



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: **MNRL-S, MNDL-S, MNDCL-S, FFL**

Tenant: **MNSDB-DR, FFT**

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The landlord applied for:

- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant applied for:

- A monetary order for a return of a security deposit and/or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the landlord and the tenant attended the hearing. The tenant was assisted by an advocate, J.L. As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord's Notice of Dispute Resolution, but not the photographs in the landlord's evidence.

The landlord testified that there were so many photographs (69) and that printing them would be cost prohibitive. She acknowledges not providing them to the tenants for this hearing. Rule 3.1 of the Residential Tenancy Branch Rules of Procedure require that the applicant serve the respondent with any evidence submitted to the Residential Tenancy Branch with the application for dispute resolution. As the landlord's photographic evidence was not exchanged with the tenant, I have exercised my discretion to not allow it.

The landlord acknowledged service of the tenant's Notice of Dispute Resolution package and evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damages or other compensation?

Can the landlord retain the tenant's security deposit or pet damage deposit, or should it be returned to the tenant?

Should either party be authorized to have their filing fee returned?

Background and Evidence

While I have turned my mind to all the allowed documentary evidence, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed one-year tenancy began on November 1, 2022, set to expire on October 31, 2023. Rent was set at \$2,550.00 per month, payable on the first day of the month. A pet damage deposit of \$1,275.00 and security deposit of \$1,275.00 were collected and the landlord continues to hold them.

The landlord gave the following testimony. The rental unit is a 2 bedroom, 1 bath condo, approximately 5 years old. The parties verbally agreed to end the tenancy on September 30th, instead of October 31st. The landlord was having financial difficulty and wanted to sell the unit in the fall. The tenant did not leave the unit until October 4th and the landlord seeks prorated rent for the first 4 days in October.

The parties agree that the tenant did not pay utilities until the end of the tenancy and during the hearing, the tenant has agreed that he owes the landlord \$130.47 for BC Hydro.

The tenancy did not end by the landlord giving the tenant a notice to end tenancy, however the tenant threatened the landlord with seeking 12 months compensation if she didn't sell the unit. To make things "go smoothly" with the tenant, she compensated him with the equivalent of a months rent and she regrets doing so. The landlord wants an order for its return.

The landlord claims the tenant did damage to the unit, by punching a hole in the bedroom door and repairing it poorly. The tenant also made chips in the paint throughout the unit and the landlord got a quote to have the unit painted and the door replaced. The landlord did not have the unit repainted or the door replaced before the next tenant moved in.

The tenant did not have the 2 carpets in the bedrooms professionally cleaned before moving out. The landlord claims they are stained and dirty and that she paid a carpet cleaning company to do the work. The landlord acknowledges she did not provide an invoice from the carpet cleaning company.

The landlord testified that the tenant failed to properly clean the unit when he moved out. The blinds were dirty, and so were the inside of the stove and the fridge. Although she obtained a quote to have the work done, the landlord ended up doing it herself as she didn't have the cash to hire the cleaners.

The tenant gave the following testimony. He moved out on the first of October. The day the parties agreed upon for the move-out condition inspection report was October 4th but by then, he was already gone from the rental unit as of September 30th. The landlord is not entitled to rent for the first 4 days of October.

The one month's compensation paid to him by the landlord was to get him to move out early which he did. There is no justifiable reason to seek its return.

The walls had normal wear and tear. The landlord made a comment about the patched door when doing the move-out condition inspection report and told the tenant that the damage was probably caused by her previous tenant who didn't replace the door like he was supposed to. The tenant denies making the hole in the door or repairing it. The landlord's realtor also told the tenant that the condition of the unit was fantastic and spotless on move out.

The tenant testified that the landlord altered the condition inspection report form after he signed it. The tenant provided the following image:

2. I, (tenant's name) [REDACTED] agree to the following deductions from my security and/or pet damage deposit:				
Security Deposit: <input checked="" type="checkbox"/>		Pet Damage Deposit: <input checked="" type="checkbox"/>		
Date: DD/MM/YYYY 4/10/2023		Signature of Tenant:		
3. Landlord's signature (on move-in)		Landlord's signature (on move-out)		
4. Tenant's signature (on move-in)		Tenant's signature (on move-out)		
5. Tenant's forwarding address:				
site/unit #	street # and name	city	province	postal code
6. All address for service:				

Compared to the landlord's document:

2. I, (tenant's name) [REDACTED] agree to the following deductions from my security and/or pet damage deposit:				
Security Deposit: \$1275. ⁰⁰		Pet Damage Deposit: \$1275. ⁰⁰		
Date: DD/MM/YYYY 4/10/2023		*Signature of Tenant:		
3. Landlord's signature (on move-in)		Landlord's signature (on move-out)		
4. Tenant's signature (on move-in)		*Tenant's signature (on move-out)		
5. Tenant's forwarding address:				
site/unit #	street # and name	city	province	postal code

The tenant alleges that the landlord falsified the condition inspection report to indicate he agreed that the landlord could retain his security deposit and pet damage deposit because she didn't have the money to return it to him.

The tenant didn't professionally clean the carpets because the tenancy was less than a year. The policy guideline specifies that the tenant is only required to professionally clean the carpets after a tenancy of a year or more.

The unit was thoroughly cleaned before he vacated it. The tenant had professional cleaners come to clean the unit in September to assist the landlord in selling the property. No receipt for that cleaning was provided by the tenant.

