



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNRL-S, MNDL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with the Landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. A Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit pursuant to Sections 26, 38, 46 and 67 of the Act;
2. A Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit pursuant to Sections 38 and 67 of the Act;
3. A Monetary Order for compensation for a monetary loss or other money owed – holding security and/or pet damage deposit pursuant to Sections 38 and 67 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. Two Landlords, YHN and LHV, and their Property Manager attended the hearing at the appointed date and time and provided affirmed testimony. The Tenants did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlords, their Property Manager, and I were the only ones who had called into this teleconference. The Landlords and their Property Manager were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlords and their Property Manager that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute

resolution hearings. The Landlords and their Property Manager testified that they were not recording this dispute resolution hearing.

The parties had a signed form #RTB-51-Address for Service permitting the parties to serve legal documents by email. The Landlords served the Tenants with the Notice of Dispute Resolution Proceeding package and evidence by email on August 3, 2022 (the “NoDRP package”). The Property Manager uploaded screen shots of the emails sent to the Tenants. I find the Tenants were deemed served with the Landlords’ NoDRP package on August 6, 2022 in accordance with Sections 43(2) and 44 of the *Residential Tenancy Regulation* (the “Regulation”).

Issues to be Decided

1. Are the Landlords entitled to a Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit?
2. Are the Landlords entitled to a Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit?
3. Are the Landlords entitled to a Monetary Order for compensation for a monetary loss or other money owed – holding security and/or pet damage deposit?
4. Are the Landlords entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlords confirmed that this tenancy began as a fixed term tenancy on March 1, 2021. The fixed term ended on March 31, 2022, then the tenancy continued on a month-to-month basis. Monthly rent was \$3,990.00 payable on the first day of each month. A security deposit of \$1,900.00 was collected at the start of the tenancy and is still held by the Landlords.

The Landlords uploaded a copy of an executed form #RTB-8-Mutual Agreement to End Tenancy. The parties agreed to end the tenancy on May 31, 2022. The Property Manager testified that the Tenants did not provide the Landlords with their forwarding address in writing.

The Tenants did not pay May 2022's rent totalling \$3,990.00.

The Property Manager testified that the Tenants overheld in the tenancy, finally vacating the rental unit on June 16, 2022. The Landlords are claiming \$2,128.00 for 16 days into June 2022 when the Tenants were overholding the rental unit.

The Property Manager said the Tenants left the house nothing like how it was at the beginning of the tenancy. The Landlords uploaded pictures of the state of the rental unit at the start of the tenancy, and the state of the rental unit after the Tenants vacated.

The Landlords claimed \$551.25 to change locks and deadbolts. The Tenants did not return the keys at all at the end of the tenancy. The deadbolt on the backdoor was completely removed and missing, and the inside panel of the front deadbolt was removed and missing.

The Landlords claimed \$500.00 for disposing of garbage left by the Tenants after they vacated.

The Tenants left the house dirty at the end of the tenancy and the Landlords contracted with a cleaning company to clean the house. The total bill for cleaning was \$1,260.00.

The Property Manager testified that the Landlords had to repaint the entire house. He stated they had to replace all the carpets in the home because there was paint on the carpets. All the toilets were clogged, and the contractors had to take off the toilets and auger the piping. The bathtub also had to be snaked to clear out the pipes. A screen door which was broken off its hinges needed a repair. Many doorknobs throughout the house were missing. Many items were missing at the end of the tenancy and had to be replaced, for instance, curtains, 4 mattresses, 3 bed frames, doorbell, dresser at entrance of house, and a microwave oven.

The total quote for these repairs and replacements was \$24,543.75.

The Landlords had to pay for lawn and garden maintenance after the Tenants vacated. The work involved grass cutting, removal of all unwanted weeds and vines, fix a leaking tap in the backyard, cleaning the gutters and removal of dead materials on the chimney. The total costs claimed was \$740.00.

