Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #310064571: MNDL-S, MNDCL, FFL
File #310068939: MNDL-S, FFL

Introduction

The Landlords seek the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order for compensation pursuant to ss. 38 and 67 for damages to the rental unit caused by the Tenants by claiming against the security deposit;
- an order for compensation pursuant to s. 67 for monetary loss or other money owed; and
- return of their filing fee pursuant to s. 72.

The Landlords filed a second application seeking the following relief under the *Act*:

- an order for compensation pursuant to ss. 38 and 67 for damages to the rental unit caused by the Tenants by claiming against the security deposit;
- return of their filing fee pursuant to s. 72.

P.W. and C.W. appeared as the Landlords. A.H. and C.E. appeared as the Tenants.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Preliminary Issue – Landlord's Claims

Rule 2.2 of the Rules of Procedure limits a claim to what is stated in the application. This rule, though simple, provides a basic procedural safeguard to ensure that a respondent knows the case being made against them.

The Landlords file two applications. The first as listed in the Notice of Dispute Resolution of March 9, 2022, indicates that the Landlords seek $800.00 for compensation for monetary loss and provides the following description:

> **Applicant's dispute description**
> The tenants were not allowed to use my property and did not ask before putting the gazebo and umbrella up. They carelessly left them outside without attending them in poor weather conditions which lead to them being destroyed, unnecessarily. They could have took them down and they would not be destroyed but they did not care, as it was my property. They left umbrella open and outside all winter as well. The damage inside exceeds deposit and the property outside needs compensated for.

An additional claim is advance in the March 9, 2022 Notice of Dispute Resolution with respect to a request for $500.00 in compensation for damages to the rental unit, which is advanced against the security deposit. The Landlords describe the dispute as follows:

> **Applicant's dispute description**
> The tenants have put 2 holes in the walls which they have been asked to fix and have not completed by the time frame given. (1.5 months) Their animals have also chewed the bathroom door and frame to the point of it needing replaced. There are also major scratch marks on the door and the main entrance door. There were a few scratches prior to the tenants moving in however their dogs have completely wrecked the doors since they moved in. The house also smells like urine and more items destroyed.

The second application filed by the Landlords, as stated in the April 20, 2022 Notice of Dispute Resolution claims $500.00 for compensation due to damages to the rental unit, which was claimed against the security deposit. The dispute is described by the Landlords as follows:

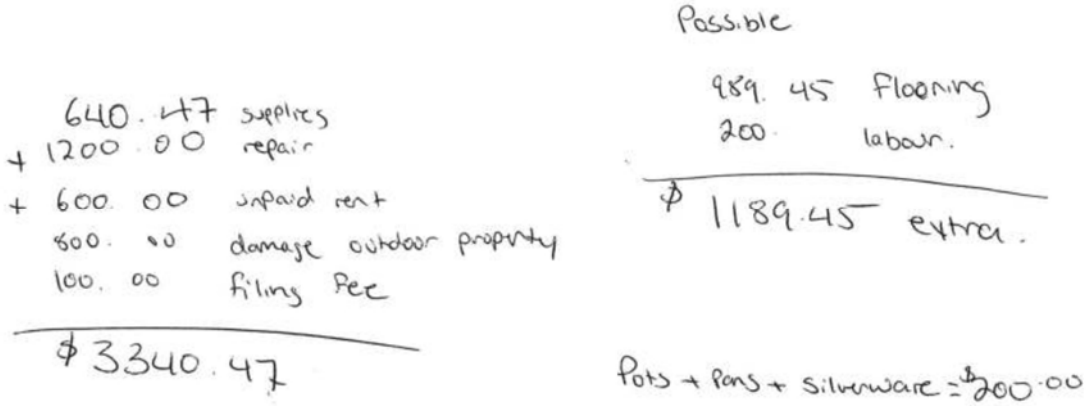
Applicant's dispute description

I am requesting to keep the damage deposit as much damage was done to my house which costed me a fortune to repair. There were multiple holes in the walls, my flooring is ruined from something continuously putting holes in it, my carpets are ruined from pets, the doors are scratched and ate by dogs, moulding was ruined in bathroom and by back door, I had to pay someone to clean the house and pickup dog poop in the back yard.

The Landlords provide a monetary order worksheet in their evidence dated February 28, 2022. In the monetary order worksheet, the Landlords claim $2,560.00 for the following items:

- Gazebo $400.00
- Umbrella $200.00
- Flower Pots $125.00
- Drainpipes $35.00
- Holes $800.00
- Door/Frame $1,000.00

At the hearing, I was advised by P.W. that the amount the Landlords were seeking was revised and was directed to a handwritten note detailing the specifics of the Landlords' monetary claim, which I reproduce below:



The issue with the Landlords' submissions at the hearing is that they greatly exceed the scope of their claims as listed within the Notices of Dispute Resolution of March 9, 2022 and April 20, 2022. No amendments were filed by the Landlords with respect to their applications nor was there a request to amend the claims at the hearing.

