



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Landlords: **MNDL-S, FFL**
Tenant: **MNSDS-DR, FFT**

Introduction

This hearing dealt with the Landlords' application under the *Residential Tenancy Act* (Act) for:

1. A Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit under sections 38 and 67 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

This hearing also dealt with the Tenant's cross application under the Act for:

1. An Order for the return of part or all of the security deposit and/or pet damage deposit under section 38 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

The hearing was conducted via teleconference. Landlord B.A., Landlord N.A. and Tenant L.N. attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Service

Both parties acknowledged receipt of:

- the Landlords' Notice of Dispute Resolution Proceeding package served by email on April 9, 2023, the Landlords uploaded the email with the attachments as proof of service, the Tenant confirmed receipt, sufficiently served on April 12, 2023;
- the Tenant's Notice of Dispute Resolution Proceeding package served by registered mail on July 31, 2023, Canada Post Tracking Numbers on cover sheet of decision, the Tenant uploaded Proof of Service form #RTB-55 attesting to this service, the Landlords confirmed receipt, deemed served on August 5, 2023;
- the Landlords' evidence package served by registered mail, the Tenant confirmed receipt on November 2, 2023, sufficiently served on November 2, 2023; and,
- the Tenant's evidence package served by email on November 17, 2023, the Landlords confirmed receipt, although Landlord B.A. said that evidence was for another matter, sufficiently served on November 20, 2023.

Pursuant to sections 71(2), 88, 89, and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

Landlords:

1. Are the Landlords entitled to a Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy?
2. Are the Landlords entitled to recovery of the application filing fee?

Tenant:

1. Is the Tenant entitled to an Order for the return of part or all of the security deposit and/or pet damage deposit?
2. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on July 15, 2021. The fixed term ended on July 15, 2022, then the tenancy continued on a month-to-

month basis. Monthly rent was \$3,654.00 payable on the first day of each month. A security deposit of \$1,800.00 was collected at the start of the tenancy and is still held by the Landlords.

The parties agreed that:

- the tenancy ended March 16, 2023;
- the Landlords did not have an outstanding monetary order against the Tenant at move-out; and,
- the Tenant did not agree in writing that the Landlords could keep some or all of the security deposit at the end of the tenancy.

The Tenant stated they sent their forwarding address to Landlord B.A. by registered mail and email on April 3, 2023, and to Landlord N.A. by registered mail on April 3, 2023. The Tenant provided the Canada Post customer receipts with tracking numbers attesting to this service.

Landlord B.A. testified that he received the Tenant's forwarding address from their dispute resolution package sometime after September 8, 2023. Landlord N.A. confirmed receipt of the registered mail package.

The Landlords applied to retain the security deposit on March 31, 2023.

Landlord B.A. testified that a move-in condition inspection was completed with Tenant L.N.'s co-tenant, and his parents, on June 18, 2021, but did not upload a copy of the report into his documentary evidence. Landlord B.A. stated he believed he gave a copy of the move-in condition inspection report to the co-tenant on the same day. The co-tenant text messaged Landlord B.A. saying, *"I'll check my hardcopy filings when I get home for the move-in inspection on [rental unit address]."*

The Tenant testified that she lived in the rental unit up to her move-in day. So, if a move-in condition inspection was completed in June 2021, the Landlords were living in the suite. The Tenant stated that a move-in condition inspection was not completed on move-in day.

Landlord B.A. stated he tried many times to organize a move-out condition inspection with the Tenant, but because he could not provide a copy of the move-in condition inspection to the Tenant, she did not agree to do the move-out condition inspection with the Landlords.

The Tenant stated she moved out on March 15, 2023, and the cleaners came on March 16, 2023. The Tenant testified that she repeatedly asked for a copy of the move-in condition inspection report, and once she had it, she wanted to set a date for the move-out condition inspection. The Landlords did not produce the move-in condition inspection report for the Tenant, and the move-out condition inspection did not happen.

Landlord N.A. stated that they fully renovated the rental unit three years before the Tenant moved in. The Landlords' real estate agent stated:

The condition [of the rental unit] was impeccable, and the unit was in flawless condition. Most people that came through had commented on how nicely it was decorated, and what great condition it was in. When we terminated the listing (April 20 to July 30, 2021) just before the tenants moved in, there really was no damage at all to the unit, so if you are saying the unit was damaged, it was certainly done during the term of the tenancy.

