Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDL-S, FFL / MNSD, FFT**

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the Act). The landlords' application for:

- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit in the amount of $2,170.91 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants' application for:

- monetary order for $3,000 representing two times the amount of the security deposit and pet damage deposit (collectively, the Deposits), pursuant to sections 38 and 62 of the Act; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

All parties attended the hearing. The landlords confirmed that they had received the tenants' notice of dispute resolution proceeding package and supporting documentary evidence. The tenants confirmed that they had received the landlords' notice of dispute resolution proceeding package and a portion of the landlords' documentary evidence (three photographs). However, they did not receive the landlords' monetary order worksheet or any of the three supporting quotes for the cost to repair the damage to the rental unit.

The tenants confirmed that the landlords had previously made them aware of the amounts of two of the quotes in the course of their prior settlement negotiations. The landlords stated that they did not intend to recover the amount listed on the third quote, and had provided it for illustrative purposes only. I permitted that the landlords to email the two quotes they were relying on in support of their application to the tenants during the hearing. The tenants confirmed receipt, and consented to these quotes being admitted into evidence. As such, I admitted them into evidence, and excluded the third quote.

Issues to be Decided

Are the landlords entitled to:

1) a monetary order for $2,170.91;
2) recover the filing fee; and
3) retain the security deposit in partial satisfaction of the monetary orders made?

Are the tenants entitled to:

1) a monetary order for $3,000; and
2) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting January 1, 2021. Monthly rent was $2,000. The tenants paid the landlords a security deposit of $1,000 and a pet damage deposit of $1,000. The landlords returned the pet damage deposit to the tenants on August 26, 2022, but continue to hold the security deposit in trust for the tenants.

The tenants vacated the rental unit on March 13, 2022, and the parties agree that the tenancy ended on March 31. The tenants provided the landlords with their forwarding address, in writing, on August 5. The landlords filed their application with the Residential Tenancy Branch (the RTB) on August 26.

The parties did not conduct a move-in condition inspection at the start of the tenancy. The parties conducted a move-out condition inspection on March 13, 2022, but the landlords did not provide the tenants with a copy of the move-out condition inspection report. The landlords did not submit a copy of this report into evidence.

Despite this, the parties agree generally on the condition of rental unit at the end of the tenancy. The parties agree that:

- two of the blinds have paint markings on them caused by the tenants when they repainted a wall in the rental unit; and
- the floor in the den has water damaged caused by a portable air conditioning unit.

1. Landlords' Application

    a. Blinds

The landlords submitted photographs of the damaged blinds. They shows that:

- One of the blinds (the First Blind) has a number of medium to large horizonal paint marks on the bottom quarter of the blind material.
- The other blind (the Second Blind) has a small, vertical paint mark (approximately 5 cm), which appears to have been caused by a drop of paint rolling down the blind. The paint mark is visible when standing away from the window.

Both blinds are of the rolling variety, and the material that covers the window is a single piece of opaque fabric.

The landlords argued that both blinds are damaged and that the material needs to be replaced. They stated that the blinds were custom-made for the rental unit and were 18 months old at the start of the tenancy. They testified that the blinds have a life expectancy of 15 years.

The landlord submitted a quote for $774.41 for the cost for replacing the material of the blinds.

The tenants did not dispute the nature of the damage or that they caused it. Rather, they argued that both blinds can still be used for their intended purpose, so the replacement of the blind material is not required. They argued that RTB Policy Guideline 40 lists the useful life of blinds at 10 years, not 15 years, and that the landlords have not provided any documentary evidence supporting their assertion that the useful life is 15 years.

Additionally, the tenants argued that the paint marking on the Second Blind is so minimal that it should not be considered “damage”, as it is barely noticeable. They argued it is unreasonable to replace the Second Blind’s material for so small a deficiency. In the alternative, they argued that if it was considered “damage”, then the landlords should only be entitled to a minimal amount of compensation, given the minor nature of the damage.

