



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord was assisted by counsel and a mandarin interpreter. The tenant was assisted by counsel.

Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence. Both parties also confirmed receipt of the submitted documentary evidence of the other party. Neither party raised any service issues.

I accept the undisputed affirmed evidence of both parties and find that both parties are deemed served with the notice of hearing package and the submitted documentary evidence as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the landlord's counsel confirmed that a previous Supreme Court Action was withdrawn concerning this dispute. As such, both parties confirmed that this matter is being dealt with exclusively through the Residential Tenancy Branch.

The landlord's counsel also confirmed that the monetary claim filed of \$35,100.00 will be limited to the Residential Tenancy Branch limit of \$35,000.00. The landlord's counsel also confirmed that although the landlord's monetary worksheet lists a total of \$43,055.79 the landlord would be limiting his claim to the limit of \$35,000.00.

During the hearing counsel for the tenant requested that an application filed for \$1,800.00 by the tenant for return of the \$1,700.00 security deposit and recovery of the \$100.00 filing fee be added and heard in conjunction with the landlord's claim. Counsel for the tenant stated that the facts for the landlord's claim are those same for the tenant's application. The landlord made no objections. Both parties confirmed the tenant had served the landlord with the notice of hearing package and the submitted documentary evidence for their application. On this basis, the tenant's application (file number noted on the cover of this decision) scheduled for December 22, 2020 shall be added to this hearing. The future hearing date is cancelled.

During the hearing the landlord cancelled items # 12 through to #16 as listed on the landlord's monetary worksheet as listed below.

\$939.75	Translation Fee
\$126.00	Translation Fee
\$157.31	Canon Pixma for printing documents
\$43.67	Canon CL-246 XL CLR
\$38.83	Canon PG-245 XL Black

During the hearing the landlord also clarified that items #9 through #11 are claims for a tenancy at a different address.

\$420.00	Cleaning Services
\$4,284.00	Estimated Repairs
\$3,300.00	Loss of Rent, 6 weeks at \$2,200.00

The landlord stated that these three items are compensation requests regarding a separate tenancy in which the landlord allowed the tenant to reside in her home sharing the upstairs space. Both parties were advised that this tenancy appears to be a "roommate" situation in which the Residential Tenancy Branch has no jurisdiction. On this basis, these portions of the landlord's claim are dismissed with leave to reapply. Leave reapply is not an extension of any applicable limitation period.

The hearing shall proceed on the remaining issues.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Is the tenant entitled to a monetary claim for return of the security deposit and recovery of the filing fee?

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks a clarified monetary claim of \$33,846.23 which consists of:

\$1,000.00	Sewer Insurance Deductible
\$25,000.00	Strata Insurance Deductible
\$1,475.51	New Appliances
\$2,052.76	Installation of hardwood floors
\$1,881.60	Telus Internet, July 30, 2019 to July 29, 2021
\$1,426.31	Washer/Dryer
\$261.45	Change of faucet
\$541.15	Hydro
\$107.45	Decent Locks and Security Ltd.
\$33,746.23	Sub-Total
\$100.00	Filing Fee
\$33,846.23	Total

The landlord provided affirmed testimony that this tenancy began on August 1, 2019 on a fixed term tenancy ending on July 31, 2020 as per the submitted copy of the mandarin to English translated signed tenancy agreement dated June 12, 2019. The monthly rent was \$2,200.00 payable on the 1st day of each month. A security deposit of \$1,100.00 was paid.

The landlord seeks recovery of her \$1,000.00 insurance deductible which covers up to a limit of \$10,000.00; the Strata \$25,000.00 insurance deductible; \$1,475.51 the cost of

new appliances as an incentive to enter into a new 3 year term tenancy agreement; \$2,052.76 replacement of hardwood floors due to water flood; \$1,881.60 telus contract due to landlord signing as guarantor for the tenant entering into a new 3 year tenancy agreement; \$1,426.31 for a new stove and fridge due to extreme heat damage; \$261.45 for a new faucet due to extreme heat damage; \$541.15 unpaid hydro costs for the period February 2019 to February 2020; \$107.45 front door lock changed.

The landlord stated that on August 9, 2019 at 5am the landlord was contacted by the building strata manager that a water leak/flood had occurred and was coming from the landlord's rental unit. The landlord immediately tried to contact the tenant without success. The landlord then attended the rental unit with another building occupant, R.Z. The landlord stated that upon entering the she found the stove on in the kitchen and the drain clogged in the shower with the water running. The landlord has submitted a copy of an affidavit dated April 6, 2020 which states in part,

...When I was inside Unit 608, I saw that the whole floor was flooded. I also saw that one stove burner was burning and the water in the shower room was overflowing.

