Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S FFL**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution ("Application") filed by the Landlords pursuant to the *Residential Tenancy Act* (the "Act"). The Landlords applied for the following:

- a monetary order for compensation to make repairs that the Tenant, their pets or their guests caused during the tenancy 67;
- authorization to keep the Tenant's security and pet damage deposits under section 38; and
- authorization to recover the application fee of the Application from the Tenant.

One of the two Landlords ("GJ") and the Tenant attended the hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* ("RoP"). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

GJ stated the Landlords served the Notice of Dispute Resolution Proceeding ("NDRP") on the Tenant in person in December 2021. GJ did not provide a Proof of Service or call a witness to corroborate his testimony. The Tenant disputed the NDRP was served on her personally and stated she received the NDRP by regular mail on December 29, 2021. Although it is unclear as to the method of service of the NDRP on the Tenant, she nevertheless acknowledged she received the NDRP on December 29, 2021. As such, I find the Tenant was sufficiently served with the NDRP on December 29, 2021 pursuant to section 71(2)(b) of the Act.

The Tenant stated she served her evidence on each of the Landlords by registered mail on July 3, 2022. The Tenant provided the Canada Post tracking numbers for service of her evidence on each of the Landlords to corroborate her testimony. I find the Landlords were served with the Tenant's evidence in accordance with the provisions of section 88 of the Act.

Preliminary Matter – Service of Landlords' Evidence on Tenant

Although the Landlords filed evidence with the Residential Tenancy Branch, GJ admitted the Landlords did not serve any evidence on the Tenant for this proceeding.

Rules 3.14 of the RoP states:

> **3.14 Evidence not submitted at the time of Application for Dispute Resolution**
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> Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.
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> In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

GJ admitted the Landlords did not serve the Tenant with their evidence. As such, the Landlords did not comply with Rule 3.14. Based on the foregoing, the Landlords' evidence was inadmissible for this proceeding. I told GJ that, although the Landlords' evidence was inadmissible, he had the option of providing, or calling witnesses to provide, testimony on the contents of the inadmissible evidence.

Issues to be Decided

Are the Landlords entitled to:

- a monetary order for compensation to make repairs that the Tenant, their pets or their guests caused?
- keep the Tenant's security and pet damage deposits?
- recover the filing fee of the Application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Tenant submitted into evidence a copy of the tenancy agreement and the addendum, dated March 14, 2021, between her, another tenant ("MC") and the Landlords. The parties agreed the tenancy commenced on April 15, 2021, for a fixed term ending April 14, 2022, with rent of $2,600.00 payable on the 1st day of each month. The Tenant was to pay a security deposit of $1,300.00 by April 14, 2021 and a pet damage deposit of $1,300.00 by April 15, 2021. The Tenant submitted into evidence a copies of two Interac e-transfers, dated March 13 and March 14, 2021, for $1,300.00 each and stated the transfers were for payment of the security and pet damage deposits. GJ acknowledged the Tenant paid the security and pet damage deposits and that the Landlords were holding the deposits in trust for the Tenant. GJ confirmed that there were no rental arrears owing by the Tenant to the Landlords.

The parties agreed the Tenant vacated the rental unit on October 1, 2021. The Tenant stated she gave the Landlords the required notice to end the tenancy prior to the end of the fixed term on the basis of domestic violence. The Tenant submitted into evidence a signed Ending Fixed-Term Tenancy confirmation Statement on Form RTB-49 to corroborate her testimony. GJ did not dispute the Tenant's evidence that the tenancy was ended prior to the end of the fixed term on April 14, 2022 on the basis of domestic violence.

GJ stated the Landlords are seeking compensation in the amount of $2,600.00 for damages caused by the Tenant as follows:

Description of Damages	Amount Claimed by Landlords
Carpet Replacement	$2,000.00
Glass Door Screen Replacement	$100.00
GC's Labour for Repairing/Painting Walls	$500.00
Total:	$2,600.00

GJ stated the Landlords claimed $500.00, for 16 hours of labour performed by GJ, at $31.25 per hour, to repair and repaint the rental unit that the Landlords claimed were damaged by the Tenant. GJ stated the Landlords discovered the Tenant had many snakes in the rental unit as well as two cats. GJ stated the tenancy agreement only permitted the Tenant to have two dogs. GJ states it appeared the screen had been damaged by the cats. GC stated the carpet was stained from the Tenant's pets and required replacement. GJ stated the Tenant did not leave the rental unit in reasonably clean condition when she vacated the rental unit and he specifically stated the laundry room tub was dirty.. GJ stated the new tenant who moved into the rental unit complained the rental unit was not clean.

