



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, FF (Tenant A.S.'s Application)
 MNSD, FF (Tenant M.L.'s Application)
 MND, MNSD, MNDC, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Application for Dispute Resolution filed by the Tenant, A.W., he sought an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, monetary compensation from the Landlord and recovery of the filing fee. In the Application for Dispute Resolution filed by the Tenant, M.L., he sought return of double the security deposit paid and recovery of the filing fee. In the Landlord's Application for Dispute Resolution she sought monetary compensation from both Tenants authority to retain the Tenants' security deposit, and recovery of the filing fee.

The hearing of the Landlord's Application and the Tenant, A.W.'s Application was originally set for hearing by teleconference on October 30, 2017. All three parties called into the hearing. The hearing on October 30, 2017 did not complete and was adjourned to February 5, 2018. The hearing could not proceed on that date and was adjourned to March 15, 2018.

The Tenant M.L.'s Application was set for April 13, 2018.

In the interim, the Residential Tenancy Branch joined the Tenant, M.L.'s Application to be heard with the Tenant A.W.'s Application and the Landlord's on March 15, 2018. At the hearing on March 15, 2018, the Tenant M.L. testified that he was not informed his application would proceed on March 15, 2018.

At the hearing on March 15, 2018 the Tenants also advised that they received the Landlord's evidence package the week before the hearing; as such they were not able to respond to the Landlord's claims.

The Landlord testified that she sent the packages to the Tenants on February 24, 2018 and provided the tracking numbers for the packages. Those numbers are included on the cover page of this my Interim Decision.

At the hearing on June 4, 2018, the Landlord testified as follows:

1. In September 2017 two registered letters were sent to the Tenants and were returned.
2. In February 2018 a second attempt to send letters to each Tenant was sent by registered mail.
3. In May 2018 the Tenant, M.L., refused to receive the Landlord's evidence and the mail was returned to sender.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and provides in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

While this matter was delayed due to the Tenants' claims they did not receive the Landlords' evidence, I find that the Tenants were in fact duly served with the Landlord's evidence and I proceeded with the hearing on June 4, 2018.

Both parties were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The parties confirmed that the Tenants vacated the rental unit at the end of August 2017 such that the Tenants no longer sought an Order canceling the Notice.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Are the Tenants entitled to monetary compensation from the Landlord?
3. What should happen with the Tenants' security deposit?
4. Should either party recover the filing fee?

Background and Evidence

The Tenant M.L. testified as follows. He confirmed that he was one of the original tenants having signed a tenancy agreement June 27, 2009. The tenancy agreement was provided in evidence indicated the tenancy began June 1, 2009. The original tenants were noted as J.M. and M.L. M.L. stated that in 2013 or 2014 his former girlfriend, J.G., moved into the rental unit. The tenancy agreement was amended at that time to include J.G.'s name. M.L. confirmed that in 2014 or 2015 J.M. moved out of the rental unit. M.L. further confirmed that in approximately February 2017 A.W. moved into the rental unit.

M.L. stated that he paid a security deposit in the amount of \$900.00.

M.L. confirmed that he and A.W. moved out of the rental unit on August 31, 2017. M.L. further confirmed that the Landlord did a move in condition inspection when he first moved in, but failed to do one when he moved out. He claimed that they "went through" the rental unit when he moved out, but she did not complete a move out inspection form as required.

M.L. stated that he gave his forwarding address to the Landlord by sending her a letter near the end of August 2017.

M.L. confirmed that A.W. sought monetary compensation in the amount of \$2,800.00 calculated as follows:

return of rent paid for August 2017	\$2,100.00
cost to reproduce keys	\$35.00
lost wages for five days	\$600.00
filing fee	\$100.00
TOTAL CLAIMED	\$2,835.00

M.L. stated that A.W. sought return of the August 2017 rent as the Landlord cut off their fobs after July such that they had limited access to the rental unit.

