



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

- compensation for damage caused by the tenant, their pets or guests to the unit, site or property - security deposit applied to the claim pursuant to sections 37, 38 and 67 of the Act;
- compensation for monetary loss or other money owed pursuant to section 67 of the Act and;
- the recovery of the filing fee for this application pursuant to section 72 of the Act.

The landlord's agent (the landlord) attended the teleconference hearing; the tenant did not attend. I left the conference call open for fifteen minutes to allow the tenant an opportunity to join. I verified the correct call-in codes were provided in the notice of hearing documents and confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

I advised the landlord of the Residential Tenancy Branches Rules of Procedure 6.11 prohibiting the recording of these proceedings. The landlord acknowledge they understood.

The landlord was given a full opportunity to provide affirmed testimony and present their evidence.

The landlord testified that they served the Notice of Hearing proceeding and their evidentiary materials to the tenant via registered mail on January 29, 2021. The Registered Mail tracking numbers are referenced on the cover page of this decision.

As per section 88, 89 and 90 of the Act, I find the tenant is deemed to have been served with the notice of hearing and evidentiary materials on February 3, 2021 – the fifth day after the landlord mailed the materials.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for damage caused by the tenant, to the unit - security deposit applied to the claim?

Is the landlord entitled to a monetary award for compensation for loss or other money owed?

Is the landlord entitled to recovery of the filing fee from the tenant?

Background and Evidence

The landlord provided undisputed testimony during this hearing. The tenancy started as a one-year fixed term agreement that was renewed twice after the end of the first term. The first term agreement started on June 1, 2019 and ended on May 31, 2020. Rent was \$2400.00 per month, included gas but not electricity. The landlord collected a security deposit of \$1200.00. The landlord testified that the parties agreed to extend the fixed term agreement for a further three months from June 1, 2020 to Aug 31, 2020 under the same terms of the first agreement. The security deposit of \$1200.00 was carried to the second term and rent remained \$2400.00 per month. At the end of the second term, the parties again agreed to extend the fixed term agreement for a third term commencing September 1, 2000 to November 30, 2000 under the same conditions of the first and second extension. Rent remained \$2400.00 and the \$1200.00 security deposit was transferred from the previous terms. As of the date of this hearing the landlord continues to hold part of the security deposit in the amount of \$630.00 plus an additional amount of \$250.00 that was returned to the landlord by the Strata.

The landlord testified that the tenant paid the Strata a deposit of \$250.00 for the move-in fee charged by the Strata to the tenant. When the tenant moved-out, this amount was unaccounted for by the Strata and it was not found until the tenant provided a copy of her receipt to the landlord and in turn the landlord provided it to the Strata. When the Strata verified the tenant's payment, instead of returning the \$250.00 to the tenant, they returned the \$250.00 to the landlord instead of to the tenant. The landlord is holding this \$250.00 amount in trust, pending the outcome of this hearing.

The landlord testified that the tenancy ended on November 30, 2020.

At the start of the first fixed term tenancy, the parties conducted a condition inspection report, which the landlord submitted into evidence. Both parties signed the condition inspection report.

The landlord also testified that there was no condition inspection report completed at the end of the tenancy nor did the landlord offer other opportunities for the tenant to complete the condition inspection report.

The landlord testified that she met with the tenant on November the 30, 2020 late in the evening. The rental unit was dark, and she was in a hurry to attend to family issues. She noticed the unit was not clean enough and asked the tenant to clean more.

When the landlord returned to the unit during daylight, she discovered there was damage to the floors, to the laundry room, the bathroom was dirty and stained, the stove hood fan and the backsplash were also dirty. The tenant left garbage and items in a closet and in the kitchen drawers. The landlord noticed many scuff marks and holes, but she attributes these to usual wear and tear and is not claiming for that. The landlord is claiming for repair and damage to the stove gas burner, closet doors and handles, bathroom countertops and the flooring in the unit. She submitted into evidence an invoice supporting her claims. The landlord testified that this was a brand-new unit when it was rented to the tenant.

The landlord further testified that the tenant returned a broken key fob that needed to be replaced at the cost of \$180.00 and that the tenant left an unpaid hydro bill in the amount \$52.40. The tenant cancelled the hydro services on November six but continued to use electricity until they moved out on November 30, 2020. The landlord submitted into evidence a bill for the fob replacement and the outstanding hydro.

The tenant provided her forwarding address for the return of the security deposit on November 30, 2020. The tenant did not give permission to the landlord to keep any of the security deposit.

The landlord confirmed that the tenancy ended on November 30, 2020 and that she returned to the tenant \$570.00 of the \$1,200.00 security deposit on December 11, 2020. She estimated that her losses were \$630.00.

The landlord explained that in late January 2021, she received a Decision from the Residential Tenancy Branch and learned that the tenant had been unsuccessful in her own claim for the full return of the security deposit. (The file number is recorded in the cover page of this decision). The landlord explained that she did not understand the dispute process and did not know she needed to file a claim in order to keep the deposit. She filed her own claim on January 28, 2021 without understanding what her rights and responsibilities were as a landlord.

