



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlord: MNDCL-S, FFL
 Tenants: MNSDB-DR, FFT

Introduction

This hearing dealt with the parties' applications under the *Residential Tenancy Act* (the "Act").

The Landlord applied for:

- compensation of \$855.00 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 Tenants pursuant to section 72 of the Act.

The Tenants applied for:

- return of double the security deposit and/or pet damage deposit in the amount of \$2,100.00 pursuant to sections 38 and 38.1 of the Act;
- authorization to recover the filing fee for the Tenants' application from the Landlord pursuant to section 72 of the Act.

The Tenants' application was initially by way of Direct Request Proceeding. On September 26, 2022, an adjudicator adjourned the Tenants' application to a participatory hearing for the following reasons:

Paragraph 12 (1) (b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required to "be signed and dated by both the landlord and the tenant."

I find that the residential tenancy agreement submitted by the tenants is not signed by the tenants or the landlord, which is a requirement of the Direct

Request process, and that a participatory hearing is necessary to address this issue.

The Landlord and the Tenants attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. AD attended this hearing as a witness for the Landlord and gave affirmed testimony.

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

The parties acknowledged receipt of each other's notice of dispute resolution proceeding packages and documentary evidence.

Issues to be Decided

1. Are the Tenants entitled to return of double the security and pet damage deposits?
2. Is the Landlord entitled to compensation of \$855 for monetary loss or other money owed?
3. 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 March 7, 2021. Rent was initially \$200.00 per month. The Tenants paid a security deposit and pet damage deposit of \$500.00 each.

Copies of the tenancy agreement are submitted into evidence. I find that although the parties did not sign the last page, the parties initialled this agreement in various places, including amendments to the agreement. I find the parties do not dispute that it is the agreement they have made.

At the start of the tenancy, the parties did not complete a move-in inspection or move-in condition inspection report together. According to the Landlord, she was in a rush to

catch a flight, so she left a pre-completed inspection report for the Tenants to sign, which she did not receive back. The Tenants stated that the Landlord had asked the Tenants if they wanted to do a formal report, and the Tenants said it was fine because the rental unit was in good conditions.

The Landlord explained that the Tenants were initially Airbnb guests who enjoyed the rental unit and wanted to stay longer. The Landlord stated she made it very clear regarding her expectations for cleanliness.

In or around June 2021, the parties agreed to amend their tenancy agreement to include bi-weekly cleaning of the rental unit for an additional \$160.00 per month in rent. The Landlord had suggested that including cleaning may help make the move-out clean less costly for the Tenants, which the Tenants had agreed with. The Landlord hired AD's company to do the bi-weekly cleaning.

The tenancy agreement indicates an expiry date of May 31, 2022. The parties agreed for the Tenants to stay a few more weeks in June 2022. According to the rent payment records submitted by the Landlord, the Tenants paid pro-rated rent of \$1,728.00 for 24 days in month of June 2022. The Landlords stated that the Tenants were instructed to move out by June 24, 2022. The Landlord asked the Tenants to leave the keys and fobs in the rental unit when they moved out.

The Tenants stated that the agreed upon move-out date was June 25, 2022, and they were waiting for the Landlord to do a move-out inspection. According to text messages submitted by the Tenants, the Tenants held onto the fobs as they wanted to keep an eye on the mailbox and did not feel comfortable handing over the keys without "some form of handover considering the deposit". The Tenants submitted text messages dated June 25, 2022 in which the Tenants informed the Landlords that their furniture were taken out, and the cleaner was in the rental unit cleaning.

The parties did not complete a move-out inspection or move-out condition inspection report together. The Tenants submitted text message correspondence between the parties which indicate that the Landlord refused a move-out inspection. The Landlord submitted a condition inspection report that is not signed by the Tenants.

On July 7, 2022, the Tenants emailed the Landlord their forwarding address. The Landlord confirmed receipt of this email. The Landlord submitted her application to retain the Tenants' security and pet damage deposits on July 22, 2022.

