



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDL MNRL-S (landlord); FFT MNSD (tenant)**

Introduction

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

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

This hearing also dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- An order requiring the landlord to reimburse the tenants for the filing fee pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The hearing process was explained. The parties had an opportunity to ask questions about the hearing process.

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 each party served the other in accordance with the *Act*.

I informed the parties of the provisions of section 38 of the *Act* which require that the security deposit is doubled if the landlord does not return the security deposit to the tenants within 15 days of the later of the end of the tenancy or the provision of the tenant's forwarding address in writing.

Issue(s) to be Decided

Is the landlord entitled to the following:

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

Are the tenants entitled to the following:

- A monetary award equivalent to double the value of the security deposit because of the landlord's failure to comply with the provisions of section 38 of the *Act*?
- An order requiring the landlord to reimburse the tenants for the filing fee pursuant to section 72.

Background and Evidence

The parties agreed the tenancy started in August 2019 for a 1-year fixed term. The parties agreed that the tenants gave the landlord a letter dated June 23, 2019 providing their forwarding address and giving one month's notice of their intention to leave at the end of July 2019. The tenants vacated on July 31, 2019. The landlord acknowledged receipt of the tenants' forwarding address on June 23, 2019.

No condition inspection on moving in or moving out was conducted.

Rent was \$2,400.00 monthly. At the beginning of the tenancy, the tenants provided a security deposit of \$1,200.00 and a pet deposit in the same amount (for a total deposit of \$2,400.00 hereafter referred to as "the security deposit"). The landlord holds the security deposit.

Before the tenants vacated, the parties agreed the tenants informed the landlord that “non-stick wall hangars” had removed some paint when they were detached. The tenants asked the landlord to keep damages for the minor repair.

When the tenants were packing up, they caused a visible crack in the base of the refrigerator.

A picture was submitted of the crack which the landlord estimated was “3 or 4 inches”. The crack is a clean break; that is, no pieces of the refrigerator are missing.

The landlord returned from holidays a week after the tenants vacated, that is, on August 7, 2019, and for the first time she saw the damage to the walls and the crack in the refrigerator. The tenants repeated to the landlord that she could deduct money for damages for both and send them the balance of the security deposit.

However, the landlord insisted that the tenants repair the wall damage. Accordingly, the tenants investigated with the previous painter the type and color of paint; they paid \$273.00 for the repair of the wall. The landlord is satisfied with the repair.

The landlord testified that the refrigerator was new when the tenancy started, and the landlord wanted it replaced with one of like kind and value. The landlord testified she thought the appliance was about \$2,000.00 new; the tenants stated that their research indicated the new price was \$1,200.00.

The landlord testified she made inquiries about repairs and was told it was not possible because the repair was in the frame of the item. The landlord acknowledged that the crack in the frame did not affect the operation of the refrigerator.

The tenants stated that they had conducted inquiries and had been informed that the refrigerator was a 2016 model, so it was not new at the beginning of the tenancy; they testified they were told that the repair of the crack was a simple one involving glue. They testified they offered the landlord to keep \$200.00 from their security deposit for the damage.

No supporting evidence was submitted by either party regarding the age of the appliance, the purchase cost, the repair cost, or the replacement cost.

During the hearing, the landlord insisted several times that she did not want money for the repair of the refrigerator; she wanted “a new refrigerator”.

The landlord also claimed reimbursement of one month's rent. Her reasons were that the painting by the tenants was not completed until mid-August and the refrigerator has never been replaced, making the unit, in her opinion, unrentable.

The landlord acknowledged that she has not advertised for a new tenant since receiving the tenants' notice and never attempted to find a new tenant. She stated that the unit is unoccupied.

The tenants brought an application for the return of their security deposit on August 20, 2019. The landlord brought an application for compensation on August 26, 2019.

The tenants claim reimbursement of double the security deposit as the landlord did not return the security deposit within 15 days of the later of the end of the tenancy or the provision of the forwarding address in writing. The tenants claimed as follows:

ITEM	AMOUNT
Security deposit	\$2,400.00
Double the Security Deposit	\$2,400.00
Reimbursement of the Filing Fee	\$100.00
TOTAL CLAIM	\$4,900.00

The landlord claims reimbursement of one month's rent (\$2,400.00), the cost of a new refrigerator in an unspecified amount, and reimbursement of the filing fee.

Analysis

I have reviewed all evidence and testimony before me and will refer only to the relevant facts and issues meeting the admissibility requirements of the rules of procedure. I have considered all the submissions and evidence presented. I will only refer to certain aspects of the submissions and evidence in my findings.

- 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 enough 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 each party 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.

I will address the tenants' claim first.