M.L. also stated that A.W. sought compensation for lost wages as they missed work to accommodate the Landlord's requests to enter the rental unit for inspections. He stated that Landlord entered the rental unit without giving proper 24 hours' notice on August 2, 3, 4, 13, 22 and 24. M.L. confirmed that he was not there when the inspections occurred but he was informed the Landlord was being very aggressive and was very angry. M.L. stated that she took advantage of A.W. because he is an immigrant and she told him that she could enter the rental unit every three nights without giving notice.

In his Application for Dispute Resolution the Tenant, M.L., claimed return of double the security deposit and pet damage deposit claiming he paid a total of \$1,800.00.

In response to M.L.'s testimony, the Landlord testified as follows. She confirmed that she continues to hold a security deposit in the amount of \$900.00. She denied receiving any pet damage deposit.

The Landlord stated that M.L. had five FOBs and that at no time was his access to the rental unit impacted. She stated that she believed that M.L. moved out before August 31, 2017 and that in fact he moved out in June or July 2017.

She further stated that when she first met the Tenant, A.W., in April of 2017, she was not aware if he was living at the rental unit or not. She stated that she was receiving letters from the strata as they were worried that too many people were living in the rental unit. She confirmed that she also told A.W. that she needed to know who was living in the rental unit as she needed all occupants to sign a Form K. She stated that in June of 2017 A.W. showed her his driver's license at which time she noticed his address was the rental unit, suggesting that he had moved in much sooner.

She stated that she tried to call M.L. but he was in Japan as his girlfriend was having a baby. She stated that A.W. kept telling her that M.L. was coming back in 2 weeks or 3 weeks. She further stated that in June, July of 2017 and August 2017 she observed as many as five people living in the rental unit. She stated that she kept waiting to hear from M.L. about who was living there, but he was in Japan.

The Landlord confirmed that A.W. signed a tenancy agreement indicating his tenancy began July 1, 2017, although she reiterated that she believed he moved in much sooner.

In support of her claim for \$6,000.00 for compensation for damage to the rental unit, the Landlord testified that the rental unit was “really damaged and vandalized” at the end of the tenancy. She stated that although she tried to make a claim, her insurance company refused to cover the claim because they determined the condition was a direct result of Tenants’ vandalism.

The specifics of the Landlord’s claims are as follows:

- **Garburator:** the Landlord testified that the garburator was damaged as a result of a piece of chain, possibly a necklace and a piece of plastic. She claimed the cost of its repair and confirmed it was replaced in 2011 such that it was only 6 years old when the tenancy ended.
- **Stove:** the Landlord claimed the stove was not cleaned at the end of the tenancy and was left damaged. She stated there was a scratch on the door and claimed that when she opened it the glass fell out and the whole front door crashed. She testified that the stove was replaced because they could not replace the glass. She stated that the stove was original to the rental unit.
- **Fridge:** the Landlord testified that the fridge was so filthy that there were worms between the seals. She stated it could not be cleaned and had to be replaced. She stated that the fridge was original.
- **Dishwasher:** the Landlord testified that the door was bent and appeared to have been kicked. She stated that the dishwasher was original.
- **Venetian blinds:** the Landlord claimed that all the blinds were damaged. She stated that the thread was broken and the blinds could not be repaired. She

stated that the blinds were replaced in 2008 such that they were 9 years old when the tenancy ended.

