



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNETC, FFT / MNRL-S, MNDL-S, FFL

Introduction

The hearing was convened following applications for Dispute Resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenant seeks the following:

- Compensation of \$21,600.00 under section 51 of the Act because their tenancy ended under a Two Month Notice to End Tenancy for Landlord's Use and the Landlords did not use the rental unit for the stated purpose; and
- To recover the cost of the filing fee from the Landlords under section 72 of the Act.

The Landlords seek the following:

- A Monetary Order for unpaid rent under sections 26 and 67 of the Act;
- A Monetary Order as compensation for damage to the rental unit under section 67 of the Act;
- Authorization to retain the security deposit and pet damage deposit under section 38 of the Act; and
- To recover the cost of the filing fee from the Tenant under section 72 of the Act.

As both parties were present, service was confirmed at the hearing. The parties each confirmed receipt of the Notice of Dispute Resolution Package (the Materials) and

evidence. Based on their testimonies I find that each party was served with these Materials as required under sections 88 and 89 of the Act.

Preliminary Issue: End of Tenancy

Both parties submitted a copy of a “Notice of Termination by Landlord” dated October 7, 2022 into evidence, which had been issued by the Landlords to the Tenant. The Notice of Termination by Landlord is a one-page document drafted by the Landlord and provides that the tenancy will be “terminated” on November 30, 2022.

Both parties agreed the Tenant vacated the rental unit on October 31, 2022 and that no Notice to End Tenancy on the approved form was issued by the Landlords to the Tenant.

As section 52(e) of the Act confirms that for a Notice to End Tenancy to be effective when given by a landlord, the notice must be in the approved form, I find there was no effective Notice to End Tenancy which complies with section 52 of the Act issued in this case, and the Tenant had no obligation to vacate the rental unit. More relevant to the Tenant’s Application, I find that no Two Month Notice to End Tenancy for Landlord’s Use in the approved form (RTB-32) was issued by the Landlords to the Tenant.

Given this, I find the Tenant therefore does not have grounds for a claim for compensation under section 51 of the Act as the tenancy was not ended under a Two Month Notice to End Tenancy for Landlord’s Use under section 49 of the Act.

Therefore, the Tenant’s Application is dismissed, without leave to reapply.

Issues to be Decided

1. Are the Landlords entitled to a Monetary Order for unpaid rent?
2. Are the Landlords entitled to a Monetary Order for damage to the rental unit?
3. Are the Landlords entitled to retain some, or all of the security deposit and pet damage deposit?
4. Are either party entitled to recover the filing fee for their respective Applications?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however,

only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy began on June 1, 2022.
- Rent was \$1,800.00 per month due on the first day of the month.
- A security deposit of \$900.00 and a pet damage deposit of \$900.00 was paid by the Tenant which the Landlords still hold.
- There is a written tenancy agreement which was entered into evidence.
- The Tenant vacated the rental unit on October 31, 2022.

The Landlord testified as follows. They served the Notice of Termination document to the Tenant with an effective date of November 30, 2022 but the parties then agreed the Tenant would move out of the rental unit early on October 31, 2022 instead.

The Landlords took occupancy of the rental unit on November 1, 2022 and found it unsuitable for living as there was damage to the carpets in the living room and bedroom caused during the tenancy. There was cat urine on the carpet throughout the rental unit.

As Landlord HW was pregnant at the time, they found they were unable to live in the rental unit and had to live in the basement of Landlord QDB's parents' home for around two and a half months.

The Landlords seek \$3,600.00 in unpaid rent for the months of November and December 2022.

It took around a month for the Landlords' insurers to deny their claim relating to the damaged carpets. As the damage had been caused by pets, it was not covered. The repairs took about a month and a half to be completed.

The Landlords seek \$6,276.08 for the removal of the carpet and preparation of the concrete floor, and \$3,373.22 for the replacement carpets. In total the Landlords seek \$9,649.30. Copies of invoices for these costs were submitted into evidence by the Landlords.