I saw K. turn off the stove. I also saw K. turn off the water valve and the showers. In the shower room, I saw K. pulling out a handful of hairs that clogged the drains. She also said to me after showing me the hairs, "This is terrifying. The shower tap was not turned off. These hairs clogged the drains." I also felt that water in the shower room was still hot.

I am a third party witness and have no interest in the outcome of this dispute.
[reproduced as written]

The landlord also referred a translated copy of a Chinese message exchange between the landlord and the tenant dated August 10, 2019. It states in part,

Then after I woke up, I immediately turned off the water.

It was mainly because I felt too sleepy during the exam season

I had always been reviewing

So I forgot that the water had not been turned off

I was too deep in my sleep to hear it

[reproduced as written]

Both parties confirmed that the tenant contacted the landlord later that morning notifying him that she was in China.

The tenant confirmed that on August 5, 2019 the tenant left Canada to see family and friends in China and Japan. The tenant stated that on August 10, 2020 the tenant was contacted by the landlord notifying her of the flood and the subsequent damage. The tenant stated that she returned to Canada in late August 2019. The tenant argued that the source of the flood was a “pipe burst” as per 1” the Insurer Flood Investigation Report”.

The landlord also seeks \$1,475.00 for the cost of new appliances (stove and fridge) agreed to as the tenant and landlord entered into a new fixed term tenancy until July 31, 2022. The landlord stated that the tenant had agreed to enter into a new 3 year fixed term tenancy if the landlord would provide a new stove and fridge for the rental unit as an incentive.

The landlord seeks \$2,052.76 for the cost of replacing the damaged hardwood floors from the flooding.

The landlord seeks \$1,881.60 for the cost of telus bundle for a 2 year contract period where the landlord acted as the tenant’s guarantor for this service in exchange for the tenant entering into a new 3 year fixed term tenancy.

The landlord seeks \$1,426.31 for the replacement of a washer and dryer due to extreme heat damage caused by the stove being left on while the tenant was out of town.

The landlord seeks \$261.45 for the replacement cost of a faucet damaged due to extreme heat caused by the stove being left on while the tenant was out of town.

The landlord seeks \$541.15 for unpaid utilities for the period August 2019 until February 2020. The landlord submitted copies of August 2019 consumption data regarding usage of hydro for the rental unit.

The landlord seeks \$107.45 for the cost of lock replacement for rental unit front door. The landlord claims that the tenant added locks to 2 of the bedroom doors in the rental unit.

These claims are being disputed by the tenant who argues that the landlord's credibility is in question. The tenant has stated that the landlord had counselled the tenant to assist in committing insurance fraud by providing a false statement as to the cause of the flood. The tenant referred to a message exchange (marked as the tenant's evidence "2B" between the two parties on August 10, 2019 at 11:22am. The message states in part that the tenant is to provide a text message admitting to being present at the rental unit, but did not hear the water overflowing. It states in part,

...The Landlord could not find you, and she asked me to tell you that she will let the insurance company compensate for the loss. It will be a big bill, and you cannot afford it. You need to post a message in the WeChat Group, saying that, don't say that you went back to China, just say that you were sleeping and you did not hear the water leaked, and the water leaked itself. You found it when you wake up, but it's too late, and water has leaked to downstairs.

You contacted the landlord in time after you found it.

Because they broke into the room. If someone asks about this, you should send another message, saying that as you are a child, and you don't know how to deal with it. You should say that you didn't know what to do and was scared when you saw the water on the ground. So you went to a classmate's home to live for two days. If we both say that we went back to China, the insurance company will not compensate for it. I have asked the landlord to delete the message I sent to the WeChat group saying that we both went back to China. She has the evidence, and the insurance company is coming soon.

You need to send the messages in the WeChat group, covering the two points I mentioned just now.

As you did not tell the landlord before you went back to Chia, so she didn't know. And you cannot say that you went back; otherwise, the insurance company would refuse to compensate. You just say you were asleep and did not hear anything. You contacted the landlord in time after you found that the water was leaking. As you are a child, you didn't know how to deal with it, so you went to your classmate's home to live for two days. That's why you were not home. That's the only way you can say. Sent a message in the WeChat group to say that...

If you saw my messages, please send message in the WeChat group as soon as possible. I've told the landlord that I've told you. She cannot find you.

