



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: MNDCT, MNSD
 LL: MNDL-S, MNDCL, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on January 1, 2021 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- a monetary order for damage or compensation; and
- an order granting the return of the Tenant’s security deposit.

The Landlord’s Application for Dispute Resolution was made on February 10, 2021 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for damage, compensation, or loss;
- an order to retain the security deposit;
- an order granting recovery of the filing fee.

The Tenant, the Landlord, and the Landlord’s Agent B.M. attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written

evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Is the Tenant entitled to the return of the security deposit, pursuant to Section 38 of the *Act*?
3. Is the Landlord entitled to a monetary for damage, compensation or loss, pursuant to Section 67 of the *Act*?
4. Is the Landlord entitled to retain the Tenant's security deposit, pursuant to Sections 38 and 67 of the *Act*?
5. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 15, 2018. Rent in the amount of \$1,150.00 was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$550.00 which the Landlord currently holds. The Tenancy ended on November 30, 2020.

Tenant's Claims

The Tenant is seeking the return of his security deposit. The Tenant stated that he sent his forwarding address in writing by Registered Mail to the Landlord on December 6, 2020. The Landlord confirmed receipt sometime in mid December 2020. The Tenant stated that he has not yet received his security deposit. As such, the Tenant is claiming double the return of his deposit.

The Tenant is also seeking a monetary order for compensation. The Tenant provided a monetary worksheet containing the monetary claims outlined below;

The Tenant is claiming \$127.23 and \$20.39 for supplies he purchased to repair the rental unit near the end of the tenancy. The Tenant stated that he had intended on cleaning and repairing the rental unit on December 1, 2020, however, when he returned

to the rental unit, he found that the Landlord had changed the locks. As such, he is seeking reimbursement for the supplies.

The Tenant is also claiming \$2,000.00 as he left some items behind at the end of the tenancy, such as a barbeque, a bench press, and a box of pictures, however, has yet to collect them. The Tenant stated that the Landlord has changed the locks preventing him from gathering the remaining items. The Landlord responded and stated that the items are still at the rental unit and are in the way. The Landlord stated that she had emailed the Tenant on December 3, 2020 in an attempt to get the Tenant to remove these items. The Tenant confirmed receipt of the email but has not yet to collect his belongings.

The Tenant is claiming \$11.36 for postage fees and \$14.50 for the cost of printing photos in relation to preparing the dispute resolution package. During the hearing, the Tenant was notified that these costs are not recoverable under the *Act*. As such, they are dismissed without leave to reapply.

Landlord's Claims

The Landlord is seeking a monetary order for damage, compensation, and loss. The Landlord provided a monetary worksheet which outlines the following claims;

The Landlord is seeking \$1,350.00 for the loss of rent for December 2020. The Landlord stated that she had a new occupant that agreed to move into the rental unit on December 15, 2020, however, due to the poor condition of the rental unit, the Landlord was unable to re-rent the rental unit until January 1, 2021. The Landlord stated that she had also raised the rent to \$1,350.00 and is claiming for this loss.

The Tenant responded by stating that he had intended on returning to the rental unit beyond the end of the tenancy to clean the rental unit and repair damage, however, the Landlord had changed the locks which prevented him from doing so.

The Landlord is claiming \$122.08 in relation to replacing a broken light in the rental unit. The Landlord stated that the Tenant had notified her that his friend broken the light during the tenancy. The Landlord provided a copy of the condition inspection report which shows that the light was in good condition at the start of the tenancy. The Tenant acknowledged that the light was broken but was unsure if it was broken prior to the commencement of the tenancy.

The Landlord is claiming \$1,368.75 in relation to repainting the rental unit. The Landlord provided a quote in support of the costs. The Landlord stated that the rental unit had been freshly painted prior to the start of the tenancy. The Landlord stated that the condition inspection report indicates that the walls were in good condition at the start of the tenancy. The Landlord stated that at the end of the tenancy, the walls were damaged in the main room and bedroom, which needed to be repaired and painted.

The Tenant responded by acknowledging the damage and stated that he had intended on returning to the rental unit after the end of the tenancy to repair the walls in the rental unit, but that the Landlord had changed the locks.

The Landlord is claiming \$52.62 and \$36.94 to replace a broken shower head and shower handheld. The Landlord stated that these items were found broken at the end of the tenancy. The Landlord did not provide a receipt in support of the costs. The Tenant stated that the shower and equipment was old and in need of replacement due to wear and tear.

The Landlord is claiming \$67.11 for a new door handle on the front door of the rental unit as the door would not lock. The Landlord stated that the Tenant had broken their key off in the lock mechanism requiring replacement. The Tenant stated that the deadbolt key would not turn the deadbolt.

The Landlord is claiming \$1,755.60 for the replacement of flooring in the rental unit because of several scratches and gouges. The Landlord provided a quote for the cost of replacement, however, stated that the floor has not yet been replaced. The Tenant stated that the damage was not beyond what could be considered reasonable wear and tear.

The Landlord is claiming \$345.79 for the replacement of three damaged blinds in the rental unit. The Landlord stated that she has not yet purchased the blinds, but has put in curtains instead. The Tenant stated that there was only one blind that was not working during his tenancy.

The Landlord had originally claimed \$655.20 for cleaning the rental unit, however, during the hearing the Landlord stated that she was able to find a cleaner who cleaned the rental unit for \$500.00. The Landlord provided pictures to support to condition of the rental unit at the end of the tenancy. The Tenant stated that he had intended on returning the rental unit after his tenancy to clean.

The Landlord is claiming \$97.00 for the cost of movies which were rented by the Tenant on the shared cable system in the rental unit. The Tenant denied renting the movies.