The Landlords had tried to have the carpets cleaned, but the smell remained so they had to have them replaced. As cat urine had seeped into the concrete, it was deemed a biohazard. The contractors working on the flooring had to use respirators. A dehumidifier was used to pull the moisture out of the concrete before new carpets could

be put down. The rental unit had been purchased in 2021 by the Landlords and the carpets were brand new at the time of purchase. I was referred to photographs of the carpet before and after the tenancy that were submitted into evidence by the Landlords.

The Tenant testified as follows. The carpet was not in the state claimed by the Landlords when the tenancy ended, and they have “no idea” how it got like that. The carpet was “fine” and in “move-in condition” when they vacated the rental unit.

The Tenant found out the Landlords had the carpet cleaned on December 11, 2022 so this led them to believe the carpet may not have been replaced. They also noted one of the documents submitted into evidence by the Landlords was a quote and not a receipt once the work had been completed.

No condition report was made at the start of the tenancy and the move-in condition was recorded at the time of the move-out inspection. They provided their forwarding address in writing to the Landlords on the move-out inspection, though they did not agree with the contents of the report.

The Tenant called a Witness who provided the following testimony. They clean homes professionally and saw the state of the rental unit on October 31, 2022. They were also present at the walk-through on November 2, 2022, though they stayed in the entrance area while the inspection took place.

The Witness found the rental unit appeared to have been cleaned to a professional standard and looked “spotless”. The rental unit also smelled like it had been professionally cleaned. The rental unit was seen while it was empty when the furniture had been removed.

In response to the Tenant’s testimony, the Landlords stated that they did not follow through with the quote for the replacement carpets submitted into evidence. They were advised by two companies that the present of cat urine on the carpet meant it needed to be replaced and they went with the cheaper option.

Analysis

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that 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.

Are the Landlords entitled to a Monetary Order for unpaid rent?

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, unless the tenant has a right under this Act to deduct all or a portion of the rent. As confirmed in Policy Guideline 3 - Claims for Rent and Damages for Loss of Rent, a tenant is not liable to pay rent after a tenancy agreement has ended.

However, as set out in Policy Guideline 3, a tenant will be liable for rent if they either overhold and do not vacate the rental unit when the tenancy ends, or do not comply with section 37 of the Act and leave the rental unit reasonably clean and undamaged except for reasonable wear and tear and the landlord is then unable to rent to a new tenant because of the tenant's breach of the Act.

Section 44 of the Act sets out how a tenancy ends. As discussed earlier in this Decision, I find the Landlords did not issue a valid Notice to End Tenancy as set out in section 44(1)(a) of the Act, however based on the testimony of both parties and the evidence before me, I find the parties communicated after the "Notice of Termination by Landlord" was issued and mutually agreed the tenancy would end on October 31, 2022. Therefore, the Tenant would not be liable for rent after October 31, 2022 unless they overheld or breached section 37 of the Act which meant the Landlords could not longer rent the unit.

It was undisputed the Tenant vacated the rental unit on October 31, 2022 so I find the Landlords are not entitled to unpaid rent due to the Tenant overholding. Additionally, by the Landlords' own testimony, they began to occupy the rental unit from November 1, 2022 though were unable to live there due to the urine damage on the carpet. I found nothing in the testimony or evidence of either party that indicated to me the Landlords intended on renting the rental unit out again after the tenancy ended so there would be

loss of future rent income after the tenancy ended, or that costs were incurred by staying in the basement of the Landlords' parents.

Given the above, I find the Landlords have failed to establish they are entitled to a Monetary Order for unpaid rent and dismiss their claim without leave to reapply.

Are the Landlords entitled to a Monetary Order for damage to the rental unit?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlords must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Landlords followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37 of the Act states that when a tenant vacates a rental unit, they must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 67 of the Act states that if damage or loss results from a party not complying with the Act, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

The parties provided conflicting testimony regarding the post-tenancy condition of the carpet in the living room and bedroom of the rental unit. The Landlords alleged the carpets were damaged by pet urine during the tenancy, while the Tenant did not dispute they had pets in the rental unit, but disputed the condition of the carpet put forward by the Landlords, saying it was "fine" and "move-in condition" when they vacated the rental unit.

