



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, MNDL-S, MNRL-S, FFL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord attended the hearing, and the tenant attended the hearing with an advocate, JM. As both parties were present, service of documents was confirmed. The tenant acknowledged service of the landlord’s application for dispute resolution and the landlord acknowledged service of the tenant’s evidence package. Both parties confirmed they had no issues with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*. Both parties confirmed that they were not recording the hearing.

Preliminary Issue

The Residential Tenancy Branch rules of Procedure state:

4.1 Amending an Application for Dispute Resolution

An applicant may amend a claim by:

- completing an Amendment to an Application for Dispute Resolution form; and
- filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch directly or through a Service BC Office.

An amendment may add to, alter or remove claims made in the original application.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3

At the commencement of the hearing, while determining the issues before me, I noted the landlord sought monetary orders in the amounts of \$600.00 for missing ice trays, oven broiler pan, and blind replacement and installation. She sought an additional \$600.00 for damage done to downstairs tenant's screen and blind by tenant's cat, payment for missing blinds as well as partial payment for damage done to bathroom ceiling due to lack of fan use. Lastly, the landlord sought \$1,200.00 as recovery for non-payment of rent after May 31, 2021.

At the commencement of the hearing, the landlord indicated she also sought an additional \$5,600.00 for *"2 years and 4 months additional tenant without notice or addendum (sic) to tenancy agreement"*. The landlord didn't amend her application in accordance with rule 4.1 of the rules of procedure and I advised the parties that only the issues described in the landlord's original application for dispute resolution would be considered during this hearing pursuant to rule 6.2.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for the issues sought?

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In

accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed one-year tenancy began on March 1, 2019, becoming month to month at the end of the first year. Rent was set at \$1,200.00 payable on the first day of each month. A security deposit of \$600.00 was collected by the landlord which the landlord continues to hold. A condition inspection report was conducted with the tenant and a copy of the move-in condition inspection report was provided as evidence.

The landlord gave the following testimony. On March 29, 2021, she served the tenant with a 1 Month Notice to End Tenancy for Cause with an effective date of April 30th. This notice was disputed by the tenant, a date for arbitration was set for the end of July but the tenant moved out before that hearing.

On April 30, 2021, the landlord served the tenant with another 1 Month Notice to End Tenancy for Cause with an effective date of May 31, 2021. The tenant did not vacate the unit by May 31st but was gone by June 30th. The landlord testified that the tenant's son, who she knew lived with the tenant but was not listed on the tenancy agreement, texted her on June 30th advising the landlord that they would be gone by June 30th. Despite texting the tenant, the landlord got no response from her about whether she would be gone by the 30th of June.

The parties met for a move-out condition inspection report on June 30th and the landlord testified that she brought the original move-in condition inspection report with her for the inspection. A copy of the condition inspection report was presented as evidence by the landlord. It is signed and dated by both the landlord and tenant on March 1, 2019, the move-in date. I note that the condition inspection report presented as evidence by the landlord was not signed or dated by either party at the end of the tenancy. The landlord also provided an undated, unsigned one-page handwritten page of observations she testified she made during the move-out inspection. The landlord testified that she gave the tenant a copy of the condition inspection report at the end of the inspection. When I

asked whether the landlord had access to a copier to do so, the landlord then changed her testimony, stating she brought an original and a copy, making identical marks on each, then provided the copy to the tenant at the conclusion of the inspection.

The landlord testified she “starred” any changes between the original condition and the condition at move out on the condition inspection report. The landlord testified that the move-out condition inspection was started with the tenant’s son, but then the landlord brought in the police to witness the inspection when the landlord became uncomfortable.

In the landlord’s evidence package, there is a letter dated July 14, 2021 to the tenant acknowledging the tenant’s request for the security deposit to be returned. The landlord acknowledges receiving the tenant’s request on July 6, 2021 and it was sent to the tenant at the tenant’s forwarding address.

The landlord claims the following damage from the tenancy. For brevity, although the tenant provided her testimony during the second part of the hearing, I have provided both parties’ submissions regarding each item together.

Damage to downstairs blinds: \$56.97.

Landlord: The tenants in the lower unit of the house would see the tenant’s cat come down. The tenant put latches on the lower unit’s windows, blocking their fire escape and blocked light into the lower tenants’ unit. The landlord did not provide photos of the lower unit blinds.

Tenant: the landlord didn’t tell her anything about damage to the lower units’ blinds. The tenant didn’t sign anything admitting to damage there.

Missing blinds upstairs: \$387.65

Landlord: The landlord noticed the blinds upstairs were missing when doing a pre-move-out inspection in March. The landlord claims the blinds had been last replaced in 2015 or 2016 and that they were still in good shape at the commencement of the tenancy. The landlord testified that there are “stars” next to the blinds on the condition inspection report, indicating they were missing. If the tenant took them down and put them somewhere, the landlord never found them.

