



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

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

1. 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 under Sections 38 and 67 of the Act; and,
2. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's property manager and the Tenants attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's Notice of Dispute Resolution Proceeding package served by registered mail on September 15, 2022, Canada Post Tracking Number on cover sheet of decision, the Tenants confirmed receipt, deemed served on September 20, 2022;
- the Landlord's evidence package served by registered mail on April 27, 2023, the Tenants confirmed receipt, deemed served on May 2, 2023; and,

- the Tenants' evidence package served by registered mail on May 3, 2023, Canada Post Tracking Number on cover sheet of decision, the Landlord confirmed receipt, deemed served on May 8, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Landlord 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?
2. Is the Landlord 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 parties confirmed that this tenancy began as a fixed term tenancy on August 1, 2018. The first fixed term ended on July 31, 2019, then the tenancy continued on a month-to-month basis. The parties entered into a second fixed term tenancy on August 1, 2020. The second fixed term ended on July 31, 2021, then the tenancy continued on a month-to-month basis. The tenancy ended on July 31, 2022.

The parties confirmed that the monthly rent was \$2,028.73 payable on the first day of each month. A security deposit of \$975.00 and a pet damage deposit of \$975.00 were collected at the start of the tenancy and are still held by the Landlord.

The Landlord uploaded a monetary order worksheet and testified about damages done to the rental unit. They hired a contractor to replace 12 burnt out light bulbs in the dining room, vent hood, main bathroom and hall. The contractor also repaired a damaged cold air return duct to the living room, painted the kitchen, dining room, hallway, one wall in the living room, and under a cabinet, re-installed a shelf in a bedroom, repaired three bi-fold doors, installed a new hard-wired smoke detector, and installed a new blind. The Landlord uploaded the invoice from the contractor totalling \$1,242.15.

A shelf in the garage was removed off the wall and sitting on the floor in the garage. The Landlord claims two hours of labour totalling \$180.00 to re-install this shelf.

The kitchen countertop was stained. The Landlord said it cannot be repaired and they claim \$100.00 for devaluation of this countertop.

The Tenants testified that on July 31, 2022 the male Tenant did the move-out condition inspection with an assistant of the Landlord's property manager. They were told everything was good, and the male Tenant signed off on the report.

The Tenants personally sent their forwarding address to the Landlord on August 15, 2022.

The Landlord testified that, at move-in, the Tenants received the rental unit not entirely ready for new tenants. The Landlord did not claim cleaning costs in their claim as the Tenants returned the rental unit cleaner than how they received it.

The Landlord stated that they could not come to an agreement with the Tenants about the damages that were left at the end of the tenancy. The Landlord did not provide evidence that they had received an Arbitrator's order authorizing them to keep some or all of the security or pet damage deposits. The Landlord applied for dispute resolution.

The first time the Tenants saw the filled-out condition inspect report, with added comments about damage and their forwarding address, was when they received the Landlord's evidence package for this hearing.

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.

Security deposit and pet damage deposit:

Section 36(2) of the Act extinguishes the landlord's right to claim against the security deposit and pet damage deposit for damage to the rental unit when the landlord does not comply with all condition inspection requirements as noted in Sections 18 to 20 in the *Residential Tenancy Regulation* (Regulation).

Section 18(1)(b) of the Regulation states the Landlord must give a copy of the signed condition inspection report of the move-out condition inspection promptly and in any event within 15 days after the later of the date the condition inspection was completed, and the date the Landlord received the Tenants' forwarding address in writing. That date would have been August 30, 2022. The Landlord's evidence package was deemed served on the Tenants on May 2, 2023. I find the Landlord has extinguished their right to claim against the security deposit and pet damage deposit pursuant to Section 36(2)(c) of the Act.

Section 38(1) of the Act says the landlord must return the security deposit and pet damage deposit or apply for dispute resolution within 15 days. Section 38(1)(d) of the Act does not apply to any landlord who is seeking damages and who has extinguished their right to claim against the security deposit and pet damage deposit for damages.

