



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord March 24, 2022 (the “Application”). The Landlord applied as follows:

- To recover unpaid rent
- For compensation for monetary loss or other money owed
- For compensation for damage to the rental unit
- To keep the security and pet damage deposits
- For reimbursement for the filing fee

L.P. (the “Agent”) appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Agent. I told the Agent they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agent provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Agent confirmed the documentary evidence of service submitted and testified that the hearing package and Landlord’s evidence were sent to the Tenant at their forwarding address by registered mail March 30, 2022. The Agent confirmed Tracking Number 062 relates to the package. I looked Tracking Number 062 up on the Canada Post website which shows the package was unclaimed after notice cards were left March 31, 2022, and April 09, 2022.

Based on the undisputed testimony of the Agent and documentary evidence of service, I am satisfied the Tenant was served with the hearing package and Landlord's evidence in accordance with sections 88(d) and 89(1)(d) of the *Residential Tenancy Act* (the "Act") on March 30, 2022. The Tenant cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the Act, the Tenant is deemed to have received the hearing package and evidence April 04, 2022. I find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was 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. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Landlord entitled to compensation for damage to the rental unit?
4. Is the Landlord entitled to keep the security or pet damage deposits?
5. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Non-pet related suite repairs	\$648.38
2	Non-pet related cleaning	\$1,019.55
3	Pet related suite repairs	\$456.75
4	Pet related cleaning	\$254.10
5	Liquidated damages	\$1,545.00
6	Dryer filter replacement	\$135.00
7	Keys/fob	\$124.00
8	Rent arrears	\$1,570.00
9	Deadbolt replacement	\$65.00
10	Filing fee	\$100.00
	TOTAL	\$5,917.78

The Landlord submitted a written tenancy agreement between the parties. The tenancy started March 01, 2021, and was for a fixed term ending March 31, 2022. Rent was \$1,545.00 per month due on the first day of each month. The Tenant paid a \$772.50 security deposit and \$772.50 pet damage deposit. The agreement has an addendum.

The Agent testified as follows.

The tenancy ended February 28, 2022.

The Tenant provided their forwarding address to the Landlord by email March 18, 2022.

The Landlord did not have an outstanding Monetary Order against the Tenant at the end of the tenancy and the Tenant did not agree to the Landlord keeping the security or pet damage deposits.

The parties did a move-in inspection and completed the Condition Inspection Report (the "CIR") in evidence. Both parties signed the CIR. The Tenant was given a copy of the CIR on the same date as the inspection.

The Tenant did not attend the move-out inspection. The Landlord did not provide the Tenant a Notice of Final Opportunity on the RTB form to do a move-out inspection. The Tenant sent the Landlord an email stating they had vacated the rental unit. The Landlord did a move-out inspection. The move-out CIR was emailed to the Tenant March 15, 2022.

The pet damage deposit was kept due to repairs and cleaning required at the end of the tenancy due to damage and uncleanliness caused by the Tenant's pet. The Tenant's cat had climbed walls of the rental unit and damaged them which required the walls to be painted. An ozone machine had to be used at the end of the tenancy to address the smell of cat urine on the floor of the rental unit.

The Landlord provided an outline of the items they are claiming for. At the hearing, the Agent confirmed the information in the outline as necessary and provided further details as noted below.

Item 1, the Landlord is claiming for repairs to the rental unit due to damage caused by the Tenant that is beyond reasonable wear and tear including:

- Patch and paint holes in walls and damage to walls
- 5 hours labour + supplies
- Remove and reinstall patio blind, bathroom door to closet and bathroom door to kitchen due to damage
- Total cost \$648.38

Item 2, the Landlord is claiming for cleaning at the end of the tenancy due to the Tenant not leaving the rental unit reasonably clean including garbage removal, move-out clean and use of the ozone machine to address the smell of cannabis odour in the rental unit. The total cost was \$1,019.55.

Item 3, the Landlord is claiming for repairs to the rental unit due to damage caused by the Tenant's pet that is beyond reasonable wear and tear including:

- Patch and paint walls and baseboards due to damage caused by the Tenant's cat
- 5.5 hours labour + supplies
- Remove and reinstall bedroom blinds due to damage
- Total cost \$456.75

Item 4, the Landlord is claiming for cleaning required at the end of the tenancy due to the Tenant's cat including removal of pet hair, cat litter and excrement as well as use of the ozone machine to address the odour of cat urine in the rental unit. The total cost was \$254.10.

