



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlords: MND-S, MNDC-S, FF
Tenant: MNSD, FF

Introduction

This hearing convened by teleconference on September 29, 2022, to deal with the cross applications (application) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlords applied for the following:

- compensation for alleged damage to the rental unit by the tenant;
- compensation for a monetary loss or other money owed;
- authority to retain the tenant's security deposit and pet damage deposit;
and
- to recover the cost of the filing fee.

The tenant applied for the following:

- a return of their security deposit and pet damage deposit; and
- to recover the cost of the filing fee.

The landlords and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The hearing continued for 56 minutes, at which time the hearing was adjourned due to the length of time. An Interim Decision was issued on October 3, 2022, which is incorporated by reference and should be read in conjunction with this Decision.

At the reconvened hearing, the landlords and the tenant attended.

At both hearings, the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. At the reconvened hearing, no parties raised concerns with service of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation from the tenant?

Is the tenant entitled to a return of their security deposit and pet damage deposit?

Background and Evidence

The tenancy began on September 24, 2020, and ended on January 31, 2022, according to the landlord. The monthly rent was \$1,700 and the tenant paid a security deposit and pet damage deposit of \$850 each. The tenant said they moved out in December 2021.

The landlords' monetary claim listed in their application was \$6,800, plus the filing fee. The landlord confirmed their actual claim in their application was \$3,400, as the amount doubled through error.

The landlord's monetary claim listed in their monetary order worksheet filed as evidence is as follows:

| Document Number | Receipt / Estimate From | For | Amount |
|-----------------|-------------------------|---|--------------|
| #1 | The Brick Langley | Damaged irreparable dishwasher | 720.23 \$ |
| #2 | Plumber | Damaged toilet tank lid. Total replacement \$499. | 499. \$ |
| #3 | Painting | Walls with damage | 700 \$ |
| #4 | Pest control | Extermination of infestation | 262.50 \$ |
| #5 | Cleaning statement | Cleaning the whole upper unit | 750.00 \$ |
| #6 | Quiet enjoyment | Distruption of others | 800 \$ |

[Reproduced as written]

Damaged dishwasher

The landlord submitted that the subsequent tenants moved into the rental unit on or about February 15, 2022, and reported a spewing dishwasher. For this reason, a service call was made and the dishwasher was determined to have been kicked in and non-repairable. The dishwasher was only a year old. The landlord referred to the letter from the subsequent tenants. The landlord said that the actual cost of the dishwasher was \$652.

The tenant said she absolutely disagreed that she damaged the dishwasher, saying she used it the day before they left in December. The tenant said there was no photo showing anything wrong with the dishwasher.

Plumbing

The landlord said that the toilet tank was damaged and was replaced. The toilet was listed on the move-out condition inspection report (Report) as being dirty. The landlord submitted a photo showing a crack on the inside of the lid. The landlord submitted they did not notice the cracked toilet on the day of the inspection, but noticed water on the floor the next day.

The tenant said she had no idea what the landlord was talking about. The tenant submitted they were using the toilet up to the day they left. The tenant submitted that

they were stuck in traffic and were late getting to the appointment for the move-out inspection. The tenant submitted that she would not sign the Report, as it was already filled out, and the rental unit was in better condition at the end of the tenancy than when she moved in. The tenant said she was never given a copy of the move-in Report. The tenant said that the landlord's photo showed only a crack in the inside of the lid.

Painting

The landlord submitted that she had no choice but to repaint due to the damage, scuff marks, and a sticky substance left on the walls. The marks, which included foot print marks would not come out after cleaning. The landlord agreed that some areas were reasonable wear and tear, but not things like the deep divots, which half a toonie could fit.

The landlord submitted that the stair well walls had marks and the carpet had to be replaced as the stains would not come out.

The tenant submitted photos and said the walls were fine, but not perfect when they moved in. The tenant submitted that the walls were listed as dirty and damaged on the move-in Report. The tenant said there was nothing on the move-out Report showing this damage and the landlord had an hour to make an inspection before she arrived.

Pest control

The landlord said that while the inspection was going on, she noticed bugs flying around and that many more bugs were in the kitchen. The landlord said that it was explained to her that contaminated food was usually the source of these meal moths.

The tenant said that there were about 10 bugs and pointed out the letter from the pest control company was not signed. The tenant submitted that as they had not been living in the rental unit since December 30, maybe someone else left food there.

