uncontested and affirmed testimony before me that when the Landlord's Agent(s) attended the rental unit to complete the move-out condition inspection as required, the Tenant W.P. was present and refused to participate. As there is no

evidence before me that the Landlord or their agents breached the Act in relation to scheduling of the move-out condition inspection, I find that they did not. Although I am satisfied that the Landlord or their agents breached section 36(2)(c) of the Act when they failed to complete a move-out condition inspection report, I am satisfied that the Tenants first breached the Act by refusing to participate in the move-out condition inspection. As a result, I find that the Tenants shall bear this loss pursuant to Residential Tenancy Policy Guideline (Policy Guideline) #17, section B, subsection 8. As a result, I find that the Tenants have extinguished their right to the return of their security and pet damage deposits pursuant to section 36(1)(b) of the Act, and that the requirement for the Landlord to either return the deposits or file a claim against them under section 38(1) of the Act was therefore not triggered.

Despite the above, the Landlord nevertheless sought retention of all or a portion of the deposits in the Application, which was filed on February 18, 2022. Pursuant to section 72(2)(b) of the Act and Policy Guideline #17, section D, subsection 4, I authorize the Landlord to retain \$3,181.35 from the deposits in recovery of the above noted amounts owed. The balance of the security and pet damage deposits may also be retained by the Landlord as the Tenants have forfeited their right to their return.

### Conclusion

The Landlord is entitled to retain the Tenants' \$1,850.00 security deposit and the Tenants' \$1,850.00 pet damage deposit. \$3,181.35 may be retained from the deposits in recovery of the amounts owed by the Tenants to the Landlord. The balance of the deposits may also be retained by the Landlord, as the Tenants have forfeited their right to their return.

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: October 11, 2022

---

Residential Tenancy Branch