Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: **MNDL, MNDCL-S**
Tenants: **MNSD, FFT**

Introduction

This hearing dealt with the Landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy pursuant to Sections 62 and 67 of the Act;
2. A Monetary Order for compensation for a monetary loss or other money owed - holding security and/or pet damage deposit pursuant to Sections 38 and 67 of the Act.

This hearing also dealt with the Tenants' cross application pursuant to the Act for:

1. An Order for the return of the security deposit and pet damage deposit that the Landlord is holding without cause pursuant to Section 38 of Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, DH, and the Tenant, KM, and Legal Advocate, LH, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's Notice of Dispute Resolution Proceeding package and evidence (the "L-NoDRP package") served by registered mail on April 27, 2022, the Canada Post Tracking Number is noted on the cover sheet of this decision, the Tenants confirmed receipt on April 29, 2022. I find the L-NoDRP package served on April 29, 2022;
- the Landlord's second evidence package served on December 4, 2022, the Tenants confirmed receipt. I find the Landlord's second evidence package served on December 4, 2022;
- the Tenants' Notice of Dispute Resolution Proceeding package (the "T-NoDRP package") served by registered mail on April 29, 2022, the Canada Post Tracking Number is noted on the cover sheet of this decision, the Landlord confirmed receipt. I find the T-NoDRP package served on May 4, 2022; and,
- The Tenants' evidence was on a usb stick and the Landlord could not open the information on the usb stick. The Tenants printed out their evidence and resent it to the Landlord on May 30, 2022, the Landlord confirmed receipt of the printed evidence. I find the Tenants' evidence sufficiently served on June 2, 2022.

Pursuant to Sections 71(2), 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy?
2. Is the Landlord entitled to a Monetary Order for compensation for a monetary loss or other money owed - holding security and/or pet damage deposit?

Tenants:

1. Are the Tenants entitled to an Order for the return of the security deposit and pet damage deposit that the Landlord is holding without cause?
2. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on July 31, 2020. On June 1, 2021, the parties entered into a new periodic tenancy agreement on account of the male Tenant's partner moving in with him. Monthly rent was $2,000.00 payable on the first day of each month. A security deposit of $1,000.00 and a pet damage deposit of $1,000.00 were collected at the start of the tenancy and are still held by the Landlord. The tenancy ended on March 30, 2022.

The uploaded tenancy agreement states that water, stove and oven, dishwasher, refrigerator, carpets, window coverings, laundry-washer/dryer, storage, garbage collection, parking for 2 vehicles, and several provided keys were included in the rent.

Move in and move out condition inspections were completed by the Landlord and Tenants. The Tenants did not include their forwarding address on the move out condition inspection report. On March 30, 2022, the Tenants left the rental unit with the original copy of the condition inspection report. The report uploaded by the Landlord has additional comments on page 3 of 4 written on it under END OF TENANCY Part Z. Damage to rental unit or residential property for which the tenant is responsible. It states, "*1) Refrigerator handle was broken 2) Entry walls (pierced a lot of holes) needed painting*".

The Landlord claims the following monetary amounts:

Items	Amounts
Fridge door handle	$375.14
Re-paint walls	$88.85
Microwave oven	$450.78
6 halogen bulbs	$49.66
Carpet	$81.74
Silicon work after ant treatment	$260.00

The Landlord testified that the Tenant broke the fridge door handle, while the Tenants testified that they just pulled it, and the handle came off. The Tenants stated it first came off on August 29, 2021 and they tried, on the Landlord's instruction, to use strong glue to fix it. A text message from the Landlord said she would pay for the strong glue. On September 7, 2021, the handle came off again. The Tenants asked the Landlord to bring in a technician to do a professional fix. The Landlord said if she called a technician

to come and fix the handle, the Tenants would have to pay for the work. From September 7, 2021 to March 30, 2022, the fridge door handle had not been repaired.