Rule 2.2 is clear. Additional amounts and claims advanced outside what was specifically pled is improper as it amounts to a breach in procedurally fairness. The respondent Tenants should rightly expect to understand the specifics of what the Landlords are claiming and cannot reasonably know or understand the claims as they have been revised several times in evidence and submissions, not through the pleadings as it ought to have been. These types of nebulous monetary claims are not permitted.

Given the circumstances and in consideration of Rule 2.2 of the Rules of Procedure, I hold the Landlords to the claims and amounts specifically pled within their notices. The Landlords have an obligation to set out their claims clearly and concisely in their applications. I find that the submissions in this matter greatly exceeded the scope of what was pled.

All other aspects of their claims are not properly put before me. I shall not summarize the other submissions provided by the parties with respect to the issues and amounts that exceed those that are specifically pled by the Landlords.

Issues to be Decided

1) Are the Landlords entitled to claim against the security deposit?
2) Are the Landlords entitled to compensation for damage to the rental unit?
3) Are the Landlords entitled to compensation for monetary loss or other money owed?
4) Are the Landlords entitled to the return of their filing fees?

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 in the applications before me will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- A.H. took occupancy of the rental unit in November 2020. On June 1, 2021, C.E. was added to the tenancy agreement.
- The Landlords obtained vacant possession of the rental unit on March 31, 2022.
- Rent of $1,200.00 was due on the first day of each month.

- The Tenants paid a security deposit of $500.00 to the Landlords.

A copy of the tenancy agreement was put into evidence.

At the hearing, the Landlord P.W. made submissions with respect to personal property left at the rental unit by the Landlord, which she says the Tenants damaged. P.W. testified to a gazebo with a fabric roof that belonged to her that was left at the rental unit and put up by the Tenants without her consent. P.W. testified that gazebo was damaged by the elements. I am directed by P.W. to text messages from the Tenants in which it is submitted the Tenants acknowledge the damage, indicate they would repair or replace the gazebo. I am told the Tenants did neither. The Landlord's evidence includes a screenshot from a website for a new gazebo would cost $399.99.

I further understand that an umbrella was destroyed in the wind, with the Landlord's evidence including photographs of what appears to be a broken umbrella. The Landlord's evidence includes a screenshot showing the cost of replacing the umbrella is $199.99. The Landlords further discussed damage to outdoor planters. The Landlords' evidence does not include copies of invoices for the outdoor planters, though there is a screenshot showing the cost of a new planter being $124.99.

The Landlords further claim damage to the walls, trim, and doors that they say were caused by the Tenants. The Landlords direct me to photographs in their evidence of wall damage within the rental unit, damage to the trim, and doors. At the hearing I was advised that the cost was $1,200.00 to repair these items and was provided with an invoice dated April 15, 2022 with respect to painting and trim repair. This did not include material costs, which the Landlords written submissions estimate to be $640.47.

The Landlord P.W. further stated that the Tenants damaged the flooring within the rental unit. The Landlord's evidence includes an image of what appears to be impressions in the flooring. The Landlords evidence includes a price estimate for replacing the flooring at a cost of $989.45 with labour costs estimated at $200.00.

The Landlords also say the carpets were not cleaned and seek the cost to do so. The Landlord's evidence includes an item which appears to be a receipt for the carpet cleaning, though the reproduction provided is illegible. The Landlords have provided a written note indicating this amount is $104.49.

The Landlords also claimed the cost of cleaning the rental unit. The Landlords evidence includes various receipts with respect to the cleaning costs, though there is no receipt with respect to specifically cleaning the rental unit at the end of the tenancy.

Finally, the Landlords seek the cost of picking up dog feces from the backyard they say was left behind by the Tenants. The Landlords evidence includes a receipt dated April 4, 2022 for $70.00 to clean up the dog feces in the backyard and images of the dog feces in the backyard.

The Tenants indicate that they cleaned the rental unit at the end of the tenancy such that the claims are not appropriate. They indicate they hired someone to clean the rental unit and cleaned the carpets prior to the end of the tenancy. The Tenants' evidence includes a receipt for a cleaner at a cost of $350.00 and a receipt for a rental carpet cleaning machine dated March 5, 2022. The Tenants' evidence includes various photographs they say shows the state of the rental unit when they moved out.

