



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDL-S, MNDRL-S, MNDCL-S

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), a monetary order for unpaid rent in the amount of \$653.00, and a monetary order for damages in the amount of 212.80; and a monetary order for damage or compensation for damage under the Act in the amount of \$552.81, retaining the security deposit for these claims; and to recover the \$100.00 cost of their Application filing fee.

The Tenant and an agent for the Landlord, L.V. ("Agent"), appeared at the first teleconference hearing and gave affirmed testimony. Early in the first hearing, the Tenant requested an adjournment, because she said she had not had sufficient time to consider the Landlord's submissions. The Tenant acknowledged that she had already had nearly four months to consider the submissions, and the Agent opposed an adjournment. However, I noted that the Landlord's evidence was highly disorganized and that an adjournment would give her an opportunity to provide more organized submissions, including a monetary order worksheet to set out her claims in full. I find this would assist in the resolution of this matter. As such, I adjourned the hearing to be reconvened at a later date.

In my interim decision explaining the adjournment and providing a new Notice of the reconvened Hearing, I directed that the Parties were allowed to upload new evidence for consideration; however, they were ordered not to file new applications to be crossed with this Application. In submitting her new evidence, the Agent applied for a new hearing, which was crossed with her first Application. The Agent had applied for \$1,803.00 in compensation from the Tenant in the first Application, but she lowered it to \$1,518.61 in the second Application. In the hearing, the Agent said that everything is in the second Application. Accordingly, as the second Application is more organized and up-to-date than the first, **I dismiss the first Application without leave to reapply.** I

will consider the evidence from the second Application and the hearing testimony in determining these matters.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties confirmed their email addresses at the outset of the hearing, and also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their documentary evidence to which they directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on July 15, 2013 and ran to July 31, 2014, and then operated on a month-to-month basis in this one-bedroom, one-bathroom apartment. They agreed that the Tenant paid the Landlord a monthly rent of \$990.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$425.00, and no pet damage deposit. They agreed that the Tenant vacated the rental unit on July 3, 2020, and did not give the Landlord her written forwarding address.

The Parties agreed that they did a condition inspection of the rental unit at the start of the tenancy, and that the Landlord gave the Tenant a copy of the resulting condition inspection report ("CIR"). However, the Landlord said that the Tenant refused to do an inspection of the rental unit at move-out. The Tenant said that the Landlord threatened to call the police on her, if she did not leave.

#1 CARPET CLEANING → \$212.80

The Agent said that they had to have the carpet steam cleaned twice, because the Tenant had a dog in the rental unit, despite the building having a no pets policy. The Agent said it is a small apartment and they had to do the cleaning for Covid, too.

The Tenant said that the Landlord should have replaced the carpet when she moved in. She also said:

See it's coming up in places; it's torn, it has no resilience to stains. I complained about it from day one, because it reeked of dirty diapers after the steam cleaning – it reeked. They said it'll never be changed until you leave.

I had life disasters when I was moving out, so I wasn't able to . . . I did my best to steam clean the carpet, too. I did the living room and the bedroom, but [the Agent] was racing me out of there. This was after I kept asking if they were going to replace the carpet, they would said 'I don't know...'. For some reason they were not replacing mine, but it was in horrible condition.

I lost weight because I was moving everything myself to [the new city], and I barely had the help of my brother. She told me that they're not replacing the carpet.

The Agent said:

The Tenant lived with that for years and then got a dog. The Tenant signed part of our [tenancy] agreement with a no pets policy at [clause] number 18. She still signed it – pets are not allowed in our property. . . . The carpet was damaged by the dog. The carpet is old, but we didn't replace the carpet until after she left. We did clean it two times before they came to remove I, but nobody agreed to remove the carpet in this condition. They requested that we double the cleaning because of the very bad smell, because of the dog, probably.

I note that the tenancy agreement submitted to the RTB does not have a clause number 18. It only goes to number 12, and there is no mention of pets either way that I can see. The Tenant said:

First, I can't see where I signed a "no pet policy". The carpet did not smell; I removed the dog stains. The only thing I didn't do was the hallway. It did not smell.

