



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL
 MNSD, MNEVC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Landlord (the Landlord's Application) on October 28, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Recovery of costs incurred to repair the rental unit;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

This hearing also dealt with an Application that was filed by the Tenants (Tenants' Application) on March 15, 2022, and two amendments to the Application filed on March 30, 2023, and March 31, 2023, seeking:

- Double the amount of their security and pet damage deposits;
- Compensation related to the end of the tenancy due to a vacate clause; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 pm on May 15, 2023, and was attended by the Tenants and an agent for the Landlord KD (Agent). All testimony provided was affirmed. As the parties acknowledged service of each other's Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service dates or methods, the hearing of both Applications proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or

exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter #1

With the consent of the parties, both Applications were amended to correctly name the corporate landlord named in the tenancy agreement.

Preliminary Matter #2

As the Tenants acknowledged failing to serve the Landlord with the amendment filed on March 30, 2023, I have not amended the Tenants' Application to include that claim. As the Agent acknowledged receipt of the amendment filed on March 31, 2023, I have amended the Application accordingly.

Preliminary Matter #3

Although the Agent acknowledged receipt of the documentary evidence before me from the Tenants, the Tenants denied receipt of utility bills that the Agent stated were sent to them by registered mail. The Agent provided me with the registered mail tracking number and the addresses used, which the Tenants confirmed was their correct mailing address.

With the consent of the parties, I checked the Canada post tracking system which showed that the registered mail was sent on October 29, 2022, a first notice was left on October 31, 2022, a final notice was left on November 6, 2022, and that the package was returned to the sender as unclaimed. As a result of the above, I am satisfied that the Landlord's documentary evidence was sent to the Tenants by registered mail at

their correct mailing address on October 29, 2022. Section 90(a) of the Act states that a document is deemed received on the fifth day after it is mailed, if not earlier received. Although Residential Tenancy Policy Guideline (Policy Guideline) #12 states that the deemed service provisions may be rebutted, this requires that the party wishing to rebut a deemed receipt presumption provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received. The Tenants provided me with neither. Policy Guideline #12 also states that where a document is served by Registered Mail the refusal of the party to accept or pick up the item, does not override the deeming provision. As a result, I deem the Landlord's documentary evidence served on the Tenants on November 3, 2022, pursuant to section 90(a) of the Act and Policy Guideline #12.

Issue(s) to be Decided

Is the Landlord entitled to recovery of costs incurred to repair damage?

Is the Landlord entitled to recovery of unpaid utility bills?

Are the Tenants entitled to the return of double the amount of their pet damage deposit and security deposit?

Are the parties entitled to recovery of their filing fees?

Background and Evidence

The parties agreed to the following:

- The tenancy ended on September 30, 2022;
- The Tenants provided the Landlord with their forwarding address in writing on October 19, 2022;
- The Tenants paid a \$1,925.00 security deposit and a \$1,925.00 pet damage deposit at the start of the tenancy, neither of which have been returned;
- No condition inspection reports were completed; and
- Sections 38(4) and 38(5) of the Act do not apply.

The Agent stated that the Tenants pet cause \$2,200.00 worth of damage to the rental unit, which the Tenants denied. The Agent also sought recovery of two unpaid utility bills in the amount of \$132.46 and \$80.00. Although the Tenants agreed that they were required to pay for utility usage, and that the utility bills remained in the owner's name

throughout the tenancy, they denied receipt of the utility bills relied on by the Agent at the hearing. They also argued that they relate to periods after the end of the tenancy.

The Tenants sought the return of double the amount of their security and pet damage deposits, as they stated that the Landlord improperly withheld them. Both parties requested the return of their filing fees.

Analysis

Is the Landlord entitled to recovery of costs incurred to repair damage?

Although the Agent stated that the Tenants pet caused \$2,200.00 of damage to the rental unit, the Tenants denied that the rental unit was left in damaged condition. Further to this, the Agent submitted no documentary or other corroboratory evidence regarding the state of the rental unit at the start or the end of the tenancy or in support of the amounts claimed. As a result, I find that the Landlord has failed to satisfy me as required by section 7 of the Act and Residential Tenancy Policy Guideline (Policy Guideline) #16, that the Tenants breached section 37(2)(a) of the Act causing the amount of damage claimed by the Landlord. I therefore dismiss the Landlord's claim for recovery of \$2,200.00 without leave to reapply.