Item 5, the Landlord is claiming for liquidated damages pursuant to section 18 of the addendum to the tenancy agreement which states:

18. Liquidated Damages: If the Tenant ends the fixed term tenancy before the original term as set out in the Agreement or if the Tenant is in breach of the Act or a material term of this Agreement, causing the Landlord to terminate the tenancy before the agreed end of the original fixed term or any subsequent fixed term (the "Early Termination"), the Landlord may treat this Agreement as being at an end. In such an event, an equivalent of one month's rent must be paid by the Tenant to the Landlord as liquidated damages, and not as a penalty, to cover the Landlord's cost of re-renting the Rental Unit and must be paid in addition to any other amounts owed by the Tenant (such as but not limited to unpaid rent or for damage to the Rental Unit and/or residential premises). The liquidated damages amount is an agreed genuine and reasonable pre-estimate of the Landlord's administrative costs of advertising and re-renting the Rental Unit as a result of the Early Termination. Payment of liquidated damages does not preclude the Landlord from exercising any further right to recovering other damages or remedies from the Tenant.

The tenancy ended through a One Month Notice for Cause. The Tenant was in breach of the *Act* and a material term of the tenancy agreement which caused the Landlord to issue the One Month Notice for Cause. The Tenant accepted the One Month Notice for Cause and moved out.

Item 6, the Landlord is claiming for having to replace the dryer filter due to the Tenant damaging it.

Item 7, the Landlord is claiming for having to replace the keys and fob because the Tenant failed to return these at the end of the tenancy.

Item 8, the Landlord is claiming for unpaid rent and late fees for February when the Tenant lived in the rental unit but did not pay rent. The Tenant did not have authority under the *Act* to withhold rent. Late fees were charged pursuant to section 20 of the addendum to the tenancy agreement which states:

20. Arrears: All rent and fees owing under this Agreement must be received by the Landlord on or before the first calendar day of each month. Payment of rent in full and on time is a material term of this Agreement. The Landlord may charge the Tenant a non-refundable administration fee of **\$25.00** for each late payment of all or a portion of any rent, fee, or amount owing under this Agreement, and/or a returned or non-sufficient fund ("N.S.F") cheque, in addition to any other service fees charged to the Landlord by a financial institution.

Item 9, the Landlord is claiming for having to replace the deadbolt to the rental unit because the Tenant failed to return the keys at the end of the tenancy.

The Landlord submitted the following relevant documentary evidence:

- Rent ledger
- Photos of the rental unit at the end of the tenancy
- The CIR
- Invoices and "Costing" sheet
- Emails between the parties

Analysis

Security and pet damage deposits

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to 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 undisputed testimony of the Agent about a move-in inspection and the CIR, I find the Tenant did not extinguish their rights in relation to the security or pet damage deposits pursuant to section 24 of the *Act*.

Based on the undisputed testimony of the Agent, I find the Tenant was not offered two opportunities, one on the RTB form, to do a move-out inspection and therefore did not extinguish their rights in relation to the security or pet damage deposits pursuant to section 36 of the *Act*.

Based on the undisputed testimony of the Agent about a move-in inspection and the CIR, I find the Landlord did not extinguish their rights in relation to the security or pet damage deposits pursuant to section 24 of the *Act*.

Based on the undisputed testimony of the Agent about a move-out inspection, I find the Landlord did not provide the Tenant two opportunities, one on the RTB form, to do a move-out inspection. I note that the Landlord was in contact with the Tenant by email as is clear from the evidence and therefore could have served a Notice of Final Opportunity on the RTB form on the Tenant. Section 36(2) of the *Act* states:

(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]...

I find the Landlord extinguished their right to claim against the deposits for damage to the rental unit pursuant to section 36(2)(a) of the *Act*.

Based on the undisputed testimony of the Agent, I find the tenancy ended February 28, 2022.

Based on the undisputed testimony of the Agent, I find the Tenant provided their forwarding address to the Landlord by email March 18, 2022.

Pursuant to section 38(1) of the *Act*, the Landlord had 15 days from March 18, 2022, to repay the security and pet damage deposits or file a claim against them. However, the Landlord had extinguished their right to file a claim against the security and pet damage deposits for damage to the rental unit. The Landlord filed their claim March 24, 2022, within 15 days of March 18, 2022.