According to the Landlord, the rental unit was not clean when AD and her cleaners arrived on June 25, 2022. The Landlord submitted email and text correspondence with AD, several photos of the rental unit taken by AD prior to cleaning, and a \$567.00 cleaning invoice from AD's company dated June 29, 2022 (the "Cleaning Invoice"). The Landlord testified that the rental unit is a two bedroom, two bathroom suite of approximately 900 square feet. The Cleaning Invoice indicates 12 hours of cleaning at \$45.00 per hour and a list of the services provided. The photos submitted show dust on the bathroom ceiling fan, dust and debris on the floor, and what appears to be dirt in the bathtub.

AD testified that the rental unit was not cleaned before her team arrived. AD stated that they did a top to bottom clean, which includes cleaning inside the fridge, cleaning the countertops, hood vent, and cupboards. AD testified that there were crumbs on the counter and the floors were not clean, as there was dust and hair. AD confirmed that they cleaned the baseboards, touched up scuffs on the walls, and deep cleaned the windows.

The Landlord submitted an email from AD dated August 12, 2022, in which AD had described the condition of the rental unit for the move-out clean as follows:

- we had to do a top to bottom to bottom clean on the place. The hood vent was very greasy (*sic*). Baseboards were bad. Walls had a lot of scuff marks. Inside and behind the oven needed a good clean as well as inside and behind the fridge. All the windows inside and out needed a good clean and window tracks.

In the same email, AD stated that when she called one of the Tenants, DC, to buzz her into the unit, DC said to AD: "I assume you clean everything."

The Landlord and AD stated that photographs of the rental unit submitted into evidence by the Tenants were taken after AD's team had cleaned the rental unit on June 25, 2022.

The Landlord argued that the Tenants were supposed to clean when they leave, then AD's company would not have cleaned. The Landlord argued it was never agreed that the Landlord would be responsible for the move-out clean.

The Landlord seeks compensation of \$567.00 for cleaning fees and \$288.00 (four days' rent) for holding the fob from June 25 to June 28, 2022.

According to the Tenants, they had cleaned the rental unit and moved everything out by June 26, 2022. The Tenants stated that they held onto the fobs until the Landlord could attend the move-out inspection. The Tenants stated that they received angry messages from the Landlord about the fobs. The Tenants explained that they didn't want to leave the fob at the rental unit without any paperwork, which would put themselves at risk. The Tenants stated that after they brought their fobs over, they asked the Landlord to return their deposits, which the Landlord refused. According to the Tenants, there was never any discussion or agreement to pay for a move-out clean. The Tenants stated that less than a week and half before they moved out, the rental unit was already professionally cleaned. The Tenants stated that they cleaned the place themselves when they left. The Tenants acknowledged that they did not pull out fridge to clean underneath it. The Tenants stated that one of the bathroom vents was so filled with dust that it was rattling, and that it was a pre-existing issue. The Tenants do not recall the date they had taken the photos of the rental unit submitted into evidence.

Analysis

1. Are the Tenants entitled to return of double the security and pet damage deposits?

Pursuant to sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security and pet damage deposits if they do not comply with the Act and the regulations. Section 38 of the Act sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Based on the evidence presented, I find the parties did not attend any move-in or move-out inspections. I find the Tenants were not offered two opportunities for inspections in accordance with the Act and the regulations, which they failed to participate in. Therefore, I find the Tenants did not extinguish their rights to the return of their security and pet damage deposits under sections 24(1) or 36(1) of the Act. The Tenants submitted their application on August 8, 2022. I find the Tenants' application was made within one year of the tenancy end date. As such I find the Tenants' rights to the deposits were not extinguished under section 39 of the Act.

However, I find the Landlord's rights to claim against the security and pet damage deposits for damage to the rental unit were extinguished under section 24(2) of the Act.

I find the Landlord did not offer the Tenants two opportunities for a move-in inspection in accordance with the Act and the regulations, which requires using a Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity. Nevertheless, since extinguishment only relates to claims for damage to the rental unit, the Landlord may still claim for cleaning fees and other monetary loss against the security deposit.