The Agent submitted an invoice dated July 10, 2020, for carpet cleaning in the rental unit that came to \$212.80. The invoice noted that the unit price was "\$106.40 x 2 = \$212.80", evidencing that it was cleaned twice.

#2 UNPAID RENT ACCUMULATION → \$653.00

The Landlord's second claim is for unpaid rent that accumulated over the years. The Agent submitted monetary order worksheets ("MOW") for this Application, which she consolidated in the final MOW, as set out below:

	Receipt/Estimate From	For	Amount owing
1	Balance as of July 30, 2018		\$313.00
2	Charge \$50.00	October 2018	50.00
3	Less payment	January 11, 2019	(\$50.00)
4	Charge \$25.00	March 2019	\$25.00
5	Charge \$25.00	October 2019	\$25.00
6	Charge \$50.00 & RTB fee \$100.00	November 2019	\$150.00
7	Charge \$50.00	December 2019	\$50.00
8	Rent \$50.00 & Charge \$50.00	February 2020	\$100.00
9	Less payment	April 24, 2020	(\$200.00)
10	Rent \$390.00	May 2020	\$390.00
	Less payment	June 10, 2020	(\$200.00)
		Total monetary order claim	\$653.00

The Agent said that these are the amounts of unpaid rent that the Tenant owes from over the years, plus fees charged for late rent. I asked the Landlord why it took her so long to apply for recovery of these funds, since her evidence indicates that the unpaid rent goes back three years.

The Agent said:

It was my mistake. I was very patient with this Tenant. I have one order of possession from before, but the tenant asked to continue to live in the building. Bad news for the tenant, her mother died. . . and after that she was living there a few years and finally got this.

Tenants were supposed to pay – [clause] number 5 on tenancy agreement – rent has to be paid on the first day by authorized service only. The Tenant repeatedly broke this agreement by being late, and I won a few RTB processes.

I went through the MOWs with the Parties in the hearing. The Tenant noted that in the Agent's MOW for 2017, she charged the Tenant \$50.00 as a late fee. I note there were two late fee charges of \$50.00 in 2017.

Further, the Parties agreed that the Tenant paid \$421.00 in March 26, 2018, rather than the \$396.00 that is in the Agent's MOW for 2018. As such, they agreed that the Tenant **has paid \$25.00 more** than the Agent has accounted for in the MOWs.

In the Agent's MOW for 2019, the Landlord charged the Tenant \$50.00 in late fees four times. Also, the Tenant said she paid \$2,042.00 on October 1, 2019, which the Agent did not include in her 2019 MOW. The Tenant submitted a receipt from the Landlord dated 10/01/19 for **\$2,042.00** and one dated 16/01/19 for **\$40.00**. Unfortunately, the dates on the receipts suggest that both of these payments were made in January 2019, rather than October 2019, as there is no 16th month.

The Tenant also noted that the Landlord has credited her with a **\$200.00** payment on April 24, 2019; however, the Tenant submitted a receipt from the Landlord in the amount of **\$250.00** on this date.

#3 CLEANING AND GARBAGE REMOVAL → \$552.81

The Agent said that she has invoices for furniture and garbage removal that amount to \$200.00 and repair costs of \$336.00.

The Agent submitted an invoice dated July 6, 2020, for “junk removal” from the rental unit in the amount of \$210.00, including tax.

The Agent submitted a copy of an invoice dated August 7, 2020, for work done at the rental unit. This invoice names the technician who did the work and lists the work done as: “Wall repairs, [indistinguishable word] removal and repairs, painting.” This invoice totals \$336.00, including tax.

The Tenant said that she did not receive this invoice, but the Landlord said if she received the other pictures in the written submissions, then she would have received this invoice, too.

