



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNDCL-S, FFL**

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 retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord testified the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on October 26, 2020 and deemed received by the tenant five days later under section 90 of the *Act*, on October 31, 2020. The landlord explained that the tenant provided a forwarding address to the landlord when he vacated the unit and the documents were sent to that address.

The landlord provided the Canada Post tracking number referenced on the first page of this Decision in support of service.

Section 89 of the *Act* provides that the Notice of Hearing and Application for Dispute Resolution may be sent to the tenant as follows:

- (c) by sending a copy by registered mail to the address at which the person resides [...].

Pursuant to sections 89 and 90 and based upon the affirmed testimony of the landlord, I

find that on October 31, 2020 the landlord served the tenant by registered mail sent to the address at which the tenant resided.

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 retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided uncontradicted testimony as the tenant did not attend the hearing. The landlord submitted substantial and complete documents in support of the claims which were well organized and thorough.

The tenancy began in November 2018 for monthly rental of \$2,000.00 payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$1,000.00 and a pet deposit of \$1,000.00. The landlord submitted a copy of the tenancy agreement. A condition inspection was conducted on moving in and a copy was submitted in evidence. The report indicated that the unit was in good condition in all relevant aspects.

The tenant vacated the unit in September 2019 and the parties met to conduct a condition inspection. The landlord testified that damage to the unit was observed and the unit needed cleaning, observations which are reflected in the report. In particular, 35 holes were found in the drywall, 12 of which were "fist-sized". The tenant stated his objection in the condition inspection report on moving out writing that the damage was "wear and tear" and that he had offered to do repairs himself.

On October 15, 2019, the landlord returned the pet deposit of \$1,000.00 to the tenant. The landlord also returned \$310.00 of the security deposit to the tenant based on estimates of repair and cleaning costs obtained by the landlord.

The landlord testified that the tenant vacated leaving \$42.31 owing in outstanding utilities.

The landlord provided dated receipts for each of the expenses claimed. The landlord submitted many photographs in evidence in support of the claims for damages and cleaning cost. The landlord requested reimbursement of the following expenses:

ITEM	AMOUNT
Repairs	\$125.00
Repairs	\$105.00
Repairs	\$92.50
Cleaning	\$175.00
Outstanding utilities	\$42.31
Filing fee	\$100.00
TOTAL CLAIM	\$639.81

The landlord testified that a balance remains owing to the tenant of \$50.19 and the landlord attempted twice to mail a cheque to the tenant; however, the tenant failed to accept delivery. The landlord calculated the amount to be returned to the tenant as follows:

ITEM	AMOUNT
Total claim	\$639.81
(security deposit)	(\$690.00)
Balance of Security deposit	(\$50.19)

The landlord requested a monetary order of \$639.81 as compensation for damages, outstanding utilities and the filing fee, as well as authorization to apply that amount from the security deposit.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement.

Section 7(1) of the *Act* provided that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award

I have considered all the evidence submitted by the landlord, including the receipts, the photographs showing the unit needed cleaning and repairs, and the condition inspection report on moving in and moving out.

Taking into account the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed cleaning when the tenant vacated, the tenant is responsible for the lack of cleanliness, the landlord incurred the

amount claimed in cleaning expenses, and the landlord took all reasonable steps to mitigate expenses. I find the landlord is entitled to a monetary award in the amount requested for this aspect of the claim.

As well, in considering all the above-mentioned evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that unit needed repairs when the tenant vacated, the tenant is responsible for the damage, the landlord incurred the amount claimed in repair expenses, and the landlord took all reasonable steps to mitigate expenses. I find the damage is more than 'reasonable wear and tear'. I find the landlord is entitled to a monetary award in the amount requested for this aspect of the claim.

In the absence of any contrary evidence, I accept the landlord's testimony the tenant caused the damage described. I find the landlord has taken reasonable steps to mitigate the damage and has incurred the expenses claimed. I therefore allow the landlord's claims.

As the landlord has been successful in this matter, I award the landlord reimbursement of the filing fee in the amount of \$100.00.

I grant a monetary order to the landlord in the amount of **\$639.81**. My award to the landlord is summarized as follows:

ITEM	AMOUNT
Repairs	\$125.00
Repairs	\$105.00
Repairs	\$92.50
Cleaning	\$175.00
Outstanding utilities	\$42.31
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$639.81

I authorize the landlord to apply the security deposit to the monetary award leaving a balance due to the tenant calculated as follows:

ITEM	AMOUNT
Total award	\$639.81
(Security deposit)	(\$690.00)

Balance of Security deposit due to tenant	(\$50.19)
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Conclusion

The landlord is entitled to a monetary order in the amount of \$639.81 and authorization to apply the security deposit to the order, leaving no balance owing the landlord. The tenant is entitled to return of \$50.19 being the balance of the security deposit.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to be 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 06, 2020

Residential Tenancy Branch