



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant: MNDCT, MNSD, FFT
Landlord: MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the parties' applications under the Residential Tenancy Act (the "Act").

The Tenant applied for:

- compensation of \$1,200.00 for monetary loss or money owed by the Landlord pursuant to section 67 of the Act;
- return of the security deposit and/or pet damage deposit in the amount of \$1,800.00 pursuant to section 38 of the Act; and
- authorization to recover the filing fee for the Tenant's application from the Landlord pursuant to section 72.

The Landlord applied for:

- compensation of \$1,245.10 to repair the damage that the Tenant, their pets or their guests caused during the tenancy pursuant to sections 32 and 67 of the Act;
- compensation of \$1,083.87 for monetary loss or other money owed pursuant to section 67 of the Act;
- authorization to retain the security and/or pet damage deposit pursuant to section 72(2)(b) of the Act; and
- authorization to recover the filing fee for the Landlord's application from the Tenant pursuant to section 72.

The Landlord and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Removal of Landlord

The Tenant’s application initially listed Team Approach Property Services Ltd. (“Team Approach”) as a second landlord and respondent. The parties agreed that Team Approach was the Landlord’s property manager and could be removed from these proceedings. By consent of the parties and pursuant to section 64(3)(c) of the Act, I have amended the Tenant’s application to remove Team Approach as a landlord and respondent.

Preliminary Matter – Service of Dispute Resolution Documents

The parties acknowledged receipt of each other’s notice of dispute resolution proceeding packages and documentary evidence but noted that the evidence was received late. The parties agreed to have all evidence considered for the purposes of this proceeding. I find the parties were served with each other’s notice of dispute resolution proceeding packages and documentary evidence in accordance with sections 88 and 89 of the Act.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage to the rental unit?
2. Is the Landlord entitled to compensation for monetary loss or other money owed?
3. Is the Tenant entitled to compensation for monetary loss or other money owed?
4. Is the Tenant entitled to return of double the security and pet damage deposits?
5. Are the parties entitled to reimbursement of their filing fees?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the parties' applications and my findings are set out below.

This tenancy commenced on August 1, 2021 and was to be for a fixed term ending on August 1, 2022. Rent was \$1,200.00 per month. The Tenant paid security and pet damage deposits of \$600.00 each. The Tenant kept two cats in the rental unit during the tenancy.

The parties completed a move-in inspection of the rental unit on or around August 9, 2021. The Landlord submitted a copy of the condition inspection report into evidence. The Landlord stated that the suite had been fully renovated before the Tenant moved in.

This tenancy ended on April 30, 2022 pursuant a decision of the Residential Tenancy Branch dismissing the Tenant's application to cancel a one month notice to end tenancy for cause dated January 18, 2022 (see file number referenced on the cover page of this decision).

The Tenant vacated the rental unit on or around May 3, 2022. The Tenant testified that she paid \$1,200.00 rent on May 1, 2022. The Tenant seeks a return of this amount. The Landlord testified that she refunded the Tenant \$1,083.87 via e-transfer sent on May 6, 2022. The Landlord explained that she had pro-rated the refund to account for the days used by the Tenant in May 2022. The Landlord submitted a partially redacted bank statement and an email from the Tenant dated May 5, 2022 into evidence. These records show that the Landlord had originally sent the e-transfer to the Tenant on May 5, 2022, but the Tenant did not answer the security question correctly, so the first e-transfer was canceled and the Landlord re-sent the e-transfer on May 6, 2022.

According to the Tenant, she had overpaid the Landlord for April 2022 hydro since she only owed \$30.00 but paid \$70.00. The Tenant submitted utility bills and email correspondence with the Landlord into evidence. The Landlord disagreed and stated that the Tenant's payment covered previous charges owed.

The parties did not do a move-out inspection together. The Landlord completed the move-out section of the condition inspection report on May 3, 2022. The Landlord explained that she did not feel safe doing an inspection with the Tenant since the Tenant had been removed from the property by police. The Tenant denied that she had been escorted by police.

The Tenant seeks the return of double her security and pet damage deposits as the Landlord did not apply to the Residential Tenancy Branch or return the deposits within 15 days of receiving the Tenant's forwarding address in writing.

