



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The Landlords’ application for:

- authorization to retain the security deposit and pet damage deposit (collectively, the Deposits) in satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit in the amount of \$2,100 pursuant to section 67; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

And the Tenant’s application for:

- the return of the Deposits pursuant to section 38; and
- authorization to recover the filing fee for this application from the Landlords pursuant to section 72.

The parties confirmed that each confirmed that they received the other’s notice of dispute resolution proceeding package and supporting documentary evidence.

Issues to be Decided

Are the Landlords entitled to:

- 1) a monetary order for \$2,100;
- 2) recover the filing fee; and
- 3) retain the Deposits in satisfaction of the monetary orders made?

Is the Tenant entitled to:

- 1) the return of the Deposits; and
- 2) recover the filing fee?

Evidence and Analysis

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.

1. Is there a Tenancy Agreement

The rental unit is a self-contained suite located in a single-detached house. The parties entered into a tenancy agreement starting June 1, 2022. Monthly rent was \$2,100. The Tenant paid the Landlords a security deposit of \$1,050 and a pet damage deposit of \$1,050, which the Landlords continue to hold in trust for the Tenant.

Landlord GG testified that she agreed to allow the Tenant to move into the rental unit under “duress”. She testified that her stepdaughter brought the Tenant to her and asked if the Tenant could move into the rental unit as she didn't have anywhere else to go. GG testified that she agreed, allowed the Tenant to move in and pay her monthly rent.

As such, I find that a tenancy agreement arose between the parties. The Landlords did not provide sufficient evidence to show that they were forced to enter into such an agreement. Rather, based on GG testimony, I think it more likely that she felt a sense of obligation to help the Tenant in her time of need. This is not sufficient to rise to the level of duress. It was within the Landlords’ power to refuse to allow the Tenant to reside in the rental unit. They did not. Accordingly, I find a tenancy agreement arose on the conditions set out above.

2. Condition Inspections

The parties conducted an inspection of the rental unit at the start of the tenancy, but the Landlords did not prepare a written condition inspection report.

The Tenant vacated the rental unit on October 14, 2022. The parties did not complete a move out inspection due to an altercation between parties. GG testified that the Tenant’s partner was “abusive and obnoxious” towards the Landlords and assaulted landlord CW.

The Tenant testified that she requested a move out walkthrough three times before the Landlords agreed to conduct one. She denied that her partner threatened or assaulted landlord CW. She testified there was a verbal “back and forth” between the parties, and she believed the Landlords acted rudely towards her.

The Tenant testified that she gave CW her forwarding address in writing on October 22, 2022. CW stated he did not recall receiving the forwarding address directly from the Tenant. GG testified that she received the forwarding address via mail on October 28, 2022.

The Landlords made their application, claiming against the deposits on November 11, 2023.

3. Landlords’ Application

GG testified that the rental unit was clean and undamaged prior to the start of the tenancy. She testified that the Tenant damaged the rental unit during the tenancy and did not repair it.

a. Did the Tenant Damage the Bedroom Door?

GG alleged that the Tenant damaged multiple interior doors in the rental unit. However, she testified she only replaced one of them at a cost of \$395. In support of this, she submitted a quote for \$440 for the door's replacement. She testified that ultimately the repair was less than the quote.

The Tenant testified that during the course of the tenancy her dog damaged one of the doors in the rental unit. However, she testified that she replaced the door. She submitted a photograph of the replacement door. This photograph shows that the door was installed using only two of the three available hinges. The Landlords also submitted a photo of the door which shows that the top portion had been cut away to expose the hollow interior. They argued that this undermined the physical integrity of the door and makes it unsuitable for use. The Tenant acknowledges that the top of the replacement door was trimmed off but said as the exposed interior made no difference to the door's suitability, as it is at the top of the door and cannot be seen.

Section 37 of the Act requires that the Tenant leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. Based on the Tenant's testimony, I accept that her dog damaged one of the doors in the rental unit. I also accept that she, at her own cost, replaced that door. However, the door replacement was not properly done. The door was improperly hung, using only two of the three provided hinges and the structure of the door was undermined but over-trimming the top, removing necessary bracing. In the circumstances, I find that the Tenant's repairs were not adequate, and the Landlords were entitled to replace the door. I find that Landlords incurred \$395 in costs to do this, and that this amount is reasonable. I order the Tenant to pay the Landlords this amount.

b. Did the Tenant Damage the Blinds?

GG testified that the blinds in one of the bedrooms were damaged by the Tenant. In support of this the Landlords submitted a photograph of one set of blinds which appeared to have a portion of one of the panels missing. GG argued that the Tenant's children caused this damage. They submitted an advertisement for replacement blinds costing \$229.

The Tenant denied that the blinds were damaged during the tenancy. Rather, she testified that the blinds were in the same condition at the end of the tenancy as they were at the start of the tenancy.

Per Residential Tenancy Branch Rule of Procedure 6.6, the party who makes the application bears the burden of proof. This means that the Landlords must prove it is more likely than not that the Tenant damaged, or allowed to be damaged, the blinds during the tenancy. The Landlords have not provided any documentary evidence supporting her assertion that the rental unit was undamaged at the start of the tenancy. The Act requires a landlord to complete a move in condition inspection report at the start of the tenancy so that the parties have a document which records the condition of the rental unit at the start of the tenancy. Without such a document, it is difficult to establish a rental unit's condition.

In the absence of such a report or any documentary evidence showing the condition of the rental unit at the start of the tenancy, I find that the Landlords have not established it is more likely the not that the Tenant damaged the blinds during the tenancy. As such I dismissed this portion of their application, without leave to reapply.

c. Did the Tenant Damage the Walls and Banister?

