Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The landlord applied on June 21, 2022 for:

- compensation for damage caused by the tenant, their pets, or their guests to the unit or property, requesting to retain the security and/or pet damage deposit;
- compensation for monetary loss or other money owed, requesting to retain the security and/or pet damage deposit; and
- recovery of the filing fee.

The hearing was attended by the landlords and the tenants. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

1) Are the landlords entitled to compensation for damage caused by the tenants, their pets, or their guests to the unit or property, in the amount of $1,422.19?
2) Are the landlords entitled to compensation for monetary loss or other money owed, in the amount of $847.50?
3) Are the landlords entitled to the filing fee?

Background and Evidence

While I have considered all the documentary evidence presented and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

The parties agreed on the following facts. The tenancy began September 1, 2021 and ended on March 31, 2022; rent was $1,695.00, due on the first of the month; the tenants paid a security deposit of $847.50, and a pet damage deposit of $847.50 which the landlords still hold.

A copy of the tenancy agreement is submitted as evidence, and states that the tenancy was for a fixed term ending on August 31, 2022.

The parties agreed that a move in inspection was completed. The landlord testified that they did not know if a copy of the report was given to the tenants because a property management company did the move in with the tenants. The tenants testified they did not receive a copy of the move in inspection report.

The parties agreed that both parties participated in a move out inspection and that the tenants were given a copy of the inspection report. The parties agreed that the tenants vacated the unit on March 27, 2022 and provided a forwarding address in writing on the same day. The parties agreed that the tenants consented in writing for the landlords to keep the security deposit and pet damage deposit.

The landlords submitted the condition inspection report into evidence. It is dated August 31, 2021 for the move in inspection and March 27, 2022 for the move out inspection. The report indicates that at the beginning of the tenancy the tenants agreed that the report fairly represented the condition of the unit. The report is signed by one of the tenants for both the move in and move out.

Compensation for damage

Regarding their claim for $1,422.19 in damages, the landlords' application indicates they are requesting compensation for:

- move out fee from strata for improper move: $100.00
- cleaning: $492.19
- carpet cleaning to remove stains: $170.00

- flooring repair: $660.00 ($450.00 for labour, $210.00 for materials)

During the hearing, the tenants said they were willing to pay the landlord $100.00 for the strata fee and $170.00 for the carpet cleaning from their deposits.

The landlords testified that though the tenants said they had cleaned the unit, on the move out inspection, the landlords found the unit was not clean. The landlords testified that the closets had not been swept and cleaned, there was food on one of the walls, and the inside of the dishwasher was not clean. They submitted a receipt from a cleaning company for $492.19 for 3.75 hours of cleaning. Also submitted by the landlord are photos of areas of the unit that were not clean at the end of the tenancy, including the dishwasher, the oven, the fridge, a wall, the washer and dryer, a closet, a storage room, and a bathroom sink and tub.

The tenants testified that they cleaned at the end of the tenancy, though the landlord thought otherwise. The tenants did not provide testimony in response to the photos of the unit at the end of the tenancy submitted by the landlords. The tenants testified that the unit was not clean when they moved in.

Regarding the $660.00 for flooring repair, the landlords testified the work has not been done yet, but that they obtained a quote of $450.00 for the labour due to water damage, submitted as evidence, and have submitted a screenshot from a home supply store, showing the cost of similar flooring. The landlords seek $210.00 for materials.

The landlords testified that there is water damage to the floor in the living room, which is not noted on the move in inspection report; the landlords submitted that if it had been present at the beginning of the tenancy it would have been noted on the report. The landlords submitted that the move out condition report records water damage to the living room floor.

The landlords submitted that the quote to get the whole floor done was $7,000.00, but they are not seeking that amount from the tenants as the tenants have a child.

The tenants testified that they are not responsible for the damage to the living room floor as it was there when they moved in. The tenant testified they had the property manager take a photo of the damage during the move in inspection, but that during the move out inspection with the landlords, the landlords texted the property manager to ask about photos of the floor from the beginning of the tenancy, but the property manager replied that she did not have the photos.

The landlords testified that the text from the property manager said that she had checked her email but had no record of photos of living room floor damage from the move in inspection.

The condition inspection report states that at the beginning of the tenancy there was a “chip in the laminate” of the living room floor. The move out column states “hard floor water damage.”

The move out section of the report states that the tenant agreed that the report represented the condition of the rental unit, and that the tenant agreed to the landlords retaining all of the security and pet damage deposits for: “hiring cleaners, fixing floor water damage in living room, cleaning carpets, replacing burnt out lights.”

The tenants testified that though tenant CC signed the move out inspection report stating that the tenant agrees to the deduction from the deposits for the cost of water damage to the living room floor, he in fact did not agree, and only signed it because he was in a hurry.

Compensation for monetary loss

The landlords testified they are seeking $847.50 in liquidated damages, as provided by section 6 of the tenancy agreement addendum, because the tenants broke the one year fixed-term tenancy agreement. The landlord testified they have re-rented the unit and seek to recover the property manager’s fee to find a new tenant.

The tenants submitted that they did not think the landlords used a property manager to find a new tenant. The landlord testified that it was the same property manager who had posted ads for the unit that the tenants had submitted as evidence.

Analysis

Section 38(1) states:

> **38**(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (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.

Section 38(6) states:

(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.

