



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained. Both parties confirmed they were not recording the hearing.

The hearing lasted 55 minutes.

1. *Preliminary Issue: Application for Adjournment*

At the outset of the hearing, the tenant claimed she was unable to conduct the hearing and required an adjournment. The tenant testified that she was recently undergoing medical tests. Further, she was at work during the hearing which was inconvenient. She said she had evidence that she wanted to upload but forgot about the hearing until today.

The tenant submitted no supporting evidence that she was unwell or unable to participate in the hearing. The tenant did not seek medical help with respect to her condition on the day of the hearing, nor did she submit a doctor's note or report.

The tenant was unable to articulate what she would do differently between today and the adjourned date.

The landlord objected to the adjournment stating he wished the hearing to proceed.

Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* allow parties to request that hearings be adjourned.

Residential Tenancy Branch Rule of Procedure 7.9 states that, without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

I considered the above tests after the parties each made submissions. I found that an adjournment was unlikely to result in a resolution. I determined that the tenant had failed to take any steps to seek medical help or notify the landlord or RTB of any reason for requesting an adjournment. I found that the tenant had not submitted any supporting evidence confirming her illness and consequent inability to proceed with the hearing. I found that the tenant had forgotten about the hearing and lack of preparedness may have been the reason for requesting a delay.

I found that the tenant failed to establish that the adjournment was necessary to provide her with a fair opportunity to prepare.

Considering all the evidence and the above tests, I accordingly denied the application for an adjournment and the hearing continued.

At all times during the lengthy hearing, the tenant appeared capable of participating in

the hearing; she presented as being able to represent herself.

2. Preliminary Issue: Service of Evidence

During the hearing, the tenant provided affirmed evidence she had not received service of the evidence package upon which the landlord relied to establish his claims.

After testimony from the landlord regarding the circumstances of the service, the landlord acknowledged the landlord's agent was supposed to serve the evidence and the agent appeared to have overlooked doing so. The landlord had no evidence of service.

I find the landlord failed to serve the tenant and I accept her testimony in this regard.

As the landlord failed to provide evidence of service of the evidence package pursuant to section 89, I directed that I would not consider the documentary evidence submitted in support of the landlord's claim.

The tenant did not submit any documentary evidence.

The hearing proceeded.

3. Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Section 10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout the conference, the tenant repeatedly interrupted the landlord and me. Several times I asked her to allow us to speak without interruption. The tenant continued to interrupt, to argue with the landlord and to voice a different version of events. When the tenant gave testimony, I asked her not to repeat herself; the tenant

seemed upset, argumentative, and disappointed the hearing was not adjourned as she requested. She stated she was calling from work and twice addressed others near her.

The hearing took longer at 55 minutes because of the behaviour by the tenant.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

As the landlord's documentary evidence is not considered by me because of failure to serve the tenant, the landlord relied solely on his testimony. The tenant did not submit any documentary evidence.

The parties agreed the tenancy began on June 1, 2020 and ended when the tenant moved out on January 31, 2021. The landlord returned the \$1,450.00 pet deposit and retained the \$1,450.00 security deposit without the consent of the tenant.

The landlord returned the pet deposit within 15 days of receipt of the forwarding address of the tenant. The landlord filed this application the day after receiving the forwarding address and within the time requirements.

The landlord stated a condition inspection was conducted on moving in and moving out indicating the unit was in good condition on moving in and the alleged damages were noted on moving out. The report is not admissible evidence. The tenant did not contradict the landlord's testimony.

The landlord testified that he requested a monetary award as follows:

ITEM	AMOUNT
Lawn repair	\$360.00
Plumbing repair	\$633.00
Reimbursement of the filing fee	\$100.00
TOTAL CLAIM - DAMAGES	\$1,093.00

Lawn repair

The landlord testified as follows. He stated that the tenant used an area of the lawn for parking despite there being plenty of other parking areas in a 2-acre lot. Mud and tire tracks damaged part of the lawn. He received a written assessment of \$688.00 for filling, levelling, and re-seeding the area. The tenant acknowledged receiving a copy of the assessment for repairs in the amount of \$688.00 from the landlord a few weeks after the tenancy ended with a request for payment.

The tenant acknowledged that her, her children, the moving van, and friends' vehicles parked on the disputed area but stated it was necessary to accommodate the people involved in the moving out. Therefore, she stated she is not responsible for the damage.