With respect to the outdoor furniture, they say that the Landlord left certain items up when they took occupancy of the rental unit and that they did not touch the Landlord's belongings, which I am told she kept in a shed at the property. The Tenants acknowledge some dog feces was left in the back but indicate they could not clean it at the time as it was covered in snow. They say they cleaned what they could and offered to clean the rest once the snow had melted.

The Tenants further say that the house is older and that it is prone to shifting. The Tenants indicate that the cracks that were patched and fixed by the Landlords were the result of the house settling and that they are not responsible for them. The Tenants have provided photographs of the state of the walls. The Tenants argued that the price for repairing the walls and trim was created by the Landlords' family member such that its veracity was in doubt. The Landlords emphasized the invoice was prepared by a qualified tradesperson.

The Tenants further argued that some of the damage to the flooring is the result of regular wear and tear and that they put carpet under their furniture to prevent damage to the flooring.

The parties confirmed that the Tenants provide their forwarding address on March 3, 2022. I am directed by the Landlords to an inspection report dated March 8, 2022 in which the Tenants and the Landlord P.W. inspected the rental unit to highlight damages

to be repaired before the end of the tenancy. The document is signed by all the parties. At the hearing, the Tenants did not agree that the form accurately portrayed the state of the rental unit, though acknowledge signing it and indicate they received a blank copy of the form on April 17, 2022.

The Landlords' evidence includes a copy of the condition inspection report, which indicates the move-in inspection was conducted on November 29, 2020 and the move-out inspection on April 2, 2022. I am advised by the Landlords that the Tenant A.H.'s mother attended the rental unit for the move-out inspection on April 2, 2022 as the Tenants were away at work at the time. I am told the mother did not sign the move-out report. A.H. testified that she was told her mother felt threatened during the move-out inspection. The Tenant A.H. argued that no move-in inspection was conducted when C.E. moved into the rental unit.

I am advised by the parties that the Landlords have retained the security deposit.

Analysis

The Landlords seek compensation at the end of the tenancy and claim against the security deposit.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38 of the *Act*. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

The Tenant argues that no move-in inspection was conducted when the current tenancy agreement was signed on June 1, 2020. With respect I do not find that argument to be very persuasive. The tenancy agreement put into evidence lists the pet damage deposit and security deposit as "N/A", despite the parties' confirmation that a $500.00 was paid to the Landlords. I find that there was only one tenancy, with an amendment in June 2021 to add the additional tenant, which is supported by the fact that only one deposit was paid at the beginning of the tenancy in November 2020.

Given the circumstance, I find that neither party's right to the security deposit has been extinguished under ss. 24, 36, or 39. Though the Tenants' agent did not sign the move-out report, I do not find that point to be particularly relevant as the Tenants did have someone participate on their behalf.

Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlords filed their initial application against the security deposit on February 27, 2022, which is before the end of the tenancy and forwarding address was provided. Accordingly, I find that s. 38(6) of the *Act* is not triggered.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the 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.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property. Policy Guideline 1 defines reasonable wear and tear as the "natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion."

I have reviewed the move-out report. There is a significant disparity in the inspection report of March 8, 2022 with the one of April 2, 2022, neither of which correspond with the photographs provided to me of the rental unit by the Tenants. The Tenants representative refused to sign the inspection report, which I take it to mean they did not agree with it. I place little weight in the move-out report as the photographs provided by the Tenants clearly demonstrate that it does not correspond with the state of the rental unit at the end of the tenancy.

Further, I place no weight in the March 8, 2022 inspection amounting to an admission by the Tenants that they were responsible for the damages listed within. The report contains no such admission, which was specifically denied by the Tenants at the hearing.

The Landlords claim compensation for damage to the walls, trim, and doors. I have reviewed the photographs of the wall damage provided to me by the Tenants, which shows large cracks running vertically consistent with damage one would expect from a house that has settled or shifted. The Landlords submitted that they are in the shape of torso. I found that argument to be disingenuous. The photographs clearly demonstrate large vertical cracks throughout the rental unit and shifting where the walls meet the roof, which I find cannot be attributed by the Tenants as they result from the house settling.

There is a further issue with the Landlords claim in that it does not properly quantify the loss. The Landlords have submitted evidence in the form of an estimate dated February 28, 2022 that the repairs would be $1,800.00 plus GST. The revised amount at the hearing, as evidenced in the invoice of April 15, 2022, was $1,200.00. I have significant doubts with respect to the veracity of the invoices. I accept the Landlords evidence that the individuals who prepared them were tradespeople, but I also accept that there is a familial relationship which the Landlords did not deny at the hearing. These invoices have varied over time, the second not charging GST, which is what I would expect if the services were provided in a business context.

