



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

The Tenants’ Application for Dispute Resolution was made on March 9, 2021 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit;
- a monetary order for the cost of emergency repairs; and
- a monetary order for damage, compensation or loss;

The Landlord’s Application for Dispute Resolution was made on April 15, 2021 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord 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. As 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*.

Preliminary Matters

At the start of the hearing, the Landlord stated that he had a previous hearing on February 4, 2021 in which he was ordered to retain the Tenants' security deposit towards his successful monetary claim. I find that the right to the security deposit has already been determined; therefore, this matter is *res judicata*, meaning that the matter has already been adjudicated upon and therefore, cannot be re-heard again. As such, I dismiss the Tenant's claim for the return of their security deposit, as well as I dismiss the Landlord's claim to retain the Tenants security deposit without leave to reapply.

At the beginning of the hearing, I described the hearing process to the parties. I explained that an hour was scheduled for the hearing. To hear the evidence in that limited time, the parties were expected to be respectful and not interrupt each other. I informed the parties they would each have an opportunity to address the issues in turn.

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

During both hearings, the Tenants were cautioned several times regarding background chatter and interrupting the Landlord and the Arbitrator throughout the hearings. Expectations were re-explained several times to the parties, however, the Tenants' disregarded all warnings. During the original hearing it was necessary to mute the Tenants for a portion of the hearing while the Landlord responded in order to ensure that I was able to fully understand the Landlord's testimony without interruption. The Tenants were still able to listen to the hearing, and were provided with the opportunity to respond once the Landlord had finished providing their testimony.

The original hearing on July 29, 2021 did not complete within the scheduled time. Pursuant to Rules 7.8 and 7.9 the proceedings were adjourned and reconvened on November 19, 2021. The Tenants and the Landlord were in attendance for both hearings.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for emergency repairs, pursuant to Section 33 of the *Act*?
2. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
3. Are the Tenants entitled to a monetary order for compensation in relation to a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to Section 51 of the *Act*?
4. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
5. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 of the *Act*?
6. 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 8, 2019. During the tenancy, the Tenants were required to pay rent in the amount of \$650.00 which was due on the first day of each month. The Tenants paid a deposit in the amount of \$650.00 which has since been dealt with in a previous hearing. The tenancy ended on February 17, 2021.

The Tenants' Claim

The Tenants submitted several monetary claims which are outlined below;

The Tenants are claiming \$325.00 in relation to compensation for emergency repairs. The Tenants stated that throughout their tenancy they conducted some repairs to the rental unit such as; fixing the porch, a hole in the living room, and the moulding around the front door. The Tenants stated that they tried to get a hold of the Landlord, however, he was difficult to reach.

The Landlord responded by stating that the Tenants did not mention the need for repairs throughout the tenancy. The Landlord stated that he lives next door to the rental unit and can be easily contacted.

The Tenants have claimed \$10,000.00 in relation to stress that they have endured as a result of the Landlord attending the rental unit without providing the Tenants with 24 hour notice. The Tenants stated that the lack of notice caused them a great deal of

stress which resulted in them all experiencing migraines, stomach issues, low iron, and depression.

The Landlord stated that there were no instances in which he entered the rental unit without notice. The Landlord stated that the eviction process was stressful for everyone as it resulted in a Court Ordered Bailiff removing the Tenants from the rental unit.

The Tenants are claiming \$1,600.00 in relation to the repair of a Hydro Pole that was damaged by a fallen tree on February 2, 2021. The Tenants stated that they were without power for two weeks as a result of the damage. The Tenants stated that the Landlord did not repair the hydro pole, therefore, they decided to employ the services of an electrician at a cost of \$1,600.00. The Tenants provided a copy of the invoice in support.

The Landlord stated that after the tree fell on the power pole, he immediately contacted two electricians who provided quotes to repair the pole (\$262.50 and \$319.20). The Landlord stated that he attended the rental unit on February 3, 2021 and again on February 5, 2021 to assess the damage and stated that the Tenants were interfering with his efforts and threatened him which resulted in Police attendance.

The Landlord stated that he purchased the required equipment to make the repairs, however, the Tenants continued to interfere with the repairs. The Landlord provided several videos which display these negative interactions. The Landlord stated that he was willing and able to have the repairs completed, however, given the Tenants' unwillingness to accommodate the repairs, they did not take place. During the hearing, the Landlord agreed to compensate the Tenants \$319.20 which would have been his cost associated with repairing the damage caused to the hydro pole. The Landlord did not agree with the invoice provided by the Tenants in the amount of \$1,600.00.

The Landlord's Claim

The Landlord's monetary claims were outlined on a monetary order worksheet which has been reproduced below:

The Landlord is claiming \$672.00 in relation to cleaning the rental unit and for carpet cleaning at the end of the tenancy. The Landlord stated that the Tenants were evicted from the rental unit, which required a Bailiff to attend and remove the Tenants from the rental unit. The Landlord stated that the Tenants did not clean the rental unit before being removed. The Landlord provided a cleaning receipt and pictures in support.