The landlord requested \$360.00 for the work as he ended up doing it himself with a friend. He stated the job took 3 hours labour (\$120.00), truck rental (\$100.00) and materials (\$140.00) for a total of \$360.00.

Plumbing repair

The landlord stated that the tenant replaced a showerhead on one of the unit's showers without permission which was improperly installed causing a leak and drywall damage. The landlord stated that he paid a contractor \$633.00 for labour and materials to fix the damage.

The tenant acknowledged changing the shower head. However, the tenant asserted that the job was done well, and any water damage was not caused by the work she did.

The landlord testified that he was present when the repair work was performed and stated that the improper installation of the showerhead caused the leaking which led to the repair cost.

The tenant acknowledged that the landlord sent her a copy of the repair bill in the amount of \$633.00 with a request for payment but denied that she is responsible for this cost.

In summary, the tenant denied that there was any damage to the unit for which she was responsible, and she requested the return of her security deposit in full.

Filing fee and security deposit

The landlord requested reimbursement of the filing fee and authorization to apply the award to the security deposit.

Analysis

When parties provide conflicting testimony, it is important to assess the parties' credibility.

I found the landlord's testimony believable as it was supported by a verbal estimate for the lawn repair and a plumbing invoice. Although the invoice was not considered as evidence, the tenant acknowledged receiving it from the landlord after the tenancy ended with a request for payment. This lends weight to the landlord's subsequent claim.

The tenant acknowledged that she parked on the disputed lawn area and did unauthorized plumbing. I find the tenant's blanket denial of responsibility to be unreasonable and lacking credibility given the facts as I understand them.

I therefore prefer the landlord's testimony to the tenant's testimony. Where their versions of events differ, I prefer the landlord's testimony as the more plausible and reliable.

Claim for Damage or Loss

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the **existence of the damage** or loss.
2. Secondly, the claiming party must that the damage or loss **stemmed directly** from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the **actual monetary amount** of the loss or damage.
4. Finally, the claimant has a duty to take reasonable **steps to reduce**, or mitigate, their loss.

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

The above-noted criteria are based on sections 7 and 67 of the Act. Section 7(1) of the Act provided 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 allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

These sections state as following:

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.

...

67. Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The landlord must meet the burden of proof with respect to each claim. Each of the landlord's claims are considered in turn.

Lawn repair

The tenant acknowledged that vehicles belonging to her, her children, the moving van and friends, parked on the disputed area, a lawn. I accept as the more likely situation that the tenant selected to park on the lawn rather than elsewhere as she was indifferent to the damage to the lawn. I find the landlord obtained an estimate which he provided to the tenant, which she acknowledged. I find the landlord quickly assessed the damage, carried out repairs and requested reimbursement.

In view of testimony, I find the landlord's request for a monetary award of \$360.00 to be reasonable. I accept his testimony that he incurred this expense because of the tenant's unauthorized parking on the lawn. I find the landlord took reasonable actions to repair the lawn and reduced expenses by doing the work himself.

Considering the evidence and the testimony, I find the landlord has met the burden of proof with respect to this claim. Accordingly, I grant the landlord a monetary award in the amount requested of \$360.00.

Plumbing repair

The tenant acknowledged changing the shower head without permission from the landlord. The landlord testified that he was present when the repair work was performed and stated that the improper installation of the showerhead caused the leaking.

I accept the landlord's testimony as being reasonable and reliable. I accept his testimony that the tenant is responsible for the improper installation of the showerhead and the resultant damage. I find the landlord took reasonable steps in having the leak repaired and that he incurred the expense stated in the invoice, a copy of which the tenant acknowledged receiving. I find the landlord quickly assessed the damage, carried out repairs and requested reimbursement.

Considering the evidence and the testimony, I find the landlord has met the burden of proof with respect to this claim as well. Accordingly, I grant the landlord a monetary award in the amount requested.

Summary

As the landlord has been successful in his claim, I grant an award of \$100.00 for reimbursement of the filing fee.

Pursuant to section 72, I direct that the landlord may deduct the award from the security deposit with the balance to be paid to the tenant as follows:

ITEM	AMOUNT
Lawn repair	\$360.00
Plumbing repair	\$633.00
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$1,450.00)
SECURITY DEPOSIT to be returned to TENANT	(\$357.00)

Conclusion

I direct that the landlord pay the balance of the security deposit of **\$357.00** to the tenant. I grant the tenant a Monetary Order of \$357.00 which may be filed and enforced as an Order of the Courts of British Columbia.

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: June 10, 2021

Residential Tenancy Branch