



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S MNRL-S MNDCT MNSD

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* ("the *Act*"), for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- Reimbursement of the filing fee pursuant to section 72.

This hearing also dealt with an application by the tenant for an order under the *Act* for:

- A monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. Each party acknowledged receipt of the other party's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67?

Background and Evidence

The parties submitted considerable evidence and testimony. I reference only the facts that are relevant to my decision herein.

The parties agreed that the tenancy agreement had a rent of \$1,659.00 per month, payable on the first day of each month. In addition, the parties agreed that the tenant gave the landlord a \$829.00 security deposit and a \$829.00 pet damage deposit. The landlord testified that the tenancy started in 2016 but the tenant testified that the tenancy started in 2015.

The landlord testified that the rental unit was the upstairs portion of a duplex. The landlord testified that the upstairs tenant and the lower level tenant both shared an entry hallway inside the house. The tenant occupied the upstairs rental unit.

The tenancy agreement stipulated that the tenant shared the cost of the utilities with the lower level tenants. The tenant was responsible for paying 65% of the electric utilities and the tenants in the lower level unit were responsible for paying 35% of the electric utilities.

The tenancy agreement allocated the water bills by the number of persons residing in the upstairs unit versus the lower level unit. The landlord testified that the tenant paid 75% of the water bill because the tenant had three people in the rental unit whereas only one tenant resided in the downstairs unit. The tenant testified that two tenants resided downstairs.

The parties completed a condition inspection report for move in on April 30, 2016. The condition inspection report on move in was signed by the tenant and the landlord.

The parties agreed that the landlord sold the property and the landlord issued A Two Month Notice For Landlord's Use of the Property (the "Two Month Notice") on October 20, 2018 with a move out date of December 31, 2018.

The landlord testified that the tenant sent a note dated November 3, 2018 which stated that the tenant would leave the property by November 15, 2018. The tenant provided her forwarding address in the note.

The landlord testified that the lower level tenant vacated the property on October 1, 2018. The landlord testified that there was no damage to the common area when the lower level tenant moved out. The landlord provided a copy of the condition inspection report upon move out for the lower level unit.

The landlord provided multiple photographs which he testified were taken at the end of the tenancy. The photographs appeared to show discoloration on hallway walls. The landlord testified that the discoloration was dog urine. However, the tenant denied this.

The landlord testified that the tenant did not pay rent for November 2018. The parties agreed that the tenant owed the landlord \$829.50 for unpaid rent for November 2018.

The tenant vacated the rental unit on November 15, 2018 and the parties completed the condition inspection report. The condition inspection report stated that there was dog urine in the 'Entry, Halls, Stairs" area. The tenant stated that she did not agree to the notation of dog urine in the condition inspection report. The tenant testified that she signed her name on the form indicating that, "...I do not agree that this report fairly represents the condition of the rental unit..." The landlord testified that he understood that the tenant was objecting to the dog urine notation on the condition inspection report.

The landlord testified that he sent the tenant a cheque dated November 20, 2018 for \$2,038.50 for repayment of the security deposit and pet damage deposit and for compensation of one month of rent regarding the Two Month Notice.

The landlord testified that the tenant still owed the landlord reimbursement for water and electric utilities. The landlord produced an unpaid water invoice \$109.92 dated December 7, 2018 for the period of September 8, 2018 to November 2, 2018.

The landlord produced an unpaid electricity invoice of \$243.00 dated September 11, 2018, for billing period August 9, 2018 to September 7, 2018. The landlord also claimed that the tenant owed the landlord compensation for unpaid electric utilities for October 2018 and November 2018. The tenant claimed that the electric utility invoice indicated a surplus of \$530.65 under the utility's equal payment plan and that she is entitled to a refund of this surplus.

Analysis

The parties agree on many aspects of their financial obligations to each other.

Specifically, the parties agreed that the tenant provided a security deposit of \$829.00, a pet damage deposit of \$829.00, and that the tenant was entitled to receive compensation of one month of rent, being \$1,659.00, pursuant to section 49 of the *Act* for the landlord's Two Month Notice.

Accordingly, the parties agree that the tenant is entitled to credits of \$3,317.00, as shown below in the following table:

Item	Credit to Tenant
Security deposit	\$829.00
Pet damage deposit	\$829.00
Compensation for Two Month Notice	\$1,659.00
Total credit to tenant	\$3,317.00

In addition, the parties also agreed that the landlord was owed unpaid rent of \$829.50 from November 1, 2018 to November 15, 2018. In addition, the parties agreed that the landlord was entitled a credit of \$2,039.50 for the payment by the landlord dated November 20, 2018. Accordingly, the parties agreed that the landlord was entitled to credits of \$2,866.00, as shown below in the following table:

Item	Credit to Landlord
Unpaid rent (November 1 to 15, 2018)	\$829.50
Payment by landlord (November 15, 2018)	\$2,038.50
Total credit to landlord	\$2,868.00

Accordingly, the net amount of the agreed tenant's credit and the agreed landlord's tenant is a net credit of \$449.00 owed to the tenant, as shown below in the following table:

Total credit to tenant	\$3,317.00
Less: Total credit to landlord	(\$2,868.00)
Net credit to tenant	\$449.00

Accordingly, based on the agreement of the parties, I find that the tenant is entitled to a net monetary award of \$449.00. However, the parties do not agree with each other regarding the either condition of the property at the end of the tenancy or responsibility for utility bills. I will examine each of these issues.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Paint Damage

The landlord claimed that the tenant damaged the paint on the entry hallway walls.