I find AD's company performed the move-out clean at the rental unit on June 25, 2022. I find the Tenants removed their furniture during the move-out clean. I find the Tenants did not occupy the rental unit after this date. Therefore, I find this tenancy ended on June 25, 2022.

I find it is undisputed that the Landlord received the Tenants' forwarding address on July 7, 2022 via email. I find the Landlord was sufficiently served with the Tenants' forwarding address in writing as of this date pursuant to section 71(2)(b) of the Act.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from the later of the end date of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security and pet damage deposits to the Tenants, or to file a claim against the deposits.

In this case, the Landlord had 15 days from July 7, 2022, or until July 22, 2022, to repay the security and pet damage deposits to the Tenants or make an application to keep the deposits.

The Landlord made her application to claim against the deposits on July 22, 2022, which is within 15 days of receiving the Tenants' forwarding address. However, I find the Landlord was entitled to make an application to claim against the security deposit only, and not against the pet damage deposit.

Residential Tenancy Policy Guideline 31. Pet Damage Deposits states that "The landlord may apply to an arbitrator to keep all or a portion of the deposit but only to pay for damage caused by a pet." (emphasis underlined).

I find the Landlord does not claim for any damage to the rental unit caused by the Tenants' pet. In any event, I have found that the Landlord's right to claim against the deposits for damage to the rental unit was extinguished under section 24(2) of the Act. Therefore, I find the Landlord was not entitled to make any claim against the pet

damage deposit, and was required to return it to the Tenants by July 22, 2022. I find the Landlord did not return the pet damage deposit to the Tenants by that date.

Under section 38(6) of the Act, if a landlord does not comply with the 15-day requirement in section 38(1) of the Act, the landlord must pay the tenant double the amount of security deposit, pet damage deposit, or both as is applicable. Section 38(1) of the Act also requires that a landlord pay interest on the deposits to a tenant.

Therefore, I find the Landlord is required to return the security deposit (not doubled), and the pet damage deposit (doubled) to the Tenants, with interest on the original deposit amounts, less any amounts that the Landlord is entitled to retain as determined in the next section.

The interest rate on deposits was 0% from 2021 to 2022, and is 1.95% in 2023. According to Residential Tenancy Policy Guideline 17. Security Deposit and Set off, 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 Tenants are entitled to \$7.39 of interest on the deposits from the date they were paid to the date of this decision, calculated as follows:

2021 \$1000.00: \$0.00 interest owing (0% rate for 82.18% of year)
2022 \$1000.00: \$0.00 interest owing (0% rate for 100.00% of year)
2023 \$1000.00: \$7.39 interest owing (1.95% rate for 37.80% of year)

Based on the foregoing, I find the Tenants are entitled to the return of \$500.00 (security deposit) + \$500.00 × 2 (double pet damage deposit) + \$7.39 (interest on original deposits) = \$1,507.39, subject to setoff for any amounts found owing to the Landlord below.

2. Is the Landlord entitled to compensation of \$855 for monetary loss or other money owed?

a. Per Diem from June 25, 2022 to June 28, 2022

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.

The Landlord claims four days of per diem from June 25, 2022 to June 28, 2022, the date that she received the fobs back from the Tenants.

I find the parties agreed to pro-rate the rent for June 2022. I find the Tenants paid 24 days of rent to the Landlord in June 2022, but did not remove their personal belongings until June 25, 2022. Since the Tenants still had the fob keys and still occupied the rental unit on June 25, 2022, I find the Tenants should pay the Landlord per diem rent on that day based on the parties' tenancy agreement.

As mentioned above, I find June 25, 2022 to be the date that the tenancy ended. I find the Tenants did not return their fob keys to the Landlord until June 28, 2022. However, I do not find the evidence to show that the Tenants had continued to occupy the rental unit from June 26 to June 28, 2022, after the rental unit was cleaned by AD's company.