The Tenant said:

I just about want to cry at the thought of those book end tables and the china lamp going to the dump. There are antique stores that would take that stuff and resell it. My Mom had those ... there is a recycling depot, not the dump. Those are my things that I did not want to give up, but since I had to do carpet cleaning after 7 years.... I could have taken those things to my Aunt....

[The Agent] was threatening to call the police on me. Yes, I was late leaving, and I may have to pay for some of the three days I was there, but as far as I knew, people were coming in and going to replace the countertops, so I had extra time.

I’m emotionally distraught at the thought. Looking at these pictures. I probably could have gone back on my day off. Those things are worth the \$80.00. She was threatening to call the police, there were not many words past that.

The Agent said:

Regarding the furniture – everything went in the garbage. [The Tenant] told me it’s garbage. She said I don’t need them and I’m downsizing. I never called the police. I never do that to tenants.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

#1 CARPET CLEANING → \$212.80

Section 32 of the Act states that tenants "...must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." Section 37 states that tenants must leave the rental unit "reasonably clean and undamaged" at the end of a tenancy.

Policy Guideline #1 helps interpret sections 32 and 37 of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

The evidence before me is that the Landlord replaced the carpet in the rental unit after the Tenant vacated the unit. The Agent said that no one would remove the old carpet, because it smelled so bad. "They requested that we double the cleaning, because of the very bad smell." As such, the Agent said they had to have it steam cleaned twice.

We did clean it two times before they came. Nobody agreed to remove the carpet in this condition. They requested that we double the cleaning because of the very bad smell, because of dog probably.

The Tenant moved in on July 15, 2013, and the carpet was old at that point. The Landlord had to have the carpet cleaned twice to get the smell associated with the dog out.

I find that the tenancy agreement which was submitted to the RTB does not have a "no pet policy" that the Tenant signed. The Parties may have uploaded an original

tenancy agreement, not the latest one in place. However, this is the agreement that is before me. Regardless, as the Landlord could not find anyone to remove the carpeting in its condition at the end of the tenancy, I find that it is more likely than not that the Tenant left the rental unit with a foul-smelling carpet. I find that the Tenant breached section 37 of the Act in not having had the carpet properly cleaned prior to the end of the tenancy. As a result, I find the Landlord is eligible for compensation for the cost of having the carpet cleaned. I, therefore, award the Landlord with **\$212.80** from the Tenant for this claim.

#2 UNPAID RENT ACCUMULATION → \$653.00

Based on the evidence before me from the Parties' testimony and documentary submissions, I find the following amounts were not credited to the Tenant.

First, the Agent acknowledged that the Landlord charged the Tenant \$50.00 a month for late fees when they were warranted. However, the *Residential Tenancy Act* Regulation ("Regulation") sets out the allowable fees that can be charged by a landlord:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

...

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

...

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

[emphasis added]

I find that the Landlord cannot impose the \$50.00 fee in this case, as the Agent did not direct me to a section of the Act or Regulation that authorizes this. Further, the tenancy agreement that is before me does not set out that a charge will be imposed on a tenant who is late with rent.

Section 67 of the Act states that "if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party."

I find that the Landlord has breached section 7 of the Regulation in charging the Tenant \$25.00 more than is allowed under the Regulation. Further, as a late rent is not set out in the tenancy agreement that is before me, I find the Tenant is eligible for a credit of \$50.00 for the nine incidents of a late fee charge on the Agent's MOWs. As such, and pursuant to section 67 of the Act, I credit the Tenant **\$450.00** for this breach of the Regulation by the Landlord.

Also, the Tenant said she paid \$2,042.00 on October 1, 2019, which the Agent did not include in her 2019 MOW. The Tenant submitted a receipt from the Landlord dated 10/01/19 for **\$2,042.00** and one dated 16/01/19 for **\$40.00**. Unfortunately, the dates on the receipts suggest that both of these payments were made in January 2019, rather than October 2019, as there is no 16th month.