- **Light fixtures:** the Landlord testified that at the end of the tenancy light bulbs were missing and the fixtures were damaged. The Landlord confirmed that they had to replace the light fixtures which she also noted were original.
- **Gas fire place:** the Landlord testified that the gas fire place switch was broken at the end of the tenancy. She claimed that the gas person or electrician who attended said it was tampered with. Two bars were twisted so it could not put it back together. She also noted that the fire place was not cleaned. The Landlord confirmed that the gas fireplace was original.
- **Doors:** the Landlord testified that two doors (the master bedroom and one to the bathroom) were damaged due to M.L. fighting with his girlfriend. She stated that M.L. replaced the doors but they were not painted and they were hollow, not solid wood like the other doors such that they do not match. She confirmed that the doors were original.
- **Front door:** the Landlord testified that the front door was damaged because M.L. lost his key so he broke the door. She confirmed that the front door was original.
- **Sliding mirrored closet door:** the Landlord testified that the sliding mirrored closet door in the bedroom was cracked. Apparently, M.L.'s girlfriend told her that M.L. broke the glass door and then replaced it with a door from another unit that was being renovated. The Landlord originally didn't notice but when she went to close it she could see yet another crack. She confirmed that the sliding door was original.
- **Bathroom sink:** The Landlord claimed that the bathroom sink was cracked and leaking. The sink had to be replaced as well as the faucet because when the sink was repaired the faucet fell off. The Landlord confirmed that the sink was original.
- **Shower head:** the Landlord also claimed that the shower head was also broken and required complete replacement. She confirmed that the showerhead was also original.

The Landlord stated that the cost to repair these items was more than \$12,000.00. She stated that she claimed \$6,000.00 as she was not sure what it was going to cost her when she filed for dispute resolution, but the total cost was actually \$12,000.00.

As an example, she noted that the bathtub was cracked. She claimed that the Tenants installed a soap holder and when that was removed it was discovered that it was covering up a crack. As well, after they moved out she discovered that the shower head was broken and there were leaks under the sink in the bathroom.

The Landlord stated that the Tenant and his girlfriend, M.L. were constantly fighting and damaging the rental unit. She stated that it was so bad that the neighbour moved out because she simply couldn't take it.

The Landlord stated that the rental unit was built in approximately 2003 such that the majority of the items noted as original were approximately 14 years old when the tenancy ended.

The Landlord stated that the condition of the rental unit was not a result of normal wear and tear, as after the Tenant moved out, he let the Tenant, A.W. move in who in turn operated an AirBnb which resulted in significant damage. She said that it was a one bedroom unit, and at one point in time she arrived and there were six people in the rental unit. She stated that even the dining room was used as a bedroom at one point.

In response to the Landlord's claim, the Tenant, M.L. testified as follows.

He stated that he moved out of the rental unit on "probably a month before they got kicked out" at the beginning of August. He stated that he did not operate an AirBnB or short term rental, he also stated that neither did the Tenant. A.W.

M.L. admitted to damaging the doors, but stated that he replaced the doors with hollow doors which he claimed were there when he moved in.

M.L. stated that he also damaged the wall but again claimed he fixed them.

M.L. provided a video of the walk through which he claimed was done at the end of August when they gave the Landlord the keys. He stated that the video does not show the damage the Landlord claims existed.

M.L. stated that the building was built in 1997 such that when they moved out it was already 20 years old, not 15 as claimed by the Landlord.

M.L. stated that he believed that all the appliances were original such that again they were 20 years old.

M.L. claimed that he cleaned and fixed the rental unit when he moved out. He stated that he left because he was having a child in another country and left for three months. He stated that the last time he was in the rental unit was the beginning of August.

M.L. stated that when they left there was no damage. He stated that he cleaned and fixed everything, painted some of the walls and otherwise did what he could to get back the \$1,800.00 he claimed to have paid as a security deposit and pet damage deposit.

M.L. also stated that when they did the walk through, which was an informal walk through, not a proper move out condition inspection, the Landlord did not point out any damage to the rental unit.

A.W. also testified. He stated that the rental unit was very clean during the tenancy. He stated that the rental unit was not damaged as claimed by the Landlord and claimed to be surprised by the photos submitted by the Landlord.

A.W. confirmed that he moved out at the end of August and at that time did a walk through inspection with the Landlord.

A.W. stated that he did not have an AirBnB or short term rental as the Landlord alleged. He stated that there was a unit in front of theirs which had a lot of random men coming to the unit, and he suggested that renter was involved in the sex trade. Evidence submitted by the Tenants suggest this may have been the case.

A.W. stated that he has friends, and they would stay 1-2 days, but not month to month as claimed by the Landlord.