The Landlord had also claimed \$61.09 in relation to developing pictures in preparation for the hearing. During the hearing, the Landlord was notified that these costs are not recoverable under the *Act*. As such, this claim was dismissed without leave to reapply.

If successful, the Landlord is seeking to recover the filing fee and to retain the Tenant's security deposit.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage resulting from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 was reasonable to minimize the damage or loss.

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

Tenant's Claims

The Tenant is claiming for double the return of his \$550.00 security deposit as the Landlord has not yet returned it. I accept that the parties agreed that the tenancy ended on November 30, 2020. I accept that the Landlord received the Tenant's forwarding address in mid December 2020. Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later.

In this case, I find that the Landlord did not return the Tenant's security deposit and did not submit their Application to retain the Tenant's security deposit until February 10, 2021 which is far beyond the 15 days permitted under Section 38 of the *Act*.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to an award of double the amount of the security deposit paid to the Landlord (\$550.00 x 2 = **\$1,100.00**).

The Tenant is claiming \$127.23 and \$20.39 for supplies he purchased to repair the rental unit near the end of the tenancy. The Tenant is also claiming \$2,000.00 as he left some items behind at the end of the tenancy, such as a barbeque, a bench press, and a box of pictures, however, has yet to collect them. The Tenant stated that they Landlord has changed the locks preventing him from cleaning and repairing the rental unit, as well as from gathering the remaining items.

Section 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.

In this case, I find that the Tenant's tenancy ended on November 30, 2020. I find that it would have been the Tenant's responsibility to ensure that all his possessions were removed and that the rental unit was cleaned and repaired, on or before November 30, 2020 by 1:00PM. Furthermore, I find that it would have been the Tenant's responsibility after receiving an email from the Landlord on December 3, 2020 to go collect the rest of

his possession from the rental unit. The Tenant has not yet taken any action to collect his items.

In light of the above, I find that the Tenant has not mitigated his loss by removing all his possession, cleaning, and repairing the rental unit on or before the end of his tenancy. As such, I dismiss the Tenant's monetary claims for compensation without leave to reapply.

Landlord's Claims

The Landlord is seeking \$1,350.00 for the loss of rent for December 2020. The Landlord stated that she had a new occupant that agreed to move into the rental unit on December 15, 2020, however, due to the poor condition of the rental unit, the Landlord was unable to re-rent the rental unit until January 1, 2021. The Landlord stated that she had also raised the rent to \$1,350.00 and is claiming for this loss.

In this case, I find that the Landlord provided insufficient evidence to demonstrate that it took all of December 2020 to clean and repair the rental unit, preventing the new occupant from moving into the rental unit until January 1, 2021. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$122.08 in relation to replacing a broken light in the rental unit. I find that the Landlord provided sufficient evidence to demonstrate that the light was in good condition at the start of the tenancy and that it needed replacement at the end of the tenancy. As such, I find that the Landlord is entitled to compensation in the amount of **\$122.08**.

The Landlord is claiming \$1,368.75 in relation to repainting the rental unit. I find that the Landlord provided sufficient evidence to demonstrate that the walls were in good condition at the start of the tenancy and needed repair and to be repainted at the end of the tenancy. While the Tenant stated that he had intended on returning to the rental unit to complete this work, I find that the Tenant was no longer entitled to the rental unit. I find that the Landlord is entitled to compensation in the amount of **\$1,368.75**.

The Landlord is claiming \$52.62 and \$36.94 to replace a broken shower head and shower handheld. The Landlord did not provide a receipt in support of these costs as such, I find that the Landlord has not demonstrated the value of the loss. I therefore dismiss this claim without leave to reapply.

The Landlord is claiming \$67.11 for a new door handle on the front door of the rental unit as the door would not lock. In this case, I find that the Landlord has provided sufficient evidence of their loss, and therefore award the Landlord compensation in the amount of **\$67.11**.

The Landlord is claiming \$1,755.60 for the replacement of flooring in the rental unit because of several scratches and gouges. The Landlord stated that they have not yet replaced the flooring in the rental unit. I find that the Landlord has not yet suffered a financial loss. As such, I dismiss the Landlord's claim for flooring without leave to reapply.

The Landlord is claiming \$345.79 for the replacement of three damaged blinds in the rental unit. The Landlord stated that she has not yet replaced the blinds. As such, I find that she has not suffered a financial loss. I therefore dismiss this claim without leave to reapply.

The Landlord is claiming \$500.00 for cleaning costs. I find that the Landlord provided sufficient evidence to demonstrate that the rental unit was left unclean and required cleaning. I find that the Landlord has demonstrated an entitlement to monetary compensation in the amount of **\$500.00**.

The Landlord is claiming \$97.00 for the cost of movies which were rented by the Tenant on the shared cable system in the rental unit. The Tenant denied renting the movies. I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant rented to movies that the Landlord has been charged for. As such, I dismiss this claim without leave to reapply.

As the Landlord was partially successful, I find that the Landlord is entitled to the recovery of the **\$100.00** filing fee paid to make the Application.

Set-off of Claims

The Tenant has demonstrated an entitlement to a monetary award of \$1,100.00. The Landlord has demonstrated an entitlement to a monetary award of \$2,157.94.

Setting of the parties' claims, and pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary award the amount of \$1,057.94 (\$2,157.94 - \$1,100.00). I find it

appropriate in the circumstances to order that the Landlord retain the Tenant's security deposit in the amount of \$550.00 held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$507.94 (\$1,057.94 - \$550.00).

Conclusion

The Landlord is granted a monetary order in the amount of \$507.94. The order should be served as soon as possible and can be filed and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 10, 2021

Residential Tenancy Branch