# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the Residential Tenancy Regulation (the Regulation) or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security and pet damage deposits (the deposits), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlord was assisted by counsel TV. Witness for the tenant BB also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing both parties affirmed they understand it is prohibited to record this hearing.

Preliminary Issue – Service of Documents and Adjournment

The landlord affirmed she served the notice of dispute resolution and the evidence by registered mail sent to the tenant's forwarding address on January 15, 2021 (the tenant's forwarding address and the tracking number are recorded on the cover page of this decision). The landlord submitted into evidence a registered mail receipt dated January 15, 2021.

The tenant affirmed she did not receive the notice of hearing, she received an email from the RTB and learned about this application.

Based on the convincing testimony provided by the landlord and the registered mail receipt and tracking number, I find the tenant was served the notice of dispute resolution and the evidence sent on January 15, 2021 in accordance with section 89(1)(d) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the notice of dispute resolution and the evidence on January 20, 2021, in accordance with section 90 (a) of the Act.

The landlord served a package containing photographs in person on April 30, 2021. The tenant confirmed receipt of the package on April 30, 2021.

Based on the testimony provided by both parties, I find the tenant was served a package containing photographs on April 30, 2021 in accordance with section 89(1)(a) of the Act.

The landlord submitted new evidence after April 30, 2021. The tenant stated she received 18 emails from the landlord after April 30, 2021 and that she did not have time to review these documents. The documents served after April 30, 2021 include emails sent in December 2020 and January 2021, quotations and photographs dated January 2021.

Rule of Procedure 3.14 states:

> 3.14 Evidence not submitted at the time of Application for Dispute Resolution
> Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.
> In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

Rule of Procedure 3.17 states new evidence "may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence".

Based on the testimony provided by both parties, I find the landlord could have served all her evidence at least 14 days before the hearing, as the documents served late date December 2020 and January 2021 and were available when the landlord served the first evidence package on January 15, 2021. The evidence served after April 30, 2021 is excluded, per Rules of Procedure 3.14 and 3.17.

The landlord confirmed receipt of the tenant's response evidence on April 29, 2021. I find the landlord was served the tenant's response evidence on April 29, 2021 in accordance with section 89(1)(a) of the Act.

The landlord's counsel submitted a written request to adjourn the hearing because the landlord was unable to serve documents within the required timelines. The landlord submitted a physician's note indicating the landlord has been under medical treatment since February 28, 2021. At the outset of the hearing the landlord affirmed she is ready to proceed with the hearing today.

Per Rule of Procedure 7.9, serving evidence late is not a reason to adjourn a hearing. Thus, I deny the landlord's request to adjourn the hearing.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the tenant's deposits?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on January 31, 2014 and ended on December 29, 2020. Monthly rent was $1,225.90, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of $575.00 and a pet damage deposit of $575.00 and currently holds the total amount of $1,150.00.

Both parties agreed the forwarding address was provided in writing on December 29, 2020. The tenant did not authorize the landlord to retain the deposits. This application was filed on January 12, 2021.

The move-in inspection report signed by both parties on February 20, 2014 was submitted into evidence. It indicates the apartment was in good condition when the

tenancy started. The landlord affirmed the move-in inspection was conducted on February 20, 2014 because the tenant asked to conduct it on that date. The tenant stated she asked to conduct the move-in inspection on January 31, 2014 but the landlord insisted on conducting it on February 20, 2014.

The move-out inspection report signed by the landlord on December 29, 2020 was submitted into evidence. The landlord explained she did not find the move-in inspection report and she used a new inspection report. The tenant did not sign the move-out inspection report because it is not the same inspection report that was signed when the tenancy started and because she did not agree with the condition at the end of the tenancy indicated in the move-out inspection report.

The landlord is claiming for compensation in the amount of $165.59 for windows coverings repairs and cleaning. Both parties agreed the windows coverings were in good condition when the tenancy started. The landlord testified the tenant damaged the windows coverings and did not clean them when the tenancy ended. The move-out inspection report does not indicate the condition of the windows coverings at the end of the tenancy. The landlord stated she did not notice the windows coverings condition when she conducted the move-out inspection.

The landlord submitted photographs showing damaged and dirty windows coverings and an invoice dated January 14, 2021 for $165.59. The invoice indicates: $40.80 to clean the windows coverings, $32.00 to clean the cord, $47.60 to replace slats, $30.00 for labour and taxes.

The tenant affirmed the windows coverings were clean when the tenancy ended and agreed to pay $47,60 to replace the 17 damaged slats. The tenant submitted into evidence photographs showing clean windows coverings.

The landlord is claiming compensation in the amount of $397.80 to clean the 450 square feet rental unit. The landlord stated the rental unit was in poor cleaning condition when the tenancy ended. The move-out inspection report indicates ‘scuff marks’ on the entry and living room walls, a dirty heater in the dining room, ‘not cleaned/dusty’ bathroom ceiling and ‘scuff marks’ in the utility room. The landlord submitted photographs and a receipt in the amount of $397.80.

The tenant testified that she cleaned the rental unit for 6 hours before the move-out inspection and the rental unit was reasonably clean when the tenancy ended. The tenant submitted photographs into evidence.

The landlord is claiming compensation in the amount of $578.70 for painting expenses. The landlord said she painted the rental unit before the start of the tenancy, the tenant extensively damaged the walls and she needed to mud, sand and paint the walls. The move-out inspection report indicates 'paint chip' in the bathroom. The landlord submitted photographs into evidence, an invoice for $380.00 for painting (labour), and an invoice for $130.00 for mudding and sanding. The landlord spent $68.70 to buy 3 gallons of paint.