As set forth above, the first element that the landlord must prove to obtain compensation is the existence of damage or loss. The landlord attempted to prove the existence of the damage by referencing the condition inspection report which noted dog urine stains in the hallway area. *Residential Tenancy Regulation* section 21 states that a condition inspection report is evidence of the state of repair and condition of the rental unit. However, in this matter I do not find the notations of dog urine in the condition inspection report probative because both parties agreed that the tenant objected to this entry in the condition inspection report.

However, the photographs provided by the landlord show large areas of discoloration on the walls. Based upon these photographs, I am satisfied that the landlord has proven that the paint has been damaged.

Pursuant to section 32(1) of the *Act*, the landlord must also prove that the damaged was caused by the actions or neglect of the tenant. In this matter, the paint damage was located in a common area of the hallway area where lower level tenants also had access to.

However, the landlord's evidence established that the lower level tenants vacated the property before the tenant in this dispute and the landlord testified that the hallway was not damaged when the lower level tenants moved out. Furthermore, the condition inspection report from the lower level tenancy indicated that the common areas hallway was not damaged when the lower level tenants vacated the property. Based on this evidence, I find that it is more likely than not that the tenant's actions or neglect caused the damage to walls in the hallway.

Based on the receipt presented, I accept the landlord's evidence that that the painting supplies cost \$89.28. However, I find that landlord's claim of 5.5 hours of painting labour at \$50.00 per hour to be excessive. The landlord did not obtain any quotes for the painting service and he provided no basis for the claimed rate of \$50.00 per hour. I find that a reasonable amount of labour to paint this area would not exceed three hours. Further, I find that a general labour rate of \$20.00 per hour is a more reasonable estimation of the labor costs involved in this project.

Accordingly, I award the landlord \$60.00 for painting labour and \$89.28 for painting supplies, for a total of \$149.28.

Water Utilities

The landlord demanded compensation for unpaid water utilities. The landlord produced an unpaid water invoice of \$109.92 dated December 7, 2018 for the period of September 8, 2018 to November 2, 2018. The tenancy agreement provided that the tenant is responsible for the payment of the water bills, split on a per person basis with the lower level tenants.

The landlord testified that the tenant paid 75% of the water bills during the tenancy. The landlord argued that the tenant should pay the entire outstanding water utility bill because the lower level tenants moved out of the property before the upper level tenants. However, the landlord's evidence indicated that the lower level tenants moved out on October 1, 2018 which is the middle of the billing period of September 8, 2018 to November 2, 2018 stated on the landlord's water bill. I find that landlord has not provided enough evidence to apportion the water bill contribution of the tenant on a different basis after the lower level tenants moved out.

Accordingly, I shall apportion that water bill 75% to the tenants as the parties have done so before the lower level tenants moved out. I shall award the landlord 75% of the \$109.92 water utility bill, being \$82.44.

Electric Utilities

The landlord demanded compensation for unpaid electric utilities for October 2018 and half of November 2018. The landlord testified that the monthly electric utilities were paid in equal monthly payments of \$243.00. The landlord submitted an electric utility invoice dated September 11, 2018 for \$243.00 as evidence. Accordingly, I find that the electric utility costs were \$243.00 for October 2018 and \$121.50 (half of \$243.00) for November 2018 for a total of \$364.50.

The tenancy agreement stated that the tenant is responsible for 65% of the electric utility invoice so I find that the landlord is entitled to compensation of \$236.93 (65% of \$364.50) for unpaid electric utilities.

However, the tenant argued that she is also entitled to reimbursement for electric utilities because she has overpaid the electricity for previous months. The tenant testified that the electric utilities were paid in an equal payment and that the account had a surplus \$530.65 on the invoice for September 11, 2018 from overpayment. The tenant argued this overpayment of \$530.65 came from her utility payment so she is entitled to a reimbursement of this surplus.

The landlord argued that this utility account surplus existed before the tenant moved in. However, I do not find this argument persuasive since the landlord did not provide any evidence of the balance of the account at the start of the tenancy. I find that the upper level tenant and the lower level tenant contributed to the \$530.65 electric utility surplus. Since the tenant paid 65% of the electric utilities, I find that the tenant is entitled to a refund of 65% of the surplus, being \$344.92.

Accordingly, I shall award the tenant \$344.92 for the electric utility surplus.

Since I have awarded the landlord \$157.95 for unpaid electric utilities and \$344.92 to the tenant for refund of the utility surplus, the net award electric utility award of \$186.97, as shown below in the following table:

Item	Amount
Electric utility refund to tenant	\$344.92
Less: unpaid electric utilities to landlord	(\$236.93)
Net electric utilities award to tenant	\$107.99

I find that the tenant is entitled to a monetary award of \$325.27 from the landlord as summarized below:

<u>Item</u>	<u>Amount</u>
Agreed credit to tenant	\$449.00
Less: painting	(\$149.28)
Less: water utilities	(\$82.44)
Electric utilities	\$107.99
Total	\$325.27

In addition, since the landlord has been partly successful this matter, I award the landlord \$50.00 for partial recovery of the filing fee.

The net award to tenant is accordingly \$325.27 as set forth below:

Item	Amount
Damages Payable to tenant	\$325.27
Less: Filing recovered by landlord	(\$50.00)
Net Award to tenant	\$275.27

Accordingly, I order the landlord to pay the tenant the net amount of sum of \$275.27.

Conclusion

I find that the tenant is entitled to a monetary award of \$325.27.

I find that the landlord is entitled to recover \$50.00 as partial reimbursement of the filing fee.

The net award is the sum of \$275.27 payable by the landlord to the tenant.

The tenant is granted a monetary order in the amount of **\$275.27**. This order must be served on the landlord. If the landlord does not comply with this order, the tenant may enforce this order in the Small Claims Division of the British Columbia 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: February 08, 2019

Residential Tenancy Branch