



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: **MNDL-S, FFL**

Tenant: **MNSDB-DR, FFT**

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The landlord applied for:

- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant applied for:

- A return of a security deposit and pet damage deposit that the landlord is retaining without cause pursuant to section 38;
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord and both tenants attended the hearing. Each party acknowledged receipt of the other's Notice of Dispute Resolution Proceedings packages and evidence and neither took issue with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation from the tenants?

Can the landlord retain the tenants' security deposit or pet damage deposit and if not, should it be returned to the tenants, doubled?

Can either party recover the filing fee?

Preliminary Issue

Rule 2.5 states that, to the extent possible, the applicant must submit a detailed calculation of any monetary claim being made and rule 6.2 states that the hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. In accordance with those rules, the landlord's claim was limited to \$2,500.00 and I used the landlord's description from the application to determine her claim for compensation.

Background and Evidence and Analysis

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord testified that the rental unit is a single family house built in 2018/2019. The landlord herself lived in the house for 6 months and there was another tenant who occupied it for a few months prior to the tenants in this dispute. The tenancy agreement provided as evidence indicates the tenancy began on July 18, 2020 with rent set at \$2,500.00 per month payable on the first day of each month. A security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 was collected from the tenants and the landlord continues to hold them.

The landlord was in Australia when the tenants moved in, so the landlord did not do a condition inspection report with the tenants at the commencement of the tenancy. A

girlfriend of the landlord made sure it was in “back to new” condition before the tenants moved in, according to the landlord. The girlfriend made sure the house was in good condition and told the tenants that if they wanted to do a condition inspection report, to let her know. The landlord confirmed that no written condition inspection report was signed by her girlfriend/agent or the tenants at the commencement of the tenancy.

The tenancy ended with the tenants texting on June 7th that they would be moving out on July 6th. The landlord did not schedule a date to conduct a move out condition inspection report with the tenants because the tenant RG’s health was fragile. According to the landlord, the tenants had stopped paying rent, their cleaners never came and on the last day of the tenancy, and when the tenants left, they locked the landlord out of the house and threatened her. The landlord testified she didn’t think doing an inspection report after they were gone would be an option because she was concerned for her safety. The landlord acknowledges receiving the tenants’ forwarding address via text message at 1:28 p.m. on July 6, 2022.

The tenant RG gave the following testimony. The landlord never contacted her to do a condition inspection report on move in or move out. The tenants’ response to each of the items listed on the landlord’s application for dispute resolution is recorded together with the landlord’s testimony, below.

1. The house was not cleaned and the tenants left it locked and took the keys then threatening to have people “come around”

Landlord: The police insisted she change the locks immediately. It cost \$450.00 just to get a locksmith out. It was a legal requirement and the police wouldn’t let the landlord neglect to change the locks.

Tenants: The landlord called her in May, telling her she was thinking of selling. The tenant was going through cancer treatment at the time. The tenant repeatedly asked the landlord to serve her with a notice to end tenancy but the landlord never produced one. The tenant never threatened the landlord and the tenants offered to give back the keys before they left.

2. appliances were damaged causing water damage

landlord: when the tenants moved in, they had all new appliances. The washing machine had a leak and it was still under warranty and could have been repaired. Water leaked into the crawlspace, painted walls were damaged. The landlord does not know how much compensation she seeks for this.

Tenant: there was pre-existing damage to the washer and the previous tenant left a gouge in the rubber that the tenants told the landlord about. The tenant’s husband

applied silicone to the door seal of the washer while waiting for the landlord to fix the washer but it was never fixed, despite the tenant telling the landlord about it.

3. The floors were damaged by dogs as were the French doors and the glass.

Landlord: the tenants' dog scratched the French doors and a glass inside the doors.

The landlord has not repaired it, but the quote is \$2,000.00. The landlord has done work to fix it herself but seeks compensation for the work. The landlord provided photos of the door frame, but not the glass she seeks to have replaced at \$2,000.00.

