



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, RPP, MNDL-S, FFL

Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* ("Act") The landlord requested:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

The tenant requested:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- 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 its application from the tenant, 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. The parties acknowledged receipt of evidence submitted by the other.

Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?
 Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?
 Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenants' testimony is as follows. The tenancy began on August 1, 2015 and ended on October 31, 2017. The tenants were obligated to pay \$1300.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$600.00 security deposit. I address the landlord's claims and my findings around each as follows. The tenant testified that the heat didn't work for at least six months each year of the two years he lived there. The tenant testified that the he and the landlord had an arrangement that if the tenant provided Wi-Fi, his rent would not go up. The tenant testified that his rent did go up and that the landlord was making money by selling the Wi-Fi access to others in the home. The tenant testified that he pressure washed the property at the landlords request and that she didn't pay him. The tenant testified that even though he didn't give his forwarding address in writing to the landlord at any time, he should still be entitled to the doubling provision under the Act. The tenant testified that he adamantly opposed the landlords claim. The tenant testified that he left the home better than when got it. The tenant testified that no walk thru was conducted at move in or move out and doesn't understand why the landlord is making her claims.

The tenant is applying for the following:

1.	No heat	\$2400.00
2.	Wifi and Illegal Rent Increase	2565.25
3.	Pressure Wash	400.00
4.	Return of Double the Deposit (\$600.00)	1200.00
5.	Filing Fee	100.00
6.		
	Total	\$6665.25

The landlord gave the following testimony. The landlord adamantly disputes this claim. The landlord testified that it's peculiar that the tenant decided to file for all of these deficiencies on the day that he moved out. The landlord testified that they would have been content to just walk away and not pursue their claim, but the tenants aggressiveness has forced them into this hearing. The landlord testified that the tenant

left a lot of damage but they don't have the money to make the repairs. The landlord testified that the amount that she has actually spent is what she is seeking today. The landlord testified that the tenant painted the walls with a colour that doesn't match the original requiring the suite to be repainted. The landlord testified that the tenant damaged the blinds, window screens and burners on the stove to the point where they all had to be replaced. The landlord testified that the suite was left dirty and that the carpets had to be cleaned and that a portion of the property had to be power washed where the tenant had made a mess.

The landlord is applying for the following:

1.	Paint	\$2500.00
2.	Stove Parts	250.00
3.	Window screens	196.00
4.	Blinds	676.00
5.	Carpet Cleaning and pressure washing	189.00
6.	Filing Fee	100.00
	Total	\$3911.00

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below. It is worth noting that the landlord was extremely disorganized when presenting her claim. She was unable to answer basic questions or provide answers' to the claim she put forth or able to explain the amount she noted on the application and what she was seeking on the day of the hearing. Much of her claim lack clarity or logic. The landlord presented her evidence in a very disjointed and vague fashion. In addition, the landlord would add and subtract items from her claim during the hearing and would alter the amount she was seeking. The landlords' testimony and documentation were in conflict through much of the hearing, when it was; I considered the sworn testimony in coming to her monetary calculations. Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the

Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Firstly, I address the landlords' application and my findings as follows:

Paint – \$2500.00

The tenant testified that the paint was old and that he did not cause any damage beyond wear and tear. The landlord testified that the paint was two years old but did not provide sufficient evidence to support that or that the tenant caused damage beyond wear and tear. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of her claim and I therefore dismiss this portion of their application.

Stove parts \$250.00, Window Screens \$196.00, Blinds \$696.00.

The landlord did not provide sufficient evidence that the tenant caused damage beyond wear and tear. The tenant testified that the items were in poor condition when he moved in but were given back to the landlord in similar condition. As noted above, without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of her claim and I therefore dismiss this portion of their application.

Carpet Cleaning and Power Washing - \$189.00

The tenant acknowledged that he did not shampoo the carpets at move out. Residential Tenancy Policy Guideline 1 states that a tenant must shampoo the carpets at move out and that they must leave the suite in a reasonably clean condition. I find that the tenant did not do either and that he left an area of the property that he had sole use of dirty that required the landlord to power wash, accordingly; I find that the landlord is entitled to \$189.00.

As the landlord has had some success, they are entitled to the recovery of the \$100.00 filing fee. The landlords' total entitlement is \$289.00.

Finally, I address the tenants' application and my findings as follows.

No Heat - \$2400.00.

The tenant testified that he seeks \$200.00 per month for a total of 12 months of no heat over two years. The tenant testified that the landlords did not repair it. The landlords testified that the tenant advised them on two occasions of the lack of heat, to which they responded by having a repairman come and fix it. The landlord testified that they responded each and every time that the tenant had an issue. The tenant testified that he didn't want to complain about this while he was living there because he was afraid that they would "kick me out". I find that the tenant has not satisfied the four factors as listed above, specifically; he has failed to show how the landlord was negligent or reckless and based on the tenants own inaction, he has failed to demonstrate how he tried to mitigate the loss. Based on the above, I dismiss this portion of the tenants' application.

Wi-Fi and Illegal Rent Increase – \$2565.25

The tenant testified that he and the landlord negotiated a deal whereby he would provide Wi-Fi and that the rent would never go up. The tenant testified that the landlord was making money by selling Wi-Fi to others in the home at a cost of \$1714.25 to the tenant over the duration of the tenancy. The tenant testified that the landlord raised the rent after one year which was in breach of their agreement. The tenant testified that he incurred an additional \$851.00 in rent.

The landlord testified that the rent was originally \$1300.00 but she agreed to make it \$1250.00 for the first year and that the tenant would provide Wi-Fi access to her. The

landlord testified that the rent increase was given after one year in accordance with the regulations and on the approved form. The landlord testified that she never promised that the rent would remain at the same level nor did she make money off of the Wi-Fi.

The tenant testified that he didn't have any documentation to support his claim, but that it was a verbal arrangement. Based on the lack of documentation, the disputing testimony of the landlord, and on a balance of probabilities, the tenant has not satisfied me of any of the four factors listed above and I therefore dismiss this portion of his application.

Pressure Washing – 400.00

The tenant testified that the landlord asked him to pressure wash the exterior area of the home. The landlord adamantly denies this claim. The landlord testified that they never asked him to do that and that she had hired her own company to clean. The tenant testified that he didn't have any documentation to support his claim, but that it was a verbal arrangement. Based on the lack of documentation, the disputing testimony of the landlord, and on a balance of probabilities, the tenant has not satisfied me of any of the four factors listed above and I therefore dismiss this portion of his application.

Return of Double the Deposit - \$1200.00

The tenant requests the return of double his security deposit. The tenant testified that he should be given double since the landlord did not return the original deposit within fifteen days of moving out. The tenant testified that he did not provide the landlord with his forwarding address in writing at any time prior to filing an application. The tenant testified that when he served the landlord the Notice of Hearing package that was the first time he provided his forwarding address. Section 38 of the Act address this issue as follows

Section 38 (1) says that 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,

As the tenant did not provide his forwarding address except as part of his application which resulted in the landlord not having the option to file an application or return the

deposit as allowed by the Act, the doubling provision was not triggered, and therefore he is not entitled to the return of double his deposit.

The tenant has not been successful in any portion of his application.

Conclusion

The landlord has established a claim for \$289.00. I order that the landlord retain \$289.00 from the deposit in full satisfaction of the claim. The landlord is to return the remaining \$311.00 to the tenant. I grant the tenant an order under section 67 for the balance due of \$311.00. This order may be filed in the Small Claims 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: May 24, 2018

Residential Tenancy Branch