Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Tenants: MNSDS-DR, FFT
Landlord: MNDL-S, FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The landlord requested:

- a monetary order for money owed or compensation for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants requested:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenants were duly served with the Applications and evidentiary materials.

Preliminary Issue—Amendment to Landlord's Application for Compensation or Money Owed

Although the landlord had applied for a monetary order of $400.00 in their initial claim for losses or money owed associated with this tenancy, the landlord submitted an updated Monetary Worksheet on March 20, 2023, increasing the claim to $411.19.

Rule 4.6 states the following:

***As soon as possible**, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.*

***In any event, a copy of the amended application and supporting evidence must be received by the* by the respondent(s) not less than 14 days before the hearing.**

Residential Tenancy Policy Guideline #23 sets out of the sequence of events that must be followed in amending an application, including the following steps:

The following sequence of events must be followed in amending an application for dispute resolution:

1. the applicant completes an Amendment to an Application for Dispute Resolution (form RTB-42);

2. the applicant submits this form and a copy of all supporting evidence on the Dispute Access site or to the Residential Tenancy Branch directly or through a Service BC office to allow service upon each other party as soon as possible, and in any event to each other party not less than 14 days before the date of the hearing;

3. the Residential Tenancy Branch or Service BC accepts the Amendment to an Application for Dispute Resolution form submitted in accordance with the Rules of Procedure;

4. the applicant serves each respondent with a copy of the Amendment to an Application for Dispute Resolution form with all supporting evidence as soon as possible, and in any event, so that it is received not less than 14 days before the date of the hearing; and

5. the arbitrator, at the hearing, considers whether the principles of administrative fairness have been met through the amendment submission process and whether any party would be prejudiced by accepting the amendment(s), determines whether to accept the amendment(s) and records the determination in a written decision.

A party must be prepared to provide proof of service of the Amendment to an Application for Dispute Resolution and supporting evidence for each respondent.

No amendments were properly filed by the landlord. These rules ensure that a respondent is aware of the scope of the hearing and are prepared to respond, if they chose to do so.

Given the importance, as a matter of natural justice and fairness, that the respondent must know the case against them, this hearing proceeded with the landlord's original monetary claim of $400.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for losses or damage?

Are the tenants entitled to the return of their security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of both applications and my findings around it are set out below.

This tenancy fixed-term tenancy began on April 16, 2022. Monthly rent was set at $2,000.00, payable on the first of the month. The tenants paid a security deposit in the amount of $1,000.00, $600.00 of which was returned to the tenants.

The tenants submit that they sent their forwarding address by registered mail on June 27, 2022, and only received $600.00 back on July 12, 2022. The tenants applied for the return of the remainder of their security deposit plus recovery of the filing fee.

The landlord submitted a monetary claim in order to recover their losses associated with the tenancy as listed below:

Item	Amount
Toilet flush valve repair	$50.00
Closet door hinge repair	50.00
Sofa bed support wire	50.00
5 hours deep cleaning	250.00
Total Monetary Order Requested	**$400.00**

The landlord submitted receipts dated June 20, 2022 from a handyman service for the above expenses.

The landlord submits that they rented their fully furnished apartment to the tenants for two months starting on April 16, 2022. The landlord testified that the two parties had arranged to meet at 2:00 p.m. on Saturday, April 16, 2022 as the landlord had a flight later that day. The landlord submitted a copy of the messages between the parties confirming the time of the key exchange and walk through. At 1:39 p.m., the landlord received a text message from the tenants that they would not make it on time. The landlord passed the keys to a neighbour as they had to leave for their flight, and took a video of the suite to document its condition. The landlord submitted the video in their evidentiary materials. The landlord also submitted a move-in and move-out inspection report filled out by the landlord, and which the landlord confirmed was not provided to the tenants as the landlord did not have internet access at their destination.

The landlord submits that the neighbour was not an agent of the landlord, and this was only done as a favour due to the last minute change by the tenants. The landlord submits that the tenants wanted to move out early, and returned the keys to the landlord's neighbour three days before the landlord was to return from their trip. The landlord testified that their flight was delayed, and they received the keys back on June 16, 2022 through their neighbour. The landlord testified that they discovered that the tenants had failed to leave the apartment in reasonably clean and undamaged condition. The landlord testified that the toilet flusher was not working properly, the sofa bed was damaged, and the closet door was off the hook and hanging, with damage to the ceiling. The landlord testified that the tenants also left food in the refrigerator and cabinets that were mouldy, and smelled of garbage. The landlord submitted photos of the suite, including photos of the food that was left behind. The landlord testified that they had no choice but to hire a cleaner and handyman to perform repairs.