Tenant: the blinds were damaged before she ever moved in, unbeknownst to her. The strings in the master bedroom gave out and collapsed. The blinds over the sliding glass doors were taken down and replaced with curtains. The tenant left the original blinds in a small cubby downstairs and the tenant told the landlord where they were. There

wasn't time to put them back up before the tenancy ended. In the kitchen, there was no blind, just a curtain. It was left exactly as it was when she moved in.

Missing broiler pan, ice trays & cleaner: \$17.04

Landlord: The landlord testified that the tenant had the stove replaced during the tenancy and the new stove came with a broiler pan which was now missing. The fridge had ice cube trays that are now gone. The landlord purchased used ones from Value Village to replace them. The landlord also purchased cleaning supplies to clean the rental unit after the tenant vacated it.

Tenant: The stove never had a broiler pan or ice cube trays. Nothing is noted on the condition inspection report. The new stove purchased by the landlord didn't come with broiler pan.

Bathroom Ceiling: \$1,380.75

Landlord: The landlord seeks partial payment for damage to the bathroom ceiling caused by the tenant's failure to use the fan while bathing or showering. There is also a pot light hanging down.

Tenant: She had complained to the landlord about the "cheap" pot light in the bathroom that didn't have a bracket to keep it in place. The landlord had someone come in to reinstall it using caulk but that didn't hold. The tenant denies damage done to the ceiling and testified that the landlord didn't use the right paint for a bathroom to avoid moisture.

Notice given by non-tenant after May 31, 2021: \$1,200.00

Landlord: After she served the tenant with an eviction notice to vacate the unit by May 31st, the tenant stayed until June 30th. The landlord acknowledges the tenant's son advised her that he would be gone by the end of June, however the tenant herself did not. The landlord acknowledges the tenant paid rent for the month of June.

Tenant: She had been served with an eviction notice and complied with it. She was trying to get out by that point and argues that the tenant is not required to give the landlord notice when she has been evicted. She complied with the eviction and paid rent up until the day she moved out.

The tenant also provided affirmed testimony. I note here that the tenant was represented by an advocate who never spoke during the hearing and did not provide any oral submissions to me although she had the full opportunity to do so.

The tenant testified that she was present for the condition inspection report done on June 30th when the police were present. At the inspection, the landlord ran around saying this is dirty, that is dirty all the while the tenant was busy trying to clean whatever the landlord pointed out was dirty. She was at the unit at 7:30 a.m. on the 30th and was cleaning it, however the landlord kicked her out at 1:00 p.m. When she left, the landlord continued the inspection without her. The tenant testified the landlord never provided her with a copy of the move-out condition inspection report although she has a copy of the one signed at the beginning of the tenancy.

Analysis

At the end of a tenancy, the landlord and tenant together must inspect the condition of the rental unit and the landlord must complete the condition inspection report in accordance with the regulations pursuant to section 35 of the *Act*. The landlord and tenant must both sign the condition inspection report, and the landlord must give the tenant a copy of that report in accordance with the regulations pursuant to section 35(4).

Pursuant to section 36(2)(c) of the *Act*, the landlord's right to claim against the security deposit or pet damage deposit **is extinguished** if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Pursuant to section 38(5), and 38(6), if the landlord's right has been extinguished by section 36(2)(c), and the landlord has not returned the tenant's security deposit within 15 days after the tenancy ends and the date the landlord receives the tenant's forwarding address, the landlord may not make a claim against the tenant's security deposit and must pay the tenant double the amount of the security deposit.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities.

As stated above, the onus is on the landlord to prove her version of the facts is the one most likely to be true. I find that the landlord provided unreliable and contradictory testimony regarding whether she complied with sections 35 and 36 of the *Act*. As an example, the landlord initially testified she gave a copy of the condition inspection report to the tenant at the end of the condition inspection. When I asked the landlord if she had access to a copier, the landlord changed her testimony to indicate she brought identical copies of the condition inspection report to the inspection and made identical marks on each one as she went through the inspection. On a balance of probabilities, I find the landlord's version of events less credible than that of the tenant who testified that she was not provided with the condition inspection report right after the inspection or any time thereafter. Further, I note that the one provided as evidence by the landlord is not signed by the tenant as required by section 35(4) of the *Act*.

Consequently, I find the landlord breached section 35 of the *Act* by failing to sign the report with the tenant and by failing to give a copy of the report to the tenant in accordance with the regulations. As a result, the landlord's right to claim against the security deposit is extinguished pursuant to section 36(2) of the *Act* and the tenant is entitled to a return of her security deposit, doubled in accordance with sections 38(5) and 38(6). I award the tenant [$\$600.00 \times 2 = \$1,200.00$] pursuant to section 38 of the *Act*.