The landlord claims the following losses:

Description	Amount claimed
Floor and unit repairs	\$407.59
Fob replacement	\$180.00
Hydro bill	\$52.40
Filling Fee	\$100.00
Total Claimed	\$739.99

Analysis

The Act and extensive information for landlords and tenants can be found here:

https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/02078_01#section43.1

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/calculators-and-resources/policy-guidelines>

Security Deposit:

Section 35 of the Act requires landlords and tenants to conduct a condition inspection report at the end of a tenancy. When a landlord fails to complete the requirements of this section, the landlord extinguishes its right to claim against the security deposit as per Section 36 (2) of the Act:

Consequences for tenant and landlord if report requirements not met

36 (1)The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a)the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and

(b)the tenant has not participated on either occasion.

(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.

[emphasis added]

Section 38 (1) of the Act requires a landlord to return the security deposit withing 15 days after the latter of the day the tenancy ends or the day the landlord received the tenant's forwarding address.

Section 38 (5) and (6) of the Act state that when the landlord's right to claim against the security deposit is extinguished, the landlord may not make a claim against it and must pay the tenant double the amount of the security deposit or pet damage deposit, or both, as applicable.

Based on the evidence before me, I find the tenancy ended on November 30, 2020; the same day that the tenant gave the landlord its forwarding address. The landlord had 15 days to return the security deposit or file a claim against the deposit as per section 38 (1) (d). The landlord did not return the deposit or file an application to claim for damages against the deposit within 15 days. The landlord filed her application on January 18, 2021.

In this case the landlord needed to return \$1200.00 to the tenant by December 15, 2020 or file to make a claim against the security deposit.

I find that landlord breached the Act, the regulations and extinguished its right to claim against the security deposit. I also find the landlord failed to return the security deposit

on time, failed to claim for the deposit; she also did not complete a condition inspection report at the end of the tenancy and did not offer the tenant two opportunities to complete the final inspection in accordance with the Act and Regulations; consequently **I order the doubling provisions apply to the Security Deposit, that is: \$1200.00 x 2 = \$2400.00.**

The doubling provisions are further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

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;**

I also find the landlord did not have the tenant's consent to keep any of the security deposit.

\$250.00 Move-in Fee held in Trust by the landlord

Section 65 (1) (e) of the Act states that Personal property seized **or received** by the landlord contrary to this Act or a tenancy agreement **must be returned**. [emphasis added]

As defined in Duhaime's Law Dictionary, personal property includes, chattels, goods, property other than real property and "In broad and general sense, everything that is the subject of ownership, not coming under denomination of real estate."

I find that the \$250.000 moving fee is the personal property of the tenant and that there is nothing stipulated in the Act or the tenancy agreement that allows the landlord to keep or claim on this amount. As the landlord is not authorized to retain this amount under the Act, the Regulations or the Tenancy Agreement, **I order the landlord to return the \$250.00 move-in fee to the tenant.**

Damages and Compensation

Section 67 of the Act states:

Without limiting the general authority in section 62 (3) [director's authority

respecting dispute resolution proceedings], 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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the landlord must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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 their case is on the person making the claim; in this case the landlord bears the burden of proof.

Section 37 of the Act states a tenant must leave the rental unit in reasonably condition:

Leaving the rental unit at the end of a tenancy

- 37** (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 floors and unit repairs; and fob replacement

The landlord provided testimony and evidence in the form of photographic evidence and receipts for work done to repair the stove gas burner, closet doors and handles, bathroom countertops and the flooring in the unit. The landlord also provided photographic evidence and receipt for the replacement of the fob. In accordance with Section 67 of the Act, I find the landlord has established that the tenant failed to leave the unit in a reasonable undamaged condition and failed to return the fob (which is used as a means of access) in a working condition. I also find the landlord established a loss in the amounts of \$407.59 for the unit and flooring repairs and \$180.00 for the replacement of the fob. I find the amounts are reasonable and **Order the landlord can retain these amounts in satisfaction of her loss.**

Hydro Bill:

The landlord provided undisputed testimony and evidence in the form of the tenancy agreements which confirmed that the tenancy agreement did not include electricity and that it was the tenant's responsibility to pay. The landlord submitted into evidence a Hydro bill for a forty-day period totalling \$52.40. The utility bill shows that the tenant cancelled the utility services before vacating the unit. I find the tenant is responsible for the hydro charges in the pro-rated amount of \$30.13 for the period of November seven (7) to November 30, 2020. I find the landlord has proven its loss and is eligible to recover the pro-rated amount of 23 days x \$1.31/day = \$30.13. **I Order the landlord can retain \$30.13, in satisfaction of the amount owed.**

I find that the landlord has proved her losses on the balance of probabilities with a preponderance of evidence in the form of photographs, invoices and with uncontradicted testimony.

As the landlord was successful in this application, I find she is entitled to recover the filing fee in the amount of \$100.00 from the tenant pursuant to section 72 of the Act.

In summary I grant the landlord:

Description	Amount Granted
Floor and unit repairs	\$407.59
Fob replacement	\$180.00
Hydro bill	\$30.13
Filling Fee	\$100.00
Total Claimed	\$717.72

As the doubling provisions of the Security Deposit apply, **I Order the landlord to return to the tenant the amount of \$1362.28** calculated as follows:

Sec. Dep \$1200 x 2	\$2,400.00
Return of the Strata move-in fee	\$250.00
Less Sec. Dep. returned	(\$570.00)
Less amount granted	(\$717.72)
Total amount owed to the tenant	\$1,362.28

Conclusion

I **Order** the landlord return to the amount of **\$ 1362.28** for the reasons described in this decision. Should the landlord fail to comply with this Order, the tenant is at liberty to apply for dispute resolution to obtain an order for this amount.

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 25, 2021

Residential Tenancy Branch