# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

## DECISION

## Introduction

This hearing dealt with the landlords' Application for Dispute Resolution (Application) filed under the *Residential Tenancy Act* (the "Act") on March 1, 2023, seeking:

- compensation for damage to the rental unit;
- compensation for monetary loss or other money owed;
- recovery of the filing fee; and
- authorization to retain the security deposit against the amounts owed.

This hearing also dealt with the tenants' Application filed under the Act on March 25, 2023, seeking:

- the return of double the amount of their security deposit, less any amounts already returned; and
- recovery of the filing fee.

Tenants B.C. and L.C. attended the hearing for the tenants.

Landlord S.L. attended the hearing for the landlords.

## Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The parties acknowledged service of each others Proceeding Packages and raised no concerns regarding service. I therefore found the parties duly served with the Proceeding Packages in accordance with the Act. The hearing of both Applications therefore proceeded as scheduled.

## Service of Evidence

The parties acknowledged service of each others documentary evidence and raised no concerns regarding service. I therefore found the parties duly served with the documentary evidence before me in accordance with the Act. The documentary evidence was therefore accepted for consideration.

## Issue(s) to be Decided

Are the landlords entitled to compensation for damage to the rental unit?

Are the landlords entitled to compensation for monetary loss or other money owed?

Are the landlords entitled to retain the security deposit? If not, are the tenants entitled to double its amount?

Are the parties entitled to recovery of their respective filing fees?

## Background and Evidence

The parties agreed that the tenancy ended on April 30, 2022, but disagreed about why. The tenants stated that the landlord gave them written notice at the end of March 2022, that the tenancy was ending on April 30, 2022, and argued that the landlord therefore ended the tenancy. The landlord disagreed, stating that the letter referred to by the tenants was not a notice to end tenancy, but instead a reiteration that the fixed term of the agreement was coming up, and an attempt to ascertain whether the tenants intended to give notice or continue the tenancy. The landlord therefore argued that it is the tenants who ended the tenancy when they moved out at the end of April 2022 without having first given proper notice.

The parties agreed that:

- rent was $1,800.00;
- a $900.00 security deposit was paid;
- $269.25 of this deposit was returned to the tenants at the end of the tenancy;
- the balance of the security deposit was retained by the landlords and has been claimed against in their Application;
- a move-in condition inspection was not scheduled or completed by the landlords at the start of the tenancy;
- a move-in condition inspection report was not completed;
- a move-out condition inspection was not scheduled or completed by the landlords at the end of the tenancy;
- a move-out condition inspection report was not completed; and
- the landlords received the tenants' forwarding address, in writing, on February 16, 2023.

The landlord stated that they did not know a move-in condition inspection and report were required at the start of the tenancy and the tenants did not ask for them. The landlord stated that they also did not schedule a move-out condition inspection at the end of the tenancy, as they did not know that the tenant's were moving out. The tenants argued in response that the landlord knew the tenancy was ending as they served them with notice, and that despite returning the keys to the landlords before April 30, 2022,

the landlord never asked for or scheduled a move-out condition inspection, which was their responsibility.

The landlord stated that the pipe to the washing machine, which they believed to be one year old, leaked, and was replaced at a cost of $168.00. They stated that as the pipe was only one year old, and the tenants were occupying the rental unit at that time, the tenants must have damaged it. They therefore sought recovery of this amount from the tenants. The tenants denied damaging the pipe, stating that the plumber had advised them when it was inspected and replaced due to the leak that it had simply failed due to age. The tenants stated that the plumber estimated the pipe to be approximately 10 years old. As a result, the tenants denied any responsibility for the cost of replacing the pipe.

The landlord stated that in March of 2022 there were plumbing issues with the toilet, which cost $446.15 to resolve. They blamed the tenants for the need for the repairs stating that the tenants had occupied the rental unit for 11 months at that time. The tenants denied causing any damage to plumbing related to the toilet. They stated that when they noticed there was a leak, which smelled, they reported this to the landlord. They hypothesized that the issue was due to the age and deterioration of the plumbing.