The landlord also alleges the tenants' dog caused scratches to the floors and provided photos of the floors and a quote to have them refinished.

Tenants: The floors were already worn down when they moved in. They are pine floors and prone to damage.

4. The back deck was damaged.

Landlord: The tenants put carpeting on the back deck and it rotted the wood and caused green mold. It took 3 days to pressure wash it. No photos of the deck were provided.

Tenants: the back deck was never power washed during the time they occupied the house. They put down a rug the day the movers came to prevent the movers from slipping.

5. Their RV which had extra residents caused driveway changes that needed repair.

Landlord: someone was illegally staying in a 5th wheel parked in the driveway. The landlord had to get a machine in to rebuild the driveway to the way it was before. The tenants also moved landscaping features and it took the landlord a full day of shovelling while the machine worked to move concrete stuff back into place.

Tenant: They had paid for the gravel to be installed to have an rv pad installed. They were waiting for the eviction notice to move the landscaping back but none came. Nobody lived in the RV, it was theirs for holiday camping.

6. Each wall needed repair and painting.

Landlord: Every wall needed to be filled. Holes or damage to be filled or painted.

Tenants: they never put up any pictures so they have no idea about this claim.

they also left unwanted items which had to be removed.

Landlord: There was a lot of junk left behind when the tenants left. The landlord wants to be compensated for having to clean it up. No photos of this was supplied as evidence.

Tenants: they left behind 2 rugs, a desk and a bbq. They were going to return the next week to pick it up but they didn't consider the tenancy over because the landlord didn't give them a notice to end tenancy.

Analysis

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the rental unit with the tenants, as required by section 23 of the *Act*. Pursuant to section 24, the landlord's right to claim against the security deposit **is extinguished** if the landlord does not offer the tenant at least two opportunities for inspection at the start of the tenancy.

Secondly, section 38(1) and (6) of the *Act* addresses the return of security deposits.

- (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.

...

- (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.

In the case before me, the landlord's right to claim against the security deposit was extinguished at the commencement of the tenancy when she failed to conduct a condition inspection report with the tenants. The fact that the rental unit was new does not negate the landlord's responsibility to have the tenants agree to the condition of the rental unit in writing at the beginning of the tenancy.

The parties agree that the landlord received the tenants' forwarding address via text message on July 6, 2022. Pursuant to section 38(6), the landlord had 15 days from July 6th to return the tenant's security deposit, since her right to claim against it was already extinguished at the beginning of the tenancy for failing to conduct a condition inspection

report with the tenants. In accordance with section 38(6)(b), the tenants are entitled to a doubling of their security deposit (\$1,250.00) and pet damage deposit (\$1,250.00) for a total of \$5,000.00. The tenants are awarded a monetary order for **\$5,000.00** pursuant to sections 38 and 67 of the Act.

Regarding the each item on the landlord's claim, I make the following findings:

Rekeying locks: Section 25 requires that a landlord rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to a new tenant. Pursuant to section 25(2) the landlord must pay all costs associated with the change. I find that since the landlord would be required to rekey the locks before giving access to the next set of tenants, the responsibility and cost for rekeying falls to the landlord. This portion of the landlord's claim is dismissed.

Pursuant to Rule 6.6 of the Rules of Procedure, the onus to prove their case falls upon the applicant, and that the standard of proof is on a balance of probabilities. Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

[the 4-point test]

appliances were damaged causing water damage

I find the landlord's version of facts on this point to be more credible than that of the tenants. I accept that the washing machine was new when the tenants moved in and that they didn't notify the landlord that the door seal was not working correctly during the tenancy. I have no evidence from the tenants to corroborate their testimony that they told the landlord about the leak during the tenancy, and I accept that the tenants tried to repair it with silicone themselves, unsuccessfully. Despite this, the landlord did not provide any indication of the value of damages she seeks (part 3 of the 4 point test). No invoices were provided to show how much the landlord spent on fixing the washing

machine and the landlord acknowledged she did not fix the floors. Consequently, I award the landlord the nominal amount of **\$100.00** for the damaged appliance.