Prior to the Tenant moving into the rental unit, the Landlord stated she had the rental unit painted on June 15, 2020. Prior to move out, the Tenants repaired and painted all the affected walls which had holes they made during the tenancy. The Tenants uploaded pictures with comparisons of the walls before and after the repairs. The Landlord was not happy with the painting as she could still see where repairs had been made on one wall in one of her uploaded photos.

The Landlord uploaded a picture of the microwave oven and pointed out a broken black panel from the area above the microwave oven. The Landlord's receipt for the purchase and install of the microwave oven shows a June 29, 2022 microwave oven purchase of $399.99, and a July 5, 2022 receipt with an install price of $85.00 and removal of the old microwave oven for $17.50. There is an area on the receipt that is whited out, and the Landlord determines that the labour costs were a total of $114.80.

The Tenants are unclear of what the Landlord is seeking regarding the microwave. On the move in condition inspection, the microwave is listed as "*perfect/clean*". On the move out condition inspection, the microwave does not have any notations of deficiencies that existed at the end of the tenancy.

The Landlord is claiming compensation for replacement of halogen light bulbs. The Tenants testified that when they moved out, they had turned on every light and pot light and all were working. The move out condition inspection provides notation space for lighting fixtures in each room and does not specify that lightbulbs were burnt out.

The Landlord stated she had to purchase some carpet to be placed in front of the laundry closet area. She described the situation as "*the carpet was broken*." The Tenants said there were two bleached spots on the carpet in front of the washer and dryer area. The Tenants rented a carpet cleaner and cleaned the carpets in the rental unit two days before moving out. The Tenants said the Landlord had lots of issues with the previous tenants. The condition inspection report does not report damage in this area before the tenancy began or at the end of the tenancy.

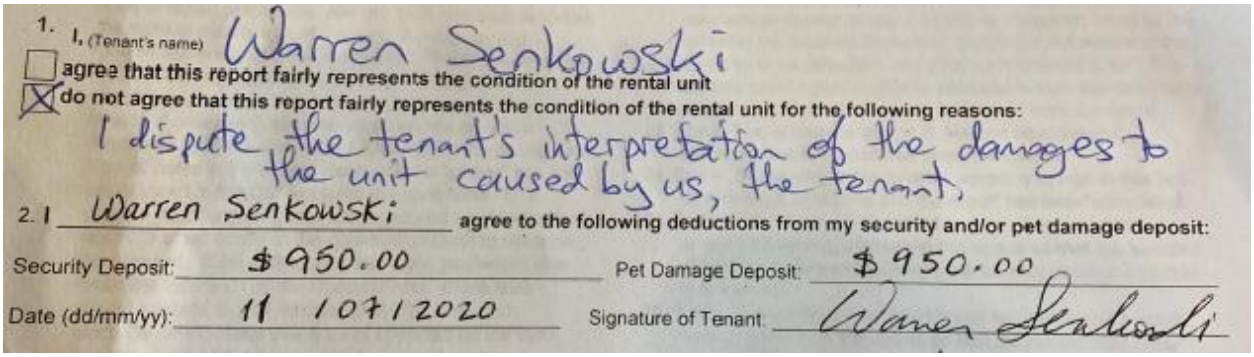
The June 6, 2022 invoice for the silicon work is a portion of a receipt showing a $260.00 total. A second copy of the invoice was uploaded, and it describes the work as "*Take out all silicon in washroom and kitchen, re install silicon in bathroom and kitchen , fix*

mirror closet door in hallway, change entry door hinges". The Landlord submitted this work was necessary because of the ant infestation she found above the microwave. The condition inspection report does not report issues with pests in the rental unit, and the Tenants note that nothing was mentioned about ants in the rental unit on the move out condition inspection report or in the Landlord's first evidence package. The Landlord first reported this in her second evidence package submitted.