The Tenants responded by stating that they did not have an opportunity to return to the rental unit to clean it after being removed from the rental unit by the Bailiff. As such, the Tenants do not agree that they should be charged for cleaning.

The Landlord is claiming \$156.25 for a dump run to dispose of garbage left behind by the Tenants in the rental unit. The Landlord provided pictures and a receipt in support. The Tenants stated that they were not permitted to return to the rental unit to dispose of these items themselves.

The Landlord is claiming \$949.17 for the cost of repairing a screen door, and Lino flooring that was damaged by the Tenants during the tenancy. The Landlord is also claiming for the replacement of a fridge and stove which had been damaged by the Tenants and removed from the rental unit and left outside. The Landlord provided a copy of the Condition Inspection Report, pictures of the rental unit and an estimate of the costs associated with repairing the rental unit. The Tenants responded by stating that the screen door was removed by the Landlord and that the Lino was already damaged at the start of the tenancy. The Tenants stated they safely stored the fridge and stove outside under a tarp.

The Landlord is claiming \$1,200.00 for removal of the Tenant's abandoned property. The Landlord stated that the Bailiffs attended the rental unit at the end of the tenancy and removed the Tenant's valuables which were placed in storage. The Landlord stated that the Bailiffs did not remove any items which had no value. The Landlord stated that it cost \$1,200.00 to remove the remaining abandoned property left behind by the Tenants, which were not collected by the Bailiffs. The Landlord provided an invoice and pictures in support.

The Landlord stated that he decided to take the Tenant's abandoned items to storage and is claiming \$1,008.00 for storage costs associated with storing the Tenant's abandoned items. The Landlord provided an invoice in support. The Landlord stated that the storage costs has since increased to \$1,344.00 since filing the Application.

The Landlord is claiming \$781.25 for dump runs associated with the garbage left in the yard by the Tenants at the end of the tenancy. The Landlord provided pictures and an estimate in support.

The Landlord is claiming for unpaid February 2021 rent in the amount of \$650.00. The Tenants stated that they tried to pay the rent to the Landlord, however, he did not accept it.

The Landlord is claiming \$4,595.26 in relation to hiring a Court ordered Bailiff to remove the Tenants after they failed to comply with the Order of Possession issued to the Landlord in a previous Dispute Resolution Hearing. The Landlord provided documentation from the Bailiff and the invoice in support.

The Landlord is claiming \$4,243.98 for legal fees associated with the Tenant overholding the rental unit. The Landlord stated that there was a Court Ordered sale of the property and that the Landlord incurred additional legal fees as a result of the Tenants overholding the rental unit.

The Landlord is claiming \$120.00 for the filing fee associated with applying for the Writ of Possession at the Supreme Court. The Landlord provided an invoice in support.

The Landlord is claiming \$37.66 for Fortis utility bill from the date the Tenants were removed from the rental unit to the time that the Landlord finished cleaning and repairing the rental unit. The Landlord provided the invoice in support.

If successful, the Landlord is also seeking the return of the \$100.00 filing fee.

Analysis

Based on all of the above, the evidence and testimony, 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 or loss results 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 or loss, 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.

Tenants' Claims

Section 32(1) of the Residential Tenancy Act (Act) requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Tenants are claiming \$325.00 in relation to compensation for emergency repairs. I find that the Tenants provided insufficient evidence to demonstrate that there were emergency repairs required, or that they attempted to notify the Landlord of such repairs. Furthermore, I find that the Tenants provided insufficient evidence to support that they conducted the emergency repairs or to demonstrate the cost of the emergency repairs. As such, I dismiss this claim without leave to reapply.

The Tenants have claimed \$10,000.00 in relation to stress that they have endured as a result of the Landlord attending the rental unit without providing the Tenants with 24 hours notice. I find that the Tenants provided insufficient evidence to demonstrate that the Landlord breached the Act with respect to providing sufficient notice of entry. As such, I dismiss the Tenants' claim without leave to reapply.

The Tenants are claiming \$1,600.00 in relation to the repair of a Hydro Pole that was damaged by a fallen tree on February 2, 2021. I accept that the Hydro Pole was damaged and find that the Landlord is responsible for ensuring that the Hydro Pole is repaired, to restore the Hydro to the rental unit. I find that the Landlord provided sufficient evidence to demonstrate that he sought two quotes for the work to be completed. I further find based on the Landlord's videos submitted that when the

Landlord attended the rental unit to conduct the repairs, the Tenants interfered with his efforts.

I find that the Tenants did not mitigate their loss by obstructing the Landlord from completed the necessary repairs. I dismiss the Tenants' claim for \$1,600.00 without leave to reapply. During the hearing, the Landlord agreed to compensate the Tenants \$319.20 which would have been the cost associated with repairing the damage caused to the Hydro pole. As such, I find the Tenants are entitled to **\$319.20**.

