



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, OLRD

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on June 10, 2020, wherein the Landlords sought monetary compensation from the Tenants in the amount of \$433.00, authority to retain their security deposit and recovery of the filing fee.

The hearing was originally scheduled on October 6, 2020. The Landlord failed to attend the hearing and their application was dismissed.

The Landlord applied for Review Consideration of the October 6, 2020 Decision on the basis she was not able to attend the hearing for reasons which were not anticipated and beyond her control. Her request was granted a new hearing was ordered.

The new hearing was scheduled for teleconference before me on January 8, 2021. Both parties called into the hearing. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?

Background and Evidence

The Landlord testified that the tenancy began March 4, 2020. Monthly rent was \$1,600.00 and the Tenants paid a \$800.00 security deposit. The tenancy ended on May 1, 2020.

The Landlords filed a Monetary Orders worksheet in which they set out their claim for \$433.00 for the following:

Move out clean	\$210.00
Replacement fire alarm	\$64.00
Lock replacement	\$59.00
Fire alarm reinstallation	\$100.00
TOTAL CLAIM	\$433.00

The Landlords filed a copy of the move in and move out Condition Inspection Report in evidence. R.S. testified that the Tenants refused to participate in the move out inspection. R.S. confirmed that she did not issue a Notice of Final Opportunity for a Condition Inspection.

In support of the claim, the Landlords provided photos of the rental unit which were taken by S.G.

The Tenants confirmed that they did not dispute the amount claimed by the Landlords for the cost to replace the locks. As such, I did not require testimony from the Landlords on this claim.

The Landlords claimed compensation for the cost to replace the fire alarm. R.S. stated that the alarm was wired and initially they wanted to replace it with another wired alarm. R.S. confirmed that they did not incur the \$100.00 cost to replace the wired alarm as they installed a battery operated alarm.

In response to the Landlords' claims the Tenant, N.B. testified as follows.

The Tenant confirmed they agreed to the Landlords' claim of \$59.00 to replace the locks.

In terms of the move out inspection, the Tenant stated that they received a text from the Landlords that they would attend the rental unit at 3:00 on May 1, 2020 for an inspection. The Tenants then put all their items on the patio in preparation for the inspection. N.B. stated that the Landlords then sent another text saying they could not attend at 3:00 p.m. N.B. stated that they finished loading up their stuff and moved into their new place. N.B. stated that they sent another text and called the Landlords to arrange another time to which the Landlords responded that they had already done the inspection on their own. N.B. confirmed they did not refuse to participate in the inspection, rather the Landlords did not give them an opportunity to do so. N.B. confirmed that the Landlords did not issue a Notice of Final Opportunity for a Condition Inspection.

N.B. stated that they cleaned the rental unit to a reasonable standard. N.B. noted that C.G.'s parents also came to clean the rental unit. N.B. also noted that they only lived there for two months. N.B. also claimed that the items left behind were left by the previous tenants.

C.G. also testified. C.G. stated that they received a text message from the Landlords about the move out inspection, then the Landlord, S.G., had to go to work and R.S. did not come down as she has health issues and she did not want to participate. C.G. reiterated that they were not provided an opportunity to participate in the inspection. C.G. also confirmed that the Landlords did not issue a Notice of Final Opportunity for a Condition Inspection.

C.G. confirmed the photos submitted by the Landlords accurately depict the condition of the rental unit when they moved out. C.G. stated that they believed they cleaned the rental unit to a reasonable standard. C.G. also stated that his mom is a "clean freak" and the unit was in "tip top shape".

C.G. confirmed that they removed the fire alarm as it was randomly going off.

The Landlord declined the opportunity to reply to the Tenants' testimony and submissions.

Analysis

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.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides 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.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

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

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The Tenants testified that they removed the fire alarm as it was “randomly going off”. There was no evidence before me to support a finding that the Tenants brought this alleged malfunction to the Landlords’ attention, or that they gave the Landlord an opportunity to repair the alarm. I accept the Landlord’s testimony that she incurred the cost of \$64.00 to replace the fire alarm. In replacing the wired alarm with a battery operated one, I find the Landlords minimized their losses. I therefore find the replacement cost to be recoverable from the Tenants and I award the Landlord the **\$64.00** claimed.

