



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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- 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.

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 tenants acknowledged receipt of evidence submitted by the landlord. The tenants testified that they submitted some documentary evidence to the Branch but didn't know that they had to serve the landlord. As the tenants have not provided the landlord copies of their documentary evidence, I have not considered the tenants documentation in making a decision. 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.

Issue to be Decided

Is the landlord entitled to a monetary for losses or damage as a result 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?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on March 1, 2018 and ended on November 30, 2018. The tenants were obligated to pay \$1100.00 per month in rent plus 50% of the hydro and in advance and at the outset of the tenancy the tenants paid a \$550.00 security deposit that the landlord still holds. The landlord testified that on November 20, 2018 the tenants gave her notice that they would be moving out by November 30, 2018. The landlord testified that the tenants left the unit dirty and with some damage. The landlord testified that the tenants left without paying their share of the hydro and that the landlord lost one month's rent for December 2018 as she was unable to rent the unit based on the short notice.

The landlord is applying for the following:

1.	Hydro	241.40
2.	Cleaning	341.00
3.	Repairs	1155.84
4.	Memory sticks and registered letters	38.36
5.	Loss of rent for December 2018 and costs to re-rent	1968.82
6.	Filing fee	100.00
	Total	\$3845.42

The tenants gave the following testimony. The tenants testified that they think the hydro split was unfair. The tenants testified that they moved on short notice as they were being harassed by a neighbor and that the landlord didn't do anything about it. The tenants' dispute that they caused the damage as alleged. The tenants testified that the landlord advised them that she wanted to clean the unit and that she didn't advise them of any issues.

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 the landlords' claims 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. 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.

I address the landlords claim and my findings as follows.

Hydro- \$241.40

The tenants felt that the other tenants were using too much electricity and felt that the 50-50 split was unfair. The landlord testified that the agreement was always 50-50 and that she was unaware of the tenant's unhappiness with the division of costs until this hearing. The landlord has provided a calculation of costs up until January 1, 2019. I find that the tenants are not responsible for the hydro costs for the month of December 2018 as they had given up possession of the unit. I do find that the landlord is entitled to \$144.19 for the time up until the tenants move out as outlined on the hydro bill.

Cleaning - \$341.00

The tenants testified that they were of the belief that the landlord wanted to clean the unit and that they were not required to do a deep clean at move out; the tenants did not have any documentation to reflect this agreement. The landlord disputed this claim. The landlord testified that she told the tenants about the deficiencies in the unit, but to no avail. The landlord testified that she had a cleaner clean the suite over two days and has provided a receipt. Residential Tenancy Policy Guideline 1 states that a tenant is responsible for leaving a suite reasonably clean at move out. Based on the documentation before me, the landlord has provided sufficient evidence to show that the unit was not left reasonably clean. The landlord has satisfied me, on a balance of probabilities that they are entitled to \$341.00 and are granted that amount.

Repairs – \$1155.84

The tenants adamantly dispute this claim. The landlord testified that the tenants caused damage to a living room wall, flooring, kitchen counter and other patching and painting was required. The landlord testified that a written condition inspection report was conducted at move in and moves out. However, the document submitted by the landlord was handwritten and lacking in many ways, i.e. there wasn't a section where the tenants could dispute the condition of the unit. Section 23(4) of the Act addresses this issue as follows:

Condition inspection: start of tenancy or new pet

(4) The landlord must complete a condition inspection report in accordance with the regulations.

Further to the above, section 20 of the Residential Tenancy Regulations states that a condition inspection report must contain specific and detailed information, the landlords form did not. In addition, the report filled out by the landlord is vague and unclear and cannot be relied upon. 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 his claim and I therefore dismiss this portion of their application.

Loss of Rent December 2018 - \$1100.00

The tenants testified that they had to move on short notice as they were being harassed by a neighbor; however, the tenants did not advise the landlord of this issue prior to this hearing and did not provide any supporting documentation to support their submission. Section 45 of the Act addresses the issue before me as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than **one month** after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the above and the tenants' acknowledgment of short notice, I find that they did not comply with section 45 of the Act. In addition, the landlord was unable to rent the unit for December 1, 2018 because of the short notice and that winter months are slower, accordingly; I find that the landlord is entitled to \$1100.00.

Admin costs and labour to re-rent -\$868.82

The landlord is also seeking \$868.82 for their time to interview prospective tenants, the cost of office supplies and the time to prep for this hearing. The landlord is seeking 33.25 hours of labour at \$22.00 per hour. The landlord has not provided sufficient evidence to show the amount of time she spent or the amount per hour she is entitled to and why she is entitled to it. In addition, the landlord did not provide sufficient evidence such as a log of dates, times, and showings. Based on the insufficient evidence before me, I dismiss the claim for \$868.82.

USB sticks, Registered mail costs, and Filing Fee \$138.36

Section 72 of the Act outlines that the only hearing related costs recoverable is that of the filing fee, accordingly, I dismiss the landlords request for the recovery of USB sticks and registered mail costs but grant them the recovery of the \$100.00 filing fee.

Conclusion

In summary, the landlord has been successful in the following claims:

Hydro	\$144.19
Cleaning	\$ 341.00
Loss of Rent December 2018	\$1100.00
Filing Fee	\$100.00
Minus Security Deposit	-\$ 550.00
Total:	\$1135.19

I order that the landlord retain the deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1135.19. 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: March 29, 2019

Residential Tenancy Branch