



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

On September 1, 2022, the Landlords made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Landlords and both Tenants attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Landlord B.D. advised that a separate Notice of Hearing and evidence package was served to each Tenant by registered mail on September 16, 2022, and Tenant J.B. confirmed that they received these packages. Based on this undisputed testimony, I am satisfied that the Landlords’ Notice of Hearing and evidence packages were duly served to each Tenant. As such, the Landlords’ documentary evidence will be accepted and considered when rendering this Decision.

J.B. advised that they did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards this debt?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 1, 2021, and that the tenancy ended when the Tenants gave up vacant possession of the rental unit on August 31, 2022. Rent was established at an amount of \$2,200.00 per month and was due on the first day of each month. A security deposit of \$1,100.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The parties also agreed that a move-in inspection report was conducted on January 1, 2021, that a move-out inspection report was conducted on August 31, 2022, and that the Tenants provided their forwarding address in writing to the Landlords on August 31, 2022, on the move-out inspection report.

B.D. advised that they were seeking compensation in the amount of **\$120.00** for replacing a rug because it smelled of dog urine. He testified that they only discovered that the Tenants had a dog in the rental unit on August 19, 2022, and that this smell was not noted on the move-out inspection report because they only noticed it after the Tenants gave up vacant possession of the rental unit. He stated that the Tenants

informed them by text message on August 29, 2022 that they would be ending their tenancy effective on August 31, 2022. While there was not a no pets clause in the tenancy agreement, he submitted that the Tenants were provided with a copy of the strata bylaws, which required them to register any pets and to inform the Landlords of such as well. He referenced the receipt submitted to support the cost of a new rug at \$78.38, and he stated that the difference between this and their claim for \$120.00 would cover the cost of disposing of the old rug. However, he was unsure of how much this disposal would actually cost.

J.B. advised that she conducted the move-out inspection with the Landlords, and that this deficiency was not noted on the move-out inspection report. She confirmed that they acquired a dog approximately a month before they gave up vacant possession of the rental unit, and that this dog lived in the rental unit for that month. As well, she acknowledged that they provided their notice to end their tenancy by text message on August 29, 2022, that was effective for August 31, 2022. She testified that “to the best of her knowledge” there “shouldn’t have been any urine” on the rug.

Tenant A.E. advised that there was not a no pets clause in the tenancy agreement.

B.D. advised that they were seeking compensation in the amount of **\$40.00** for repairing holes and scuffs on the drywall. He stated that these deficiencies were noted on the move-out inspection report, and he referenced the pictures submitted as documentary evidence that corroborates this damage. He stated that he did this repair work himself, and he cited the receipts submitted to support the cost associated with repairing this damage.

J.B. advised that this damage was not discussed, nor was it noted on the move-out inspection report. In fact, the area that B.D. claimed was damaged was noted as “same” on the move-out inspection report. She again stated that “to the best of [her] knowledge”, there was no damage done.

B.D. acknowledged that he noted, on the move-out inspection report, that the condition of this area in dispute was left in the “same” condition as it was noted on the move-in inspection report. He submitted that the reason for this mistake was due to a “rushed” and “awkward exit”, and because the Tenants had a shelf in front of this area.

B.D. advised that they were seeking compensation in the amount of **\$20.00** for replacing three burnt out lightbulbs that the Tenants did not replace at the end of the

tenancy. He stated that this was noted on the move-out inspection report, and he also referenced a picture submitted as documentary evidence. He cited the receipt provided to support the cost of these bulbs.

J.B. confirmed that these bulbs were burnt out at the end of their tenancy, and she advised that it was not her understanding that it was their responsibility to replace these prior to giving up vacant possession of the rental unit.

B.D. advised that they were seeking compensation in the amount of **\$20.00** because the Tenants did not adequately clean the rental unit and leave it in a re-rentable state at the end of the tenancy. He stated that these deficiencies were noted on the move-out inspection report, and he referenced pictures submitted of the dirty fridge and bathtub. As well, he pointed to the receipts submitted to support the cost of this claim.

J.B. advised that “in general”, the rental unit was “cleaned to the best of [their] ability” and she stated that the pictures submitted do not demonstrate any uncleanliness. She stated that they spent three to four hours cleaning the rental unit and they had already been packing prior to giving their notice on August 29, 2022.

A.E. advised that the rental unit was fully furnished, so they only had to focus on moving their own personal effects.

B.D. advised that they were seeking compensation in the amount of **\$400.00** because the Tenants incurred two strata bylaw fines. He testified that they received two bylaw violation letters on August 19, 2022, and the first alleged violation was that the Tenants transported a bike through the elevator and common areas on August 15, 2022. The second violation was that the Tenants’ dog had urinated in the building on multiple occasions on or around August 15, 2022, and that the Tenants did not clean up this mess. B.D. advised that after reaching out to the Tenants about these issues, he received a response to these letters from A.E. on August 19, 2022, where A.E. acknowledged that they acquired a pet without informing anyone about it. As well, he stated that A.E. expressed surprise at this allegation regarding the non-cleanup of dog waste. B.D. testified that A.E. stated that “If they were caught on camera, they tried to clean this up.”