The landlord is not entitled to recover the one month's rent that she gave to the tenant as it was given of her own free will. It was provided because the landlord was trying to get him out before the end of the fixed term tenancy and it was agreed to.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C:

In order to determine whether compensation is due, the arbitrator may determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

[the 4-point test]

- Claim for painting walls and door frames

Pursuant to section 37 of the Act, when a tenant vacates a rental unit, the tenant must leave it reasonably clean and undamaged except for reasonable wear and tear.

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. The tenant is responsible to pay for repairs where damage is caused either deliberately or as a result of neglect.

The landlord testified that there was chipped paint and nail holes throughout the rental unit when the tenant vacated it. I have not considered the photos of the unit as the

landlord did not provide them to the tenant and I have excluded them from consideration for this decision. I find insufficient evidence to prove to me that the unit sustained any damage to the walls beyond reasonable wear and tear.

I have also considered the landlord's testimony that she re-rented the unit immediately without doing any of the work she seeks compensation for.

Likewise, I do not find that, on a balance of probabilities, that the tenant damaged the bedroom door and repaired it. I note that on the condition inspection report, where the landlord notes the door is damaged, she has noted "waived" next to the item. As the onus to prove to me their version of the facts is most likely to be true, I find the landlord has failed to do so. The landlord's claim for painting walls and door frame are dismissed.

- Carpet cleaning

Residential Tenancy Policy Guideline 1 states that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpets, he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

Section 21 of the Residential Tenancy Regulations state that in dispute resolution proceedings, a condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I am unable to use the landlord's photographs of the carpets in this decision, so I must turn to the condition inspection report, signed by both parties, where the parties note the carpets are dirty. While I accept the tenant's testimony that he believed the carpets were vacuumed and that's all that was required, I find that the carpets were dirty at the end of the tenancy and required a thorough cleaning, not just vacuuming. I find that the tenant is responsible for cleaning the carpets, even though the tenancy lasted for just under a year.

I accept the quote provided by the landlord from the carpet cleaning at \$200.00 plus GST. I also accept the landlord's testimony that she had them cleaned, despite not providing an invoice from the cleaning company. The landlord is awarded **\$210.00**.

- Suite Cleaning

As stated previously, when a tenant vacates a rental unit, the tenant must leave it reasonably clean and undamaged except for reasonable wear and tear.

The landlord testified that she did not hire anybody to clean the unit and that she did it all herself. The tenant's legal obligation is "reasonably clean" and this standard is less than "perfectly clean" or "impeccably clean" or "thoroughly clean" or "move-in ready". Oftentimes a landlord wishes to turn the rental unit over to a new tenant when it is at this higher level of cleanliness; however, it is not the outgoing tenant's responsibility to leave it that clean. If a landlord wants to turn over the unit to a new tenant at a very high level of cleanliness that cost is the responsibility of the landlord. I find insufficient evidence of the tenant failing to comply with the Act in leaving the unit in a condition that was not clean (point 1) and of the value of the compensation the landlord seeks, since she did not pay anybody to do the work. (point 3).

This portion of the landlord's claim is dismissed.

- BC Hydro

The tenant agrees that he has not compensated the landlord for the Hydro he consumed at the end of the tenancy and he agreed to pay the **\$137.47** bill. The landlord is awarded this compensation.

- 4 days rent

If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the Residential Tenancy Act.

The landlord testified the tenant did not vacate the unit until October 4th, while the tenant testified that he was gone by September 30th. When two parties provide different accounts of the facts, the onus is on the applicant to provide sufficient evidence to establish theirs is most likely the one to be true. On a balance of probabilities, I find that the tenant had vacated the unit by the mutually agreed upon date of September 30th and that the parties attended for the condition inspection on October 4th, after the landlord was lawfully entitled to have possession of it. I find the tenant did not overhold

the rental unit for the 4 days in October and consequently the landlord is not entitled to compensation pursuant to section 57.

- I regret compensating the tenant one month free rent

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

I find that the landlord gave the tenant the one month's rent in order to end the fixed term tenancy before the end of the fixed term. I find there has been no breach of the Act that allows me to award compensation when the exchange of money was provided by the landlord of her own free will. The fact that she now regrets the decision to give the tenant the money is not sufficient justification for me to award it. This portion of the landlord's claim is dismissed.

- Security deposit and pet damage deposit

The tenancy ended on September 30th and the tenant provided his forwarding address to the landlord on October 6th via email. A condition inspection report was done on October 4th.

On October 11th, the landlord filed her application seeking to retain the tenant's deposits. This is within 15 days of receiving the tenant's forwarding address and the date the tenancy ending. As both parties participated in the condition inspection report at the beginning and end of the tenancy, neither party's right to claim against it was extinguished.

As the majority of the landlord's claim was dismissed, the landlord is to return the tenant's security deposit and pet damage deposit, together with any interest accrued, less any of the monetary awards I have granted to her.

- Filing fees

The landlord's application was not successful and the tenant's was. Accordingly, the tenant is awarded the filing fee of \$100.00 and the landlord's filing fee will not be recovered.

Item	Amount
Security deposit	\$1,275.00

Pet damage deposit	\$1,275.00
Interest on both deposits	\$62.48
Tenant's filing fee	\$100.00
Less carpet cleaning	(\$210.00)
Less BC Hydro	(\$137.47)
TOTAL	\$2,365.01

Conclusion

I award the tenant a monetary order in the amount of \$2,365.01.

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: March 06, 2024

Residential Tenancy Branch