GG testified that the banister and the walls were chipped during the tenancy and that they had to be repaired and repainted. The Landlords submitted a photo of a corner of an interior wall in the bathroom depicting a not insubstantial area of damage. They allege that the Tenant's dog caused this.

The Tenant denied that her dog caused the damage depicted in the photograph. Additionally, she denied that she caused any significant damage to the walls or the banisters. She acknowledged that there may have been some small indentations in the walls, but these to not require repainting, and amounted to reasonable wear and tear.

As above, the Landlords did not provide any documentary evidence regarding the condition of the rental unit at the start of the tenancy. As such, I cannot say that the various damages to the rental unit alleged by the Landlords were not present in the rental unit at the beginning of the tenancy. However, in light of the fact the Tenant's dog significantly damaged a door during the tenancy, I find it more likely than not that it also damaged the portion of the bathroom wall depicted in the Landlords' photograph.

The Landlords claimed \$467 for "paint repairs and general repair" which encompasses all the general repairs to the rental unit. I cannot say what portion of this cost is attributable to the repair of the bathroom wall. In the circumstances I find that the Landlords are entitled to nominal damages of \$50 as compensation for the damaged bathroom wall. In the absence of photographic evidence showing the condition of the rental unit at the start of the tenancy, or any evidence which shows it is more likely than not that the Tenant's dog caused the alleged damage, I decline to order of the Tenant paid any other compensation to the Landlords for "general repairs".

d. Did the Tenant Fail to Clean the Rental Unit?

GG testified that the Tenant did not clean the rental unit at the end of the tenancy. She testified that she had taken photographs of the rental unit during the aborted move-out inspection, and they supported her position. These photographs depicted a stained mattress, dog hair on the exterior furniture, a stained dining room carpet, dog hair on the couch, and bedrooms with bedding and clothes strewn on the floor.

The Tenant testified that she cleaned the rental unit prior to leaving. She argued that these photographs were taken during the tenancy, and not at the end of the tenancy. Pointed to one photograph the Landlords submitted of a door frame, which showed in the background an empty room with a vacuum cleaner. She stated that this vacuum cleaner was hers, that the photograph was taken at the end of the tenancy and depicted the true state of the rental unit at that time: clean and empty of belongings. She testified that that photograph of the messy bedroom was taken during the tenancy. I asked CW if he could recall the condition of the rental unit during the move out inspection, and he stated that he could not recall if the bedroom in question was covered in clothing or bedding.

The Tenant testified that she vacuumed the carpets, cushions, and couch prior to vacating the rental unit.

GG testified she had to hire a cost of \$525 to clean the rental unit and had to have the carpets professionally cleaned at a cost of \$512.96. The Tenant argued that these costs were not necessary for the Landlords to incur because the rental unit was adequately clean at the end of the tenancy.

The parties' testimony as to whether the rental unit was clean or not at the end of the tenancy is significantly different. In particular GG and the Tenant disagree as to whether one of the bedrooms was left strewn with clothing and bedding. Based on the fact that CW could not remember the condition of the bedroom in question at the end of the tenancy (which I expect he would have been able to remember had it been in the condition depicted in the photograph referred to by GG) and on the photograph of the door frame which, in the background, shows a clean and tidy bedroom (which I would not have expected to be the case had a different bedroom in the rental unit been strewn with clothes and bedding), where the testimony of GG and the Tenant differ as to the condition of the rental unit, I prefer the testimony of the Tenant.

As such, I find that the Tenant cleaned the rental unit at the end of the tenancy and I dismiss the Landlords' application to recover the cost of a cleaner.

However, Residential Tenancy Branch (RTB) Policy Guideline 1 states that a Tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises. Based on the evidence presented, I find that the Tenant owned a dog that was not caged during the tenancy, and I find that she did not have the carpets steam cleaned or shampooed; she only

vacuumed them. Accordingly, I find that the Tenant must reimburse the Landlords the cost of having the carpets professionally cleaned (\$512.96).

4. Tenant's Application

Section 23 of the Act requires that a landlord complete a condition inspection report at the start of the tenancy and provide a signed copy of it to the Tenant. The Landlords did not do this. Section 24 of the Act states that the right of a landlord to claim against a security or pet damage deposit is extinguished if the landlord does not complete a such a report.

Accordingly, I find that the Landlords' right to claim against the Deposits is extinguished.

RTB Policy Guideline 16 sets out the effect of this extinguishment. It states that 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.

At the hearing, the Tenant specifically indicated that she was not waiving her right to the return of double the Deposits. As such, Policy Guideline 16 requires that I order that the Landlords pay the Tenant an amount equal to double the Deposits. The language of this Policy Guideline is mandatory and does not require that a Tenant actually apply for the return of double the security or pet damage deposit. A Tenant is entitled to this relief as a function of the Act.

Accordingly, I order the Landlords to pay the Tenants \$4,200, representing an amount equal to double the Deposits.

5. Filing Fees

Each party has been at least partially successful in their applications. I order that each bear the cost of their own filing fee.

Conclusion

The Landlords have been partially successful in their application, per section 67 of the Act, I order the Tenant to pay them \$957.96, calculated as follows:

Description	Total
Door replacement	\$395.00
Bathroom wall repair	\$50.00
Carpet cleaning	\$512.96

	\$957.96
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The Tenant has been successful in their application, per section 65 of the Act, I order the Landlords to pay her \$4,200, representing the return of double the Deposits.

I order that these orders be offset against each other. Accordingly, I attached a monetary order in favour of the Tenant in the amount of \$3,242.04

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: September 22, 2023

Residential Tenancy Branch