J.B. advised that they dispute these allegations being purported by the strata, and they refute that this was committed by them or their dog. She submitted that there was no evidence provided to corroborate these claims.

A.E. confirmed that he moved his bike through the property; however, it was his understanding that the route he took was not through common areas.

Finally, B.D. advised that they were seeking compensation in the amount of **\$1,100.00** because the Tenants ended their tenancy and gave up vacant possession of the rental unit contrary to the *Act*. Despite this, they were able to find new tenants for the rental unit on September 15, 2022.

J.B. advised that the Landlords did not submit the document that informed the Tenants that they were breaching the tenancy agreement and strata bylaws for obtaining a pet. This August 27, 2022 warning letter demanded that the Tenants comply, which they believed meant they would have to give up their dog. Instead, it was their belief that they were required to vacate by August 31, 2022, if they did not comply with this letter. She stated that it was their intention to dispute this warning letter, but they then made plans to move as soon as possible instead.

As well, she stated that it was their belief that there was an ulterior motive behind this warning letter. She submitted that she “could not recall”, but that she “believes [they] received a copy of the bylaws” from the Landlords. She testified that they were “not aware if there was a rule” in the bylaws to inform the strata and the Landlords if they acquired a pet. In addition, she stated that they did not receive any notification from the strata that they were required to register the dog with the strata.

A.E. advised that this dog was a service animal; however, they submitted no documentary evidence to support this claim. He stated that they were provided with one week to rectify this issue of having a dog contrary to the bylaws. As well, he claimed that the Landlords posted the rental unit on August 29, 2022, for an increased amount of rent. He stated that there was no discussion with the Landlords about them not being permitted to have a dog.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlords and Tenants must inspect the condition

of the rental unit together on the day the Tenants are entitled to possession of the rental unit or on another mutually agreed upon day.

Section 35 of the *Act* states that the Landlords and Tenants must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenants cease to occupy the rental unit, or on another mutually agreed upon day. As well, the Landlords must offer at least two opportunities for the Tenants to attend the move-out inspection.

Section 21 of the *Residential Tenancy Regulation* (the "*Regulation*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlords or the Tenants have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlords to claim against a security deposit or pet damage deposit is extinguished if the Landlords do not complete the condition inspection reports in accordance with the *Act*.

Section 32 of the *Act* requires that the Landlords provide and maintain a rental unit that complies with the health, housing and safety standards required by law and must make it suitable for occupation. As well, the Tenants must repair any damage to the rental unit that is caused by their negligence.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

With respect to the inspection reports, as all parties agreed that a move-in and move-out inspection report was conducted, I am satisfied that the Landlords complied with the requirements of the *Act* in completing these reports. As such, I find that the Landlords have not extinguished the right to claim against the deposit.

Section 38 of the *Act* outlines how the Landlords must deal with the security deposit and/or pet damage deposit at the end of the tenancy. With respect to the Landlords' claim against the Tenants' security deposit, Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords

may not make a claim against the deposit, and the Landlords must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the forwarding address in writing was received on August 31, 2022, and the Landlords filed to claim against the deposit on September 1, 2022. As such, I am satisfied that the Landlords made this Application within 15 days of receiving the forwarding address in writing. As the Landlords have not extinguished the right to claim against the deposit, I find that the doubling provisions do not apply to the security deposit in this instance.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Tenants fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Landlords prove the amount of or value of the damage or loss?
- Did the Landlords act reasonably to minimize that damage or loss?

As well, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Landlords' claim for compensation in the amount of \$120.00 for the

cost of replacing a rug that was damaged by dog urine, while there was not a no pets clause in the tenancy agreement, the consistent and undisputed evidence is that the Tenants received a copy of the strata bylaws in which B.D. testified that there were rules regarding obtaining a pet. Furthermore, it appeared as if J.B. confirmed receiving these bylaws and that they did not review them. When assessing the testimony of the parties', I found J.B.' testimony to be intentionally vague and generalized, as she often rebutted B.D.'s testimony with "to the best of their knowledge", or other similarly ambiguous statements in the same vein. I found these repeated statements to be unconvincing and unreliable.

When reviewing the totality of the evidence before me, I am satisfied that the Tenants, more likely than not, either did not read the bylaws that were provided or read them and understood that there were restrictions on obtaining a pet, but they deliberately obtained one anyways with the intention not to advise the Landlord or the strata. I am also satisfied that being caught, and then subsequently warned to comply, was the impetus for the hasty manner with which they elected to end the tenancy.

Given that I am satisfied that they intentionally obtained a dog, that they purposefully withheld this information from the strata and the Landlords, and that they then ended their tenancy abruptly after the dog was discovered, I find that I am doubtful of their credibility on the whole. As they obtained a dog duplicitously, and as this dog lived in the rental unit for approximately a month, I find it more likely than not that this dog did damage the carpet.

However, as I am not satisfied that the Landlords have provided sufficient documentary evidence to substantiate the entire amount that they were claiming for, I grant the Landlords a monetary award in the amount of **\$78.38** to satisfy this claim.