The Landlord acknowledged receipt of the Tenant's forwarding address in writing on May 6, 2022. The Landlord testified that there was extensive damage to the rental unit. The Landlord stated that she also lost out on rent for May 2022. According to the Landlord's written submissions, the Landlord was unable to re-rent the rental unit until May 16, 2022 due to the repairs and needing to find a new tenant. The Landlord testified that she had made attempts to settle the matter with the Tenant's previous representative. The Landlord submitted email and mail correspondence into evidence.

The Landlord claims compensation as follows:

Item	Amount
Sliding Closet Door Replacement	\$245.00
Pet Damage to Windowsill and Wall	\$200.00
Labour (10 hours at \$50.00 per hour) for Repairs and General Suite Clean	\$500.00
Mattress Removal Dump Fee	\$40.00
Fuel Surcharge	\$40.00
Supplies for Repairs	\$160.81
GST	\$59.29
Subtotal	\$1,245.10
Lost Rent for May 2023	\$619.36
Total	\$2,428.97

The Landlord submitted an invoice for repairs, photos of damage, receipts for repair supplies, and a new tenancy agreement into evidence.

The Tenant denied that her cats had damaged the rental unit. The Tenant submitted that she had tried to clean up and fix the damages before moving out but had a hard time. The Tenant submitted photos of the rental unit into evidence. The Tenant submitted that she had taken these photos and cleaned the rental unit while the Landlord's husband, a contractor, had left for supplies.

According to the Landlord, the photos of the rental unit taken by the Tenant showed the Landlord's husband's toolbelt while he was doing repairs after the tenancy had already ended. The Landlord indicated that this was after May 3, 2022. The Landlord argued that the Tenant was trespassing when she took those photos.

Analysis

1. Is the Landlord entitled to compensation for damage to the rental unit?

Section 37(2)(a) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Under section 67 of the Act, if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement, the director may determine the amount of compensation that is due, and order the responsible party pay compensation to the other party.

Based on the evidence presented, including the condition inspection report and the photos of the rental unit submitted by the Landlord, I am satisfied on a balance of probabilities that the Tenant left behind damage beyond reasonable wear and tear in the form of a smashed column, cracked mirror closet door, broken cupboard door and hinge, and cat scratches on walls and a windowsill. I find the condition inspection report does not note any such damage at the start of the tenancy. I find the photos submitted by the Tenant show the rental unit to be in better shape, but I find that these photos were likely taken after the Landlord had repossessed the rental unit and had already completed some repair and cleaning work. I find the Landlord's photos show that areas of the rental unit, such as underneath the sink, were not left clean at the end of the tenancy.

I find the Landlord submitted receipts to support the amounts claimed for repair supplies. I accept that additional cleaning and garbage removal would have been required after the repairs were completed. Based on the photos of damage submitted by the Landlord, I find the total amount of \$1,245.10 claimed on the Landlord's invoice, which includes labour for repairs and cleaning, to be reasonable in the circumstances.

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord the sum of \$1,245.10 for repairs and cleaning.

2. Is the Landlord entitled to compensation for monetary loss or other money owed?

The Landlord claims loss of rent in May 2022. I have already found the Tenant did not leave the rental unit undamaged and reasonably clean at the end of the tenancy. I accept the Landlord's evidence that she was unable to re-rent the rental unit until May

16, 2022 due to the repairs and having to find a new tenant. I find the Landlord acted reasonably to mitigate her damages. However, I find the Tenant already paid for the first three days of rent in May 2022, and I find the Landlord's evidence to be that the new tenant moved in on May 16, 2022. As such, I find the Landlord's damages to be loss of rent from May 4 to 15, 2022 inclusive, or $\$1,200.00 \times 12/31 \text{ days} = \464.52 .

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$464.52 for loss of rent in May 2022.

3. Is the Tenant entitled to compensation for monetary loss or other money owed?

Based on the Landlord's evidence, including the Tenant's email dated May 5, 2022 and the Landlord's bank statement showing the e-transfers sent to the Tenant, I am satisfied on a balance of probabilities that the Landlord already refunded the Tenant \$1,083.87 for May 2022 rent. Furthermore, I have reviewed the email correspondence and utility bills submitted by the Tenant. I find there is insufficient evidence to prove that the Tenant had overpaid for hydro. As such, I find the Tenant is not entitled to compensation of \$1,200.00 from the Landlord. The Tenant's claim under this part is dismissed without leave to re-apply.

4. Is the Tenant entitled to return of double the security and pet damage deposits?

According to sections 38(1), (3), and (4) of the Act, a landlord must repay a security deposit and/or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the deposit within 15 days after the later of the tenancy end date or the date the landlord receives the tenant's forwarding address in writing, unless the landlord has the tenant's written consent or a previous order from the Residential Tenancy Branch.