Though the Tenant called a Witness whose testimony corroborated the Tenant's testimony, I find the Landlords' testimony to be more credible and consistent than the Tenant's. Additionally, I find the Landlords' testimony to be supported by their photographic evidence, which I give significant weight to.

I find the photographs are date-stamped, are of good quality and show the carpets and underlay in good detail. I find the photographs dated October 31, 2022, the date the

tenancy ended, clearly show stains of a significant size on the carpets. I find the photographs of the carpet before the tenancy show it to be of good condition and to be free from stains.

Given the above, I find the Landlords have proven, on a balance of probabilities, that the Tenant breached section 37 of the Act and the Landlords are therefore entitled to compensation as a result.

I accept the Landlords' testimony that they sought quotes from at least two different companies and had attempted to clean the carpet prior to replacing it. Given this, I find the Landlords have adhered to section 7(2) of the Act and attempted to mitigate their losses.

Given that the carpet was part way through its useful life, I find the Landlords are not entitled to recover the full \$9,649.30 claimed. I determine an appropriate level of compensation to be \$7,250.00 in this case.

Are the Landlords entitled to retain some, or all of the security deposit and pet damage deposit?

Section 38(1) of the Act requires a landlord to either repay the security deposit to the tenant or make an application for dispute resolution claiming against the security deposit within 15 days of the tenancy ending and receiving the tenant's forwarding address in writing, whichever is later.

A landlord may also retain the security deposit if they either have authority from an arbitrator, or written agreement from the tenant to do so as set out in sections 38(3) and 38(4) of the Act.

Section 38(6) of the Act states that if a landlord does not take either of the courses of action set out in section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Based on the evidence before me and the testimony of both parties, I find that the tenancy ended on October 31, 2022 and the Tenant provided their forwarding address in writing to the Landlords on the move-out condition report in-person on November 2, 2022.

This means the Landlords would have had to either return the deposits to the Tenant or make an application for dispute resolution claiming against the deposits by November 17, 2022. I find the Landlords did not return the deposits and made their Application on December 8, 2022. Given this, I find the Landlords have failed to comply with section 38(1) of the Act and I order the Landlords to return double the security deposit and pet damage deposit to the Tenant per section 38(6) of the Act.

Additionally, I find there is no evidence that the Tenant had extinguished their right to the return of the security deposit per section 38(2) of the Act as I find the Tenant attended the condition inspections at the start and end of tenancy.

Per section 4 of the *Residential Tenancy Regulation*, interest on deposits is calculated at 4.5% below the prime lending rate. The amount of interest owing on the deposits was calculated using the Residential Tenancy Branch interest calculator using today's date. The interest applies only to the original deposit and is not doubled.

Though the Landlords have not complied with section 38(1) of the Act and may not claim against the deposits for damage to the rental unit, as stated above, as I have made a payment order in favour of the Landlords under section 67 of the Act, I authorize the Landlords to retain the Tenant's security deposit and pet damage deposit in partial satisfaction of the payment order under the offsetting provisions set out in section 72(2)(b) of the Act.

Are either party entitled to recover the filing fee for their respective Applications?

As the Landlords have been successful in their Application, I order the Tenant to pay the Landlords the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act.

As the Tenant's Application was not successful, they must bear the cost of the filing fee.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

The Landlords' Application is granted in part.

The Landlords are issued a Monetary Order. A copy of the Monetary Order is attached to this Decision and must be served on the Tenant. It is the Landlords' obligation to serve the Monetary Order on the Tenant. The Monetary Order is enforceable in the Provincial Court of British Columbia (Small Claims Court).

The Order is summarized below.

Item	Amount
Compensation under section 67 of the Act	\$7,250.00
Filing fee	\$100.00
Less: security deposit and pet damage deposit	(\$1,800.00)
Less: double security deposit and pet damage deposit	(\$1,800.00)
Less: interest on security deposit and pet damage deposit	(\$23.92)
Total	\$3,726.08

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: September 05, 2023

Residential Tenancy Branch