



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for a monetary order in the amount of \$2,845.44 for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenants' security deposit towards any amount owing, and to recover the cost of the filing fee.

The landlord and the tenants, SB and RB (tenants) attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenants confirmed that they received the landlord's documentary evidence and had the opportunity to review that evidence prior to the hearing. Given the above, I find the tenants were served in accordance with the Act. The tenants also confirmed that they did not serve any evidence on the landlord in response to this application.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 1, 2017 and converted to a month-to-month tenancy after January 31, 2020. The parties agreed that the tenancy ended on May 2, 2022 when the rental unit keys were returned by the tenants.

The tenants paid a security deposit of \$1,000 initially and the parties confirmed that the amount was increased by \$500 to \$1,500 as a security deposit when the parties mutually agreed to increase rent from \$2,000 to \$3,000 after the tenancy began. As a result of landlord claiming towards the \$1,500, the parties were asked about when the landlord received the tenants' written forwarding address. The tenant testified that they sent the landlord their written forwarding address via text on May 11, 2022, which they confirmed on their phone during the hearing. The landlord was asked if they agreed with that date, and the landlord replied that they trust that information as stated by the tenant. The landlord filed their application for dispute resolution on May 31, 2022.

The landlord's monetary claim for \$2,845.44 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. User rates/utilities Feb 1, 2022 to April 28, 2022	\$302.48
2. User rates/utilities Sept 17, 2021 to Feb 1, 2022	\$490.26
3. Garage door repair	\$1,952.70
4. Filing fee	\$100
TOTAL	\$2,845.44

Regarding items 1 and 2, the tenant agreed during the hearing after reviewing the utilities bills that the tenants owed \$302.48 for item 1 and \$490.26 for item 2. As a result of the above, the parties reach a mutually settled agreement regarding items 1 and 2, which I will address later in this decision.

Regarding item 3, the landlord has claimed \$1,952.40 for a damaged garage door. The landlord presented a quote from March 12, 2021 indicating that the garage door could be replaced with labour and taxes included for \$1,698. The landlord was asked why they were claiming for \$1,952.40 as a result, and the landlord testified that they are relying on the email submitted from their agent, WH (agent) which reads as follows:

Here is last years quote to replace the garage door entirely not including painting and the bottom quote is the replace the 2 damaged garage for panels. Probably add 10-15% as prices have increased. Ifr you need an exit figure I can call Island Overhead door and they can reissue current quote

[reproduced as written]

When asked about the age of the home, the landlord stated that they purchased the home new in either 2008 or 2009.

The landlord presented a photo of the garage door they stated was damaged as follows:



The landlord submitted a copy of the incoming Condition Inspection Report (CIR) but failed to submit a copy of the outgoing CIR. The landlord instead provided a letter from their agent under the title "Move_out_inspection_with_Agent.pdf." The landlord was asked if they completed the outgoing column/portion of the CIR and they indicated they had. The landlord was asked why they did not submit the outgoing portion of the CIR

with their application when they are seeking damages to the rental unit garage. The landlord could not recall why the outgoing CIR was not submitted in evidence and claimed that the completed outgoing CIR was before them during the hearing and was not submitted for my consideration.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Firstly, I will address the tenants' security deposit of \$1,500, which has accrued interest of **\$3.21** during the tenancy. As a result, I find the landlord is holding a total security deposit including interest of **\$1,503.21**. The landlord confirmed they trust the tenant's testimony that on May 11, 2022, the tenants texted the landlord and the landlord received the tenants' written forwarding address. The landlord filed their application on May 31, 2022. During the hearing, the landlord confirmed that they continue to hold the tenants' full security deposit. Section 38(1) of the Act applies and states the following:

Return of security deposit and pet damage deposit

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.**
[emphasis added]

As the landlord continues to hold the tenants' full security deposit, I find the landlord had 15 days from May 11, 2022 to file their application, which was Thursday, May 26, 2022. As the landlord waited to file their application on May 31, 2022, I find the landlord breached section 38(1) of the Act. Given the above, section 38(6) of the Act applies and states:

38(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.**
[emphasis added]

Given the above, I have no discretion in this matter and I find the landlord **must** pay the tenants **\$3,000**, which is double the \$1,500 security deposit for violating section 38(1) of the Act.

Given the above, I **caution** the landlord not to breach section 38(1) of the Act in the future and to either return the security deposit in full and then make their claim or at the very least, file their application within 15 days of the receipt of the written forwarding address.

As items 1 and 2 were resolved by way of a mutual agreement of the parties, and pursuant to section 63 of the Act, I grant the landlord **\$302.48** for item 1 and **\$490.26** for item 2, which combined total **\$792.74**.

Regarding item 3, the landlord has claimed \$1,952.70 to replace a damaged garage door. RTB Policy Guideline 40 – *Useful Life of Building Elements* (Guideline 40) states

that the useful life a garage door is 10 years. Therefore, based on Guideline 40, I find that the garage door has already exceeded its useful life as the landlord confirmed that they purchased the home new in either 2008 or 2009. Using the latter year, 2009, I find that after 2019, the garage door is depreciated by 100% and as a result, I grant the landlord **\$0.00** for this portion of their claim as the garage door was already fully depreciated by the time the damage occurred. As a result, this item is dismissed without leave to reapply as the garage door has been fully depreciated as indicated above.

As the landlord's application has some merit, I grant the landlord **\$100** for the recovery of the cost of the filing fee pursuant to section 72 of the Act.

Given the above, I find that the tenants are owed **\$3,000** less the combined amounts of items 1 and 2 and the filing fee, which total **\$892.74**, results in the amount owing from the landlord to the tenants of **\$2,107.26**. In addition to that amount, I add the security deposit interest of **\$3.21**, which I find results in a total amount owing by the landlord to the tenants of **\$2,110.47**. The tenants are granted a monetary order pursuant to section 67 of the Act in the amount of **\$2,110.47**.

Conclusion

The only successful portion of the landlord's claim is by mutual agreement, with a majority being dismissed without leave to reapply.

The security deposit of \$1,500 has been doubled to \$3,000 owing by the landlord to the tenant as described above.

The filing fee is granted to the landlord.

The landlord owes a balance to the tenants in the amount of \$2,110.47, which includes interest of \$3.21 on the tenants' security deposit. The tenants are granted a monetary order in the amount of \$2,110.47. Should the landlord fail to immediately pay the tenants, the tenants may serve the monetary order with a demand letter and then apply to the Provincial Court (Small Claims Division) for enforcement of the monetary order.

The landlord is reminded that they can be held responsible for all costs related to the enforcement of the monetary order including court costs.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlord as necessary.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 10, 2023

Residential Tenancy Branch