Is the Landlord entitled to recovery of unpaid utility bills?

The parties agreed that although the electricity and gas bills remained in the name of the property owner, the Tenants were responsible to pay for their electricity and gas usage. I have also already found above that the Tenants were deemed served on November 3, 2022, with the gas and electricity bills submitted for consideration. The Hydro bill states that \$132.46 was due on November 7, 2022, for a bill issued on October 14, 2022. However, the parties agreed that the tenancy ended on September 30, 2022, and the electricity bill submitted did not specify the usage period for the bill. As a result, I cannot be satisfied that the entire amount relates to a period during which the Tenants were responsible for the electricity costs.

Assuming an average two-month electricity billing period for BC Hydro, and given the billing date of October 14, 2022, I find that the bill likely includes utility usage costs for the rental unit after the end of the tenancy, which I find the Tenants are not responsible for paying. As a result, I grant the Landlord only \$105.60, which represents a per diem

rate of \$2.20, multiplied by the 48 days the Tenants resided in the rental unit between August 14, 2022 – September 30, 2022.

The gas bill states that \$80.83 was due on November 12, 2022, for gas used at the rental unit address between September 21, 2022 – October 21, 2022. As the Tenants did not reside in the rental unit during that entire period, I find the Tenants are only responsible for 10 days of usage during this billing cycle. I therefore grant the Landlord recovery of only \$26.00, calculated at a per diem rate of \$2.60 over the 31-day billing period.

Are the Tenants entitled to the return of double the amount of their pet damage deposit or security deposit?

I am satisfied that the Landlord extinguished their right to claim against the pet damage deposit and the security deposit for damage to the rental unit pursuant to section 24 of the Act, as the parties agreed that no move-in condition inspection report was completed or provided to the Tenants at the start of the tenancy. Despite this finding, the Landlord was still entitled to file a claim against the security deposit for other matters, provided they did so in compliance with section 38(1) of the Act, which I am satisfied they did. As a result, I find that the Tenant's are not entitled to the return of double its amount. However, Policy Guideline #30 states that a pet damage deposit may only be claimed against by a landlord or retained under section 38(3) or 38(4) of the Act in relation to damage caused by a pet.

As I have already found that the Landlord extinguished their right to claim against both deposits for damage, and pet damage deposits may only be claimed against for damage caused by a pet, I find that the Landlord was not entitled to retain the \$1,925.00 pet damage deposit pending the outcome of this Application. The Landlord was therefore required to have returned it to the Tenants within 15 days after the later of either the date the tenancy ended, September 30, 2022, or the date the Landlord received the Tenants' forwarding address in writing, October 19, 2022, pursuant to section 38(1) of the Act, which they did not do. As a result, I find that the Tenants are entitled to \$3,850.00, double its amount, pursuant to section 38(6) of the Act, plus \$28.18 in interest.

Are the parties entitled to recovery of their filing fees?

As both parties were partially successful, I grant them both recovery of their respective \$100.00 filing fees pursuant to section 72(1) of the Act.

Conclusion

The Landlord currently holds in trust the Tenants' \$1,939.09 security deposit, calculated as \$1,925.00, plus \$14.09 in interest owed. The Landlord is entitled, pursuant to section 72(2)(b) of the Act, to retain \$231.60 from the Tenants' security deposit for outstanding utilities and recovery of the \$100.00 filing fee. The \$1,707.49 remaining balance of the security deposit and interest must be returned to the Tenants.

The Tenants are entitled to \$5,685.59 for the return of the \$1,707.49 balance of the security deposit and interest, \$3,878.18 for double the amount of their security deposit, plus interest, and recovery of the \$100.00 filing fee. Pursuant to section 67 of the Act, I therefore grant the Tenants a Monetary Order in the amount of **\$5,685.59**. The Tenants are provided with this order in the above terms and the Landlord must be served with this order as soon as possible. Should the Landlord fail to comply with this order, it 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 Branch under Section 9.1(1) of the Act.

Dated: May 17, 2023

Residential Tenancy Branch