Section 32 of the Act requires that tenants repair damage to the rental unit, other than reasonable wear and tear, that is caused by their actions or neglect. I find that paint stains on the blinds amount to damage which the tenants did not repair. I am not persuaded by the tenants’ argument that they should not have to pay the replacement cost of the blinds because the blinds can still be used for their intended purpose. The Act does not distinguish between cosmetic and functional damage. Accordingly, I find that a tenant is as much response for paying for the repair or replacement of a paint-stained blind as they would be for the repair of a blind in which they ripped a hole in it.

Similarly, I find that the small vertical paint mark on the Second Blind amounts to damage. This paint mark is an aesthetic blemish which not-insignificantly detracts from the overall appearance of the Second Blind. I do not find that a paint stain amounts to reasonable wear or tear of the blind.

Section 7 of the Act requires that a tenant who breaches the Act compensate the landlord for the loss that results from the breach, and that the landlord must act reasonably to minimize the loss. The Act does not allow for a reduction in the amount of compensation if the damage is minimal. Repairs cost what they cost, and as long as a landlord acts reasonably to minimize the costs, a tenant is responsible for paying for them.

I accept that the cost of replacing the material of both blinds is $774.41. I find that the landlords acted reasonably to minimize their cost, opting to replace the blind material only, and not the entire blind fixture.

Policy Guideline 40 requires that the diminished life expectancy of a replaced item be taken into account when making a monetary award. As stated above, it specifies that the useful life of a blind is 10 years. The landlords have not provided any evidence to support their assertion that the life expectancy of the blinds in question is 15 years. Accordingly, I see no reason to deviate from the useful life set out in Policy Guideline 40.

As the tenancy lasted roughly 14 months, and as the blinds were installed 18 months prior to the start of the tenancy, I find that the blinds were roughly 32 months old at the end of the tenancy. As such, they were 27% through their useful life. Accordingly, the amount the landlords are entitled to recover from the tenants for the replacement of the blinds must be reduced by 27%.

I order the tenants to pay the landlords $565.32.

b. Flooring

The parties agree that the tenants' portable air conditioning unit leaked water onto the laminate flooring in the rental unit's den, which damaged several of the floorboards. The landlords testified that the floor was redone in 2014 and has a life expectancy of 20 years.

The landlords testified that they could not find the material which would match the existing flooring in the den. Accordingly, they argued that they must replace all the flooring in the den. They stated that the den is approximately 120 square feet.

They testified that the estimated cost of replacement flooring is $3.75 per square foot for a "half-decent product". They testified that they looked at a flooring website to arrive at this cost. They did not provide any documentary evidence supporting this calculation.

Additionally, they testified that the cost of installing the flooring would be $892.50. They submitted a quote supporting this amount. In total, the landlords seek $1,396.50 to replace the flooring in the den.

The tenants argued that the damage to the den floor is restricted to a few square feet of the den, and that it is not necessary to replace all of the flooring. They argued that the fact that the landlords cannot find matching flooring material, which unfortunate, does not mean that the cost to replace all the flooring in the den should be borne by the tenants.

In support of this proposition, the tenants cited a prior decision of the RTB, *A matter regarding Prompton Real Estate Services Inc.* (April 29, 2019), in which the presiding arbitrator wrote:

> Further, the landlord agreed that the damage to the flooring was not all over the entire laminate flooring. It was only in certain parts. The fact that the landlord chose flooring that did not have a match to replace only the damaged parts is out of the tenant's control. Replacing the entire flooring, because there is no match, is not the tenant's responsibility when he did not damage the entire flooring.

Per section 64(2) of the Act, prior decisions of the RTB are not binding on arbitrators. However, they can be useful tools to provide guidance to parties on how an arbitrator may decide in a situation with similar circumstances.

In this application, I agree with the case cited by the tenants. I do not find it reasonable for the tenants to pay for the replacement of the entire den floor, when only a small portion of it is damaged. Additionally, I have not been presented with any evidence to support the landlords' assertion that the type of material used in the original flooring is discontinued or otherwise unavailable. I do not know the extent of the efforts made by the landlords to locate the same or similar flooring.