Leaving my doubts with respect to their veracity, they do not itemize the cost for repairing the different aspects of what of the damage. I cannot differentiate between aspects the Tenants are clearly not responsible for, such as the cracks from the house shifting, and those aspects that could possibly be attributed to the Tenants, being the hole in the drywall from what appears to be a doorknob.

All this is to say that this is the Landlords claim. They bear the burden of proving it, which includes providing clear evidence with respect to quantifying their claim. I find that the Landlords have failed to do so under the circumstances. Given this, I dismiss this aspect of their claim.

The Landlords also seek the cost of replacing damaged flooring. I have reviewed the Landlords' evidence, which does show minor marks on the flooring in the form of dents from the weight of furniture. I find that having furniture and placing it on the floor is

normal use and that dents that may result in the flooring is normal wear and tear. Therefore, I find that the damage is not the Tenants' responsibility. Further, the Landlords provide estimates on the replacement cost, which does not take the age of the flooring into account nor is it a clear quantification of loss as the estimate at this point is speculative until the cost is actually incurred. I would further find that the Landlords have failed to quantify their claim demonstrating the actual loss. I dismiss this portion of the Landlords claim.

The Landlords also seek the cost of cleaning the carpets. The Landlords' evidence includes a copy of what I take to be a rental sheet for a carpet cleaner, though the reproduction is illegible. Without considering the other aspects of the four-part test, I cannot ascertain the cost on this amount as the receipt is illegible. Some of the receipts provided by the Landlords include items such as Doritos, Bugles, and bathroom tissue, which along with the dubious estimates for the repairs to the walls and trim, cause me to doubt the veracity of much of the Landlords evidence. As the carpet cleaning receipt is illegible, I cannot verify the loss claimed and, as a result, this aspect of the claim is also dismissed.

The Landlords also seek the cost of replacing personal property left behind at the rental unit by the Tenants. I have been provided with screenshots for replacement items. Again, this is not proper quantification of the loss as it is merely speculative. The financial loss only crystalizes when the cost is incurred. Also, it is not clear to me that any of these items fall within the ambit of the tenancy. A gazebo, umbrella, and flower planters are not necessary components of any tenancy nor are they identified as forming part of the tenancy in the tenancy agreement. The Tenants, as part of the tenancy, are not responsible to personal property left behind at the property by the Landlord when it does not form part of the tenancy agreement. I find that the Landlords have failed to make out this portion of their claim. It too is dismissed.

The Landlords seek the cost of cleaning the rental unit. However, I have been provided no receipt evidencing the cost of cleaning the rental unit nor is the loss clear based on the written submission's writ large. Further, I have reviewed the photographs provided by the Tenants, which show the rental unit to be in a reasonably clean state. I find that the Landlords have failed to prove and quantify this aspect of their claim, which is dismissed.

Finally, the Landlords seek the cost of picking up dog feces from the backyard. The Tenants admit that they could not clean the backyard fully due to their being snow

covering portions of the yard. Section 37 of the *Act* does not permit tenants to avoid their obligation to clean the rental unit, including the yard in this case, at the end of the tenancy. In other words, the weather and snow are not relevant and is no excuse. I find that the Tenants breached their obligation under s. 37 to pick up the dog feces. The Landlords provide an invoice for cleaning the dog feces at $70.00. I find that this amount is excessive given the extent of the issue based on the photographs provided to me by the Landlords, which appear to be isolated to two small areas of the yard. The Landlords are under an obligation to mitigate their damages, which in this case would mean not needlessly incurring excess expense. In this instance, I find that the Landlords have failed to do so. Given this, I do not permit this portion of their claim.

The Landlords have failed to properly set out or prove their monetary claims. They are dismissed without leave to reapply in their entirety.

Policy Guideline #17 states the following with respect to the retention or the return of the security deposit through dispute resolution:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
    - a landlord's application to retain all or part of the security deposit; or
    - a tenant's application for the return of the deposit.

    Unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

As the Landlord has retained the security deposit of $500.00, I order that it be returned to the Tenants.

Conclusion

I dismiss the Landlords monetary claims without leave to reapply.

I find that the Landlords are not entitled to the return of their filing fees. I dismiss their claims under s. 72 of the *Act* without leave to reapply.

Pursuant to ss. 38 and 67, I order that the Landlords pay $500.00 to the Tenants for the return of the security deposit.

It is the Tenants obligation to serve the monetary order on the Landlords. If the Landlords do not comply with the monetary order, it may be filed by the Tenants 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: November 1, 2022

Residential Tenancy Branch