Section 37(2)(b) of the Act states that when a tenant vacates a rental unit, a tenant must give the landlord all keys or other means of access that are in the possession or control of the tenant. I find the Tenants did return the fob keys to the Landlord within a matter of a few days after the tenancy ended. I find a delay of a few days to be insufficient to constitute a breach under this section. I do not find the Landlord is entitled to compensation for overholding since the Tenants did not continue to occupy the rental unit. I also find the Landlord has not demonstrated that she suffered any specific loss due to this minor delay with the return of fob keys. I find the Landlord did not provide evidence to show, for example, that she lost rent due to a tenant being prevented from moving into the rental unit right away.

Based on the foregoing and pursuant to section 67 of the Act, I grant the Landlord compensation of \$72.00 for June 25, 2022 per diem rent only. The balance sought by the Landlord is dismissed without leave to re-apply.

b. Compensation for Cleaning

I find bi-weekly cleaning was a service provided to the Tenants during the tenancy and included in the monthly rent. I find the parties have confirmed the value of the bi-weekly clean to be \$160.00 per month. I find the parties did not agree as to who will pay for the move-out clean.

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.

Therefore, I find the Tenants are still obligated under section 37(2)(a) of the Act to leave the rental unit reasonably clean when they vacate.

According to Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises (“Policy Guideline 1”):

- The tenant is expected to leave the internal window coverings clean at the end of the tenancy. The tenant is responsible for cleaning the inside windows and tracks at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy.
- At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher. If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy.
- The tenant must wipe or vacuum baseboards and baseboard heaters to remove dust and dirt. The tenant is responsible for washing scuff marks, fingerprints, etc. off the walls unless the texture of the wall prohibited wiping.
- Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste at the end of the tenancy.

In this case, I accept AD’s testimony that the rental unit was not cleaned when her team arrived on June 25, 2022. I find AD’s testimony includes details about the cleaning tasks performed, and is supported by her email correspondence with the Landlord as well as the Cleaning Invoice. I find the Landlord submitted some photos which show that the rental unit was not clean. I find the tasks described in the Cleaning Invoice are similar to those described in Policy Guideline 1 as being a tenant’s responsibility. I find the overall amount charged in the Cleaning Invoice to be reasonable based on the rental unit being a two bedroom and two bathroom suite.

In contrast, I find the Tenants stated that they cleaned the rental unit but did not explain what they did to clean the rental unit. I find that aside from the photos submitted by the Landlord, there are no other photos of the rental unit taken prior to the move-out clean performed by AD’s company. I find the photos of the rental unit submitted by the Tenants were taken after the move-out clean.

Based on the foregoing, I conclude that the Tenants are responsible to pay for the cost of the Cleaning Invoice as part of their obligation to leave the rental unit reasonably clean at the end of the tenancy under section 37(2)(a) of the Act. However, I also find that the Tenants would have partially paid for a second cleaning session included in the rent for June 2022, which they never benefited from. I estimate the value of this service to be $\$160.00 \times 25/30 \text{ days} - \80.00 (the first cleaning session received in June 2022) = \$53.33.

Therefore, pursuant to section 67 of the Act, I award the Landlord compensation for cleaning calculated as the difference between the total charged in the Cleaning Invoice, and the unused amount the Tenants would have partially paid for a second cleaning session in June 2022, or $\$567.00 - \$53.33 = \$513.67$.

3. 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 Tenants as follows:

Item	Amount
Amounts Payable by Landlord to Tenants	
Return of the Security Deposit	\$500.00
Return of Double the Pet Damage Deposit ($\$500.00 \times 2$)	\$1,000.00
Interest on Original Deposits	\$7.39
Filing Fee	\$100.00
Subtotal	\$1,607.39
Less Amounts Payable by Tenants to Landlord	
Compensation for Cleaning	\$513.67
Per Diem for June 25, 2022 ($\$2,160.00 \times 1/30 \text{ days}$)	\$72.00
Filing Fee	\$100.00
Subtotal	\$685.67
Net Payable by Landlord to Tenants ($\\$1,607.39 - \\685.67)	\$921.72

Conclusion

Pursuant to sections 38 and 72 of the Act, I grant the Tenants a Monetary Order of **\$921.72**. 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 18, 2023

Residential Tenancy Branch