The Landlord stated that the Tenants' claim that they did a video walk through with her at the end of the tenancy is not true. She further stated that if they did such a video, she does not know when they did it.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I will first deal with the Landlord's claim.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The Landlord seeks \$6,000.00 in compensation for damage to the rental unit which she claims was caused by the Tenants. She testified that the actual cost of repairing the unit was significantly higher than she originally estimated/claimed stating it was likely as much as \$12,000.00. In support of her application she provided photos of the damage, as well as receipts for the cost of the repairs and communications from others confirming the condition.

I find that the supporting evidence confirms the Landlord's testimony that the rental unit was not cleaned or repaired as required by the *Act* and the *Regulations*.

The Tenant M.L. stated that the last time he was in the rental unit was the beginning of August 2017. The Tenant A.W. confirmed that he moved out at the end of August 2017 and participated in a walk through inspection with the Landlord. As such, M.L.'s testimony regarding the condition of the rental unit at the end of the tenancy is of limited probative value.

The Landlord also submitted a copy of the move out condition inspection report completed on August 31, 2017. While this report is not signed by the Tenants, the Tenants' forwarding addresses are noted on the document. The contents of the report are consistent with the Landlord's testimony, the photos of the rental unit, the invoice from the cleaners and the invoices submitted by the Landlord.

An invoice submitted by the Landlord from D.C. Services details the cleaning that was required as of September 2, 2017. This invoice indicates the rental unit was "very dirty" and required four hours of cleaning with four people for a total of \$537.60 with tax.

Additionally, the Landlord submitted an email from M.M., a realtor who confirms he was present when the tenancy ended and during the move out inspection. He writes that the rental unit was dirty and damaged.

The evidence also shows that the Landlord attempted to make an insurance claim based on the condition of the rental unit. This claim was denied as the insurer found the damage was tenant's vandalism and a deliberate action on the tenant's part. Any damage which was not deliberate was found to be "wear and tear over the many years that [the Landlord has] owned [the] rental unit".

The Tenants claim they took a video of the rental unit at the time of the move out inspection, which does not depict the damage noted in all of the Landlord's evidence. The Landlord stated that no such video was taken on the date of the inspection, nor in her presence. She suggested the Tenants took the video at another time, prior to the end of the tenancy and before the damage occurred. I find it highly unlikely the Tenants took this video at the end of the tenancy as they claim. There is no mention of this video in any correspondence between the parties, nor does M.M., reference such videotaping in his email. I find it likely that the video was taken at some time prior to the end of the tenancy. I am therefore not persuaded this video accurately depicts the condition of the rental at the end of the tenancy.

Where the evidence of the Tenants and the Landlord's conflicts regarding the condition of the rental unit at the end of the tenancy, I prefer the evidence of the Landlord. I found her to be consistent in her testimony as to the condition of the rental. As noted, I also find the preponderance of evidence submitted supports her version of events.

I will now address each claim as itemized on the Landlord's Monetary Orders Worksheet signed October 8, 2017.

I am unable, based on the evidence before me to ascertain the age of the rental unit. The Landlord stated it was built in 2003, the Tenants claimed it was built in 1997. In any case, it is clear the rental unit was not new when the tenancy ended, and was at least 14 years old. The Landlord testified that the majority of finishing and appliances were original, such that I find they were also at least 14 years old.

Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements provides in part as follows:

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.

Policy Guideline 40 also provides a table setting out the useful life of most building elements. Accordingly, for some items claimed, I have applied a discount based on the age of the item.

The Landlord claimed \$118.39 for the cost to repair the garburator. I find she has proven this claim and I award her the full **\$118.39** claimed.

The Landlord also claimed **\$537.60** for the cost to clean the rental unit. Based on the Landlord's testimony, the photos submitted, the invoice from the cleaners and the email from M.M., I find that the rental unit required extensive cleaning and I therefore find that the Landlord is entitled to the full amount claimed.

The Landlord also claimed **\$128.00** for the cost to repair the washing machine. I accept her testimony that the washing machine was damaged by the Tenants and I find she is entitled to this sum.

