



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The landlord applied on July 15, 2022 for:

- compensation for damage caused by the tenant, their pets, or their guests to the unit or property, requesting to retain the security and/or pet damage deposit;
- compensation for monetary loss or other money owed, requesting to retain the security and/or pet damage deposit; and
- recovery of the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

- 1) Is the landlord entitled to compensation for damage caused by the tenants, their pets, or their guests to the unit or property, in the amount of \$2,530.51?
- 2) Is the landlord entitled to compensation for monetary loss or other money owed, in the amount of \$1,934.70?
- 3) Is the landlord entitled to the filing fee?

Background and Evidence

While I have considered all the documentary evidence presented and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

The parties agreed on the following facts. The current tenancy began January 1, 2017 and the tenants vacated the unit on June 28, 2022; rent was \$1,934.70, due on the first of the month; and the tenants paid a security deposit of \$900.00, which the landlord still holds. The parties agreed the tenant did not consent in writing for the landlord to retain any of the security deposit.

The parties agreed that tenant MR had previously lived in the unit with others, under a previous tenancy agreement.

The parties agreed that no move in inspection was completed at the beginning of the most recent tenancy and that the tenants were not given a copy of a move in inspection report. The tenant testified that the landlord had said they were not required to do a move in inspection report, but they needed to complete a report on the tenant's move out. The tenant testified that as they have lived there since 2012 there will be a lot of wear and tear over ten years.

The parties agreed the tenants had been served with a Two Month Notice for Landlord's Use of Property, with an effective date of June 30, 2022.

The landlord testified that on June 7 the tenant asked the landlord to move their vehicle and that the tenant brought in a moving vehicle. The landlord testified the tenant seemed to have moved out on June 7. The tenant testified he was at the unit every day from June 7th to the 28th.

The tenant testified the landlord has asked them to do the move out inspection on June 28th. The landlord testified they emailed the tenant before June 28 to ask them when they were moving out. The landlord testified that as the tenant did not reply, the landlord arbitrarily picked June 28 for the inspection. The parties agreed they planned to do the inspection on June 28, 2022. The tenant testified he did not receive prior emails from the landlord, only the "final notice to schedule" email.

The tenant testified that on June 28 they were not yet done moving out and cleaning, and that a friend was coming later to pick things up. The tenant testified they told this to the landlord, who refused to allow them to continue, gave them 30 minutes to vacate the unit, then the landlord changed the locks. This was not disputed by the landlord. The tenant testified they had not realized that they would have to vacate on June 28 and not on June 30.

The parties agreed that a move out inspection was conducted and a copy of the report provided to the tenant. A copy is in evidence and is marked that the tenant does not agree the report fairly represents the condition of the rental unit because the landlord did not explain the tenant's move out day would be the day of the inspection and that the tenant was still in the process of cleaning the unit and removing their belongings as they thought they had until the 30th.

The landlord testified the tenants provided a forwarding address by email on June 29, 2022. The tenants testified it was provided by email on July 1, 2022. Documentary evidence in support was not presented by either party.

The landlord testified they seek \$2,530.51 in compensation for damages for cleaning, painting, and junk removal, and have submitted a Monetary Order Worksheet, photos, and invoices in support.

The landlord testified they seek \$1,934.70 in compensation for monetary loss because they were planning to move into the unit on June 28 and rent out another unit. The landlord testified that as they were not able to move in on time they lost a month's worth of time.

Analysis

Section 38(1) states:

38(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.

Section 38(6) states:

- (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.

I find the tenancy ended on June 28, 2022, the date the tenants vacated the rental unit and the landlord changed the locks.

The landlord testified the tenants provided a forwarding address by email on June 29, 2022. The tenants testified it was provided by email on July 1, 2022. Neither party presented additional evidence in support.

As it would benefit the tenants to prove that the landlord did not apply for dispute resolution in time to avoid the doubling provision of section 38(6), I find the onus was on the tenants to demonstrate the landlord did not apply in time, despite this being the landlord's application. The tenants failed to provide any evidence that the landlord did not make this application within the allowable time frame. As such, and as the tenants' own evidence suggests that the landlord *did* apply in the required time frame, I find that they have failed to discharge their evidentiary burden to show the landlord did not make this application within 15 days of the later of receiving the tenant's forwarding address or the end of the tenancy. The tenants are therefore not entitled to recover double the security deposit from the landlord.

Section 24 of the Act provides that the right of a landlord to claim against the security deposit for damages is extinguished if they do not give the tenant a copy of the completed inspection report at the beginning of the tenancy.

The parties agree that a move in inspection was not done at the beginning of the tenancy.

Therefore, based on the evidence before me, I find the landlord failed to provide a copy of the move in condition report to the tenants as required by the Act. Consequently, I find that the landlord has extinguished their right to make a claim against the security deposit for damages.

The landlords must discharge their evidentiary burden to show it is more likely than not that they are entitled to this compensation due to the tenants' breach of the Act.

The landlord testified they seek \$2,530.51 in compensation for damages for cleaning, painting, and junk removal, and \$1,934.70 in compensation for monetary loss because they were not able to move into the unit on June 28 and rent out another unit.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It 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. In order to determine whether compensation is due, the arbitrator may determine 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.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit caused by the actions or neglect of the tenant.

Section 37 of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean.

The parties agreed the tenants had been served with a Two Month Notice for Landlord's Use of Property, with an effective date of June 30, 2022.

The tenant testified that on June 28 they were not yet done moving out and cleaning, and that a friend was coming later to pick things up. The tenant testified they communicated this to the landlord during the inspection, and that the landlord refused to permit the tenants to continue cleaning, gave them 30 minutes to vacate the unit, then changed the locks. This was not disputed by the landlord.

Based on the preceding, and on a balance of probabilities, I find the landlord forcibly ended the tenancy prematurely, prior to the effective date of the Two Month Notice, June 30, 2022, and in contravention of the Act.

I find that the tenants were entitled to occupy the unit until 1:00 PM on June 30, 2022. Had they been permitted to do so, they would have had the opportunity to do additional cleaning and make repairs. By changing the locks and preventing the tenants from doing additional cleaning and repairs, the landlord failed to mitigate any loss they suffered.

Section 21 of the *Residential Tenancy Act Regulation* states that in dispute resolution proceedings, a condition inspection report 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. As no condition inspection was conducted at the beginning of the tenancy, it is impossible for me to determine the condition of the unit at that time.

Therefore, I find the landlord is not entitled to compensation for damages because they evicted the tenants before the legal end of the tenancy, and because the landlord failed to prove any damage to the unit was the result of the tenancy.

I find the landlord is not entitled to compensation for monetary loss related to their inability to move into the rental unit on June 28, 2022, as, under the Act and the tenancy agreement, the tenancy should not have ended on June 28, 2022.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. As the landlord is unsuccessful in their application, I decline to award the filing fee.

I order the landlord to return the full amount of the \$900.00 security deposit to the tenants by May 18, 2023.

Conclusion

The landlord's application is dismissed.

The tenants are granted a monetary order in the amount of \$900.00, to be served on the landlord should the landlord fail to return the security deposit as ordered. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 03, 2023

Residential Tenancy Branch