The tenant affirmed when the tenancy ended the walls had some scratches caused by her cat and the rental unit needed to be repainted because of regular wear and tear, as the tenancy lasted 7 years. The tenant submitted photographs into evidence.

The total amount the landlord is claiming is $1,142.09.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> 7 (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Move-in Inspection

Section 23(4) of the Act requires the landlord to complete a condition inspection report in accordance with the regulations. Regulation 14 requires the landlord and tenant to complete the move-in inspection at the outset of the tenancy, unless the parties agree on a different time.

The parties provided conflicting testimony regarding the reason why the move-in inspection was completed on February 20, 2014, 21 days after the tenancy started. The landlord did not provide any documentary evidence and did not call any witnesses to prove the tenant agreed to complete the move-in inspection on February 20, 2014. Thus, I find the landlord failed to prove, on a balance of probabilities, the tenant agreed to complete the move-in inspection 21 days after the tenancy started. As such, the landlord did not comply with Regulation 14 and section 23(4) of the Act.

Section 24(2) of the Act states:

> The right of a 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 23 (3) [2 opportunities for inspection],
> (b)having complied with section 23 (3), does not participate on either occasion, or
> (c)does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

As the landlord did not comply with Regulation 14 and section 23(4) of the Act, the landlord extinguished her right to claim against the deposits, per section 24(2)(c) of the Act.

Security Deposit

Section 38(1) of the Act requires the landlord to either return the tenant's deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The forwarding address was provided in writing on December 29, 2020. The landlord retained the deposits.

In accordance with section 38(6)(b) of the Act, as the landlord extinguished her right to claim against the deposits and did not return the deposits within the timeframe of section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit.

Residential Tenancy Branch Policy Guideline 17 states the tenant is entitled to double the deposits if the landlord claimed against the deposits when her right to do so has been extinguished under the Act:

> Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:
> - if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the the tenant is entitled to $2,300.00 (double the $575.00 security deposit and the $575.00 pet damage deposit).

Windows Coverings

Section 37(2)(a) of the Act states the tenant must clean the rental unit when the tenancy ends: "When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear".

Residential Tenancy Branch Policy Guideline 1 states:

> INTERNAL WINDOW COVERINGS
> 1. If window coverings are provided at the beginning of the tenancy they must be clean and in a reasonable state of repair.
> 2. The landlord is not expected to clean the internal window coverings during the tenancy unless something unusual happens, like a water leak, which is not caused by the tenant.
> 3. The tenant is expected to leave the internal window coverings clean when he or she vacates. The tenant should check with the landlord before cleaning in case there are any special cleaning instructions. The tenant is not responsible for water stains due to inadequate windows.
> 4. The tenant may be liable for replacing internal window coverings, or paying for their depreciated value, when he or she has damaged the internal window coverings deliberately, or has misused them e.g. cigarette burns, not using the "pulls", claw

> marks, etc.

Based on the photographs provided by both parties, I find the windows coverings were reasonably clean when the 7-year tenancy ended. The move-out inspection does not indicate the windows coverings' condition at the end of the tenancy. Thus, I dismiss the landlord's claim for windows coverings cleaning costs.

Based on the testimony offered by both parties, I find the tenant breached section 37(2)(a) of the Act by damaging the windows coverings and the landlord suffered a loss because of the tenants' failure to comply with the Act. Based on the invoice submitted by the landlord, I find the landlord suffered a loss of $47.60 to replace the 17 damaged slats, $30.00 for labour costs and $9.31 for taxes, in the total amount of $86.91.

As such, I award the landlord $86.91 for compensation to repair the windows coverings.

Cleaning

Residential Tenancy Branch Policy Guideline 1 states:

> The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. 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.

The tenant's testimony about cleaning the rental unit for six hours before the move-out inspection was convincing.

Based on the photographs provided by both parties, I find the rental unit was reasonably clean when the tenancy ended.

Thus, I dismiss the landlord's application for compensation for cleaning expenses.

Painting

Residential Tenancy Branch Policy Guideline 1 states:

> Nail Holes:
> 1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used.

If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
**2. The tenant must pay for repairing walls where there are an excessive number of** nail holes, or large nails, or screws **or tape have been used and left wall damage.**
**3. The tenant is responsible for all deliberate or negligent damage to the walls.**
PAINTING
The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises.
**The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.**

**(emphasis added)**

Based on the testimony provided and photographs submitted by both parties, I find the tenant breached section 37(2)(a) of the Act by not painting the walls that were damaged during the tenancy by her cat and the landlord suffered a loss because of the tenant's failure to comply with the Act.

Residential Tenancy Branch Policy Guideline 40 states the useful life of interior painting is 4 years. The paint was 7 years old when the tenancy ended.

Considering the size of the rental unit and the age of the painting when the tenancy ended, I find it reasonable to award the landlord $200.00 for painting expenses. I note that the Policy Guideline is a guidance to interpret the Act. The tenant is responsible for the damage caused to the rental unit walls (scratches caused by her cat) despite the paint being beyond its useful life.

Thus, I award the landlord $200.00 in compensation for painting expenses.

Filing fee and summary
As the landlord was partially successful in her claim, I authorize her to recover the $100.00 filing fee.

In summary, the landlord is entitled to:

| **Expenses** | **$** |
|---|---|
| Windows coverings repair | 86.91 |
| Painting | 200.00 |
| Filing fee | 100.00 |
| **Total** | **386.91** |

Set-off

The tenant is awarded $2,300.00. The landlord is awarded $386.91.

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

> 1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

Thus, the tenant is awarded $1,913.09.

Conclusion

Pursuant to section 38(6)(b) of the Act, I grant the tenant a monetary order in the amount of $1,913.09.

This order must be served on the landlord by the tenant. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be 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: May 19, 2021

Residential Tenancy Branch