Tenants' claim

The *Act* contains comprehensive provisions regarding security and pet damage deposits.

As stated in section 38 of the *Act*, the landlord is required to either return the tenants' security deposit in full or file for dispute resolution for authorization to retain the deposit,

15 days after the later of the end of a tenancy and receipt of the tenant's forwarding address in writing.

Section 38 states as follows:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
(a) the date the tenancy ends, and
(b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:
(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to
the tenant with interest calculated in accordance with the regulations;
(d) make an application for dispute resolution claiming against the security deposit or
pet damage deposit.

If that does not occur, the landlord must pay a monetary award equivalent to double the value of the security deposit.

Section 38(6) states as follows:

(6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit,
or both, as applicable

However, this provision does not apply if the landlord has obtained the tenants' written permission to keep all or a portion of the security deposit pursuant to section 38(4)(a).

I find the landlord has not brought proceedings for compensation or an application for dispute resolution claiming against the security deposit for any outstanding rent or damage to the rental unit pursuant to section 38(1)(d) of the *Act*.

I find the tenants provided their forwarding address in writing pursuant to section 38(1)(b) on June 23, 2029 as acknowledged by the landlord. I find the tenants did not

provide consent to the landlord to keep any portion of the security deposit pursuant to section 38(4)(a).

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the landlord is in breach of the *Act* by failing to return the security deposit or applying for dispute resolution as required.

I find the tenants are entitled to a doubling of the security deposit. Accordingly, I grant the tenants a monetary award in the amount of double the security deposit.

As the tenants were successful in their application, I further grant the tenants reimbursement of the filing fee.

My award to the tenants is summarized as follows:

ITEM	AMOUNT
Security deposit	\$2,400.00
Double the Security Deposit	\$2,400.00
Reimbursement of the Filing Fee	\$100.00
TOTAL AWARD	\$4,900.00

Landlord's claim – compensation/damages

The landlord requested compensation for damages for a crack caused by the tenants in the base of a refrigerator. As acknowledged by the parties and represented in a photograph submitted as evidence, the crack is a “clean break” and is a few inches long. The landlord contended that the crack calls for the replacement of the refrigerator which she estimated to have a value of \$2,000.00. The tenants claimed the crack could have been easily repaired.

It is the landlord's obligation to establish her claim on a balance of probabilities. The landlord has submitted no documentary evidence to support her testimony that the refrigerator cost \$2,000.00 new or when it was purchased. The landlord submitted no

evidence in support of her assertion that the appliance must be replaced or that it cannot be repaired.

In considering all the evidence, I find the landlord has not met the burden of proof that the item must be replaced. I do not accept the landlord's assertion that the refrigerator must be replaced because of the crack which defies common sense. I found the tenants' evidence with respect to their enquiries about the possible repairs to be credible and more in keeping with the evidence overall.

I accept that the landlord has incurred some loss in value of the refrigerator. I accept the tenants' estimate of \$200.00 to be a fair, nominal award for compensation.

I therefore allow the landlord's claim for compensation for damages to the refrigerator in the amount of \$200.00.

Landlord's claim – compensation for one month's rent

I find that the tenancy agreement ended on July 31, 2019. I find the landlord has not met the burden of proof on a balance of probabilities that she is entitled to rent for the month of August 2019.

As agreed by the parties, a painting job, which I find to have been minor, was completed mid-August. Based on the description of the parties and the small cost, I find the

painting was not of such a nature as to preclude the landlord from attempting to find a replacement tenant.

The landlord acknowledged she has never advertised the property for rent since receiving the tenants' notice. I find that the unit remains vacant only because the landlord decided not to rent it any more.

Policy Guideline # 3 – Claims for Rent and Damages for Loss of Rent provides guidance on the landlord's obligations to take reasonable steps to reduce losses. The Guideline states in part as follows:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

I find the landlord has made no effort to mitigate her loss of rent for August 2019.

I therefore find the landlord has not met the burden of proof with respect to this aspect of her claim. I therefore dismiss this claim without leave to reapply.

As the landlord has been primarily unsuccessful in her claim, I do not award reimbursement of the filing fee.

Summary

I award the tenants the sum of **\$4,700.00** calculated as follows:

ITEM	AMOUNT
Security deposit	\$2,400.00
Double the Security Deposit	\$2,400.00
Reimbursement of the Filing Fee	\$100.00
(Less Award to Landlord)	(\$200.00)
TOTAL AWARD	\$4,700.00

Conclusion

The tenants are entitled to a Monetary Order in the amount of **\$4,700.00**. This Order must be served on the landlord. This Order may be filed in the British Columbia Supreme 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: December 16, 2019

Residential Tenancy Branch