



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSD-DR, FFT
 MNDL-S

Introduction

This hearing convened as a result of cross applications. In the Tenants' Application for Dispute Resolution, filed on May 17, 2022, the Tenants requested return of their security and key deposit (the "Deposits") and to recover the filing fee. In the Landlords' Application for Dispute Resolution, filed on June 15, 2022, the Landlords requested monetary compensation from the Tenants for cleaning of the rental unit as well as authority to retain the Deposits towards any amounts awarded.

The hearing was conducted by teleconference at 1:30 p.m. on February 28, 2023. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. Both Tenants called into the hearing. The Landlord P.W. called in as did their agent, R.H.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to return of their Deposits?
2. Are the Landlords entitled to monetary compensation from the Tenants?
3. Should the Tenants recover the filing fee?

Background and Evidence

In support of their claim the Tenant, H.Z., testified as follows. The tenancy began October 5, 2020. Monthly rent was \$1,900.00 and the Tenants paid a security deposit of \$950.00 and a key deposit in the amount of \$100.00 for a total of \$1,050.00 paid. The Landlord continues to hold their deposits in the total amount of \$1,050.00.

The tenancy ended March 3, 2022. The Tenants did not agree to the Landlords retaining their Deposits and provided their forwarding address to the Landlords by letter dated April 15, 2022. H.Z. testified that the letter was sent by registered mail on that date and was received by the Landlords on April 22, 2022.

The Tenant testified that the Landlords did not perform a move out condition inspection.

The Tenant confirmed that the rental unit was semi furnished. All items were listed in the contract when the Tenants moved in.

In terms of the Landlords' claim that the rental unit required cleaning the Tenant stated that when they moved out the Landlords stated that that the rental unit was in "great condition". The Tenant stated that they moved out early and they had time to take care of any required cleaning, and would have done so, but the Landlords stated that the rental unit was "great" and did not require anything further.

The Landlord, P.W., testified as follows. He confirmed that the tenancy ended on March 3, 2022. He claimed that he did not fill out the move out condition inspection report as the Tenants kept postponing the report.

The Landlords sought compensation in the amount of \$630.00 for the cost to clean the rental unit. P.W. testified that he informed the Tenants that the rental unit required further cleaning as he sent a message to the Tenants to inform them that he needed to

hire a cleaning company. The Landlords submitted photos of the rental unit confirming its condition at the time the tenancy ended as well as an invoice dated March 4, 2022.

P.W. confirmed that they received the Tenants forwarding address in writing on April 22, 2022. The Landlords applied for dispute resolution on June 15, 2022.

Analysis

Tenants' Request for Return of the Deposits Paid

The Tenants apply for return of the security deposit and key deposit paid pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(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, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I accept the Tenants' evidence that they did not agree to the Landlords retaining any portion of their deposits.

I find that the Landlords received the Tenants' forwarding address in writing on April 22, 2022 when the Landlords received the registered mail package sent by the Tenants.

The Landlords failed to return the deposits or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenants, as required under section 38(1) of the *Act*.

I also find the Landlords failed to perform an outgoing condition inspection report in accordance with the *Act* and Part 3 of the *Residential Tenancy Regulation*. Section 17 of the *Regulation* sets out in detail the process for scheduling an inspection. If, as the Landlords claim, the Landlords had difficulty arranging a time to inspect the unit when the tenancy ended, the Landlords were able to deliver a Notice of Final Opportunity to Schedule a Condition Inspection (#RTB-22) as set out in section 17(2)(b) of the *Regulations*. By failing to inspect the unit at the end of the tenancy as required, the Landlords extinguished their right to claim against the deposits for damages, pursuant to section 36(2) of the *Act*.

Deposits are held in trust for the Tenants by the Landlords. The Landlords may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenants an Order from an Arbitrator. If the Landlords believe they are entitled to monetary compensation from the Tenants, they must either obtain the Tenants' consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenants' Deposits. Here the Landlords did not have any authority under the *Act* to keep any portion of the deposits and failed to make their application within the strict timelines imposed by the *Act*.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlords pay the Tenants the sum of **\$2,100.00**, comprised of double the security and key deposit (2 x \$1,050.00).

Landlord's Claim for Cleaning Costs

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (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.

In this case the Landlords sought the sum of \$630.00 for cleaning of the rental unit including steam cleaning the upholstery and rugs. In support of their claim they provided photos of the rental unit as well as a receipt for cleaning. Photos of the furniture and rug confirm that these items were stained and required shampooing/cleaning. The stove also was not cleaned.

I am satisfied, based on the photos provided by the Landlords that the upholstery and rugs required professional cleaning when the tenancy ended. While there were only a few stains, those stains were highly visible. I also find that the Tenants failed to clean the stove. I find the amount claimed by the Landlords to be reasonable and I award them the **\$630.00** claimed.

Tenants' Request to Recover Filing Fee

As the parties have enjoyed divided success, I award the Tenants recovery of one half the filing fee paid in the amount of **\$50.00**.

Conclusion

The Tenants' application for return of double their security (\$950.00) and key deposit (\$100.00) is granted; they are entitled to the sum of **\$2,100.00** ($\$950.00 + \$100.00 = \$1,050.00 \times 2 = \$2,100$). The Tenants are also entitled to recover **\$50.00** from the Landlords towards the cost of their filing fee for a total award of **\$2,150.00**.

The Landlords are entitled to the sum of **\$630.00** for cleaning of the rental unit. This award is to be offset against the Tenants \$2,150.00 award such that the Tenants are entitled to the net sum of \$1,520.00.

In furtherance of the above the Tenants are awarded a formal Monetary Order in the amount of **\$1,520.00**. The Tenants must serve a copy of the Order on the Landlord as soon as possible, and should the Landlords fail to comply with this Order, the Order may be filed in the B.C. Provincial Court (Small Claims Division) 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: March 28, 2023

Residential Tenancy Branch