The condition inspection report provided as evidence by the landlord is called a "*Report of Rental Premises and Contents*" by the landlord. The landlord testified that accompanying this document are "*rough notes*", unsigned and not acknowledged as being seen by the tenant, whereby the landlord purportedly made notations regarding the condition of the unit at move out. It does not contain all the standard information that must be included in a condition inspection report as required under section 20 of the Regulations.

Section 21 of the Regulations states that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Based on the "*Report of Rental Premises and Contents*" supplied by the landlord, I find I am unable to distinguish the state or repair or condition of the rental unit at move-in compared to the state of repair or condition at move-out. While the landlord testified that she put "stars" where there is a difference between the two, and the document states "** Blue – moving out -> condition*", I am still at a loss to find the condition inspection report accurately provides me with any evidence that would support the landlord's claim that the tenant caused any damage to the rental unit. Further, the document does not provide a spot for the tenant to dispute any of the damages to the rental unit as alleged by the landlord, a requirement under section 20 of the Regulations. It is with this view, that the landlord cannot prove the condition of the unit at move in, that I turn to her individual claims for compensation.

Residential Tenancy Policy Guideline PG-16 [Compensation for Damage or Loss] states at Part C: 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 4-point test]

Damage to downstairs blinds:

The landlord has not provided any photographs to satisfy me the tenant's cats did any damage to the lower unit tenants' blinds. Nor did the landlord provide any indication on the condition inspection report that there was damage done to the lower unit blinds or that the tenant was responsible for it. I find the landlord has not provided sufficient evidence to satisfy me the existence of the damage or loss resulting from a non-compliance of the *Act* by the tenant and I dismiss this portion of her claim.

Missing blinds upstairs: \$387.65

On the condition inspection report, the landlord put stars next to the blinds in the bedroom, blinds in the second bedroom and a star saying curtains at doors kitchen sink. While I accept that there may have been issues with either the condition of the blinds upon move-in as alleged by the tenant and that the tenant took them down; I also accept the landlord's testimony that they were not put back up when the tenant moved out. The landlord stated the blinds were last replaced in 2015 which means they were approximately 7 years old at the end of the tenancy. Given that the useful life of a blind is approximately 10 years according to Policy Guideline PG-40 [Useful Life of Building Element], I award the landlord 30% for the cost of the replacement blinds, or **\$116.29**.

Missing broiler pan, ice trays & cleaner: \$17.04

The parties agree that during the tenancy, the oven was replaced. While the landlord argues that the new oven came with a broiler pan, the tenant denies it. The tenant also denies that the ice cube trays were missing at the end of the tenancy. The condition inspection report only has "stars" next to those items which, I find does not have any meaning as to what the stars denote. As the onus is on the applicant to prove their case, I find insufficient evidence that the landlord's version of events is the one to be preferred and I dismiss this portion of the claim. Likewise, the cleaner purchased by the landlord was not due to any violation of the *Act* by the tenant and as such, I dismiss this claim as well.

Bathroom Ceiling: \$1,380.75

I accept the tenant's testimony that the quality of the light fixture made it so that the fixture would not stay affixed to the ceiling which is not the responsibility of the tenant. Likewise, I am swayed by the tenant's argument that if the paint on the ceiling bubbled during the tenancy, the landlord contributed to the damage because he did not use moisture proof paint. Lastly, in the landlord's condition inspection report, there is no indication that there is any damage to the bathroom ceiling. In fact, there are "tick" marks in the columns where it states the ceiling is not dirty and not damaged. I dismiss this portion of the landlord's claim.

Notice given by non-tenant after May 31, 2021: \$1,200.00

The evidence before me indicates the landlord served the tenant with a notice to end tenancy with an effective date of May 31st and the tenant complied with that notice on June 30th. The landlord seeks compensation because the tenant didn't specifically advise her that she was moving out, despite the text from the tenant's son (who the landlord knew lived with the tenant) on June 10th telling her that they were moving out. There is no obligation for a tenant who has been served with a notice to end tenancy under the *Residential Tenancy Act* to serve formal notice to the landlord advising that they will be moving out or complying with the notice to end tenancy. While the tenant may be considered an overholding tenant as described by section 57 of the *Act* for continuing to occupy the rental unit after the tenancy ended; the evidence before me is that the tenant compensated the landlord with rent for the month of June. I find no violation of the *Act*, regulations or tenancy agreement committed by the tenant that puts the landlord in a position to seek compensation and I dismiss this portion of the landlord's claim.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

| Item | Amount |
|-------------------------------------|-------------------|
| Tenant's security deposit (doubled) | \$1,200.00 |
| Blinds | (\$116.29) |
| Total | \$1,083.71 |

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,083.71. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: February 14, 2022

Residential Tenancy Branch