The tenants testified that they returned the keys on June 11, 2022. The tenants dispute the landlord's claims, and noted that the landlord did not provide them with a copy of the move-in or move-out inspection report. The tenants submitted a video they took upon move-out, as well as photos they took at the beginning and end of the tenancy. The tenants argued that their photos showed that the landlord left unwashed dishes, hair, and various items in the suite before they had left. The tenants also deny causing damage to the suite.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant had caused damage and losses in the amounts claimed by the landlord.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. Although I accept that the landlord was unable to complete the move-in inspection with the tenants as the tenants were late, I find that the landlord knew that they were on a flight that same day, and did not make prior arrangements as a contingency in case a situation did arise like this one. Furthermore, although the landlord did fill out an inspection report, the landlord failed to comply with section 18(1)(a) of the Residential Tenancy Regulation by providing the tenants with a copy of the move-in inspection report within 7 days after the inspection report was completed, and 18(1)(b) by providing the tenants with move-out inspection report within 15 days. I am also not satisfied that the landlord had complied with section 35(2) of the *Act* by offering the tenants at least 2 opportunities to attend the move out inspection together.

In this case, the landlord attempted to support the condition of the rental unit through a video and photos. Although the landlord submitted photos and a video to show the "before" and "after" condition of the suite, in light of the disputed testimony and claims, I find that the landlord's evidence falls short in proving that the damage was indeed caused by the tenants during this tenancy, and which exceed regular wear and tear.

As noted in *Residential Tenancy Policy Guideline* #40 *"when applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.*

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement."

As noted above, and in Policy Guideline #40, the onus is on the landlord to support the age and maintenance of an item, especially when the item has exceeded its useful life. Although I am satisfied that there was damage to the items referenced in this application, I am unable to ascertain how much of this damage can be attributed to wear and tear, and the general age of the item rather than the neglectful or intentional actions of the tenants. I am not satisfied that the landlord proved, on balance of probabilities, that the tenants had caused damage in the amounts claimed by the landlord. The landlord's application for repairs is therefore dismissed without leave to reapply.

In consideration of the landlord's monetary claim for cleaning of the rental unit, I am satisfied that the evidence clearly shows that the tenants failed to leave the rental unit in reasonably clean condition. This is especially evident by the fact that the tenants had clearly left unconsumed food in the refrigerator despite vacating the rental unit on June 11, 2022, knowing that the landlord would not return until June 15, 2022 when the tenancy was to end. Although the tenants refuted the landlord's claim for cleaning, arguing that the suite was not properly cleaned when they took possession, this fact does not relieve the tenants of their obligations to return the rental unit to the landlord in at least the same state that it was provided to them. In this case, I am satisfied that the tenants had unreasonably left perishable food items behind, knowing that the consequence would be that the landlord would be left with the responsibility of cleaning and sanitizing the areas where the food was left behind. I am satisfied that the landlord

had provided sufficient evidence to support their loss associated with hiring a cleaner. Accordingly, I allow the landlord's monetary claim for cleaning as claimed.

The tenants filed an application for the return of their security deposit. Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

The tenants provided their forwarding address by registered mail on June 27, 2022. In accordance with sections 88 and 90 of the *Act,* the landlord is deemed to have received the package 5 days later. As the landlord filed their application within the required time limit, the tenants are not entitled to compensation under section 38 of the *Act*.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit plus applicable interest in satisfaction of the monetary awards granted to the landlord. As per the RTB Online Interest Tool found at http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html, over the period of this tenancy, $2.61 is payable as interest on the tenants' security deposit from March 13, 2022 when the two parties had signed the tenancy agreement, until the date of this decision, May 2, 2023. The remaining portion shall be returned to the tenants.

I allow both parties to recovery the filing fees paid for their applications. As both parties obtained the following offsetting monetary awards for the filing fee, no order will be made in regards to the recovery of their filing fees.

Conclusion

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit plus applicable interest in satisfaction of the monetary awards granted to the landlord. I issue a Monetary Order in the amount of $**152.61** in the tenants' favour for the return of the remaining portion of their security deposit.

Item	**Amount**
Cleaning	$250.00
Less Security Deposit Held plus applicable interest	-402.61
Total Monetary Order to Tenants	**$152.61**

The tenants are provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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.

The remainder of the landlord's application is dismissed without leave to reapply.

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: May 02, 2023

Residential Tenancy Branch