The Tenants agreed the Landlords were entitled to the **\$59.00** cost to replace the locks. I therefore award the Landlords compensation for this cost.

The Landlord alleged the Tenants did not clean the rental unit to a reasonable standard. The Tenants dispute this portion of the Landlords’ claim. I have reviewed the photos submitted by the Landlords. These photos confirm that some light cleaning was required at the end of the tenancy, such as wiping out the oven, baseboards and windowsills. The photos do not support the Landlords’ claim for \$210.00 in cleaning costs. I award the Landlords the nominal sum of **\$50.00** as I find this to be a reasonable amount to finish cleaning the rental unit to a reasonable standard.

As the Landlords have been partially successful in their claim, I award them recovery of the **\$100.00** filing fee.

Move out clean	\$50.00
Replacement fire alarm	\$64.00
Lock replacement	\$59.00
Filing fee	\$100.00
TOTAL AWARDED	\$273.00

I will now address the Landlords' request to retain a portion of the Tenants' deposit towards the amounts awarded.

Section 38 of the *Act* deals with security deposits and reads as follows:

Return of security deposit and pet damage deposit

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished

under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(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.

Section 38(2) and (5) refers to extinguishment and move in and move out inspections. Pursuant to sections 23 and 35 of the *Act*, a landlord is required to complete a move in and move out condition inspection report at the start of a tenancy and when a tenancy ends. Such reports, when properly completed, afford both the landlord and tenant an opportunity to review the condition of the rental unit at the material times, and make notes of any deficiencies.

Section 21 of the *Residential Tenancy Regulation* affords significant evidentiary value to condition inspection reports and reads as follows:

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The importance of condition inspection reports is further highlighted by sections 24 and 36 of the *Act* as these sections provide that a party extinguishes their right to claim against the deposit if that party fails to participate in the inspections as required (in the case of the landlord this only relates to claims for damage; a landlord retains the right to claim for unpaid rent.) For greater clarity I reproduce the applicable sections of the *Act* as follows.

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Consequences for tenant and landlord if report requirements not met

36...(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 36(2)(c) references the “regulations” which in turn refers to the *Residential Tenancy Branch Regulations*. The applicable provision with respect to scheduling the condition inspection report is section 17 of the *Regulations* and which reads as follows:

Two opportunities for inspection

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice ***in the approved form***.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

[emphasis added in bold italics]

The approved form is #RTB-22 Notice of Final Opportunity to Schedule a Condition Inspection. Service of this form alerts tenants to the fact an inspection will occur at a certain time, whether they participate or not. The form also warns tenants that they will extinguish their right to claim return of their deposits if they do not attend the final inspection.

The evidence confirms the Landlords did not comply with the *Act* and the *Regulations* in terms of scheduling a move out inspection and did not serve a Notice of Final Opportunity to Schedule a Condition Inspection. As such, the Landlords extinguished their right to claim against the deposits and had no option under section 38(1) but to return those funds to the Tenants. By failing to schedule a move out inspection as required by the *Act* and the *Regulations*, the Landlord has extinguished their right to claim against the deposit in accordance with section 36 of the *Act*. As such, when the tenancy ended the Landlord's only option under section 38(1) of the *Act* was to return the funds to the Tenant. The Landlord failed to return the security deposit to the Tenant and therefore breached section 38(1) of the *Act*.

As such and pursuant to section 38(6), I find the Tenants are entitled to return of double the security deposit paid (2 x \$800.00), namely: **\$1,600.00**.

The amounts awarded to each party are to be offset against the other such that the Tenants are entitled to a monetary order in the amount of **\$1,327.00** calculated as follows:

\$1,600.00 (awarded to Tenants)
- <u>\$273.00 (awarded to Landlords)</u>
= \$1,327.00 payable to Tenants

Conclusion

The Landlords are entitled to the sum of \$273.00 for cleaning, lock and fire alarm replacement and recovery of the filing fee.

The Tenants are entitled to the sum of \$1,600.00 representing return of double the security deposit paid. As they are to pay the sum of \$273.00 to the Landlords, they are to receive the net sum of \$1,327.00.

In furtherance of this my Decision, the Tenants are granted a Monetary Order in the amount of **\$1,327.00**. They must serve the Order on the Landlords and may file and enforce it in the B.C. Provincial Court (Small Claims Division).

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: January 28, 2021

Residential Tenancy Branch