[reproduced as written]

The tenant also argues that there is no evidence presented of the cause of the water leak. The tenant referred to the landlord's evidence submission, "Initial Site Report" regarding the cause of loss which states,

As reported, water ingress from Unit 608 supply line in Kitchen.
[reproduced as written]

The tenant stated the landlord's evidence and that of the submitted affidavit from R.Z. the witness is contradicted as it stated:

I saw K. turn off the stove. I also saw K. turn off the water valve and the showers. In the shower room, I saw K. pulling out a handful of hairs that clogged the drains. She also said to me after showing me the hairs, "This is terrifying. The shower tap was not turned off. These hairs clogged the drains." I also felt that water in the shower room was still hot.
[reproduced as written]

The tenant argued that the tenant was not given an opportunity to cross-examine the tenant's witness, R.Z. concerning the contents of the submitted affidavit. I note that the tenant did not make a request for a summons for this witness.

The tenant argued that the landlord has stated that the water leak originated in the bathroom which is contradicted by the strata "Initial Site Report".

The tenant seeks a monetary claim of \$1,800.00 which consists of:

\$1,700.00	Return of Original \$1,100.00 Security Deposit, \$600.00 utility/wifi deposit
\$100.00	Filing Fee

The tenant claims that as of late December 2019 while the tenant was residing in the landlord's residence in a separate tenancy, the tenant communicated to the landlord on December 28, 2019 a notice to end the tenancy for frustration as of December 31, 2019 as per the submitted copy of the letter from the tenant's counsel in the letter dated December 28, 2019. It states in part, "I ask that you please direct any future correspondence regarding her tenancy of the Rental Unit to me." Part F of that same letter, Summary of Requests, states in part,

Return of the full amount of Deposits, totalling \$1,700, provided by my client in respect of the Rental Unit.

[reproduced as written]

The tenant claims that the tenant paid to the landlord a \$1,100.00 security deposit and a separate \$600.00 deposit for “internet and utilities”.

In support of the tenant’s claim, the tenant has submitted a copy of a RTB-41 form, Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit which states in part, dated February 23, 2020 the landlord was served with the tenant’s forwarding address in writing by registered mail to the address at which the person resides or carries on business as a landlord via XpressPost by Canada Post.

During the hearing both parties confirmed that the tenancy ended as of December 31, 2019 and that the landlord did not apply for dispute of returning the security deposit until June 10, 2020.

Analysis

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I find based upon the submissions and evidence of both parties that the landlord has failed to provide sufficient evidence to satisfy me that the tenant is responsible for the items of claim sought in this application. Despite the landlord providing a detailed chronology of the events and a witness affidavit upon discovering that a water leak had originated in the rental unit, the tenant has argued that the landlord’s credibility is in question. The tenant provided a translation of a message exchange that counsels the tenant to provide fraudulent evidence to the landlord for the purposes of insurance fraud. These details are provided in the above submitted translation of the message exchange. The tenant has also referenced the landlord’s submitted “Initial Site Report”

regarding the cause of loss as originating from the kitchen, whereas the landlord has submitted in this hearing that the source of the water ingress was the bathroom shower as referenced in the affidavit of R.Z. I find that the landlord's own evidence in conjunction with the tenant's submissions on the message exchange contradict the landlord's claim that the tenant was responsible for the water leak. On this basis, I find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord and that the landlord's claim is dismissed without leave to reapply.

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, both parties confirmed that the landlord currently holds the \$1,100.00 security deposit and the \$600.00 "internet and utilities" deposit paid by the tenant. The tenant provided undisputed affirmed evidence that notice was given to end the tenancy for December 31, 2019 as the tenancy was frustrated due to the rental unit renovations not being completed. The tenant provided undisputed affirmed evidence that the landlord was provided with the tenant's forwarding address for return of the deposits on February 23, 2020 as per the submitted copy of the RTB-41 completed form which was served to the landlord via Canada Post XpressPost. A review of the Canada Post online tracking website confirms service on February 27, 2020. On this basis, the landlord is deemed served with the tenant's forwarding address in writing on February 27, 2020. Both parties also confirmed that the landlord's application for dispute was filed on June 10, 2020. As such, I find that the tenant is entitled to return of the original \$1,100.00 security and the \$600.00 "internet and utilities" deposits.

Pursuant to section 38(6) the landlord having been served with the tenant's forwarding address in writing for return of the security deposit on February 27, 2020 did not return it within the allowed 15 day period nor did the landlord apply for dispute of its return until June 10, 2020. The Act does not contemplate compensation for "internet and utilities" deposits. On this basis, the tenant is entitled to compensation equal to \$1,100.00.

The tenant has established a total monetary claim of \$2,800.00. The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord's application is dismissed without leave to reapply.
The tenant is granted a monetary order for \$2,900.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial 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: October 13, 2020

Residential Tenancy Branch