



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFL, MNDL-S

Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* (“Act”) the landlord applied for:

- a monetary order 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 tenants applied for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

July 9, 2018 -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. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

October 11, 2018 – The tenant was the only participant on this date. The hearing was adjourned to this date at the request of both parties to give them one further opportunity to make their final submissions and arguments; the tenant did. Although the landlords did not participate, each party had completed presenting their claim on the previous date. I am able to issue a decision despite the landlords not attending on this date. All

evidence was considered in making this decision. This was explained in great detail to the tenant and he advised that he understood.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damages and loss 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 for the return of a portion of their security deposit?

Background and Evidence

The tenant's testimony is as follows. The tenancy began on April 1, 2015 and ended on December 1, 2017. The tenants were obligated to pay \$1500.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$750.00 security deposit and a "\$160.00 or \$180.00" utility deposit. The tenant testified that written condition inspection reports were conducted at move in and moves out. The tenant testified that he left a forwarding address with the landlord "sometime in November 2017". The tenant testified that due to the anxiety in dealing with the landlords; he did not speak during the move out inspection and refused to sign the inspection report. RS requests the return of his deposits.

The landlords gave the following testimony. The landlords testified that the tenant only provided the \$750.00 security deposit as there wasn't a "utility deposit". RP testified that the tenant has not provided their forwarding address at any point. RP testified that the tenant will only give his work address. The landlords testified that the tenant left the unit extremely dirty with some minor damage throughout. RC testified that the tenant left garbage and personal items which he never came back to collect. RC testified that RS left a truck camper on the property and is still there even though he moved out eight months ago. RC testified that the tenant caused mildew damage to the bathroom window by not opening the window or using a shower curtain, did not maintain the property by shovelling snow or cutting grass as agreed to, failed to replace light bulbs, damaged the fridge light by using a regular light bulb, scratched floors throughout the home, broke the toilet paper holder, made cigarette holes in the deck, removed curtains and rods, left the unit dirty, broke the fridge handle, drilled holes in the kitchen counter and failed to remove his camper.

The landlord is applying for the following:

1.	Repair bathroom window	\$161.87
2.	E.J. Josay Snow Removal	575.00
3.	Walmart Light bulbs	39.05
4.	Fridge Repair	33.74
5.	Toilet Paper Holder, floor scratch kit	23.50
6.	Repair cigarette holes in deck	48.15
7.	Replace Curtains and rod	123.05
8.	L. Lagarde & Inas Cleaning	75.00
9.	West Kootenay Cleaning	1207.50
10.	Fridge Handle	12.22
11.	Arborite Repair	24.05
12.	Camper removal	250.00
13.	Filing Fee	100.00
14.	Minus Deposit	-750.00
	Total	\$1923.13

Analysis

The relationship between the parties is an acrimonious one. It was evident during the hearing the amount of hostility each party displayed towards one another.

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.

I address the landlords' claims and my findings as follows. The tenant disputed all aspects of the landlords claim.

Bathroom Repair \$161.87

The tenant testified that it's a bathroom and that mildew would of course build up. RC testified that she conducted the repair herself over a three day period where she treated, sanded, retreated, sanded and painted the window frame. RC testified that the tenant had neglected this area by not airing out the bathroom or at least clean it regularly. Based on the condition inspection report, photos, and testimony of RC, I find that the landlord has proven their claim on a balance of probabilities and is therefore entitled to \$161.87.

Snow Removal - \$575.00

RC and RP testified that when the tenant was having financial troubles with his business they lent him \$1000.00 in exchange that he maintain the pool, cut the grass and shovel snow while they vacation in Mexico for four months. RC testified that when they returned from Mexico they had a snow removal bill of \$575.00 that she feels the tenant should pay for. RS testified that it was a very generous loan and not a contract for him to maintain the property. RS testified that there was not a written or oral agreement that he would do any of the items the landlord claims. The landlords testified that they have documentation to support this claim; however, they did not submit it for this hearing. Based on the insufficient evidence before me, I dismiss this portion of their claim.

Items 3-12 listed above.

Although the tenant disputed these claims he provided little by way of testimony and stated that he was "at a loss as to what to say about this". The landlords have submitted extensive documentation including; photos, receipts, the condition inspection reports and their clear, concise and credible testimony. Based on the above I am satisfied that the landlords have provided sufficient evidence to support each of these claims, accordingly; the landlords are entitled to \$1998.13.

The landlords are also entitled to the recovery of the \$100.00 filing fee.

For absolute clarity, the tenant has not provided sufficient evidence of a "utility deposit" and I therefore find that the only deposit is the \$750.00 security deposit.

The tenant has not been successful in his application.

Conclusion

The landlord has established a claim for \$2098.13. I order that the landlords retain the \$750.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1348.13. 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: October 11, 2018

Residential Tenancy Branch