



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL FFL**

Introduction

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

- a monetary order for compensation for monetary loss or other money owed from the Tenants pursuant to section 67; and
- authorization to recover the filing fee for the Application from the Tenants pursuant to section 72.

The Tenants (“MD” and “JW”) did not attend this hearing. I left the teleconference hearing connection open until 2:00 pm in order to enable the Tenants to call into this teleconference hearing scheduled for 1:30 pm. The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding (“NDRP”). I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord stated she served the NDRP and her evidence (“NDRP Package”) on each of the Tenants by registered mail on May 2, 2022. The Landlord submitted the Canada Post tracking numbers for service of the NDRP Packages on each of the Tenants to corroborate her testimony. The Landlord stated MD provided her with his mother’s address as the Tenants’ forwarding address. The Landlord submitted an email from the male Tenant dated May 1, 2020 in which he states mail can be forwarded to the address the Landlord stated she used for service of the NDRP Packages on the Tenants. The Landlord also submitted a photo the Landlord stated was the Tenants’ recreational vehicle parked in front of the house of JD’s mother. I find, based on the undisputed testimony of the Landlord, that each of the Tenants were served with the

NDRP Package. Pursuant to section 90 of the Act, I find the Tenants were deemed to have been served with the NDRP Package on May 7, 2022.

The Landlord stated she did not receive any evidence from the Tenants for this proceeding.

Issues to be Decided

Is the Landlord entitled to:

- a monetary order for compensation for monetary loss or other money owed by the Tenants?
- recover the filing fee for the Application from the Tenants?

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 Landlord submitted into evidence a copy of a tenancy agreement dated November 15, 2015 between the Landlord and the Tenants. The Landlord stated the tenancy commenced on December 1, 2015, on a month-to-month basis, with rent of \$1,250.00 payable on the 1st day of each month. The Tenants were required to pay a security deposit of \$625.00 and a pet damage deposit of \$625.00 by November 16, 2015. The Landlord acknowledged the Tenants paid the security and pet damage deposits and that she is holding them in trust for the Tenants. Based on the foregoing, I find there was a residential tenancy agreement between the Landlord and Tenants and that I have jurisdiction to hear the Application.

The Landlord submitted into evidence the move-in condition inspection reports performed on November 26, 2015 and the move-out condition inspection report performed on May 1, 2020. Both of the inspection reports are signed by the Landlord and Tenants. The condition move-out inspection report indicated that numerous items were dirty. The Landlord confirmed most of the rental unit was dirty when the parties performed the move-out condition inspection. The move-out condition inspection documents numerous deficiencies in the cleanliness of the rental unit. In the move-out condition inspection report, the Tenants agreed to the deduction of \$625.00. The

Landlord submitted 59 photos that document the condition of the rental unit when the Tenants vacated the rental unit. The Landlord stated some of the carpeting was stained by cat urine. The Landlord stated she performed the cleaning with a friend because she was caring for her another person who was living upstairs in the residential property and she needed to avoid contact with people during the COVID-19 pandemic.

The Landlord stated she was seeking \$1,100.00 for cleaning costs for the rental unit and for \$1,250.00 for loss of rental income. The Landlord stated she rented the rental unit to new tenants on June 1, 2020 for \$1,250.00 a month.

Analysis

Rule 6.6 of the RoP states:

6.6 The standard of proof and onus of proof

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. 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.

Based on Rule 6.6, the onus to prove his case, on a balance of probabilities, is on the Landlord.

Sections 7 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.

- (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.
- 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.

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:

- 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.

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).

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 Landlords must provide sufficient evidence that the four elements set out in PG 16 have been satisfied.

1. *Landlord's Claim for Cleaning Expenses*

Sections 23(1), 24(1), 24(2), 35(1) through 35(5), 36(1), 36(2) and 38(1) through 38(8) of 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.

- 24(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord has complied with section 23 (3) *[2 opportunities for inspection]*, and
 - (b) the tenant has not participated on either occasion.
- (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*
- (a) *does not comply with section 23 (3) [2 opportunities for inspection],*
 - (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.*
- 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.
- 36(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
 - (b) the tenant has not participated on either occasion.
- (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.*
- (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36(1) *[tenant fails to participate in end of tenancy inspection]*.
- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
 - (a) the director has previously ordered the tenant to pay to the landlord, and
 - (b) at the end of the tenancy remains unpaid.

- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (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.
- (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.
- (8) For the purposes of subsection (1) (c), the landlord must repay a deposit
 - (a) in the same way as a document may be served under section 88 (c), (d) or (f) [*service of documents*],
 - (b) by giving the deposit personally to the tenant, or
 - (c) by using any form of electronic
 - (i) payment to the tenant, or
 - (ii) transfer of funds to the tenant.

[emphasis in italics added]

The Landlord provided copies of the move-in and move-out conditions inspection reports that were signed by the Landlord and Tenants. As such, the Landlord complied with the provisions of sections 23(4) and 35(2) of the Act. The Landlord provided a copy of the email dated May 1, 2022 in which the Tenants provided their forwarding address. Pursuant to section 38(1) of the Act, the Landlord had until May 16, 2022, being 15 days after the date the Landlord received the Tenants' forwarding address. The records of the Residential Tenancy Branch indicate the Landlord made the Application on April 20,

2022. As such, the Landlord made the Application after the expiry of the 15-day period required by section 38(1) of the Act. The Tenants consented to the Landlord retaining \$625.00 from the deposits held by the Landlord. The Tenant's consent did not specify whether the \$625.00 was to be taken from the security deposit or the pet damage deposit. Regardless, the Landlord was required to handle the remaining deposits of \$625.00 in accordance with the Act. As such, the Landlord was required to make an application for dispute resolution to claim against the deposits within 15 days of receiving the Tenants' forwarding address on May 1, 2020. As the Landlord did not comply with section 38(1), the Landlord is required to pay the Tenants double the amount of the security and pet damage deposit, or both, as applicable, pursuant to section 36(6)(b) of the Act. As the Tenants consented to the Landlord retaining \$625.00 from the deposits, I find the Landlord must pay \$1,250.00 to the Tenants, being double the portion of the deposits the Tenants did not consent to the Landlord retaining.

Although section 36(6)(a) of the Act extinguished the Landlord's right to make a claim against the security and pet damage deposits for a claim for damages, I find a claim for cleaning a rental unit is not extinguished. As such, the I find the Landlord is entitled to make a claim against the deposits for cleaning the rental unit.

Section 37 of the Act states

- 37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
 - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (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.

[emphasis in italics added]

Residential Tenancy Policy Guideline 1 ("PG 1") provides clarification on the responsibilities of a landlord and tenant regarding maintenance, cleaning, and repairs of residential properties. PG 1 states in part:

[...]

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. *The tenant is generally*

responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.... An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

[...]

CARPETS

[...]

4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

[...]

INTERNAL WINDOW COVERINGS

[...]

3. 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 carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

[...]

5. The tenant is expected to clean the internal window coverings at the end of the tenancy regardless of the length of the tenancy where he or she, or another occupant smoked in the premises.

[...]

WINDOWS

[...]

2. The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony doors, windows and tracks during, and at the end of the tenancy The landlord is responsible for cleaning the outside of the windows, at reasonable intervals.

[...]

MAJOR APPLIANCES

1. At the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.
2. If the refrigerator and stove are on rollers, the tenant is responsible for pulling them out and cleaning behind and underneath at the end of the tenancy. If the refrigerator and stove aren't on rollers, the tenant is only responsible for pulling them out and cleaning behind and underneath if the landlord tells them how to move the appliances without injuring themselves or damaging the floor. If the appliance is not on rollers and is difficult to move, the landlord is responsible for moving and cleaning behind and underneath it.

[...]

FIREPLACE, CHIMNEY, VENTS AND FANS

[...]

2. The tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it.
3. The tenant is required to clean the screen of a vent or fan at the end of the tenancy.

[...]

WALLS

[...]

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

FURNACES

[...]

2. The tenant is responsible for cleaning floor and wall vents as necessary.

[...]

