



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* (the *Act*) for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security and pet damage deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee 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 tenant confirmed receipt of the landlord's application and evidence. The tenant said they had not served any of the documentary evidence uploaded on the landlord. Based on the testimonies I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the Act. As the tenant did not serve their evidence on the landlord, in accordance with Rule of Procedure 3.17 the unserved evidence will not be considered.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposits for this tenancy?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

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 claim and my findings around each are set out below.

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that both parties submitted numerous pieces of individual evidence in a haphazard and poorly organized manner. The parties filed many individual files in a variety of formats instead of a single pdf file with numbered pages, The file names are inconsistent and unclear as to their contents and uploaded non sequentially so that it is confounding for the reader. While I have not excluded any of the documentary evidence of either party, I find that the poor presentation detrimentally affects the strength of submissions and the parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

This periodic tenancy began in March 2018. The rental unit is a suite in a detached home with the landlord occupying the other portion of the property. Originally, the monthly rent was \$2,400.00 for the whole property. The parties later agreed to reduce the monthly rent to \$1,500.00 for one suite in the property. The tenant paid a security deposit of \$1,200.00 and pet damage deposit of \$1,200.00 at the start of the tenancy and the amounts are still held by the landlord.

The tenant gave written notice to the landlord to end the tenancy on July 24, 2018 and vacated the suite by September 1, 2018. The landlord submits that prior to the end of the tenancy the tenant attempted to rescind their notice to end the tenancy and continue beyond September 2018. The landlord submitted into evidence copies of the correspondence between the parties. The landlord said that because they were uncertain that the tenant would vacate in accordance with the notice they were unable to find a new occupant for the rental suite. The landlord said that they decided they would occupy the suite themselves and currently reside in the rental building. The landlord seeks a monetary award in the amount of \$1,500.00 for loss of rental income.

The landlord submits that the tenant failed to pay utilities in full and there is an arrear of \$210.00.

The landlord submits that the tenant left the rental unit in a state of disrepair such that the landlord needs to perform major repairs. The landlord submitted into documentary evidence a quote from a contractor for proposed work to the rental building. The landlord says they incurred costs for cleaning, disposing of garbage and various work at the end of the tenancy.

The landlord says that the tenant was present for a move-out inspection but did not sign the condition inspection report. The landlord submitted into documentary evidence a copy of the condition inspection report signed only by the landlord.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security and pet damage deposit or file for dispute resolution for authorization to retain a security and pet damage deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the security and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit.

In the earlier hearing under the file number on the first page of this decision, the earlier arbitrator found that the landlord had been served with the tenant's written forwarding address on the date of the hearing, January 28, 2019. The earlier arbitrator provides that the landlord must deal with the tenant's security deposit within 15 days of January 28, 2019 in accordance with section 38 of the *Act*.

In the present circumstance the landlord filed their application for dispute resolution to retain the security deposit on February 19, 2019, outside of the 15 day period provided under the *Act*.

I accept the evidence of the parties that the tenant was present at the move-out inspection but had refused to sign the condition inspection report. I find that the parties satisfied the requirement of section 35 of the *Act* by participating in an inspection.

Under the circumstances I find that the landlord failed to file their application for dispute resolution within the 15 day provided under the *Act* and consequently must pay a monetary award equivalent to double the value of the security and pet damage deposit in the amount of \$4,800.00.

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

While I accept the evidence of the landlord that the tenant gave a written notice to end tenancy and subsequently attempted to cancel their own notice and extend the tenancy, I find that there is insufficient evidence this resulted in a financial loss for the landlord. The landlord testified that they have not rented the suite but instead chose to occupy it themselves. Even if the tenant had overhired the rental unit, as the landlord was not renting the suite there was no loss of rental income. As such, I find that there is insufficient evidence that the landlord suffered a loss as a result of the tenant's actions and dismiss this portion of the landlord's application.

I find that the landlord has provided insufficient evidence in support of the portion of their claim for utility arrears. The tenant disputes that the tenancy agreement required them to pay any amount to the landlord for utilities and the landlord has failed to provide any documentary evidence showing that there is an outstanding utility account or any invoices documenting the amount. As the landlord has failed to meet their evidentiary burden I dismiss this portion of the landlord's claim.

I find there is insufficient evidence in support of the full amount claimed by the landlord for damages and loss. The landlord submits that the rental unit was damaged by the tenant and they have obtained a quote for repairs. However, I find that the quote is dated February 2019, several months after the tenancy has ended and after the landlord says they occupied the suite. Furthermore, I find that much of the work listed on the quotation is more in the nature of upgrades and renovations rather than simply repairs to bring the suite back into its earlier state. I find that items such as sanding and refinishing cabinetry, replacing flooring and replacing doors are not simply repairs attributable to the tenant's actions but renovations. I find that the landlord would be entitled to damages or loss directly caused by the tenant but would not be entitled to upgrades occasioned by the tenancy.

Based on the evidence of the landlord, including the photographs and condition inspection report, I find that there was some damage caused by the tenant beyond that which would be expected through the normal wear and tear associated with a tenancy. I accept that the landlord incurred some costs to perform repairs and cleaning. I find that there are insufficient receipts and invoices showing the actual amount of the costs. On the basis of the evidence provided by the landlord I find that a monetary award in the amount of \$1,000.00 to be appropriate.

As the landlord's application was successful in part I find that the landlord is entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposit in full satisfaction of the monetary award issued in the landlord's favour. The landlord must return the balance of the deposits to the tenant.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of \$3,700.00 under the following terms:

Item	Amount
Double Security Deposit (\$1,200.00 x 2 = \$2,400.00)	\$2,400.00
Double Pet Damage Deposit (\$1,200.00 x 2=\$2,400.00)	\$2,400.00
Less Monetary Award to Landlord	-\$1,000.00
Less Filing Fee to Landlord	-\$100.00
Total Monetary Order	\$3,700.00

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 7, 2019

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant

Residential Tenancy Branch

#RTB-136 (2014/12)

