



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing addressed the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order for damage to the unit, site or property, pursuant to section 67 of the *Act*;
- an application to keep all or part of the pet and security deposits, pursuant to section 38 of the *Act*; and
- a request to be reimbursed by the tenant for the filing fee, pursuant to section 72 of the *Act*.

The landlord's agent, D.W., the tenant and the tenant's counsel appeared at the hearing. All parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord's application for dispute. While both parties confirmed receipt of each other's evidentiary packages. All parties are found to have been served with all applicable documents in accordance with the *Act*.

The tenant and the landlord's agent confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

Issue(s) to be Decided

Is the landlord entitled to a monetary award? Can the landlord retain the deposits?
Can the landlord recover the filing fee?

Background and Evidence

The parties confirmed this tenancy ran from May 15, 2020 to April 30, 2021. Rent was \$2,300.00 per month with two deposits of \$1,150.00 (pet and security) being paid at the outset of the tenancy and currently held by the landlord.

The landlord's application seeks a monetary award of \$6,140.05, however, after initial remarks at the outset of the hearing, the landlord confirmed he wished to amend his application to reflect an updated monetary order worksheet seeking \$2,183.62. As the respondent would not be prejudiced by this amendment, I amend the landlord's application pursuant to section 64(3)(c) to consider the landlord's application for \$2,183.62.

The landlord explained he sought a monetary award in respect of the following:

- 1) Recover balance of insurance deductible - \$1,250.00
- 2) Recover balance of insurance premium - \$109.37
- 3) Cleaning - \$330.75
- 4) Plumbing and Repair - \$493.50

= \$2,183.62

The landlord said the parties previously had a hearing in August 2021 concerning a landlord initiated monetary application. The landlord explained that he was partially successful in this August 2021 hearing, however, he had 'new and relevant' evidence that he wished to bring forward related to the insurance and deductible of which he was previously granted 50%. The landlord said it was his understanding that he could present evidence in a further hearing if 'new and relevant' evidence arose following the conclusion of a hearing.

Specifically, the landlord sought compensation related to insurance premiums and deductibles that were due following a flood in the rental unit. Further, the landlord applied to recover money paid for cleaning of the rental unit following the tenant's departure and for plumbing repairs.

The landlord argued that evidence had emerged since the tenant's departure and following the August 2021 hearing, which proved the tenant's hair had blocked the drain and ultimately caused flooding to the unit. The landlord submitted that the unit was overall, "not very clean" and that the following repairs were specifically performed by a plumber; unclog the drain for basis, bathtub, shower and kitchen; repaired main toilet

flush valve gasket; replace water fill valve and supply tube for master toilet; and reattached dryer duct exhaust.

The parties acknowledged completing a condition inspection at move-in on May 15, 2020 and at move-out on May 30, 2021. There was some disagreement as to whether or not a copy of this move-out inspection report was provided to the tenant, however, it is acknowledged that the tenant attended both inspections and signed both reports. The move-out inspection contained the following comments:

Floors not swept
General cleaning required
Hold security and pet deposits
Check with strata regarding any fines or infractions

A review of this document remarks that 'cleaning required' in the bathroom 2: Ensuite, Kitchen, Balcony, shower door/rail/curtain, cabinets/drawers (Kitchen), range/fan/hood/filter and balcony flooring. Further it notes 'maintenance required' for a Bedroom 2: Master – light fixture/fan. The report contains 17 pages of photos.

Counsel for the tenant argued that the matter had been conclusively decided in the August 2021 hearing. Counsel cited the case of *Kahn v Shore* BCSC 2015 in arguments that the landlord's arguments amounted to issue estoppel and should therefore be dismissed. Counsel called the tenant as a witness. The tenant testified that the unit was left clean other than "some dirt", while lengthy questioning of the tenant from counsel and the landlord focused on the issue of hair in the drain. Counsel submitted that a copy of the move-out inspection was not received by the tenant, despite the landlord's insistence it was emailed to him.