The parties agreed that the tenancy ended on March 31, 2022, and that the tenants provided the landlord with their forwarding address in writing on March 27, 2022.

The landlords made this application on June 21, 2022.

As the landlords did not repay in full or make a claim against the security and pet damage deposits within 15 days of the date the tenancy ended, I find that in accordance with section 38 of the Act, the landlords are required to pay the tenants double the amount of the security and pet damage deposits: $3,390.00. The tenants are entitled to a monetary award of $3,390.00.

Section 24 of the Act provides that the right of a landlord to claim against the security and pet deposits for damages is extinguished if they do not give the tenant a copy of the completed inspection report at the beginning of the tenancy.

The landlord testified they did not know if the tenants were given a copy of the move in inspection report, because a property management company did the move in with the tenants. The tenants testified they did not receive a copy of the move in inspection report.

Therefore, based on the evidence before me, I find the landlords failed to provide a copy of the move in condition report to the tenants as required by the Act.

Consequently, I find that the landlords have extinguished their right to make a claim against the security and pet damage deposits for damages.

As such, I do not consider the tenants' agreement that the landlords can retain any portion of the deposits as compensation for damage to be valid. The landlords must discharge their evidentiary burden to show it is more likely than not that they are entitled to this compensation due to the tenants' breach of the Act.

Compensation for damage

Regarding their claim for $1,422.19 in damages, the landlords' application indicates they are requesting compensation for:

- move out fee from strata for improper move: $100.00
- cleaning: $492.19
- carpet cleaning to remove stains: $170.00
- flooring repair: $660.00 ($450.00 for labour, $210.00 for materials)

During the hearing, the tenants said they were willing for the landlords to retain from their deposits $100.00 for the strata fee and $170.00 for the carpet cleaning. Accordingly, I order that they pay the landlords these amounts.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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.

Section 37 of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean.

The tenants testified that they cleaned the unit at the end of the tenancy. The landlords testified that the unit was not left clean, and submitted photos in support, along with a receipt from a cleaning company for $492.19 for 3.75 hours of cleaning.

Based on the landlords' documentary evidence, I find the tenants did not leave the unit reasonably clean at the end of the tenancy as required by section 37, and that the landlords are entitled to $492.19 for cleaning costs.

Section 32(3) of the Act states that a tenant must repair damage to the rental unit caused by the actions or neglect of the tenant.

Section 21 of the *Residential Tenancy Act Regulation* (the Regulation) states 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.

Therefore, despite the tenants' testimony that the damage to the living room floor was present at the beginning of the tenancy, pursuant to the Regulation, I rely on the condition inspection report as the evidence of the state of repair of the rental unit. I cannot say why, if the water damage existed at the start of the tenancy, and the tenants noticed it and wanted it photographed by the property manager, they would have signed the move in report without recording the water damage. The move in report notes only a chip in the laminate, and was signed by tenant JC, who agreed that the report represented the condition of the unit at the beginning of the tenancy.

The landlords have submitted documentary evidence in support of their claim for $660.00 to repair the damage to the floor, and have noted that they have not sought from the tenants the quoted $7,000.00 it would cost to replace the whole floor.

Based on the evidence before me, and on a balance of probabilities, I find that the tenants caused the water damage and the landlords are entitled to recover from the tenants $660.00 to repair damage to the living room floor.

Monetary loss

The landlords testified they are seeking $847.50 in liquidated damages, as provided by the tenancy agreement addendum, because the tenants broke the one year fixed-term tenancy agreement. The landlord testified they seek to recover the property manager's

fee to find a new tenant. The tenant submitted that they did not think the landlords used a property manager to find a new tenant, but provided no evidence in support.

The parties agreed that the tenancy began September 1, 2021 and that the tenants vacated the unit on March 27, 2022. The tenancy agreement submitted as evidence states that the tenancy was for a fixed term ending on August 31, 2022.

Pursuant to section 45 of the Act, a tenant cannot end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the tenancy. I find the tenants breached the Act and the tenancy agreement by vacating on March 27, 2022.

As explained in Policy Guideline 4, a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The damages should be a genuine pre-estimate of the loss at the time the contract is entered into. The tenants agreed to the clause when they signed the tenancy agreement and the tenants have not proven on a balance of probabilities that the landlords waived this clause when the tenants vacated the unit before the end of the fixed term.

In this case the landlords' amount is equivalent to the value of the security deposit or half a month's rent. This sum is not extravagant and was a reasonable estimate of the costs the landlord would incur if the tenancy ended earlier than the end date of the fixed term. I find the landlord is entitled to $847.50 in liquidated damages.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. As the landlords were successful in their application, I grant their claim for reimbursement of the filing fee of $100.00.

In total, the landlords are entitled to a monetary order of $2,369.69, calculated as follows:

Cleaning	$492.19
Strata fee	$100.00
Carpet cleaning	$170.00
Damage to living room floor	$660.00
Liquidated damages	$847.50
Filing fee	$100.00
Total	**$2,369.69**

This amount must be offset against the monetary award I have granted in the tenants' favour for $3,390.00, representing the return of double their security and pet damage deposits.

Accordingly, I order the landlords to pay the tenants $1,020.31 ($3,390.00 - $2,369.69).

Conclusion

The tenants are granted a monetary order in the amount of $1,020.31. The monetary order must be served on the landlords. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 12, 2023

Residential Tenancy Branch