The landlord acknowledged replacing the exterior sewer pipes, due to their age, at the recommendation of the plumber. When asked, they disclosed that the house was built in 1959 and that to their knowledge, the pipes and plumbing had never been replaced.

The landlord accused the tenants of breaking the handle of the microwave, which they stated was less than one year old at the time, and sought $600.75 for its replacement and installation. The tenants argued that the handle of the microwave was already loose at the start of the tenancy, and that although it broke, this constitutes reasonable wear and tear. They also called into question the landlord’s assertion that the microwave was less than one year old.

Finally, the landlords also sought $30.00 in cleaning costs for a light fixture. The landlord stated that it was dirty and oily, and that they had been quoted between $20.00-$30.00 for it to be cleaned. The landlord stated that they ultimately cleaned it themselves, and sought $30.00 in compensation for the 30 minutes it took them to clean it. Although the tenants stated that they had cleaned the light fixture, they acknowledged that it was not “perfectly” clean. However, they questioned why the landlords did not advise them it needed further cleaning before doing it themselves.

## Analysis

### Are the landlords entitled to compensation for monetary loss or other money owed?

Although the landlord argued that the tenants should be responsible for $1,800.00 in lost rent for May of 2022, I disagree. In a letter dated March 25, 2022, and signed March 28, 2022, the landlords advised the tenants that they were not renewing their lease, and that the tenancy was therefore ending on April 30, 2022. The tenants had signed a fixed-term tenancy agreement with an end date of April 30, 2022. The tenants stated that it was their belief that the tenancy was over as of April 30, 2022, as set out by the landlords in their letter, and that no action was therefore required by them.

Based on the above, I find that the tenancy ended on April 30, 2022, because the landlords ended it, even though they were not entitled to do so in that manner under the Act. Regardless, the landlords gave written notice that the tenancy was over effective April 30, 2022, and the tenants complied. I am satisfied that if the landlords had not done so, the tenancy would have continued as allowable under the Act on a month-to-month basis.

I therefore find that not only was it impermissible for the landlords to end the tenancy on April 30, 2022, as they did, but also that any loss of rent suffered for May of 2022, is therefore their own fault. Further to this, I find the landlord's argument at the hearing that they were waiting for the tenants to give 30 days notice in response to their letter illogical and absurd. I am satisfied that no reasonable person having read the letter from the landlords would interpret it as anything other than a notice to end the tenancy from the landlords, effective April 30, 2022. I am also satisfied that no reasonable person would have thought that the notice to end tenancy from the landlords required the tenants to issue their own notice to end tenancy in response. As a result, I dismiss the landlords' claim for $1,800.00 in lost rent for May of 2022 without leave to reapply.

### Are the landlords entitled to compensation for damage to the rental unit?

Although the landlord argued that the tenants are responsible for $168.00 in plumbing costs for a leaky washing machine pipe, $446.15 in plumbing costs for blocked and leaky sewer pipes, and $600.75 for replacement and reinstallation of a microwave, I disagree. Nothing in the plumbing invoices indicates that the plumbing work was required due to the actions or neglect of the tenants, and the tenants denied causing the issues. No move-in condition inspection report was completed showing the condition of the rental unit at the start, and testimony from the landlord regarding the age of the

building and the need for the exterior sewer pipes to be replaced, satisfies me on a balance of probabilities that the plumbing issues were likely the result of age and reasonable wear and tear, rather than the actions of the tenants. I therefore dismiss the landlords' claim for recovery of $614.15 in plumbing and repair costs without leave to reapply.