Analysis

The landlord has applied to retain the tenant's pet and security deposits and for a monetary award of \$2,183.62.

I will first address the landlord's application for recovery of the insurance deductible and premium. Over the course of two hearings (April 22 and August 20, 2021) the landlord sought monetary compensation from the tenant in the amount of \$4,345.55. A review of this previous decision – of which the file number is recorded on the front page of this decision – notes the landlord sought compensation (amongst other relief) for insurance deductible (\$2,500.00) and insurance premium (\$218.75).

A decision on this matter was rendered on September 20, 2021 and the landlord was awarded \$1,459.38 “representing one half of the insurance deductible paid and one half of the increased insurance premiums.” On page 7 of the September 20th decision, I note that the Arbitrator explained the award given represented 50% of the insurance deductible and 50% of the insurance policy increase.

The legal principle of *res judicata* prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action.

I therefore find that this current application related to insurance deductibles and premiums is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again. I dismiss this portion of the landlord’s application. While the landlord was under the impression that ‘new and relevant’ evidence could be submitted, I suspect the landlord may be referring to section 79(2)(b) which refers to new and relevant evidence in a review consideration application.

The remainder of the application before me concerns an application to retain the pet and security deposit for cleaning and plumbing repairs.

Policy Guideline #31 states clearly that a pet deposit “is to be held by the landlord as security for damage caused by a pet...landlords may keep all or a part of the pet damage deposit to pay an amount awarded by an arbitrator for damage caused by a pet and which was still unpaid at the end of the tenancy...the landlord may apply to an arbitrator to keep all or a portion of the deposit but only to pay for damaged caused by a pet.”

I heard no submissions from the landlord that any of the alleged damage or cleanliness issues were related to the presence of a pet, therefore, I order a return of the entire pet deposit to the tenant.

I am therefore left to consider the cost for repairs, cleaning and security deposit. A review of the condition inspection report notes ‘general cleaning required’ and identifies five specific regions which fell short of the landlord’s expected cleaning standards. The landlord included numerous photos of the unit to bolster their claim. Following a close review of the move-out inspection, and having considered the photos

submitted, I find that the landlord has failed to demonstrate an entitlement to any amount for cleaning.

Section 37(2) of the *Act* sets out the standard for cleanliness at the end of a tenancy. It notes, "When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." Based on the evidence submitted, I find the cleaning for which the landlord seeks compensation to be beyond what could be considered a tenant's responsibility to leave a unit "reasonably clean." I find the unit was left tidy and in an acceptable condition free of significant cleaning requirements. I therefore dismiss this portion of the landlord's application.

Finally, the landlord sought compensation for plumbing repairs. While some of these issues were partially addressed in the last application (where a determination was made by the arbitrator that it would be impossible to identify the source of a clog), I will instead focus on the invoice submitted in evidence by the landlord.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to a claim for a monetary award

Based on the above criteria, I find the landlord has failed to prove that the existence of damage/loss stemmed direction from an action of the tenant. While I accept that some repairs in the bathroom were required following the conclusion of the tenancy, I find that these matters were not recorded in the move-out inspection and as noted in section 32(4) of the *Act*, "A tenant is not required to make repairs for reasonable wear and tear."

I find the nature of the repairs as described by the invoices and by the landlord amount to regular wear and tear as contemplated *Policy Guideline #1*, "Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion." I find no evidence that the property was not used for a reasonable fashion, for example housing a large number of people or for commercial purposes, and therefore dismiss this portion of the landlord's application.

The landlord's application is dismissed in its entirety. The landlord must bear the cost of their own filing fee and is ordered to return the security deposit in its entirety to the tenant.

Conclusion

The landlord's application is dismissed without leave to reapply.

The landlord is ordered to return both the tenant's pet and security deposit in their entirety.

The landlord must bear the cost of their own filing fee.

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: March 24, 2022

Residential Tenancy Branch