The Landlord also claimed the cost of \$459.11 to replace the sliding mirrored doors. As doors have a 20 year useful life span, I discount this amount by 70% such that I award the Landlord the sum of **\$137.33**.

The Landlord also sought the amount of **\$200.00** for the cost to replace the fobs. I accept her evidence that the Tenants did not return the fobs as required and I award her this sum.

The Landlord sought the sum of \$988.50 for the cost of plumbing and wall repair. I find that this amount must be discounted by 70% based on the age of the rental building and I therefore award her **\$296.55** for these repairs.

The Landlord also sought the sum of \$353.87 to paint the rental unit. As interior paint has a useful building life of four years, and this Tenancy was 8 years, I decline the Landlord's claim in this regard as I find she would have needed to paint in any case.

I find the \$2,962.77 claimed by the landlord for materials purchased at a hardware store must similarly be discounted. I find the Landlord is entitled to 30% of the amount claimed as I find some of these expenses may be deferred maintenance and I therefore award her **\$888.83**.

The Landlord claimed compensation in the amount of \$855.00 for replacement of the stove. I find that the stove was 14 years old at the time the tenancy ended. *Policy Guideline 40* provides that a stove has a useful life of 15 years. Accordingly, I discount the Landlord's claim of \$855.00 by 93% and award her **\$59.85**.

The Landlord claimed \$106.35 for the cost to replace the mirrored doors. As doors have a useful building life of 20 years, I discount her claim by 70% and award her **\$31.91**.

The Landlord also claimed the cost of registered mail and the cost of an airline ticket. These expenses are not recoverable under the *Residential Tenancy Act*.

I accept the Landlord's evidence that she was not able to rent the rental unit in September of 2017 due to its condition. However, she failed to provide any evidence of her attempts to re-rent the unit, or testimony as to the date it was occupied by a new

Tenant. I therefore find she has failed to prove she mitigated her losses and I therefore dismiss her claim for loss of rent.

The Tenants apply for compensation for loss of work, alleging they had to be at the rental unit when the Landlord performed suite inspections. I find they have failed to prove this claim and I therefore dismiss it in its entirety.

I also find the Tenants have failed to prove their claim for return of the August 2017 rent as I do not accept their testimony that the Landlord denied them entry to the rental unit for this month.

The Tenant, M.L., applied for return of double the security deposit pursuant to section 38 of the *Act*.

Section 35 of the *Act* mandates that a landlord and tenant must complete an inspection of the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon date.

While the Tenant M.L. was absent, find that the Landlord and the Tenant A.W. performed a move out condition inspection report in accordance with the *Act* and the *Regulations*.

I also find that the Landlord applied for dispute resolution within the 15 days required by section 38 of the *Act*. I therefore find the Tenants are not entitled to return of double their deposit.

The Tenant, M.L., alleged he paid both a security deposit of \$900.00 and a pet damage deposit of \$900.00. The tenancy agreements provided in evidence make no mention of a pet damage deposit. Further, when M.L. initially testified he stated that he paid a \$900.00 security deposit and did not claim to have paid any pet damage deposit. I therefore find the Tenants paid a security deposit of \$900.00.

As the Landlord has been substantially successful I award her recovery of the **\$100.00** filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$1,918.46** calculated as follows:

Cost to repair garburator	\$118.39
Cleaning costs	\$537.60
Washing machine repair	\$128.00
Discounted cost to replace sliding door	\$137.33
Cost to replace fobs	\$200.00
Discounted Plumbing costs	\$296.55
Discounted material costs	\$888.83
Discounted stove cost	\$59.85
Discounted cost to replace mirror	\$31.91
Filing fee	\$100.00
TOTAL AWARDED	\$1,918.46

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain the Tenants' \$900.00 security deposit towards the amounts awarded and I grant her a Monetary Order for the **\$1,018.46** owing. The Landlord must serve this Order on the Tenants as soon as possible. Should the Tenants fail to comply with this Order, the Order 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 Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 3, 2018

Residential Tenancy Branch