Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: Tenants**: MNSDB-DR, FFT**
Landlords: MNDL-S, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The landlords requested:

- a monetary order for money owed or monetary loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications"). In accordance with section 89 of the *Act*, I find that both the landlords and tenants duly served with each other's Applications.

The landlords confirmed receipt of the tenants' evidentiary materials in accordance with section 88 of the Act.

The tenants testified that they did not receive the landlords' evidence package. After the evidence was described to the tenants, the tenants confirmed that they took no issue with the admittance of the landlords' evidence and proceeding with the scheduled hearing.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order for monetary loss or money owed?

Are the tenants entitled to the return of all or a portion of their security and pet damage deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of both applications and my findings around it are set out below.

This month-to-month tenancy began on July 1, 2016, and ended on or about July 31, 2022. Monthly rent was set at $1,350.00, payable on the first of the month. The tenants paid a security deposit and pet damage deposit in the amount of $600.00 each deposit, which the landlords still hold. Both parties confirmed that the tenants provided their forwarding address on July 29, 2022.

The landlord a monetary claim on October 15, 2022 in order to recover their losses associated with the tenancy as listed below:

Item	Amount
Replacement of damaged floor	$700.00
Repainting of walls and ceiling	400.00
Replacement of fan	150.00
Replacement of dishwasher	1500.00
Kitchen cupboard and drawer repairs	750.00
Replacement of missing range	1,200.00
Replacement of plugs and switches	200.00

Tax for labour	245.00
Tax for parts	90.00
Maintenance/gas fee	100.00
Total Monetary Order Requested	**$6,085.00**

Both parties confirmed that no move in or move out inspection reports were provided to the tenants for this tenancy. The tenants testified that they tried to arrange inspection dates with the landlords, but the landlord failed to perform any inspections with them. The landlords testified that they had contacted the tenants for an inspection, but received no response from the tenants.

The landlords testified that the tenants failed to leave the rental unit in reasonably undamaged condition. The landlords submitted photos of the rental unit, as well as an estimate listing the above cost of repairs to the rental unit.

The landlords testified that the tenants had purchased their own range and disposed of the landlords' without their permission. The landlords testified that the old range was only four or five years old when the tenancy began in 2016.

The tenants testified that the old range no longer worked, and they had requested a new range from the landlords. The tenants testified that they were informed that they could purchase their own range, which they did. The tenants testified that they removed the range when they moved out as they had purchased it. The tenants testified that the old range was removed by the landlords.

The tenants deny causing any damage beyond regular wear and tear. The tenants testified that they had informed the landlords about the mould in the rental unit, and the landlords had denied that there was a problem. The tenants testified that the dishwasher was old, and had to be repaired twice.

The tenants applied for the return of their deposits.

Both parties requested the return of their filing fees.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay

compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove, on a balance of probabilities, that the tenants had caused damage and losses in the amounts claimed by the landlords.

Section 37(2)(a) of the *Act* stipulates 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.

Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. In this case, although the landlords claimed to have proposed dates and times for a move in and move out inspection, I am not satisfied that the landlords had complied with section 35(2) of the *Act* by offering the tenants at least 2 opportunities to attend the move out inspection together for these occasions.

As noted in Residential Policy Guideline #17:

The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

• the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or
• having made an inspection does not complete the condition inspection report.

I must note, however, that the above does not exclude the landlord from being able to file a monetary claim for damages as noted in the policy guideline:

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

• to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
• to file a claim against the deposit for any monies owing for other than damage to the rental unit;

• to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
• to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

Accordingly, I will consider the landlords' claims. Although the landlords submitted photos to show the condition of the rental unit, the landlords failed to provide completed move-in and move-out inspection reports for this tenancy. In light of the disputed testimony and claims, I find that the landlords' evidence falls short in proving that the damage was indeed caused by the tenants or their pet during this tenancy beyond what could be considered regular wear and tear.

Taking in consideration that the party claiming the loss bears the burden of proof, I find that there is no way to determine exactly what damage occurred during this tenancy, and what the pre-existing condition of the home was.

Furthermore, as noted in *Residential Tenancy Policy Guideline* #40 *"when applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.*

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement."

As noted above, and in Policy Guideline #40, the onus is on the landlords to support the age and maintenance of an item, especially when the item has exceeded its useful life. Although there may have been damage to the home and appliances such as the dishwasher door, I am unable to ascertain how much of this damage can be attributed to wear and tear, and the general age of the item rather than the neglectful or intentional actions of the tenants. I am not satisfied that the landlords had proved, on balance of probabilities, that the tenants had caused damage in the amounts claimed by the landlords. I therefore dismiss the landlords' monetary claims for damage without leave to reapply.

Furthermore, the tenants had disputed the landlords' claims that they had removed the old range without the landlords' permission. I find that the tenants provided a plausible and reasonable explanation for why they had removed the range that they had purchased. I am not convinced that the tenants had taken or removed the old range that had belonged to the landlords. I further note that the party making the claim must support the value of their loss. Not only am I not satisfied that the tenants had removed the landlords' old range, I find that the landlords failed to support the value of the range, whether by providing a receipt for the original or replacement range. Accordingly, I also dismiss the landlords' claim for loss of the old range without leave to reapply.

The tenants filed an application for the return of their security deposit. Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

The tenants provided their forwarding address by registered mail on July 29, 2022. Although the landlords filed an application for monetary losses against the deposits, they did not do so until October 15, 2022, well past the 15 days required by the Act.

In this case, I find that the landlords had not returned the tenants' deposits in full within 15 days of receipt of the tenants' forwarding address, nor am I satisfied that the landlords had not obtained the tenants' written authorization at the end of the tenancy to retain their deposits. In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order amounting to double the original security and pet damage deposit, plus applicable interest. As per the RTB Online Interest Tool found at http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html, over the period of this tenancy, $7.33 is payable as interest on the security deposit, and $7.32 is payable as interest on the pet damage deposit (from when the deposits were paid until the date of this decision).

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were successful with their claim, I allow the tenants to recover the filing fee paid.

Conclusion

The tenants are provided with a monetary order as set out in the table below. The landlords must be served with this Order as soon as possible. Should 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.

Item	**Amount**
Return of deposits, plus applicable compensation and interest	$2,400.00
Filing Fee	100.00
Monetary Order to Tenants	**$ 2,414.65**

The landlords' entire application is dismissed without leave to reapply.

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: August 16, 2023

Residential Tenancy Branch