The Tenant denied she put holes in the walls or damaged the screen as claimed by the Landlords. The Tenant stated the Landlords did not perform a move-in or move-out condition inspection even though she requested that one be performed on move-in and move-out. The Tenant stated there were continuing problems with the drain for the laundry room tub clogging that were reported to the Landlords. The Tenant stated that the rental unit was clean when she vacated it. To corroborate her testimony on the condition of the rental unit immediately before she vacated it, the Tenant submitted into evidence 3 videos and 48 photographs showing the interior and exterior of the rental unit, without any furniture.

The Tenant submitted into evidence a signed Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit on Form RTB-47 ("Address Notice") and stated the Address Notice provided her forwarding address for the return of her security and pet damage deposits. The Tenant submitted into evidence a signed and witnessed Proof of Service on Form RTB-41 and stated the Address Notice was served on GJ in-person on October 1, 2021. The Tenant submitted into evidence a witness statement dated November 16, 2021 from an acquaintance ("CL"). In the Statement, CL attests to assisting the Tenant move out of the rental unit. CL stated, among other things, that she witnessed the Tenant attempt to contact the Landlords by telephone to advise the move-out was complete and requested a move-out inspection and the return of the keys.

Analysis

1. Landlords' Claim for Compensation to make repairs that the Tenant, their pets or their guests Caused to Rental Unit

Rule 6.6 Residential Tenancy Branch Rules of Procedure ("RoP") states:

> **6.6 The standard of proof and onus of proof**
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> 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.
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> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Sections 7, 37(2) and 67 of the Act state:

> 7(1) 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.
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> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.
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> 37(2) When a tenant vacates a rental unit, the tenant must
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> (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
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> (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.
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> 67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from

> a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the foregoing, the Landlord must prove it is more likely than not that the Tenant breached section 37(2) of the Act, that he suffered a quantifiable loss as a result of this breach, and that he acted reasonably to minimize his loss.

Residential Tenancy Branch Policy Guideline 16 ("PG 16") addresses the criteria for awarding compensation. PG 16 states in part:

> 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. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - 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.
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> These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the Residential Tenancy Act for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).
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> An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Accordingly, the Landlord must provide sufficient evidence that the four elements set out in PG 16 have been satisfied. However, before I can consider the Landlords' testimony and evidence regarding the damages claimed, I must firstly consider whether

the Landlord complied with the requirements for performance of a move-in and move-out condition inspection reports pursuant to section 23 of the Act.

Sections 23, 24, 35 and 36 the Act state:

23(1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

[emphasis in italics added]

The Tenant stated she requested that the Landlord perform a condition move-in and move-out inspection. GJ admitted the Landlords did not perform a condition move-in or move-out inspection on the rental unit. As such, the Landlord did not have move-in and move-out condition inspection reports to corroborate the Landlords' claims that the Tenant caused the damages claimed in the Application.

GJ stated the addendum to the tenancy agreement provided the Tenant was only permitted to have two dogs. The Landlord stated the Tenant had many reptiles and two cats when the tenancy agreement only permitted two dogs. It may be true that the Tenant had pets, other than two dogs, in the rental unit which may have been a breach of the terms of the tenancy agreement. However, the Landlord is nevertheless required to prove, on a balance of probabilities, that the Tenant, their guests or pets caused the damages for which the Landlords are seeking compensation.