The Landlord did not repay the security deposit and pet damage deposit within 15 days of August 15, 2022. Therefore, the Landlord failed to comply with Section 38(1) of the Act.

Sections 38(2) to 38(4) of the Act state:

38 ...

- (2) *Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].*
- (3) *A landlord may retain from a security deposit or a pet damage deposit an amount that*
 - (a) *the director has previously ordered the tenant to pay to the landlord, and*
 - (b) *at the end of the tenancy remains unpaid.*
- (4) *A landlord may retain an amount from a security deposit or a pet damage deposit if,*

- (a) *at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant...*

The Tenants participated in the move-in and move-out inspection with the Landlord and therefore did not extinguish their rights in relation to the security deposit and pet damage deposit. Section 38(2) of the Act does not apply.

The Landlord did not provide evidence that they had an outstanding monetary order against the Tenants at the end of the tenancy. Section 38(3) of the Act does not apply.

The Tenants did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit. Section 38(4) of the Act does not apply.

Residential Tenancy Policy Guideline #17-Security Deposit and Set off (PG#17) sets out the policy intent of the legislation and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. About the return of the security deposit through dispute resolution, the PG#17 states:

...

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

1. *The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*
 - *a landlord's application to retain all or part of the security deposit; or*
 - *a tenant's application for the return of the deposit.**unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.*
(emphasis added)

...

3. *Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:*

...

- *if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;*

Given the above, I find the Landlord failed to comply with Section 38(1) of the Act in relation to the security deposit and the pet damage deposit and that none of the exceptions outlined in Sections 38(2) to 38(4) of the Act apply. Therefore, the Landlord is not permitted to claim against the security deposit and pet damage deposit and must return double the security deposit and pet damage deposit to the Tenants pursuant to Section 38(6)(b) of the Act.

Landlord's monetary claim for Tenants to pay to repair damage:

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

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.*

Residential Tenancy 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 Landlord claimed compensation for damage done to the rental unit at the end of the tenancy which was beyond reasonable wear and tear under Section 37(2)(a) of the Act. The Landlord uploaded move-in and move-out condition inspection photos demonstrating the damage for which they are claiming. I find the damages listed by the Landlord beyond reasonable wear and tear. The Landlord uploaded a contractor's receipt for the repairs conducted totalling \$1,242.15. I grant this compensation to the Landlord.

The Landlord claimed 2 hours of labour to re-install a large shelf that had been taken down by the Tenants. I find that 1 hour of labour is reasonable, and this totals \$90.00.

The Landlord claimed \$100.00 for a devaluation for the kitchen countertop. The countertop was stained and is not replaceable without replacing the whole countertop. I grant compensation for \$100.00 for this devaluation.

The Landlord did not claim for cleaning costs as he testified the Tenants left the rental unit cleaner than how they received it.

I award compensation to the Tenants in this matter which considers the return of their security deposit and pet damage deposit. The Tenants monetary award is calculated as follows:

Item	Amount
Return double security deposit (\$975.00 X 2)	\$1,950.00
Return double pet damage deposit (\$975.00 X 2)	\$1,950.00
Interest on deposits (not doubled)**	\$14.17
Light bulbs, cold air return, painting, re-install shelf in bedroom, smoke detector, new blind	-\$1,242.15
Re-install large shelf in garage	-\$90.00
Devaluation of kitchen countertop	-\$100.00
Total monetary award:	\$2,482.02

** calculated using: <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>

As the Landlord was unsuccessful in their claim, they must bear the cost of the application filing fee.

For the benefit of the Tenants, they may wish to discuss with an Information Officer at the RTB any further options available to them at the end of this tenancy. An Information Officer can be reached at:

5021 Kingsway

Burnaby, BC

Phone: 604-660-1020 (Lower Mainland)

250-387-1602 (Victoria)

1-800-665-8779

Website: www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies

Conclusion

I grant a Monetary Order to the Tenants in the amount of \$2,482.02. The Landlord must be served with this Order as soon as possible. Should the Landlord 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: June 12, 2023

Residential Tenancy Branch