



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (Application) filed by the Landlords pursuant to the *Residential Tenancy Act* (Act). The Landlords applied for the following:

- a monetary order for compensation to make repairs that the Tenants, their pets or their guests caused to the rental unit during the tenancy pursuant to section 67;
- an order for compensation for monetary loss or other money owed by the Tenants to the Landlord pursuant to section 67;
- authorization to keep the Tenants' security and pet damage deposits pursuant to section 38; and
- authorization to recover the filing fee for the Application from the Tenants pursuant to section 67.

The Tenants did not attend this hearing scheduled for 1:30 pm. I left the teleconference hearing connection open for the entire hearing, which ended at 2:24 pm, in order to enable the Tenants to call into this teleconference hearing. An agent for the Landlord (AM) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding (NDRP). I also confirmed throughout the duration of the hearing that the Tenants were not in attendance and that AM, MK and I were the only ones on the conference call. AM and MK were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

AM submitted into evidence a signed Address for Service on Form RTB-51 in which the Tenants agreed to be given or served documents related to the tenancy at the email address provided by the Tenants. AM stated the NDRP and the Landlords' evidence (NDRP Package) was served on the Tenants at the email address indicated by the Tenants on the Form RTB-51 on September 3, 2022. Based on the undisputed testimony of AM, I find the NDRP Package was served on the Tenants pursuant to section 43(1) and 43(2) of the *Residential Tenancy Regulation* (Regulation). Pursuant to section 44 of the Regulation, I find the NDRP Package was deemed to have been received by the Tenants on September 6, 2022, being three days after the email was sent by the Landlords to the Tenants.

Issues to be Decided

Are the Landlords entitled to:

- a monetary order for compensation to make repairs that the Tenants, their pets or their guests caused to the rental unit during the tenancy?
- an order for compensation for monetary loss or other money owed by the Tenants to the Landlord?
- authorization to keep all or part of the Tenants' security and pet damage deposits?
- recover the filing fee for the Application from the Tenants?

Background and Evidence

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

AM submitted into evidence a copy of a signed tenancy agreement, together with an addendum, dated November 3 and 7, 2021 between the parties. AM confirmed the tenancy commenced on November 7, 2021, for a fixed term ending October 31, 2022, with rent of \$2,650.00 payable on the first day of each month. The Tenants were required to pay a security deposit of \$1,325.00 and a pet damage deposit of \$1,325.00. AM stated the Landlords received the security and pet damage deposits and that they were holding them in trust for the Tenants. Based on the undisputed testimony of AM, I find there was a residential tenancy between the parties and that I have jurisdiction to hear the Application.

AM stated the Tenants served the Landlord with a written notice to end tenancy by text on June 30, 2022 in which the Tenants stated they were vacating the rental unit on July 31, 2022. AM submitted into evidence a copy of the notice to end the tenancy from the Tenants to corroborate her testimony.

AM stated a move-in inspection was scheduled and performed with the Tenants on November 7, 2021. AM submitted into evidence a copy of the move-in condition inspection report to corroborate her testimony. AM stated a move-out inspection was scheduled and performed with one of the two Tenants on August 1, 2022. AM submitted into evidence a copy of the move-out condition inspection report to corroborate her testimony.

AM submitted into evidence a copy of a Monetary Order Worksheet on Form RTB-37 that sets out the Landlords claims as follows:

Reason	Amount
Liquidated Damages	\$2,000.00
Cleaning of Yard and Removal of Animal Excrement	\$175.00
Total:	\$2,175.00

AM stated the Landlord was seeking liquidated damages of \$2,000.00 as the Tenants breached the tenancy agreement by vacating the rental unit before the end of the fixed term of October 31, 2022. AM directed me to paragraph 31 of the tenancy agreement that states, in part:

If the Tenant wants to end the lease before the term of the lease is up, there will be a liquidated damage fee of 2,000.00 inclusive of all taxes. This in no way releases the Tenant from his/her responsibility to pay rent until another suitable tenant, approved by the Landlord, is secured. [...]

AM stated it typically costs ½ of the monthly rent for an agency to find a new tenant as well as the advertising costs and locksmith fees for changing the lock on a rental unit. AM submitted that the amount of the liquidated damages was a reasonable estimate of the loss the Landlords sustained as a result of the Tenants' breach of the tenancy agreement.

AM stated the Landlords were claiming \$175.00 to clean up the backyard of the rental unit and to remove animal excrement left by the Tenants. AM submitted into evidence six photos of the backyard of the rental unit to corroborate her testimony on its condition at the time the Tenants vacated the rental unit. AM stated it cost the Landlords \$1,800.00 to clean up the rental unit, but the Landlord has not made a claim for the cleaning of the rental unit.

Analysis

Rule 6.6 of the RoP states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Section 37 of the Act states:

- 37(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.