The Landlords did not submit move-in and move-out condition inspection reports signed by the Tenant or, alternatively, call a witness or witnesses to corroborate the condition of the rental unit immediately prior to the Tenant moving into the rental unit and its condition after the Tenant vacated the rental unit. The Tenant denied she, her guests or her pets caused any of the damages claimed by the Landlords. I have reviewed the photographs submitted into evidence by the Tenant and the rental unit appears to be in reasonably clean condition. I see the screen door is damaged, there appears to be four small holes in a wall and some staining on a carpet. However, I do not know, in the absence of a move-in condition report, what the condition of the carpet, door screen or wall were in at the time the Tenant took possession of the rental unit. As such, I cannot

determine whether those damages existed prior to the Tenant taking possession of the renal unit or were caused by the Tenant, her guests or pets.

Based on the foregoing, I find the Landlords have failed to provide sufficient evidence to prove, on a balance of probabilities, that the Tenant is responsible for any of the damages claimed by the Landlords. As such, I dismiss the Landlords' claim for compensation from the Tenant to make repairs to the rental unit as a result of damage caused by the Tenant, her guests or her pets during the tenancy or for a failure by the Tenant to leave the rental unit in reasonably clean condition at the time of vacating it.

As the Landlords have been unsuccessful in the Application, the Landlords are not entitled to recover the filing fee for the Application. I dismiss the Application in its entirety without leave to reapply.

2. Return of Security and Pet Damage Deposits to Tenant

The Tenant submitted into evidence a completed and signed Address Notice and a signed Proof of Service certifying the Address Notice was served on GJ in-person on October 1, 2021. GJ did not dispute the Landlords received the Forwarding Address Notice on October 1, 2021. I find the Tenant served the Landlords with the Address Notice in accordance with the provisions of section 88 of the Act. GJ acknowledged the Landlords were still holding the security and pet damage deposits.

Sections 24(2), 36(2), 38(1), 38(5) and 38(6) of the Act state:

> 24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
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> (a) does not comply with section 23 (3) *[2 opportunities for inspection]*,
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> (b) having complied with section 23 (3), does not participate on either occasion, or
>
> (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Residential Tenancy Branch Policy Guideline 17 ("PG 17) provides guidance on the handling of security and pet damage deposits. Paragraph 3 of Section "C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION" states:

2. *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 not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- *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 Act16;*
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

The Tenant gave the Landlords notice she was vacating the rental unit and moved out on October 1, 2021. As such, the Tenant did not abandon the rental unit. Based on the testimony of the parties, I find the Landlords did not arrange for and perform a move-in and move-out inspection of the rental unit with the Tenant. As the only claims made by the Landlords were for damages, the Landlords' right to claim against the security and pet damage deposits was extinguished pursuant to sections 24(2) and 36(2) of the Act. In these circumstances, the Landlords were not entitled to hold the security and pet damage deposits. As such, the only option the Landlords had was to return the security and pet damage deposits within 15 days of the date they received the Address Notice from the Tenant. BJ was served personally with the Address Notice on October 1, 2021. As such, the Landlords had until October 18, 2021, being the next business day after the expiry of the 15-day period, within which to return the deposits to the Tenant. BJ acknowledged the Landlords were still holding the deposits.

The Tenant did not specifically waive the doubling of the security and pet damage deposits at the hearing. Based on the foregoing, pursuant to section 38(6) of the Act, I find the Landlords must pay the Tenant double the amount of the security and pet damage deposits. As such, I am required to order the return of double the security and pet damage deposits pursuant to section 38(6)(b) of the Act. In this case, the Tenant paid $1,300.00 for a security deposit and $1,300.00 for a pet damage deposit for a total of $2,600.00. Based on the foregoing, I order the Landlords to pay the Tenant $5,200.00 pursuant to section 38(6)(b) of the Act calculated as follows:

Type of Deposit	Original Amount Paid by Tenant	Double the Amount
Security Deposit	$1,300.00	$2,600.00
Pet Damage Deposit	$1,300.00	$2,600.00
Total:	$2,600.00	$5,200.00

As the Landlords have not been successful in their Application, I dismiss their claim for recovery of the filing fee of the Application.

Conclusion

The Tenant is granted a Monetary Order for $5,200.00. It is the Tenant's obligation to serve this Order on the Landlords as soon as possible. If the Landlords do not comply with the Monetary Order, it may be filed with the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: August 24, 2022

Residential Tenancy Branch