



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LIMITED
PARTNERSHIP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S MNRL-S FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the landlord seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order in the amount of \$3,549.88 for unpaid rent or utilities, for damages to the unit, site or property, to retain the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

Two agents for the corporate landlord, KM and MG (agents) and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Both parties confirmed that they had received documentary evidence from the other party and had the opportunity to review that evidence prior to the hearing. As a result, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

During the hearing, the landlord requested to amend the monetary claim to a lower amount of \$3,331.33, which was permitted as I find that a reduction in the landlord's claim does not prejudice the tenant.

In addition, the parties confirmed their respective email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to the parties as a result.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to recover the cost of the filing fee under the Act?

Background and Evidence

A fixed term tenancy began on May 1, 2017 and reverted to a month to month tenancy after April 30, 2018. Monthly rent in the amount of \$2,570.00 was the original amount of monthly rent, which increased during the tenancy to \$2,634.25 by the end of the tenancy and was due on the first day of each month. The tenant paid a security deposit of \$1,285.00 at the start of the tenancy which the landlord continues to hold. The parties agree that the rental unit keys were returned to the landlord on May 21, 2020.

The landlord's reduced monetary claim of \$3,331.33 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. June 2020 rent (plus parking and storage fees)	\$2,839.25
2. Painting	\$212.63
3. Light bulb replacement	\$48.00
4. Unit cleaning	\$157.70
5. Blind re-stringing	\$73.75
TOTAL	\$3,331.13

Settlement Agreement

During the hearing, the parties agreed on a partial settlement agreement regarding some of the items being claimed by the landlord. The items which have been agreed upon by the parties have been organized into a table below for ease of reference. As a result, the corresponding item numbers will not be included in the analysis section of this decision as all matters which form part of the settlement agreement were agreed upon by the parties, pursuant to section 63 of the Act, and form a final and binding agreement between the parties as mutually resolved matters related to this tenancy.

Settlement Agreement Item Number	Agreed compensation to landlord by tenant
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Item 2 - Painting	\$212.63
Item 3 - Light bulb replacement	\$48.00
Item 4 - Unit cleaning	\$157.70
TOTAL	\$418.33

Remaining items

Regarding item 1, the landlord has claimed loss of June 2020 rent in the amount of \$2,634.25, plus the unpaid parking fee of \$175.00 and the unpaid storage fee of \$30.00 for a total amount of \$2,839.25 for this item. Submitted in evidence is a hand-written notice from the tenant that is not dated but is signed by the tenant and reads as follows:

To whom it may concern,

As per my email dated May 02, please accept this letter as my notice to end tenancy. I intend to be fully moved out of the unit by Sunday May 17th 2020.

The notice includes the name of the tenant and their rental unit address. The agents stated that the tenant provided late notice under the Act and owes June 2020 rent, parking and storage fees as the landlord was unable to secure a new tenant for June 2020.

The tenant did not agree to this amount during the hearing. The tenant stated that their notice was only late by a day, which I will address later in this decision.

Regarding item 5, the landlord is claiming \$73.75 for the cost to re-string a damaged blind in the rental unit. The landlord submitted an invoice in the amount of \$147.15, which the agents clarified was for 2 rental unit, including the rental unit of the tenant and that the invoice total was divided in half as a result, for the total amount including tax of \$73.75. The invoice indicates 2-1" blinds record, 1 cordlock and labour plus a service call fee.

The tenant did not agree to this amount during the hearing. The tenant's position is that the blind cord is wear and tear of a blind and that the tenant should not be responsible for that cost. The Condition Inspection Report indicates that in 2017, the window coverings were in good condition and at the end of the tenancy, the right blind string was broken in the living room. There is no dispute that the rental unit was no older than

5 years as the agents testified that the building was five years old at the time of the hearing. There were no photos of the blind string submitted in evidence.

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what is reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 – The landlord has claimed loss of June 2020 rent in the amount of \$2,634.25, plus the unpaid parking fee of \$175.00 and the unpaid storage fee of \$30.00 for a total amount of \$2,839.25 for this item. While the tenant claims to have given notice on May 1, 2020, the written notice is dated May 2, 2020, which I find makes the notice 2 days late under the Act. Section 45(1) of the Act applies and states:

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.

[Emphasis added]

Given the above, I find the tenant breached section 45(1) of the Act by providing late notice to end the tenancy and while the tenant returned the keys as of May 21, 2020, I find the earliest the tenant could have ended the tenancy was June 30, 2020 without penalty under the Act. Therefore, I find the landlord has met the burden of proof and that the tenant owes **\$2,839.25** as claimed for unpaid June 2020 rent, parking fees and storage fees.

Item 5 – The landlord is claiming \$73.75 for the cost to re-string a damaged blind in the rental unit. I have considered the invoice submitted in the amount of \$147.15, which the agents clarified was for 2 rental unit, including the rental unit of the tenant and that the invoice total was divided in half as a result, for the total amount including tax of \$73.75. The invoice indicates 2-1” blinds record, 1 cordlock and labour plus a service call fee.

I have also considered that the tenant did not agree to this amount during the hearing. The tenant’s position is that the blind cord is wear and tear of a blind and that the tenant should not be responsible for that cost. The Condition Inspection Report indicates that in 2017, the window coverings were in good condition and at the end of the tenancy, the right blind string was broken in the living room. While there is no photo of the blind string before me, I note that RTB Policy Guideline 40 – Useful Life of Building Elements states that the useful life of venetian blinds is 10 years. I have also considered that while the blinds could not be any older than five years old if the building is five years old, I have considered that the agents were unsure of the exact age, so I find the blinds are more likely than not 5 years old.

Therefore, based on the Condition Inspection Report and the invoice before me, I find it more likely than not that the blind cord was not worn from reasonable wear and tear as the blind has only met half of the useful life of 10 years. After factoring in 50% depreciation for the blind being 5 years old, I award the landlord 50% of the \$73.75 amount claimed. As a result, I grant the landlord **\$36.88** for this item and I dismiss the remaining amount without leave to reapply, due to insufficient evidence.

As the landlord's claim had merit, I grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 72 of the Act.

Monetary order – Based on the above, I find the landlord has established a total monetary claim of **\$3,394.46**, comprised of \$2,839.25 for item 1, \$418.33 for items 2, 3 and 4 by mutual agreement, \$36.88 for item 5, plus \$100.00 for the filing fee. As the landlord continues to hold the tenant's security deposit of \$1,285.00, which has accrued \$0.00 in interest under the Act, **I authorize** the landlord to retain the tenant's full security deposit of **\$1,285.00** to offset the amount owing by the tenant to the landlord. I grant the landlord a monetary order pursuant to section 67 of the Act for the balance owing by the tenant to the landlord in the amount of **\$2,109.46**.

Conclusion

The landlord's application was mostly successful.

In addition, a portion was settled by way of a mutually settlement agreement pursuant to section 63 of the Act. The parties confirmed that their mutual agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

Based on the above, the landlord has established a total monetary claim of \$3,394.46. The landlord is authorized to retain the tenant's full \$1,285.00 security deposit, which has accrued no interest, to offset the amount owed. The landlord has been granted a monetary order pursuant to section 67 of the Act for the balance owing by the tenant to the landlord in the amount of \$2,109.46.

The monetary order must be served on the tenant and may be enforced as an order of the Provincial Court of British Columbia (Small Claims). The tenant is reminded that they may be held responsible for the costs related to enforcing the monetary order.

The decision will be emailed to the parties.

The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 14, 2020

Residential Tenancy Branch