Based on the foregoing, the Landlord must prove it is more likely than not that the Tenant breached section 37(2) of the Act, that it suffered a quantifiable loss as a result of this breach, and that it acted reasonably to minimize its loss.

Residential Tenancy Branch Policy Guideline 16 (PG 16) addresses the criteria for awarding compensation. PG 16 states in part:

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.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlord must provide sufficient evidence that the four elements set out in PG 16 have been satisfied. However, before I can consider the Landlords' testimony and evidence regarding the claims made in the Application, I must firstly consider the joint and several liability of the Tenants and whether the Landlords complied with the requirements for performance of a move-in and move-out condition inspection reports pursuant to sections 23 and 35 of the Act.

Sections 23, 24, 35, 36, 38(1), 36(6) and 38 of the Act state:

- 23(1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
 - (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
 - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
 - (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
 - (4) *The landlord must complete a condition inspection report in accordance with the regulations.*
 - (5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
 - (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.
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- 24(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
 - (a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and
 - (b) the tenant has not participated on either occasion.
 - (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
 - (a) does not comply with section 23 (3) [2 opportunities for inspection],
 - (b) *having complied with section 23 (3), does not participate on either occasion, or*
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

- 35(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.
- 36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
 - (b) the tenant has not participated on either occasion.
- (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
 - (b) having complied with section 35 (2), does not participate on either occasion, or
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

- 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.*
- [...]
- (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.

[emphasis in italics added]

AM provided signed move-in and move-out inspection reports. As such, the Landlords complied with the provisions of sections 23 and 35 of the Act. As the Tenants did not serve the Landlords with a written notice with their forwarding address, the provisions of section 38(1) were not triggered. As such, there was not requirement to an application for dispute resolution by a specific date other than for making the application within two years of the end of the tenancy pursuant to section 60(1) of the Act.

Paragraph 32 of the tenancy agreement provides the Tenants are required to pay liquidated damages of \$2,000.00 in the event the Tenants vacated the rental unit prior the end of the fixed term on October 31, 2023. I find, based on the undisputed testimony of AM, that the Tenants breached the tenancy agreement by vacating the rental unit July 31, 2022. *Residential Tenancy Policy Guideline 4* (PG 4) provides guidance on situations where a party seeks to enforce a clause in a tenancy agreement provided for payment of liquidated damages. PG 4 states in part:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum. Further, if the clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause.

The \$2,000.00 liquidated damages is less than one months rent of \$2,650.00. AM stated it typically costs $\frac{1}{2}$ of the monthly rent for an agency to find a new tenant as well as the advertising costs and locksmith fees for changing the lock on a rental unit. Based on the undisputed testimony of AM, I find the claim for \$2,000.00 for liquidated damages was a genuine pre-estimate of the loss to the Landlord at the time the tenancy agreement was entered into. Based on the foregoing, I find the Landlord has proven, on a balance of probabilities, that the Landlords are entitled to liquidated damages of \$2,000.00. As such, I order the Tenants to pay the Landlords \$2,000.00.

AM stated the Landlord was claiming \$175.00 to clean up the backyard of the rental unit and to remove animal excrement left by the Tenants. AM submitted into evidence six photos of the backyard of the rental unit to corroborate her testimony on the condition of the back yard. Based on the undisputed testimony of AM, I find the Tenants caused damage to the residential property by leaving animal excrement all over the backyard of

the residential property. Based on the undisputed testimony of AM, I find the Landlords have proven, on a balance of probabilities, that they are entitled to compensation of \$175.00 to clean the backyard of the residential property. As such, I order the Tenants to pay the Landlords \$175.00 for cleaning services to clean up the backyard and to remove animal excrement from the residential property.

Based on the foregoing, I find the Tenants are responsible for paying the Landlords \$2,175.00 as follows:

Reason	Amount
Liquidated Damages for Ending Tenancy Early	\$2,000.00
Cleaning of Yard and Removal of Animal Excrement	\$175.00
Total:	\$2,175.00

Pursuant to section 67 of the Act, I order the Tenants to pay the Landlords \$2,175.00. Pursuant to section 72(2)(b), the Landlords may deduct the \$2,175.00 from the Tenant's security and pet damage deposits, totaling \$2,650.00, leaving a credit of \$475.00 owing to the Tenants.

As the Landlords have been substantially successful in the Application, I order the Tenants pay the Landlords \$100.00 for the filing fee of the Application pursuant to section 72 of the Act.

Conclusion

I order the Tenants to pay the Landlords \$1,530.00 calculated as follows:

Reason	Amount
Liquidated Damages for Ending Tenancy Early	\$2,000.00
Cleaning of Yard and Removal of Animal Excrement	\$175.00
Filing Fee for Application	\$100.00
Less: Tenant's Security Deposit	-\$2,650.00
Total:	-\$375.00

The Tenants must serve the Monetary Order on the Landlords as soon as possible. If the Landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: June 28, 2023

Residential Tenancy Branch