The Tenants provided their forwarding address to the Landlord by email on April 13, 2022 at 1:19 PM. The email message says that the male Tenant "*told you on March 30 in writing, that our forwarding address is:*", however, the Tenants did not produce this written notice of their forwarding address. The Landlord replied to this email on April 13, 2022 at 3:06 PM.

The Tenants testified that the Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy.

The Tenants stated they did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security and pet damage deposits. Although amounts are filled in on the condition inspection report as follows:



1. I, (Tenant's name) Warren Senkowski;
☐ agree that this report fairly represents the condition of the rental unit
☒ do not agree that this report fairly represents the condition of the rental unit for the following reasons:
I dispute the tenant's interpretation of the damages to the unit caused by us, the tenant,
2. I Warren Senkowski; agree to the following deductions from my security and/or pet damage deposit:
Security Deposit: $950.00 Pet Damage Deposit: $950.00
Date (dd/mm/yy): 11/07/2020 Signature of Tenant: Warren Senkowski

The Tenants testified that the security and pet damage deposit amounts were filled in at the move in condition inspection on July 11, 2020. The Tenant pointed out that different coloured pens were used in this regard, the black ink writing being the move in condition inspection report, and the blue ink writing being the move out condition inspection report. The Tenant corrected his written statement to say, "*I dispute the landlord's interpretation of the damages to the unit caused by us, the tenants*" (emphasis mine).

The Landlord applied for dispute resolution on April 8, 2022 to the RTB to keep some or all of the security and pet damage deposits. The Landlord has not claimed any of the reported damage was caused by the Tenants' pet.

The Tenants seek double their deposits and the return of their application filing fee.

Analysis

LANDLORD'S APPLICATION:
The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Leaving the rental unit at the end of a tenancy

> ***37*** *…*
>
> *(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*
>
> *…*

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, "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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due." This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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.

RTB Policy Guideline #1- Landlord & Tenant – Responsibility for Residential Premises states that:

> *The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act … (the Legislation)*."
>
> *Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. …*
>
> *Residential Tenancy Agreements must not include terms that contradict the Legislation. For example, the tenant cannot be required as a condition of tenancy to paint the premises or to maintain and repair appliances provided by the landlord. Such a term of the tenancy agreement would not be enforceable.*

RTB Policy Guideline #1 states the tenant must clean all major appliances at the end of the tenancy; however, the landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible. The tenant is responsible for replacing light bulbs in his or her premises during the tenancy. Where a tenant has deliberately or carelessly stained the carpet, the tenant will be responsible for the cleaning.

Fridge door handle:

The fridge door handle broke when the Tenants were opening the fridge. They contacted the Landlord and were instructed to fix the handle to the door using a strong glue. The Tenants tried this fix, but it lasted for less than one month, and it broke again. There is no evidence that the Tenants caused the damage by deliberate actions or neglect. The refrigerator is an included service and facility under the tenancy agreement. I find the Landlord has not proven that the Tenants deliberatively caused

the damage to the fridge door, and pursuant to RTB Policy Guideline #1, the Landlord is responsible for repairs to appliances provided under the tenancy agreement. I decline to award compensation for this item.

Painting Walls:

The Tenants had items on the wall in the rental unit that left holes in the wall when removed. The Tenants filled those holes and painted the walls they repaired. The Landlord ultimately was not happy with the paint job the Tenants completed. After the move out condition inspection and the Tenants left with their copy of the report, the Landlord added in the report that, "*Entry walls (pierced a lot of holes) needed painting"*. I find that the Tenants left the walls reasonably repaired and painted at the end of their tenancy pursuant to Section 37(2)(a) of the Act. I decline to award compensation for this item.