The landlord responded and said that no one knew when the tenant moved out as there was still boxes and furniture in the rental unit in January 2022.

Cleaning

The landlord agreed there was no receipt, but a letter from the cleaner was submitted. The landlord said that the rental unit needed re-cleaning as there was cat hair everywhere, blinds had to be pulled up, lighting fixture panels had to be removed, and the floors were cleaned 3 times. The landlord submitted further the doors had dirty handles, the vents were lifted and cleaned, there was sticky substances that required cleaning, cooking grease was left in the oven and the coils were not cleaned.

The tenant submitted that her photos spoke for themselves and were in colour, and that the landlord's photos were not.

The landlord's claim for \$800 for loss of quiet enjoyment for disruptions to others was not considered at the hearing.

The landlord's evidence included undated photos from the rental unit, the Report, written statements from the subsequent tenants, a previous prospective tenant viewing the rental unit in 2020, the tenant in the basement unit of the residential property, a cleaner, and a neighbour, a pest control invoice, and a dishwasher invoice.

Tenant's application

The tenant submitted that she was never given a copy of the move-in Report. The tenant submitted a Notice to Move Out to the landlord on December 28, 2021, containing the tenant's written forwarding address and a request for their security deposit and pet damage deposit. The landlord has not returned the security deposit and pet damage deposit and as a result the tenant has claimed double the security deposit and pet damage deposit, for a total amount of \$3,400.

The landlord agreed that the move-in Report was not provided to the tenant, but now knows that this is required.

Analysis

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 the claim is on the person making the claim.

While I have reviewed the evidence submitted prior to the hearing and the oral evidence during the hearings, I refer to only the relevant evidence regarding the facts and issues in determining this Decision.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is on the landlord, in this case, to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Damaged dishwasher

In this case, having reviewed the evidence, I find the landlord submitted insufficient evidence to support the claim for a new dishwasher. First, although the landlord said that the dishwasher was a year old, I find there was no proof submitted. More importantly, having reviewed the dishwasher invoice, the date was March 11, 2022. I find this is inconsistent with the testimony at the hearing, in which the landlord said the new tenants moved in on February 15, 2022. I find it does not make sense that the new tenants would not have used the dishwasher for nearly a month after moving into the rental unit, and had the tenant damaged the dishwasher, that should have been noticed

immediately. Apart from that, I find the dishwasher was not mentioned on the move-out Report, and the landlord had the opportunity to run the dishwasher at the move-out inspection to verify it was working properly.

For the reasons above, as I have found the landlord submitted insufficient evidence to support that the dishwasher was damaged by the tenant, I **dismiss** the landlord's claim for **\$720.23, without leave to reapply**. I note that included in the landlord's claim was for an extended warranty, for which the tenant in any event would not been held responsible.

Plumbing

In this case, I find the landlord submitted insufficient evidence to prove a monetary loss. There was no receipt from a plumber to verify the amount of the claim or that the toilet needed replacing. Apart from that, the landlord's photo representing this claim showed the inside of the lid with a crack, but not the outside of the lid. I would have expected a view from the top of the lid and I find there was no evidence that it had been replaced. For these reasons, I find the landlord submitted insufficient evidence of the claim for plumbing and I therefore **dismiss** the landlord's claim for **\$499, without leave to reapply**.

Painting

I have reviewed the landlord's photographic evidence, as there was no invoice or receipt for the claim, or details of the work done. Although there were marks on some of the walls, I note that the move-in Report shows holes, dark marks/dirt and wear on some of the walls. As I was not provided documentary evidence that any painting had been done after the tenancy or any costs proven, I **dismiss** the landlord's claim of **\$700, without leave to reapply**.

Pest control

I have reviewed the landlord's invoice for pest control along with the move-out Report and find the landlord submitted sufficient evidence to substantiate that the meal moths were the result of actions of the tenant in leaving food out, as indicated in the statement. I find the treatment was done within a reasonable amount of time after the tenancy officially ended. I therefore find the landlord has **established a monetary claim of \$262.50**.

Cleaning

Under the Act, the tenants are required to leave the rental unit reasonable clean. The tenants are responsible for paying cleaning costs where the property is left at the end of the tenancy that does not comply with the Act. The tenants are not responsible for cleaning the rental unit to bring the premises to a higher standard.