The Landlord's Claim

According to the Residential Tenancy Policy Guideline 1; The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. 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 Landlord is claiming \$672.00 in relation to cleaning the rental unit and for carpet cleaning at the end of the tenancy. I accept that the Tenants were removed from the rental unit by the Bailiff at the end of the tenancy. I find that the Tenants were still required to ensure that the rental unit was left reasonably clean. I find that the Landlord provided sufficient evidence to demonstrate that they incurred a cost of \$672.00 as a result of the Tenants failing to leave to rental unit reasonably clean. As such, the Landlord is entitled to **\$672.00**.

The Landlord is claiming \$156.25 for a dump run to depose of garbage left behind by the Tenants in the rental unit. The Landlord provided pictures and a receipt in support. I find that the Landlord has provided sufficient evidence to demonstrate that they are entitled to compensation in the amount of **\$156.25**.

The Landlord is claiming \$949.17 for the cost of repairing a screen door, and Lino flooring that was damaged by the Tenants during the tenancy. The Landlord is also claiming for the replacement of a fridge and stove which had been damaged by the Tenants and removed from the rental unit and left outside. In this case, I find that the Landlord provided an estimate of what the cost would be to complete the above-

mentioned tasks. I find that the Landlord provided insufficient evidence to demonstrate that he had this work completed or the true value of the loss incurred. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$1,200.00 for removal of the Tenant's abandoned property. The Landlord stated that he decided to take the Tenant's abandoned items to storage and is claiming \$1,344.00 in relation to storage costs. In this case, I accept that the Landlord was required to remove the Tenant's abandoned items which were left outside of the rental unit at the end of the tenancy. As such, I award the Landlord **\$1,200.00**.

I accept that the Bailiff did not collect these items as they had no value. In this case, Section 25 (1) of the Regulations states;

The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
- (b) keep a written inventory of the property,
- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,**
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or**
- (c) the storage of the property would be unsanitary or unsafe.**

As the items had no value, I find that the Landlord was not required to store the items each month. Instead, the Landlord could have mitigated his loss by disposing of the items in a commercially reasonable manner as the items had no value. As such, I dismiss the Landlord's claim for storage costs without leave to reapply.

The Landlord provided an estimate in the amount of \$781.25 for dump runs associated with the garbage left in the yard by the Tenants at the end of the tenancy. I find that the Landlord provided insufficient evidence to demonstrate that he incurred this loss as the Landlord only provided an estimate, and also testified that the Tenant's items had been put in storage rather than disposed of. I dismiss this claim without leave to reapply.

The Landlord is claiming for unpaid February 2021 rent in the amount of \$650.00. While the Tenants stated that they offered rent to the Landlord, I find that the Landlord is entitled to compensation for loss of rent for February 2021 in the amount of **\$650.00**.

The Landlord is claiming \$4,595.26 in relation to hiring a Court ordered Bailiff to remove the Tenants after they failed to comply with the Order of Possession issued to the Landlord in a previous Dispute Resolution Hearing. The Landlord provided documentation from the Bailiff and the invoice in support. I accept that the Tenants did not comply with the Order of Possession, which required the Landlord hire a Bailiff to provide vacant possession of the rental unit to the Landlord. As such, I find that the Landlord is entitled to recover this cost in the amount of **\$4,595.26**.

The Landlord is claiming \$4,243.98 for legal fees associated with the Tenant overholding the rental unit. In this case, I find that the Landlord is not entitled to recover losses associated with the cost of doing business as a Landlord. I therefore dismiss this claim without leave to reapply.

The Landlord is claiming \$120.00 for the filing fee associated with applying for the Writ of Possession at the Supreme Court. The Landlord provided an invoice in support. I find that the Landlord is entitled to the return of the Supreme Court filing fee in the amount of **\$120.00**.

The Landlord is claiming \$37.66 for Fortis utility bill from the date the Tenants were removed from the rental unit, to the time that the Landlord finished cleaning and repairing the rental unit. The Landlord provided the invoice in support. I find that these utilities do not relate to the Tenants' usage of the rental unit as they occurred after the tenancy had ended. I therefore dismiss this claim without leave to reapply.

Having been partially successful, I find the Landlord is entitled to the return of the **\$100.00** filing fee paid to make the Landlord's Application.

In summary, I find the Landlord has demonstrated an entitlement to a monetary award of \$7,493.51, which has been calculated as follows:

Claim	Award
Cleaning:	\$672.00
Dump Run:	\$156.25
Removal of Abandoned Property:	\$1,200.00

Loss of Rent:	\$650.00
Bailiff Services:	\$4,595.26
Supreme Court Filing Fee:	\$120.00
RTB Filling Fee:	\$100.00
TOTAL:	\$7,493.51

Pursuant to section 67 of the *Act*, I find that the Tenants have demonstrated an entitlement to a monetary amount of \$319.20. The Landlord has established an entitlement to a monetary amount of \$7,493.51. Offsetting these amount, I grant the Landlord with a monetary order in the amount of \$7,174.31 (\$7,493.51 - \$319.20).

Conclusion

Pursuant to section 67 of the *Act*, the Landlord is granted a monetary order in the amount of **\$7,174.31**. The monetary order must be served on the Tenants and may be filed in 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: December 17, 2021

Residential Tenancy Branch