Microwave oven:

The Landlord said a panel above the microwave oven was broken by the Tenants. The Landlord also said there was an infestation of ants behind the microwave oven. The Tenants uploaded pictures of the rental unit, including a picture of the microwave oven, and it looked clean and in good repair. The Tenants were not aware of an ant infestation in the rental unit. There was no listed deficiency with the microwave oven at the end of the tenancy, and the Landlord has not proven on a balance of probabilities that the microwave oven was unreasonably damaged. I find that the microwave oven was an included service and facility under the tenancy agreement, and the Landlord was responsible for any repairs, or replacement, of this appliance. I decline to award compensation for this item.

Halogen bulbs:

I note from the move out condition inspection report, there are no issues with burnt out lightbulbs or other issues with the lighting. The Landlord has not proven any damage of lighting fixtures, and I decline to award compensation for this item.

Carpet:

The Landlord purchased some carpet to replace damaged carpet in front of the laundry closet area. The Tenants said there were two bleached spots on the carpet in front of

the washer and dryer area. The condition inspection report does not report damage before the tenancy began or at the end of the tenancy. The Landlord has not proven that any damage to the carpet in front of the laundry closet area was caused by any deliberate action or neglect of the Tenants, and I decline to award compensation for this item.

Silicon work:

The June 6, 2022 invoice for the silicon work outlines more work than just applying silicon around the microwave oven. Again, I point out that no deficiencies were noted at the move out condition inspection with respect to the microwave oven. I decline to award compensation for this item.

TENANTS' APPLICATION:

Section 38 of the Act sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in Sections 38(2) to 38(4) of the Act.

I find the tenancy ended on March 30, 2022, and the Tenants' provided their forwarding address to the Landlord in writing in an email on April 13, 2022.

April 13, 2022 is the relevant date for the purposes of Section 38(1) of the Act. The Landlord had 15 days from April 13, 2022 to repay the security deposit in full or file a claim with the RTB against the security deposit.

The Landlord did not repay the security deposit or the pet damage deposit. The Landlord filed a claim with the RTB against the deposits on April 8, 2022. I find none of the damage the Landlord reported on was caused by the Tenants' pet. RTB Policy Guideline #31-Pet Damage Deposits states that "*The landlord may apply to an arbitrator to keep all or a portion of the [pet damage] deposit but only to pay for damage caused by a pet*." The implication of this fact will be discussed below. The Landlord complied with Section 38(1) of the Act regarding the Tenants' security deposit.

Sections 38(2) to 38(4) of the Act state:

38 …

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(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…

The Tenants participated in move-in and move-out condition inspections with the Landlord and therefore did not extinguish their rights in relation to the security deposit and the pet damage deposit. Section 38(2) of the Act does not apply.

The Landlord did not have an outstanding monetary order against the Tenants at the end of the tenancy. Section 38(3) of the Act does not apply.

The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4) of the Act does not apply.

Given the above:

- I find the Landlord complied with Section 38(1) of the Act in relation to the security deposit; however, I previously declined to award any compensation to the Landlord for the items she reported as damaged. The Landlord must return the **$1,000.00** security deposit to the Tenants; and,

- I find the Landlord failed to comply with Section 38(1) of the Act in relation to the pet damage deposit and that none of the exceptions outlined in Sections 38(2) to 38(4) of the Act apply. Therefore, the Landlord is not permitted to claim against the pet damage deposit and must return double the pet damage deposit, **$2,000.00**, to the Tenants pursuant to Section 38(6) of the Act.

The Landlord must return $3,000.00 to the Tenants. There is no interest owed on the security deposit as the amount of interest owed has been 0% since 2009.

As the Tenants were successful in their application, I award the Tenants reimbursement for the $100.00 application filing fee pursuant to Section 72(1) of the Act.

In total, the Tenants are entitled to $3,100.00 and I issue the Tenants a Monetary Order against the Landlord for this amount.

Conclusion

The Landlord's application is dismissed.

The Tenants' application is granted, and the Tenants are issued a Monetary Order for $3,100.00. This Order must be served on the Landlord as soon as possible. If the Landlord fails to comply with the Order, the 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 Act.

Dated: December 14, 2022

Residential Tenancy Branch