The Landlords seek \$2,682.03 in compensation for damage done to the rental unit. The following are the items for which the Landlords claim compensation:

Washing machine	\$1,387.62
Shower curtain	\$100.00
Lutron blind remote	\$49.91
Move-out fixing damages and cleaning	\$1,144.50

Landlord N.A. testified that their relationship with the Tenant went downhill after her separation from her husband. The Landlords claimed when they put the rental unit up for sale, their realtor listed the damages done. The clients the real estate person brought through the suite witnessed the unclean living conditions of the Tenant.

Washing machine:

In January 2022, the Tenant reported to the Landlords that the glass window on the washing machine door shattered. The Landlords called an appliance service centre to investigate the broken washing machine glass. The appliance service technician reported:

Found inner tub paddles are damaged. Suspect something rigid has hit the paddle blades and damaged them. Glass is shattered. Informed and discussed with owner. Needs a new inner tub be replaced first. Repair is very

costly and not possible at customer site. Just charged for service call, no labour.

The Landlords submitted that the technician told him this was not a defective machine, rather something inside the washer broke it. The damage was due to negligence. The Landlords uploaded the receipt for the purchase of the new washing machine.

The Tenant said shortly after they moved into the rental unit, the glass shattered in the front of the washing machine. She stated nothing but clothes were in the washing machine when this happened, and it was only a half load. The Tenant had sent the Landlords a newspaper article about the glass in a similar washing machine door shattering. The Tenant said at no time after this event did the Landlords ask for compensation from her saying she was at fault.

Shower curtain:

The Landlords testified that the shower curtain was missing from a bathroom when the Tenant vacated. The Landlords said they were told by the Tenant that the curtain had mould on it, but the Landlords stated it could have just been rewashed.

The Tenant said she used the shower curtain for a year, but it turned green in patches. It had grown mouldy although she had repeatedly washed it.

Lutron blind remote:

The Landlords claimed that one blind remote was broken. The Landlords testified that the Tenant had packed both remotes when she moved out. The Landlords had to retrieve the remotes from the Tenant. The Landlords uploaded the receipt for this broken blind remote.

The Tenant said the remote was working when she moved out.

Move-out fixing damages and cleaning:

The Landlords' real estate agent, and a property manager who lives in the same residential property provided written testimonials of the unkept state of the rental unit. The Landlords uploaded a receipt which included work for touch up painting, fixing a bathroom door handle, adjustments to three kitchen cabinet doors, adjustments to two closet doors, bathroom silicon work, painting of bedroom walls, and eight hours of

cleaning. The Landlords uploaded pictures of the state of the rental unit after the Tenant vacated.

The Tenant testified that throughout her tenancy, she had cleaners routinely cleaning the rental unit. The Tenant argued that the rental unit was not dirty at the end of her tenancy.

Analysis

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.

Security deposit:

Section 38 of the Act sets out the obligations of a landlord in relation to a security deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security deposit in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing.

Further, under sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and Regulation.

Landlord B.A. testified that he did a move-in condition inspection, but they did not upload a copy of that report. It sounds like the inspection was completed with the Tenant's ex-spouse, and although Landlord B.A. asked them for a copy, the ex-spouse did not provide it.

The Landlords did not do a move-out condition inspection with the Tenant. They said this did not happen because the Tenant would not do one without a copy of the move-in condition inspection report. For the Landlords' benefit, section 23(6) of the Act states that the landlord must make the inspection and complete and sign the report without the tenant if the landlord has complied with subsection (3), and the tenant does not participate on either occasion.

For this matter, I find under sections 24(2) and 36(2) of the Act, that the Landlords have

extinguished their right to claim against the security deposit for damage to the residential property.

Based on the testimony of the parties, I accept the tenancy ended March 16, 2023, and I find the Landlords are deemed served with the Tenant's forwarding address in writing on April 8, 2023 under section 90(a) of the Act. The Landlords applied for dispute resolution on March 31, 2023.

April 8, 2023 is the relevant date for the purposes of section 38(1) of the Act. The Landlords had 15 days from April 8, 2023 to repay the security deposit in full to the Tenant. Because the Landlords extinguished their right to claim against the security deposit for damage done to the rental unit, their only option was to repay the security deposit to the Tenant.