The Landlord stated she was claiming \$1,100.00 for cleaning the rental unit after the Tenants vacated the rental unit. The Landlord stated the Landlord did the cleaning with a friend because she was caring for her another person who was living upstairs and she needed to avoid contact with people during the COVID-19 pandemic. The Landlord stated the \$1,100.00 was calculated on the basis of \$50.00 per hour for two people for 25 hours. The Landlord provided copies of the signed move-in and move-out inspection

reports performed on November 26, 2015 and May 1, 2020 respectively. The move-out inspection report documented that many items in the rental unit were dirty or worse. The Landlord submitted 59 photos of the rental unit to demonstrate the Tenants did not reasonably clean the rental unit. I have reviewed the photos and find that the condition was not left in a reasonably clean condition as required by section 37(2)(a) of the Act and PG 1. Some of the pictures revealed:

- filthy carpeting throughout the rental unit
- some sections of the carpeting are stained from pet urine
- the lower portion of a curtain were covered in pet hair
- filthy vinyl flooring around door entry
- dirty doors and walls
- dirty light switches and covers and thermostat covers
- dirty sliding door frame and track
- dirty cupboards and cabinets in kitchen and bathroom
- dirty washer
- dirty oven
- filthy toilet and walls behind and beside toilet
- numerous cat feces under the refrigerator
- dirty sides of refrigerator and range
- dirty windows and window frames
- dirty vertical and horizontal venetian blinds
- dirty heater baseboards and covers
- filthy bathroom light fixture

I find it would reasonably take two people 25 hours to clean the rental unit. I find a charge of \$25.00 per hour per person to be reasonable, particularly since the Landlord has not claimed for cleaning supplies to clean the rental unit or use of equipment to clean the carpeting. Based on the undisputed testimony of the Landlord, and the evidence she submitted, I find the Landlord has demonstrated, on a balance of probabilities, that she is entitled to recover \$1,100.00 for cleaning the rental unit.

Section 1 of the Act defines pet damage deposit as:

"pet damage deposit" means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security *for damage to residential property caused by a pet*, but does not include

- (a) a security deposit, or
- (b) a fee prescribed under section 97 (2) (k) *[regulations in relation to fees]*;

[emphasis in italics added]

Based on the undisputed testimony of the Landlord, and from the pictures of the carpeting in the rental unit, I find the carpeting was damaged by urine stains. As such, I find the Landlord is entitled to seek the application of part of the Tenant's pet damage deposit towards the cleaning of the rental unit pursuant to section 38(7) of the Act. As such, pursuant to section 67 of the Act, I order the Tenants to pay the Landlord \$1,100.00 for cleaning the rental unit.

2. Landlord's Claim Loss of Income

The Landlord stated she rented the rental unit to new tenants on June 1, 2020 for \$1,250.00 a month. The Landlord did not submit copies of any advertisements to seek new tenants for the rental unit nor did the Landlord provide a copy of the tenancy agreement with the new tenants. As noted earlier, the Landlord claimed for 25 hours for cleaning the rental unit by her and a friend. I find that cleaning the rental unit should not have taken more than two weeks from the date the Tenants vacated the rental unit. In the absence of evidence to demonstrate the Landlord acted reasonably to minimize that damage or loss by renting the rental unit as soon as possible, I find the Landlord is not entitled to claim for one month's loss of rental income. Based on the undisputed testimony and evidence of the Landlord, I find the Landlord is entitled to claim for one-half of a month's loss of rental, being one-half of \$1,250.00 or \$625.00. As such, I find the Landlord has established that she is entitled to recover \$625.00 from the Tenants for loss of rental income. Based on the foregoing, I order the Tenants to pay the Landlord \$625.00 pursuant to section 67 of the Act,

As the Landlord has been partially successful in the Application, I award the Landlord \$100.00 for the filing fee of the Application pursuant to section 72 of the Act,

Conclusion

The Tenants are ordered to pay the Landlord \$575.00 calculated as follows:

Purpose	Amount
Compensation for Cleaning Rental Unit	\$1,100.00
Compensation for Loss of Rental Income	\$625.00
Filing Fee of the Application	\$100.00
Less Double the Tenants' Security and Pet Damage Deposit that Tenants' did not Consent to Landlord keeping (\$1,250.00 - \$625) x 2 = \$1,250.00)	-\$1,250.00
Total:	\$575.00

The Landlord must serve the Monetary Order on the Tenant as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in 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: January 24, 2023

Residential Tenancy Branch