I accept the tenants' photographs that the rental unit was left reasonably clean. I find the landlords have failed to prove a violation of the Act by the tenants. Therefore, I dismiss the landlords' claim for cleaning.

In considering this claim, I reviewed the statement from a cleaner, the parties' photographs, and the Report. I note that the rental unit had multiple items of deficiencies listed on the move-in Report. For instance, the cleaner on their statement said that the stove/oven was not clean and the coils did not work. However, on the move-in Report, the condition of the stove/oven was dirty under the burners and the side and door were dirty.

I have reviewed the photographs submitted by the respective parties. The landlords' up-close photographs show minor deficiencies in some items. However, I find the landlords did not provide photographs of the entire rental unit to show the rental unit was overall left unreasonably clean.

I accept the tenant's photographs that the rental unit was left reasonably clean. I find the landlord failed to prove a violation of the Act by the tenant. For this reason and due to the landlord's insufficient evidence of a cleaning cost, I **dismiss** the landlord's claim for cleaning of \$750, **without leave to reapply**.

Quiet enjoyment

I find this is a 3rd party claim the landlord attempted to make due to an alleged complaint from the downstairs tenant and a neighbour and not related to a landlord's claim for a direct loss under this tenancy. As the landlord has presented no evidence of damage or loss or proof of a violation of the Act by the tenant, I **dismiss** this claim of **\$800, without leave to reapply**.

Due to the above, I find the landlord is entitled to a monetary award of **\$262.50**, for pest control treatment.

Tenant's application-

Security deposit and pet damage deposit, doubled-

Under section 38(1) of the Act, within 15 days **of the later** of receiving the tenant's forwarding address in writing and the end of the tenancy, a landlord must either return a tenant's security deposit and pet damage deposit or file an application for dispute resolution claiming against the deposits. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit and pet damage deposit.

In the case before me, I find the tenancy officially ended on January 31, 2022, the date of the move-out inspection and when the rental unit was fully vacated. The landlord confirmed receipt of the tenant's written forwarding address on December 28, 2021 with a move-out date of January 31, 2022.

Additionally, when a landlord fails to give a tenant a condition inspection report, as is the case here, the landlord's right to make a claim against the security deposit and pet damage deposit for damage to the property is extinguished under sections 24 and 36 of the Act.

In this case, the landlord's application claiming against the two deposits was filed on February 13, 2022, within 15 days of the end of the tenancy and receiving the tenant's written forwarding address. Although the landlord's right to claim against the security deposit and pet damage deposit for damage to the rental unit was extinguished, the landlord's application also included a claim for cleaning and pest control treatment, which I find are not damages.

Residential Tenancy Branch Policy Guideline 17 suggests that the landlord may make a claim against the security deposit for any other monies owing other than for damage to the rental unit, even in the light of sections 24 and 36 of the Act.

As part of the landlord's claim was not for damage to the property but for cleaning and pest control treatment, I find that the landlord complied with the requirement under section 38 to make an application to keep the deposits within 15 days of the end of the tenancy. The tenant is therefore not entitled to double recovery of the security deposit and pet damage deposit, and I dismiss that portion of the tenant's application.

Although I find the tenant is not entitled to double her security deposit and pet damage deposit, I find the tenant is entitled to a return of her security deposit and pet damage deposit of \$850, each, less the monetary award of \$262.50 given to the landlord.

Both applications-

As both parties had some success with their applications, I decline to award either party recovery of their filing fee.

I have awarded the landlord compensation for pest control treatment in the amount of \$262.50. I direct that the landlord retain this amount from the tenant's security deposit of \$850 in satisfaction of her monetary award, leaving a balance owing to the tenant in the amount of \$587.50 for her security deposit.

I order the landlord to return the balance of the tenant's security deposit of \$587.50 and the pet damage deposit in full in the amount of \$850.

To give effect to this order, **I grant the tenant a monetary order of \$1,437.50** pursuant to section 67 of the Act, comprised of the balance of her security deposit, or \$587.50 and her pet damage deposit of \$850.

Should the landlord fail to pay the tenant this amount without delay, the order may be served upon the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application was granted in small part, with the rest of their application being dismissed without leave to reapply.

I order the landlord to return the balance of the tenant's security deposit of \$587.50 and the pet damage deposit of \$850, and I have granted the tenant a monetary order of \$1,437.50.

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*. Pursuant to

section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 06, 2023

Residential Tenancy Branch