Two family members planned to move into the rental unit. The Landlords claim accommodation expenses during the Tenants overholding period. The two invoices attached are for first for an Airbnb totalling \$225.21, then the second invoice was for hotel expenses totalling \$577.68 which were less than the Airbnb costs. The total accommodations claimed are \$802.89.

The Tenants did not pay the last few months of gas bills, and Fortis would not allow the Landlords to make their own account until they paid the outstanding gas bill. Heating costs were not included in this rental, and the Landlords paid the outstanding gas bill totalling \$596.75.

The Landlords' total claim follows:

ITEM	AMOUNT
Replacing deadbolts	\$551.25
Garbage removal	\$500.00
Cleaning services	\$1,260.00
Painting, repairs, replacing missing items	\$24,543.75
Lawn and garden maintenance	\$740.00
Unpaid May 2022 rent	\$3,990.00
Overholding June rent (16 days)	\$2,128.00
Landlords' Airbnb expense	\$225.21
Landlords' Hotel expense	\$577.68
Fortis - outstanding gas bill	\$596.75
TOTAL:	\$35,112.64

The Property Manager uploaded all the receipts for the debt and damages, and on some invoices, the Landlords are not claiming the full amounts. The Property Manager stated if the amount of the claim is over the RTB maximum, he seeks the maximum amount of compensation that the Landlords are entitled.

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 their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenants' absence, therefore, all the Landlords' testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Rent is due on the first of the month, and the Tenants did not pay May 2022's rent. Pursuant to Section 26(1) of the Act, I find the Tenants owe the Landlords **\$3,990.00** for May 2022's rent.

The Tenants continued to occupy the rental unit beyond the day the tenancy ended further to the Mutual Agreement to end. Section 57(3) of the Act states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. I find the Tenants owe the Landlords **\$2,128.00** for the 16 days they overheld the rental unit beyond the Mutual Agreement to end tenancy date.

Two Landlords planned to move back into the rental unit on June 1, 2022. Because the Tenants were overholding the rental unit the Landlords incurred costs for accommodation while they waited for the rental unit to be vacant. I find pursuant to Section 57(3) of the Act, the Landlords are entitled to their accommodation costs totalling **\$802.89** (\$225.21 + \$577.68).

Liability for not complying with this Act or a tenancy agreement

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

Leaving the rental unit at the end of a tenancy

- 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.*

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, "The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due." This guideline must be read in conjunction with Sections 7 and 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

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

The Landlords' rental unit and property was left in a damaged and very dirty state at the end of the tenancy. The Tenants also removed items from the home that were to remain in the home at the end of the tenancy. The Landlords provided before tenancy pictures and after tenancy pictures to support their claims for damage and loss. The Tenants did not pay for their last gas bill at the rental unit which the Landlords had to cover to get a gas account opened in their name. I find the Tenants breached Section 37 of the Act when they vacated the rental unit and the Landlords incurred loss and damage on account of their non-compliance.

The Property Manager presented each claim and provided invoices proving the amount of the value for the damage or loss. I find the Landlords have not claimed the full amount on some of the invoices, and I see this as a minimization of the damage or loss they incurred. The Property Manager said that if the approved claims go over the monetary limit permitted, to reduce the claim to the maximum amount allowed.

Based on the Property Manager and Landlords' undisputed testimonies and the totality of the evidence provided, I find the Landlords are entitled to compensation on a balance of probabilities for damages and loss they incurred in this tenancy. I grant the Landlords **\$35,000.00** for their damages and loss stemming from this tenancy.

Pursuant to Section 72(2)(b) of the Act, I order that the Landlords are authorized to retain the security deposit held by the Landlords in partial satisfaction of the monetary award. In addition, having been successful, I find the Landlords are entitled to recover the \$100.00 application filing fee paid to start this application.

The total monetary award is \$33,200.00 (\$35,000.00-monetary award - \$1,900.00-security deposit + \$100.00-application filing fee).

Conclusion

I grant a Monetary Order to the Landlords in the amount of \$33,200.00. The Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be 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 Act.

Dated: May 08, 2023

Residential Tenancy Branch