By April 23, 2023, the Landlords had not repaid the security deposit to the Tenant, therefore, the Landlords must return double the security deposit, \$3,600.00, to the Tenant pursuant to section 38(6) of the Act.

The Landlords' tenancy agreement states that, "*The Landlord agrees to pay NO interest on the security deposit held by him.*" Section 38(1)(c) of the Act states that the landlord must repay any security deposit ... to the tenant with interest calculated in accordance with the regulations. Section 5 of the Act states that landlords and tenants may not avoid or contract out of the Act or regulations, and any attempt to avoid or contract out of this Act or the regulations is of no effect. So, using the RTB Deposit Interest Calculator, there is \$32.26 of interest owed on the security deposit.

I will now consider the Landlords' compensation claims for damages to the rental unit.

Residential Tenancy Policy Guideline #16-Compensation for Damage or Loss (PG#16) addresses the criteria for awarding compensation to an affected party. This guideline states, "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." This section must be read in conjunction with section 67 of the Act.

PG#16 asks me to analyze 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.

Washing machine:

The Landlords had a service technician assess the damage to the washing machine. The service technician found that the inner tub paddles were damaged, and they suspected that something rigid hit the paddle blades and damaged them. The service technician told the Landlords that the machine was not defective, rather something inside the washer broke it. The damage was due to negligence, and the Tenant breached section 32(3) of the Act.

The Tenant said there was nothing but clothes in the washing machine. Residential Tenancy Policy Guideline #1-Landlord & Tenant – Responsibility for Residential Premises (PG#1) clarifies the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities. PG#1 states:

MAJOR APPLIANCES

...

3. *The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.*

I find that the washing machine was damaged due to the neglect of the Tenant. Not only did the glass shatter, but also the paddle blades inside the machine were damaged. I find the Landlords have substantiated their claim and are entitled to compensation to replace the broken washing machine.

Shower curtain:

The Landlords testified that the shower curtain was missing from a bathroom when the Tenant vacated. The Landlords said they were told by the Tenant that the curtain had mould on it, but the Landlords stated it could have just been rewashed.

The Tenant said she used the shower curtain for a year, but it turned green in patches. It had grown mouldy although she stated that she had repeatedly washed it.

I find the Tenant is responsible to replace the shower curtain during her tenancy and must certainly ensure a shower curtain exists when one was there at the start of her tenancy. I find the Landlords have substantiated this part of their claim and I grant compensation for this item.

Lutron blind remote:

I find the Tenant is responsible to replace the broken blind remote. The Landlords had to retrieve the remotes from the Tenant because she packed them with her belongings. The Tenant provided no evidence that both remotes were operational aside from her statement as such. I find the Tenant must leave the rental unit how she found it, and the Landlords are entitled for compensation to replace this item.

Move-out fixing damages and cleaning:

I find the Landlords have proven that the Tenant left the rental unit unreasonably dirty and damaged beyond what would be considered reasonable wear and tear. Section 37 of the Act states 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. The Landlords uploaded over 60 pictures of the state of the rental unit after the Tenant vacated.

The Tenant may have had cleaners routinely come to the rental unit, but I find, on a balance of probabilities that the rental unit needed repairs and cleaning, and the Landlords' compensation request is granted in this regard.

Granting recovery of parties' application filing fees is discretionary. Section 72(1) of the Act states the director *may* order payment or repayment of a fee. I find both parties are equally successful in their dispute resolution claims and must bear the cost of their own application filing fees.

The Tenant's monetary award is calculated as follows:

Item	Amount
Security deposit doubled to Tenant	\$3,600.00
Deposit interest to Tenant*	\$32.26
Less Washing machine to Landlords	-\$1,387.62
Less Shower curtain to Landlords	-\$100.00
Less Lutron blind remote to Landlords	-\$49.91
Less Move-out fixing damages and cleaning	-\$1,144.50
Monetary award to Tenant:	\$950.23

*There is no interest owed on the deposits in 2021 to 2022 as the amount of interest owed in those years was 0%. The amount of interest in 2023 was 1.95%. Interest is calculated on the original security deposit amount, before any deductions are made, and it is not doubled. Interest was calculated using the Residential Tenancies Online Tools: Deposit Interest Calculator.

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$950.23. 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 of British Columbia 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 Act.

Dated: December 28, 2023

Residential Tenancy Branch