I find the tenancy ended on April 30, 2022. I find the Landlord received the Tenant's forwarding address in writing on May 6, 2022. Pursuant to section 38(1) of the Act, I find the Landlord had until May 21, 2022 to return the deposits to the Tenant or make an application to claim against the deposits.

Records of the Residential Tenancy Branch indicate the Landlord did not make her application until August 14, 2022. I find the Tenant did not agree for the Landlord to keep the deposits. I find there is no evidence of any previous orders made by the

Residential Tenancy Branch or authorization for the Landlord to keep any portion of the deposits.

Based on the foregoing, I find the Landlord did not comply with the 15-day deadline under section 38(1) of the Act.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1), the landlord may not make a claim against the security or pet damage deposit and must pay the tenant double the amount of the deposit.

According to Residential Tenancy Policy Guideline 17. Security Deposit and Set Off ("Policy Guideline 17"), the arbitrator will order a return of a security deposit unless the tenant's right to the return of the security deposit has been extinguished under the Act. I find the parties completed a move-in inspection and condition inspection report. I find the Tenant was not provided with two opportunities for a move-out inspection, such that the Tenant's right to a return of the deposits would have been extinguished under the Act and the regulations. For reference, section 17 of the regulations requires that the second or final opportunity for inspection be given to a tenant using the approved (Residential Tenancy Branch) form. Furthermore, I find the Landlord received the Tenant's forwarding address in writing within one year after the tenancy ended. Therefore, I find the Tenant's right to the return of the deposits was not extinguished under any of sections 24(1), 36(1), or 39 of the Act.

I conclude the Tenant is entitled to a return of double the security and pet damage deposits under sections 38(1) and 38(6) of the Act.

In addition, section 38(1) of the Act requires that interest on the deposits be paid to a tenant. The interest rate on deposits was 0% from 2021 to 2022, and is 1.95% in 2023. According to Policy Guideline 17, interest is calculated on the original deposit amount, before any deductions are made, and is not doubled. Using the Residential Tenancy Branch Deposit Interest Calculator online tool, I find the Tenant is entitled to \$8.21 of interest on the deposits from they were paid to the date of this decision, calculated as follows:

2021 \$1200.00: \$0.00 interest owing (0% rate for 52.87% of year)
2022 \$1200.00: \$0.00 interest owing (0% rate for 100.00% of year)
2023 \$1200.00: \$8.21 interest owing (1.95% rate for 35.06% of year)

Pursuant to section 38 of the Act, I order the Landlord to pay the Tenant \$2,408.21 (or $(\$600.00 + \$600.00) \times 2 + \$8.21$) for the return of double the security and pet damage deposits plus interest.

5. Are the parties entitled to reimbursement of their filing fees?

Both parties have been partially successful in their applications. I award the parties reimbursement of their filing fees pursuant to section 72(1) of the Act.

The total amounts awarded to the parties are set off against each other resulting in a net payment from the Landlord to the Tenant as follows:

Item	Amount
Amounts Payable by Landlord to Tenant	
Return of Double the Security Deposit and Pet Damage Deposit ($\$600.00 + \600.00) \times 2	\$2,400.00
Interest on Deposits	\$8.21
Filing Fee	\$100.00
Subtotal	\$2,508.21
Less Amounts Payable by Tenant to Landlord	
Compensation for Damage and Repairs	\$1,245.10
Loss of Rent from May 4 to 15, 2022 Inclusive ($\$1,200.00 \times 12/31$ days)	\$464.52
Filing Fee	\$100.00
Subtotal	\$1,809.62
Net Payable by Landlord to Tenant (\$2,508.21 - \$1,809.62)	\$698.59

Conclusion

The Tenant's claims for return of double the security and pet damage deposits and reimbursement of the filing fee are granted. The Tenant's claim for \$1,200.00 in compensation for overpaid rent and hydro is dismissed without leave to re-apply.

The Landlord's claims for damage and reimbursement of the filing fee are granted. The Landlord's claim for lost rent is partially granted.

Pursuant to sections 38 and 72 of the Act, I grant the Tenant a Monetary Order of **\$698.59**. This Order may be served on the Landlord, filed in the Small Claims Division of the Provincial Court of British Columbia, 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: May 08, 2023

Residential Tenancy Branch