Regarding the Landlords' claim for compensation in the amount of \$40.00 for repairing holes and scuffs on the drywall, given that all parties agreed on the affected area being disputed, that this area was marked as "wear and tear" on the move-in inspection report, and that this same area was marked as "same" on the move-out inspection report, I dismiss this claim in its entirety.

With respect to the Landlords' claim for compensation in the amount of \$20.00 for replacing three burnt out lightbulbs, the consistent and undisputed evidence is that the Tenants did not replace these at the end of the tenancy. As such, I grant the Landlords a monetary award in the amount of **\$20.00** to remedy this matter.

Regarding the Landlords' claim for compensation in the amount of \$20.00 because the Tenants did not adequately clean the rental unit, I note that there are deficiencies noted in the move-out inspection report and that the Landlords provided pictures of some of the noted issues. Given that the Tenants provided less than two days notice to end their tenancy, and given that J.B. testified that the rental unit was "in general" cleaned "to the best of [their] ability", I find that this causes me to doubt the legitimacy of their claims regarding adequate cleaning being completed.

Based on the doubts above, in conjunction with the Tenants' hurried exit from the rental unit, I find it more likely than not that they failed to leave the rental unit in a re-rentable state at the end of the tenancy. Consequently, I prefer the Landlords' evidence on the whole. As such, I grant the Landlords a monetary award in the amount of **\$20.00** to satisfy this claim.

With respect to the Landlords' claim for compensation in the amount of \$400.00 for two strata bylaw fines, as noted above, I am satisfied that the Tenants obtained a dog contrary to the bylaws, and that they did this duplicitously. Given that I find the Tenants' credibility and reliability to be dubious, I prefer the Landlords' evidence on these points. Consequently, I am satisfied, on a balance of probabilities, that the Tenants' committed these infractions contrary to the strata bylaws. As such, I grant the Landlords a monetary award in the amount of **\$400.00** to remedy this matter.

Finally, regarding the Landlords' claim in the amount of \$1,100.00 for half of September 2022 rent, Sections 44 and 45 of the *Act* set out how tenancies end, and they also specify that the Tenants must give written notice to end a tenancy. As well, this notice cannot be effective earlier than one month after the date the Landlords receive the notice, and 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. What this means is that the Tenants must have served written notice to end their tenancy that was deemed received by the Landlords on July 31, 2022, at the latest, in order to be effective for August 31, 2022.

Given that the Tenants did not comply with the *Act*, I am satisfied that they are liable for any rental loss in September 2021 that the Landlords suffered. I find it important to note that I am satisfied that the basis for this chain of events was borne out of the Tenants' actions of obtaining a dog, and then intentionally attempting to conceal this from the Landlords and strata. This was the root cause that precipitated all of the following events, and this was solely triggered by the Tenants' actions. I do not accept their

submission that they were permitted to end the tenancy, contrary to the *Act*, based on a warning or compliance letter from the Landlords, as this warning would not have even been necessary had the Tenants not initially attempted to conceal obtaining a dog.

Furthermore, as there was no documentary evidence to support this submission, I reject A.E.'s claim that this dog was a service dog. I also note that it is an offence to represent a dog as a guide or service dog when it is not. Moreover, if this animal truly was a service dog, and that the Tenants genuinely obtained a dog under the *Guide Dog and Service Dog Act*, it is not logical why they would not bring it up to the Landlords' attention, at any point in time, that this dog was declared as being officially necessary for their well-being.

Moreover, given that they were warned in writing about obtaining a pet contrary to the bylaws, if this genuinely was a legitimate, approved service dog, it is not consistent with common sense and ordinary human experience that they would suddenly end their tenancy in a matter of days, rather than attempt to explain that the dog was essential to managing a legitimate disability. Furthermore, it makes little sense that they would not make this argument and provide proof of such to the Landlords. I find this submission to be extremely dubious, and I am satisfied that this further supports a conclusion that the Tenants were caught concealing this dog, and are only now attempting to portray any remotely plausible explanation to justify their actions. In combination with the doubts above, I find that this further emphasizes the lack of credibility or reliability in the Tenants' submissions. Ultimately, I place no weight on the legitimacy or truthfulness of their testimony.

Regardless, as the Landlords confirmed that they were able to mitigate this rental loss and that they re-rented the unit on September 15, 2022, I grant the Landlords a monetary award in the amount of **\$1,100.00** to satisfy this debt.

As the Landlords were partially successful in these claims, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlords

Item	Amount
Replacement rug	\$78.38
Lightbulbs	\$20.00
Cleaning	\$20.00
Bylaw fines	\$400.00
September 2022 pro-rated rent	\$1,100.00
Recovery of filing fee	\$100.00
Security deposit	-\$1,100.00
Total Monetary Award	\$618.38

Conclusion

I provide the Landlords with a Monetary Order in the amount of **\$618.38** in the above terms, and the Tenants must be served with **this Order** 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: October 26, 2022

Residential Tenancy Branch