Accordingly, I decline to order that the tenants pay the replacement cost of the entire flooring in the den. In the circumstances, despite the lack of evidence supporting the actual cost of replacing the damaged portion of the den floor alone, I find that nominal damages of $200 are appropriate. Nominal damages may be awarded when a party has proven that the opposing party has breached the Act, and caused them to suffer loss, but has failed to establish the amount of the loss suffered.

c. Filing fee and disposition of the landlords' application

As the landlords have been partially successful in their application, they are entitled to recover their filing fee of $100.

In total, I order the tenants to pay the landlords $865.32, calculated as follows:

Description	Total
Blinds	$565.32
Flooring - nominal damages	$200.00

Filing fee	$100.00
	$865.32

2. Tenants' Application

The tenants seek a monetary order of $3,000, representing the return of an amount equal to double the Deposits less the $1,000 returned to them by the landlord on August 26, 2022.

The tenants argue they are entitled to this amount for two reasons:

- the landlords' right to claim against the Deposits was extinguished; and
- the landlords did not return or claim against the Deposits within 15 days of receiving the tenants' forwarding address.

a. Is the landlords' right to claim against the Deposits is extinguished?

In their written submissions, the tenants wrote:

> Section 36(2) of the RTA states that the right of a landlord to claim against security and/or pet damage deposits "for damage to the residential property is extinguished if the landlord," among others, does not complete the required end-of-tenancy condition inspection report and give the tenant a copy of it in accordance with the regulations.
>
> The Landlords here completed a walk-through at the end of the Tenancy but, to the Tenants' knowledge, did not complete a condition inspection report. Even if this was completed, no report was ever provided to the Tenants.
>
> The Landlords claimed both the Deposits against the damage to the Unit, only returning the pet damage deposit after the Tenants specifically noted that the damage was not pet related. The Landlords continue to claim against the Tenants' security deposit, incorporating it into this application for compensation before the RTB. However, their rights to do so were extinguished under the RTA for failure to provide the Tenants with an end-of-tenancy condition inspection report. On this basis, pursuant to RTB Policy Guideline 17, the Tenants are equally entitled to double the Deposits for the Landlords' lack of compliance with the RTA.

The tenants have correctly set out the relevant law. Additionally, section 24(2) of the Act states that a landlord's right to claim against a security or pet damage deposit is extinguished if the landlord does not conduct a move-in condition inspection or does not provide a tenant with a copy of the move-in condition inspection report.

The parties agree that no move-in condition inspection was conducted, and no move-in condition inspection report was created. Accordingly, the landlord's right to claim

against the Deposits is extinguished. Policy Guideline 17 states that a tenant, per section 38(6) of the Act, is entitled to 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. In his case, the landlords' claim is exclusively for compensation for damage to the rental unit.

Policy Guideline 17 provides an example of how section 38(6) is to be applied when a landlord has returned a portion of the deposits;

> Example A: A tenant paid $400 as a security deposit. At the end of the tenancy, the landlord held back $125 without the tenant's written permission and without an order from the Residential Tenancy Branch. The tenant applied for a monetary order and a hearing was held. The arbitrator doubles the amount paid as a security deposit ($400 x 2 = $800), then deducts the amount already returned to the tenant, to determine the amount of the monetary order. In this example, the amount of the monetary order is $525.00 ($800 - $275 = $525).

As such, the landlord is entitled to the return of double the security deposit ($2,000). However, as the landlords have not claimed against the pet damage deposit, and have returned it, I cannot order that it be doubled on the basis set out above. If the tenants are entitled to an amount equal to double the pet damage deposit, it must be on the basis that the landlords failed to return it within 15 days of receiving the tenants' forwarding address.

b. <u>Did the landlords return the pet damage deposit within 15 days of receiving the tenants' forwarding address?</u>

Section 38 of the Act requires a landlord to return a deposit or make an application against it within 15 days of the later of either the tenancy ending or receiving the tenants' forwarding address. If a landlord fails to do this, they must pay the tenant an amount equal to double the deposit.

The parties agree that the tenants provided the landlords their forwarding address on August 5, and that the landlords returned the pet damage deposit on August 26.

However, the landlords argue that the tenants never asked for the return of the pet damage deposit and that the parties had multiple conversations about extending the deadline for the return of the pet damage deposits.

