



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.

The agent MJ attended for the landlord ("the landlord"). The tenant attended. Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. Each party confirmed they were not recording the hearing.

Each party confirmed their email addresses to which the Decision will be sent.

Settlement Discussions During Hearing

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

During the hearing, the parties engaged in discussions regarding resolution of the dispute.

No settlement was reached regarding the landlord's claim, and the hearing continued to conclusion.

Reference to Evidence

The parties submitted considerable evidence in a 70-minute hearing. Only key, relevant and admissible evidence is referenced in the Decision.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for damages or compensation?

Is the landlord entitled to authorisation to apply the security deposit to the Monetary Order?

Is the landlord entitled to reimbursement of the filing fee?

Background and Evidence

This is an application by a landlord for compensation for damages (compensation for cleaning expenses) allegedly caused by the tenant and for reimbursement for a municipal water bill. The landlord also requests reimbursement of the filing fee and authorization to apply the security deposit to any award.

The parties agreed on the following. The tenancy was for a fixed term of one year, beginning September 1, 2020, and ending on August 31, 2021. Rent was \$2,600.00 monthly payable on the first of the month. A security deposit of \$1,300.00 was paid by the tenant at the start of the tenancy and is held by the landlord. The tenant was responsible for paying the water bill for the unit. The tenant moved out August 28, 2021.

Landlord's Claim

The landlord seeks compensation for the following:

	ITEM	AMOUNT
1.	Water bill – last two months of tenancy	\$315.00
2.	Steam cleaning carpets	\$230.20
3.	Cleaning	\$315.00
	TOTAL	\$860.20

Condition Inspection Report on Moving In

The landlord submitted a copy of the condition inspection report on moving in which indicated the unit was in good condition in all material aspects. Both parties signed the report.

Condition Inspection Report on Moving Out

The landlord submitted a copy of the condition inspection report on moving out. The report is dated August 28, 2021 and signed by both parties. Several deficiencies are noted. Relevant to this matter are notations of a dirty oven and carpet stains.

The tenant claimed there were several versions of the Condition Inspection Reports and professed confusion as to their reliability. The landlord submitted a copy upon which they relied. They explained they are a busy professional and may have sent the tenant unsigned versions. They also explained that they removed some deficiencies from the final version after signing as they did not want to dispute responsibility with the tenant.

Each of the landlord's claims are addressed.

Landlord's Claim – Reimbursement Water bill

The landlord claimed reimbursement of the water account for the last two months of the tenancy. The landlord submitted a copy of the invoice for the quarter immediately before the end of the tenancy (that is, for April, May and June 2021) in the amount of \$472.60. Based on that most current invoice, the landlord calculated monthly fees multiplied by two months (the last two months of the tenancy) for an amount owing of \$315.00.

The tenant denied that the calculation was accurate. They stated the landlord had asked them to move out early and they vacated the unit on August 28, 2021. They should only be charged for water until that day.

The agent stated they were unaware of any such request. In any event, the agent stated the tenant was responsible for utilities to the end of the tenancy under the agreement.

Landlord's Claim – Reimbursement Cleaning

The parties agreed on the following. They met on August 28, 2021 and signed the condition inspection report. The landlord then requested the tenant to steam clean the carpets. The tenant agreed. They used their own steam cleaner and completed the job that day. While the tenant was doing the job, the landlord sent a text to the tenant asking them to clean the stove. The tenant put the oven on auto clean.

The tenant then sent a message to the agent, a copy of which was submitted and which stated:

Hi Michelle, I performed a self cleaning, went back to swipe residual but the oven is still locked. Should be unlocked tonight, they will just need to wipe residual. Sorry about this.
But all carpet have been steamed.

The agent replied as follows:

No problem. Thanks so much David.

The tenant interpreted this to mean the two residual cleaning issues were resolved to the landlord's satisfaction. He testified he expected the return of the security deposit.

The agent testified that the landlord later went to the unit and found the carpet cleaning and the household cleaning inadequate. The landlord paid for steam cleaning of the carpets in the claimed amount of \$230.20 and household cleaning of \$315.00. Copies of the invoices and a letter from the cleaner were submitted as evidence.

The tenant said the agent had agreed in the text to the condition of the carpet and the house generally. They denied any responsibility for more cleaning subsequently demanded by the landlord.

Summary

The landlord claimed a Monetary Order as set out above. The tenant requested that the landlord's claim be dismissed without leave to reapply.

Analysis

Only relevant, admissible evidence is considered. Only key facts and findings are referenced.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state 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.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the landlord to prove their claims.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Four-part Test

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?

3. Has the claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

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

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

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.

My findings with respect to each claim follows.

Landlord's Claim – Reimbursement Water bill

I find the landlord has met the burden of proof on a balance of probabilities with respect to all aspects of this claim.

I find the tenant agreed in the tenancy agreement to pay for the municipal water bill until the end of the tenancy, August 31, 2021, and had done so throughout the tenancy. The tenant has therefore not complied with the tenancy agreement by failing to reimburse the landlord for the account for the last two months. I find the tenant has not presented any documentary evidence in support of their claim that the landlord agreed to compensate them for a pro rate water bill if they moved out early. I give no credence to this assertion.

I find the landlord incurred the expense of paying the hydro bill in the amount claimed. Therefore, the loss or damage resulted from the non-compliance.

I find the landlord has proven the amount of the loss. I accept the landlord's documentary evidence as credible and find the landlord's calculation reliable and reasonable.

I find the landlord could have done nothing to mitigate this expense which was based on the tenant's water consumption.

I therefore award the landlord the amount claimed under this heading, \$315.00.

Landlord's Claim – Reimbursement Cleaning

The landlord's testimony supported by the credible Condition Inspection Report indicates a dirty oven and carpet stains when the tenant moved out.

I find the agent asked the tenant to rectify these two issues by steam cleaning the carpet and cleaning the oven. I find the tenant reported to the landlord that they had steam cleaned the carpets and turned the oven on auto clean

The tenant may have failed to meet their obligations to clean the oven and carpet. However, I find the above text exchange of August 28, 2021, to be acceptance of the work the tenant did to satisfy the agent's requests to steam clean the carpets and clean the oven. I find the agent's reply, "No problem" to have a common sense meaning of acquiescence and agreement. That is, I find the agent unconditionally acknowledged the work as adequate and cannot later claim to be entitled to more or better cleaning.

I therefore find the landlord has failed to meet the burden of proof that the tenant failed to comply with the Act or tenancy agreement, the first of the steps in the 4-part test. I therefore do not need to consider the remaining three tests.

I therefore dismiss the landlord's claim for reimbursement of the two cleaning expenses without leave to reapply.

Filing Fee

As the landlord has been successful in this application, I grant the landlord

reimbursement of the filing fee of \$100.00.

Monetary Order

I direct the landlord to return the balance of the security deposit to the tenant of \$885.00 calculated as follows.

ITEM	AMOUNT
Security deposit	\$1,300.00
Less reimbursement filing fee	(\$100.00)
Less water bill	(\$315.00)
BALANCE SECURITY DEPOSIT TO BE RETURNED TO TENANT	\$885.00

I grant the tenant a Monetary Order of \$885.00.

Conclusion

I grant a Monetary Order to the tenant for the return of the balance of the security deposit of \$885.00. This Monetary Order must be served on the landlord. The Monetary Order may be filed and enforced in the Courts of the Province of BC.

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: May 17, 2022

Residential Tenancy Branch