Although the landlord stated that the microwave was less than a year old, no proof of the age of the microwave was submitted and no move-in condition inspection report was completed showing the state of the microwave at the start of the tenancy. Further to this, the tenants stated that the microwave handle was already loose at the start of the tenancy. As a result, I find that the landlords have failed to satisfy me that the microwave handle was broken through misuse of the microwave by the tenants, rather than reasonable wear and tear. As a result, I therefore dismiss their claim for recovery of $600.75 in microwave replacement costs without leave to reapply.

Although the tenants stated that they cleaned the light fixture, they acknowledged that it was not perfect and in the pictures the landlords submitted it appears significantly unclean. Tenants are required under section 37(2)(a) of the Act to leave a rental unit reasonably clean at the end of the tenancy. I do not find that this light fixture was left reasonably clean.

The landlord stated that it took them 30 minutes to clean the light fixture, and sought $30.00 in compensation. A quote from a cleaning company was submitted for my consideration, wherein the estimated charge for this job was $20-$30.00. As the landlord is not a professional cleaner and it took them only 30 minutes to clean the light fixture, I find that $30.00 is an unreasonable amount to charge. I therefore award them only $10.00, half of the lowest amount quoted for professional cleaning.

**Are the landlords entitled to retain the security deposit? If not, are the tenants entitled to double its amount?**

I am satisfied based on the affirmed testimony of the parties at the hearing, and the documentary evidence before me, that:

- the landlords received the tenants' forwarding address in writing on February 16, 2023;
- the tenancy ended on April 30, 2022;
- neither move-in nor move-out condition inspections were scheduled or completed by the landlords as required;
- condition inspection reports were not completed by the landlords as required.

Based on the above, I find that the landlords extinguished their right to claim against the security deposit, but only for damage, pursuant to sections 24(2) and 36(2) of the Act. As the landlords extinguished their rights in relation to the security deposit first, by failing to properly schedule and complete a move-in condition inspection at the start of the tenancy, I find that the tenants cannot later be found to have extinguished their right to the return of the deposit under section 24(1) or 36(1) of the Act, pursuant to Residential Tenancy Policy Guideline (Policy Guideline) #17.

Despite the above, the landlords were still entitled to seek retention of the security deposit for matters unrelated to damage, which they did, provided they complied with section 38(1)(d) of the Act. The landlords filed their Application seeking retention of the security deposit on March 1, 2023, which is almost one year after the end of the tenancy and 13 days after receipt of the tenants' forwarding address. The Application also relates, at least in part, to cleaning costs, which I find not count as damage. I therefore find that the landlords complied with section 38(1) of the Act and that neither section 38(6) of the Act nor section 39 of the Act apply. As a result, I dismiss the tenants' claim for double the amount of their security deposit under section 38(6) of the Act, without leave to reapply.

Despite the above, the landlords are entitled to only $10.00 for cleaning costs. The remainder of their claims have been dismissed without leave to reapply. The landlords currently hold $641.85 in trust, which represents the $630.75 retained from the original $900.00 security deposit amount, plus $11.10 in interest owed on that amount.

Pursuant to section 72(2)(b) of the Act, the landlords are permitted to withhold the $10.00 owed to them by the tenants from this amount. The balance of $631.85 must be returned to the tenants. Pursuant to section 67 of the Act, I therefore grant the tenants a Monetary Order in the amount of $631.85, and I order the landlords to pay this amount to the tenants.

**Are the parties entitled to recovery of their respective filing fees?**

As both parties were largely unsuccessful in their respective Applications, and there was therefore mixed success, I decline to award the parties recovery of their respective filing fees.

## Conclusion

Pursuant to section 72(2)(b) of the Act, the landlords are permitted to withhold $10.00 from the $641.85 in deposits and interest currently held in trust, for the amount owed to them by the tenants for cleaning costs. The remaining balance is to be returned to the tenants as set out below.

Pursuant to section 67 of the Act, I grant the tenants a Monetary Order in the amount of **$631.85**. The tenants are provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, it 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 Branch under Section 9.1(1) of the Act.

Dated: November 24, 2023

Residential Tenancy Branch