The floors were damaged by dogs as were the French doors and the glass.

Section 21 of the Regulations state that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put herself in a position where she cannot prove, on a balance of probabilities, the existence of the damages allegedly caused by the tenants when the tenancy ended. Though her testimony and photos taken at the end of the tenancy bear some weight, she has not met the burden of proof to show me the difference in condition between move-in and move-out.

Without the condition inspection report to corroborate her claim, the landlord has provided insufficient evidence to satisfy me the damage to the floors and French doors she says was caused by the dogs. The tenants testified that the soft pine floors were already worn down to the stain when they moved in. The landlord does not have a preponderance of evidence to satisfy me it was the tenants' dog causing anything greater than what I consider to be reasonable wear and tear to a rental unit.

The back deck was damaged.

Though the landlord testified the back deck was "damaged" by rotten green mold, the evidence of the damage does not reflect the same. The single photo provided to me depicts a small line of mildew that could easily be washed away with a deck cleaning solution and water. I find the "damage" claimed by the landlord is consistent with reasonable wear and tear to a wooden outdoor deck and the landlord is not entitled to compensation.

Their RV which had extra residents caused driveway changes that needed repair.

Residential Tenancy Branch Policy Guideline 1 [Landlord & Tenant – Responsibility for Residential Premises] states:

RENOVATIONS AND CHANGES TO RENTAL UNIT

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.

2. If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

PROPERTY MAINTENANCE

1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.
2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.

The tenants acknowledged making changes to the landlord's driveway to accommodate their RV. Based on the testimony of the parties and the evidence before me, I find the tenants made alterations to the driveway and did not return it to the original condition at the end of the tenancy. The landlord seeks 5 hours at \$70.00 per hour to return it to the original condition. I find that to be a reasonable estimate of the cost to do the repairs and I award the landlord **\$350.00**.

Each wall needed repair and painting.

No photos of the alleged holes or damaged walls were presented as evidence for me to consider, other than the one marked Aircon3.jpg. Moreover, the landlord did not provide a condition inspection report signed by the tenants for them to acknowledge the existence of the damage alleged by the landlord at the beginning of the tenancy. I find the landlord has provided insufficient evidence to satisfy me of any damage to the walls caused by the tenants during the tenancy and I dismiss this portion of the landlord's claim.

they also left unwanted items which had to be removed.

The tenants acknowledged they left behind 2 rugs, a desk and a barbecue at the end of the tenancy and they were going to return after the tenancy ended to come get it. Unless there is an agreement between the parties that the left behind items would be stored by the landlord, the tenants had no right to leave behind any of their possessions. I do not accept the tenant's explanation that they were waiting for a notice to end tenancy from the landlord to determine their last day of tenancy. They had already vacated the unit.

The landlord seeks \$200.00 for labour and truck rental, but provided no receipts for the removal of the tenant's possessions. As such, the landlord has not proven the value of this portion of her claim. Despite this, the landlord is entitled to reasonable costs which I nominally determine to be **\$100.00**.

Filing fee

The tenants were successful in their application and the filing fee of \$100.00 shall be recovered.

The landlord was successful in less than half of her application and the filing fee shall not be recovered.

Item	Amount
Security deposit and pet damage deposit	\$5,000.00
Tenants filing fee	\$100.00
appliances were damaged causing water damage.	(\$100.00)
Their RV which had extra residents caused driveway changes that needed repair.	(\$350.00)
they also left unwanted items which had to be removed.	(\$100.00)
TOTAL	\$4,550.00

Conclusion

I award the tenants a monetary order in the amount of **\$4,550.00**.

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: April 26, 2023

Residential Tenancy Branch