In relation to the security deposit, the Landlord claimed for items other than damage to the rental unit including cleaning, liquidated damages, keys/fob replacement, rent arrears and deadbolt replacement. The Landlord was permitted to file a claim against the security deposit for items other than damage to the rental unit and therefore complied with section 38(1) of the *Act* in relation to the security deposit.

In relation to the pet damage deposit, the Landlord was only allowed to claim against the pet damage deposit for pet-related damage (see RTB Policy Guideline 31 page 2). Given the Landlord had extinguished their right to claim against the pet damage deposit for damage to the rental unit, the Landlord had to return the pet damage deposit within 15 days of March 18, 2022. The Landlord did not do so and therefore failed to comply with section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlord must pay the Tenant double the pet damage deposit being \$1,545.00. No interest is owed on the pet damage deposit because the amount of interest owed has been 0% since 2009.

The Landlord was still entitled to claim for loss and damage, and I consider that now.

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:

- 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.

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

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, 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.

Pursuant to rule 6.6 of the Rules, it is the Landlord as applicant who has 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.

I accept the Agent's undisputed testimony, Landlord's undisputed position as well as Landlord's undisputed documentary evidence and, based on these, I find the following.

I accept the Tenant breached section 37 of the *Act* by:

- leaving the rental unit damaged beyond reasonable wear and tear at the end of the tenancy, the damage being caused by the Tenant and/or their pet
- leaving the rental unit dirty and not reasonably clean at the end of the tenancy
- damaging the dryer filter
- failing to return keys and fobs to the Landlord at the end of the tenancy

I accept the Landlord had to have damages repaired, cleaning done and items replaced at the end of the tenancy due to the nature of the Tenant's breaches of section 37 of the *Act* and that the Landlord therefore suffered loss and damage.

I accept the amount or value of the loss and damage is as claimed by the Landlord and note that the Tenant did not appear at the hearing to dispute this.

I find the amounts claimed reasonable given the state of the rental unit at the end of the tenancy as shown in the photos. Further, the Tenant did not appear at the hearing to dispute that the amounts claimed are reasonable. I award the Landlord the amounts claimed for items 1, 2, 3, 4, 6, 7 and 9.

In relation to item 5, RTB Policy Guideline 04 addresses liquidated damages. I accept that section 18 of the addendum is valid and enforceable as I find it to be a genuine pre-estimate of the loss contemplated at the time the tenancy agreement was entered into given the wording of the section and given the parties initialed the relevant page and signed the addendum. I accept section 18 of the addendum is not a penalty given the wording of the section. I accept section 18 of the addendum applies because the Tenant was in breach of the *Act* or a material term of the tenancy agreement which caused the Landlord to end the tenancy before March 31, 2022. I find the Tenant must pay \$1,545.00 to the Landlord as liquidated damages pursuant to section 18 of the addendum to the tenancy agreement.

In relation to item 8, the Tenant was required to pay rent for February while still living in the rental unit. I accept the Tenant did not have authority under the *Act* to withhold rent. I accept the Tenant did not pay February rent and therefore owes the Landlord \$1,545.00 in rent. The Landlord is also entitled to collect a \$25.00 late fee for February rent pursuant to section 20 of the addendum to the tenancy agreement. I award the Landlord \$1,570.00 in total for this item.

In relation to the filing fee, given the Landlord has been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Summary

In summary, the Landlord is entitled to the following:

Item	Description	Amount
1	Non-pet related suite repairs	\$648.38
2	Non-pet related cleaning	\$1,019.55
3	Pet related suite repairs	\$456.75
4	Pet related cleaning	\$254.10
5	Liquidated damages	\$1,545.00
6	Dryer filter replacement	\$135.00
7	Keys/fob	\$124.00
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9	Deadbolt replacement	\$65.00
10	Filing fee	\$100.00
	TOTAL	\$5,917.78

The Landlord is considered to hold \$2,317.50 in deposits being the \$772.50 security deposit and double the pet damage deposit being \$1,545.00. The Landlord can keep the \$2,317.50 pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$3,600.28 pursuant to section 67 of the *Act*.

Conclusion

The Landlord can keep the security and pet damage deposits. The Landlord is issued a Monetary Order for \$3,600.28. This Order must be served on the Tenant and, if the

Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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: November 22, 2022

Residential Tenancy Branch