After the tenancy ended, prior to the landlords filing their application, the parties attempted to negotiate a settlement of the issues currently before me. The tenants submitted the emails exchanged between the parties into evidence.

On August 3, 2022, tenant SW sent landlord TE an email which, in part, stated:

> We also asked for a timeline for resolution. I suggested that, if we cannot come to a resolution by October 30, we could apply for dispute resolution. Do you agree? If not, we may apply for dispute resolution now just so there is some structure to getting this resolved.
>
> I understand that the easiest thing is for you to apply the $1000 for the pet deposit to your estimated damages for the apartment. However, I note that you cannot do so without our agreement. Technically and legally, we are owed the $1,000 and then we can resolve the remaining $1,158.91 that you say is owing. Without waiving our right to claim that amount, we are happy for you to keep it in the meanwhile as we discuss.

On August 5, landlord TE responded, stating, in part:

> I would like to sort this out sooner than October. I suggest if we do not come to any agreement shortly, we go directly to dispute resolution.

Following this email, tenant SW provided the tenants' forwarding address. Then, on August 13, the tenants sent a settlement proposal, which the landlords did not respond to.

On August 23, tenant SW wrote:

> Can you please let us know what you think re our offer? Again, we would strongly prefer to settle this as opposed to going to dispute resolution (from a time and effort perspective, on both of our parts).
>
> We initially agreed to extend the time to return the security deposit from the 15 days from the end of tenancy. However, I've since noticed that the legislation states that it's either 15 days from the end of tenancy or from when the tenants provide a forwarding address, whichever is later. We provided our forwarding address via email (on this thread) over 15 days ago. As you know, there are potential cost consequences that the Residential Tenancy Branch can impose for lack of compliance with the legislation.
>
> Again, we'd really prefer not to go to dispute resolution.

Later that day, landlord TE wrote:

> [Landlord AE] and I have discussed your email, and we disagree with your assessment. We will be going forward and submitting a Dispute Resolution with the Residential Tenancies Branch of the BC Government. You should be hearing from them shortly. I'm sorry that it has come to this.

> Regarding your Pet Damage Deposit, we can return it or hold it - as per your previous email. Please let us know what you would like to do with it.

The landlords returned the pet damage deposit later that day.

I understand the phrase "Without waiving our right to claim that amount, we are happy for you to keep [the pet damage deposit] in the meanwhile as we discuss" in the August 3 email to mean that the tenants consented to allowing the landlords to hold the pet damage deposit while they were negotiating a possible settlement (the Settlement Extension).

I find that, per their August 23 email, the tenants were attempting to negotiate a settlement. As such, the Settlement Extension remained applicable. I do not find that the section 38 timing requirement negates it. Such an interpretation would render the Settlement Extension meaningless.

TE's August 23 email had the effect of ending the settlement discussions. In this email, he offered to return the pet damage deposit. Three days later the landlords returned the pet damage deposit.

There is no indication in the correspondence I had reviewed that the parties reached an agreement as to when the landlords would have to return the pet damage deposit if a settlement was not reached. However, I do not think it reasonable to conclude that, should a settlement agreement not be reached, the tenants were automatically entitled, due to the effluxion of time, to an amount equal to double the pet damage deposit. Such an interpretation would also render the Settlement Extension meaningless.

Rather, I find it appropriate to conclude that the landlords had 15 days from when settlement discussions failed to return the pet damage deposit, or make a claim against it. The landlords more than met this timeline.

Accordingly, I decline to order that the landlords pay the tenants an amount equal to double the pet damage deposit.

3. Filing fee and disposition on tenants' application

As the tenants have been partially successful in their application, I find that they are entitled to the return of their filing fees.

In total, I order that the landlords pay the tenants $2,100, representing the following:

Description	Total
Double deposit	$2,000.00
Filing fee	$100.00
	$2,100.00

Conclusion

Both parties have been partially successful in their applications. The monetary orders I have made are to be offset against each other.

Pursuant to sections 65, 67, and 72 of the Act, I order that the landlords pay the tenants $1,234.68, representing the following:

Description	Total
Tenants' monetary order	$2,100.00
Landlords' monetary order	-$865.32
	$1,234.68

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: July 4, 2023

Residential Tenancy Branch