



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL
 MNDCT, MNSD

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for a monetary order for damage to the rental unit or property, an order permitting the landlord to keep all or part of the pet damage deposit or security deposit and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement and for a monetary order for recovery of the security deposit or pet damage deposit. The applications have been joined to be heard together.

Both tenants and an agent for the landlord attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the rental unit or property?
- Should the landlord be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

- Have the tenants established a monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically compensation of a portion of the last month's rent paid?
- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit or pet damage deposit?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on September 1, 2020 and reverted to a month-to-month tenancy after August 31, 2021, which ultimately ended on July 18, 2022. Rent in the amount of \$2,000.00 was payable on the 1st day of each month and there are no rental arrears. On August 26, 2020 the landlord collected a security deposit from the tenants in the amount of \$1,000.00 and a \$1,000.00 pet damage deposit was collected with a new Pet Agreement Addendum. A copy of the tenancy agreement and Pet Agreement Addendum have been provided for this hearing. The rental unit is an apartment in a high-rise building, and the landlord did not live on the property during this tenancy.

The landlord's agent further testified that the landlord received the tenants' forwarding address on August 15, 2022 by email, with the address handwritten. A move-in condition inspection report was completed at the beginning of the tenancy however the landlord was not familiar and was managing the tenancy and didn't complete a move-out condition inspection report. When the landlord picked up the keys he informed the tenants that if any damages existed he would notify the tenants because he was in a hurry. A copy of the move-in condition inspection report has been provided for this hearing.

The landlord's agent also testified that the tenants were served with a Two Month notice to End Tenancy for Landlord's Use of Property, and a copy has been provided by the tenants for this hearing. It is dated 05/25/22 and contains an effective date of vacancy of July 31, 2022. The reason for issuing it states: All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The landlord did sell, sometime in September, and the tenants were permitted compensation by not paying rent for July, 2022. The tenants moved out as a result of the Notice.

The tenants painted the bedroom blue during the tenancy, and before and after photographs have been provided showing that the walls were white at the beginning of

the tenancy. Also, the kitchen cabinets had been covered with stickers and had to be painted. A quote has been provided showing a total cost of \$3,100.00. The landlord's agent testified that a painter was sent, and the bedroom was repainted just prior to the tenants moving in, and after the move-in condition inspection report was done. The landlord's agent does not believe there was any damage caused by a pet.

Email was the regular method of the parties to communicate.

The first tenant (PM) agrees that regular communication between the parties was done by email. The tenant testified that after receiving the Two Month Notice to End Tenancy for Landlord's Use of Property, the tenants provided their own notice to end the tenancy early and the landlord accepted that. The tenants vacated and gave the keys on July 18 and wanted July's rent back. A copy of the tenants' notice has also been provided for this hearing. The landlord accepted it replying saying that the early end would work for the landlord.

The tenants were never given an opportunity to do the move-out condition inspection even though the tenants confirmed when that could happen and when the tenant would return.

The landlord's daughter was a real estate agent who sold the rental unit, and mentioned laminate labels on the cabinets and the bedroom, but never suggested that it was "damages."

The tenants sent their forwarding address to the landlord, and also sent it by registered mail.

There is no claim for damage caused by a pet.

The second tenant (AM) testified that the tenants were rushed through the move-in condition inspection and some stuff was shrugged off by the landlord's agent, who was in a rush. There were multiple damages and the tenants made repairs to the walls and painted. It should have been a very detailed report. The tenants requested multiple repairs through the Property Manager and after multiple requests, there was no culpability by the landlord to make repairs throughout the entire tenancy, and the fallout from this has been excruciating.

Analysis

Firstly, the *Residential Tenancy Act* places the onus on the landlord to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations, and if the landlord fails to do so, the landlord's right to make a claim against the security deposit or pet damage deposit for damages is extinguished. The law also states that a landlord may not make a claim against the pet damage deposit unless the landlord makes a claim for damages caused by a pet.

In this case, the landlord did not ensure a move-out condition inspection report was completed, but testified that when the landlord picked up the keys he informed the tenants that if any damages were noted, he would notify the tenants because the landlord was in a hurry. That is contrary to the law, and I find that the landlord's right to make a claim against the security deposit and pet damage deposit for damages is extinguished. Therefore, since there are no rental arrears and no claims other than damages, the landlord ought to have returned the deposits to the tenants.

A landlord has 15 days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the deposits. The parties agree that the landlord received the tenant's forwarding address in writing in a handwritten note sent by email on August 15, 2022. The tenant also testified that he sent it by registered mail as well, which is deemed to have been served 5 days later, or August 20, 2022. Since the landlord did not return the deposits within 15 days, I find that the tenants are entitled to double the amount of each of the \$1,000.00 deposits, or \$4,000.00.

The landlord's right to make a claim for damages is not extinguished. Where a party makes a monetary claim as against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlord claims \$3,100.00 for the quote received for repairs and paint. I refer to Residential Tenancy Policy Guideline#1 – Landlord & Tenant – Responsibility for Residential Premises, which states that any changes made by a tenant that are not

explicitly consented to by the landlord must be returned to the original condition, and if the tenant fails to do so before vacating, the landlord may do so and claim the amount.

In this case, the second tenant (AM) testified that the tenants were rushed through the move-in condition inspection and there were multiple damages and the tenants made repairs to the walls and painted. I agree that it should have been a very detailed report.

The landlord's agent testified that the tenants vacated as a result of the Two Month Notice to End Tenancy for Landlord's Use of Property and the rental unit sold. The landlord has provided a quote for the damages claimed in the amount of \$3,150.00 but it is not dated, nor is there any evidence that the work was completed by the company who gave the quote, or if the rental unit was sold prior to the work being completed. Also, the landlord's agent testified that painting was done prior to the tenants moving in, however the move-in condition inspection report indicates that the kitchen cabinets were not in good condition at that time, as well as marks on the bedroom walls and trim. Any compensation is meant to put the landlord in the same position financially as the landlord would be if damage caused by the tenants hadn't occurred. In the circumstances, I am not satisfied that the landlord has established that the walls in the bedroom didn't already need painting at the beginning of the tenancy, or that the kitchen cabinets didn't also need repair. Nor am I satisfied that the work was completed prior to the sale of the home.

I am not satisfied that the landlord has established that any damages were caused by the tenants' failure to comply with the *Act* or the tenancy agreement, and I dismiss the landlord's application.

The first tenant (PM) testified that after the landlord served the tenants with the notice to end the tenancy the tenant provided their own notice to end the tenancy earlier. The law permits a tenant to end a tenancy earlier by giving the landlord no less than 10 days written notice and the tenant pays rent to the effective date of the tenant's notice. The landlord is required to give the tenants the equivalent of 1 month's rent as compensation. I accept that the tenants did not pay rent for the month of July, 2022, but by giving notice the tenants are only required to pay rent to July 18, 2022 and the landlord is still required to pay the compensation. Rent is \$2,000.00, and since the tenants vacated on July 18, the tenants ought to have paid rent for 18 days ($\$2,000.00 / 31 = \64.51 per day; $\times 18 = \$1,161.29$). Therefore the landlord ought to have collected \$1,161.29 and would still have to give the tenants \$2,000.00. The difference is \$838.71, which I find is due to the tenants.

I grant a monetary order in favour of the tenants as against the landlord in the amount of \$4,000.00 for double the deposits and \$838.71 for compensation required by the *Act*, for a total of \$4,838.71. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,838.71.

This order is final and binding and may be enforced.

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: December 15, 2022

Residential Tenancy Branch