I find that the Agent's MOWs detail the dates on which the Tenant failed to pay rent or a late fee. Therefore, while the Parties agree that the Landlord did not include the Tenant's payment of \$2,042.00 in the 2019 MOW, I find that this is consistent with the content of the MOWs, and that there would be no reason for this credit to appear on the Landlord's MOWs. I find that the MOWs set out the Tenant's failure to pay rent when it is due. As such, I find that this is not relevant to the issues before me.

As a result of this analysis of the evidence, I find that the Landlord has provided sufficient evidence to establish a claim of \$653.00 less the credit I have awarded the Tenant for illegal late fee charges of \$450.00. I, therefore, award the Landlord with recovery of **\$203.00** from the Tenant for unpaid rent.

#3 CLEANING AND GARBAGE REMOVAL → \$552.81

The Regulation addresses a landlord's responsibilities regarding a tenant's personal property. It states:

Part 5 — Abandonment of Personal Property

Abandonment of personal property

- 24** (1) A landlord may consider that a tenant has abandoned personal property if
- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or
 - (b) subject to subsection (2), the tenant leaves the personal property on residential property

- (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
- (ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or
- (b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

Landlord's obligations

25 (1) The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
- (b) keep a written inventory of the property,
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- (c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

[emphasis added]

I find that the Agent was hasty in discarding the Tenant's belongings without consulting her, although, the Agent said that the Tenant told her that she did not want what was left behind. However, I find that it is consistent with common knowledge and ordinary human experience that moving day is a stressful, pressure-filled time. I find it is more likely than not that the Tenant may have felt rushed, since she was overholding the rental unit by remaining there past the end of the last paid month.

Still, I find that the Agent seemed unaware of her obligations under the Act regarding proper storage and/or disposal of a tenant's property, which is not a reasonable excuse for such ignorance of the law. However, there is no application by the Tenant before me claiming compensation in this regard. Further, given the evidence before me overall, I find that it is more likely than not that the Tenant's belongings amounted to less than \$500.00 market value. As such, and pursuant to section 25(2) of the Regulation, I find that the Agent was not remiss in disposing of the Tenant's personal property in this specific set of circumstances. However, **the Agent is cautioned** to be aware of her obligations under the Act and Regulation in this regard going forward.

In terms of the Landlord's claims, I find that given the receipts provided by the Agent regarding the disposal of the Tenant's personal property and garbage left behind, that the Agent has provided sufficient evidence to support her claim in this regard. However, the amounts on the receipts add up to \$546.00, not \$552.81. Accordingly, I award the Landlord with recovery of **\$546.00** from the Tenant for this claim.

Summary and Set Off

The Landlord has been awarded the following amounts.

	For	Amount
1	Carpet Cleaning	\$212.80
2	Unpaid Rent	\$203.00
3	Cleaning and garbage removal	\$546.00
4	Subtotal	\$961.80
5	Less security deposit	\$425.00
6		\$536.80
7	Plus RTB Application filing fee	\$100.00
	Total monetary order claim	\$636.80

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$425.00 in partial satisfaction of the Landlord's monetary award.

Based on the evidence before me overall, I award the Landlord with recovery of \$961.80 from the Tenant, pursuant to section 67 of the Act. The Landlord is authorized to retain the Tenant's security deposit of \$425.00 in partial satisfaction of this award.

Given their success, the Landlord is also awarded recovery of the \$100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act. I grant the Landlord a Monetary Order from the Tenant in the amount of **\$636.80**, pursuant to section 67 of the Act.

Conclusion

The Landlord's claims for compensation from the Tenant are successful in the amount of \$961.80, because the Agent provided sufficient evidence to support this award. The Landlord is also awarded recovery of the \$100.00 Application filing fee from the Tenant, for a total award of \$1,061.80.

The Landlord has established a monetary claim of \$1,061.80. I authorize the Landlord to retain the Tenant's full security deposit of \$425.00 in partial satisfaction of the claim. The Landlord has been granted a monetary order under section 67 for the balance due by the Tenants to the Landlord in the amount of **\$636.80**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) 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: October 23, 2020

Residential Tenancy Branch