



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JABS CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, FFL**
 MNSDS-DR

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.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;

- An order for the landlord to return the security deposit pursuant to section 38.

The landlord's agents ("the landlord") attended this teleconference hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. The agent LCI testified they were the building manager and provided testimony in support of the landlord's claim. The hearing process was explained.

1. Attendance of Tenant

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 15 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

As no evidence was submitted in support of the tenant's claim, the tenant's claim is dismissed without leave to reapply.

2. Recording

The persons attending were cautioned that recordings of the hearing were not permitted pursuant to Rule 6.11 of the *Residential Tenancy Branch Rules*. They confirmed their understanding of the requirement and further confirmed they were not making recordings of the hearing.

3. Delivery of Decision

The landlord confirmed their email address to which a copy of the Decision and any Order will be sent.

4. *Service of Documents*

As the tenant did not attend the hearing, the landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent to the residential address for the tenant on December 16, 2021 and deemed received under section 90 of the *Act* five days later, that is, on December 21, 2021.

The landlord testified the tenant moved out and provided a forwarding address on December 5, 2021, a copy of which was submitted.

The landlord provided the Canada Post Tracking Numbers and a copy of the receipt in support of service. Further to the landlord's testimony and supporting documents,

I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on December 21, 2021, pursuant to sections 89 and 90.

Issue(s) to be Decided

Is the landlord entitled to 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.

Background and Evidence

As the tenant did not attend the hearing, the landlord provided uncontradicted testimony. While I have turned my mind to all the documentary evidence and the testimony, not all details of the landlord's submissions and arguments are reproduced here. Only relevant, admissible evidence is considered. The principal aspects of the claim and my findings around each are set out below.

The landlord submitted a comprehensive evidence package supporting the landlord's claims in all aspects.

The landlord submitted a copy of the tenancy agreement and provided the following details about the background of the tenancy:

ITEM	DETAILS
Type of tenancy	Monthly
Date of beginning	February 1, 2021
Date of ending	November 30, 2021
Monthly rent payable on 1 st	\$1,370.00
Security deposit	\$675.00

This is the second hearing between the parties. The landlord obtained an Order of Possession in a previous hearing on November 30, 2021, a copy of which was submitted. The landlord testified the tenant was served with the Order of Possession and stayed one day past the effective date. The file number of the previous application is referenced on the first page.

A condition inspection was conducted on moving in. The landlord testified that the unit was in good condition in all relevant aspects. A copy of the report was submitted.

The building manager testified the parties agreed on a time for the conduct of the condition inspection on moving out. The tenant did not attend. The landlord attended. The landlord completed the report in the tenant's absence. A copy of the report on moving out was submitted.

On moving out, the landlord observed damage to the unit because of which the landlord incurred cleaning and repair expenses for which they seek compensation. The landlord testified the damage appeared to have been deliberately done by the tenant prior to moving out.

The landlord testified to the details of the claim as follows:

ITEM	AMOUNT
Carpet cleaning	\$105.00
Replacement hood fan	\$96.75
Replacement various broken items	\$282.95
Labour	\$1,257.00
Fridge damage	\$110.06
Replacement 2 doors	\$190.33
TOTAL CLAIM	\$2,042.09

The landlord submitted the following in support of their claim for compensation: several photographs, receipts, correspondence with tenant, condition inspection reports, and testimony of the building manager as to the condition of the unit as well as time and costs to clean/repair.

At the beginning of the tenancy, the tenant provided a security deposit of \$675.00. The landlord requested authorization to apply the security deposit to any award. The landlord also requested reimbursement of the filing fee.

The landlord's claim is summarized:

ITEM	AMOUNT
Total claim for compensation, above	\$2,042.09
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$675.00)
TOTAL CLAIM	\$1,467.09

The landlord requested a Monetary Order of **\$1,467.09**.

Analysis

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.

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 respondent party (the tenant) to the tenancy agreement 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 applicant (landlord) proven the amount or value of their damage or loss?
4. Has the applicant done whatever is reasonable to minimize the damage or loss?

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.

Each of the above four tests are considered in my findings.

I give substantial weight to the landlord's evidence as summarized above. Based on the uncontradicted credible evidence of the landlord with supporting documentary evidence, I find the landlord has met the burden of proof on a balance of probabilities with respect to all aspects of the claims.

Cleaning and Repairs

I accept the landlord's evidence and I find the tenant did not leave the unit in a reasonably clean or good condition as required under section 32 and the tenancy agreement.

I find the tenant's breach of the Act caused the landlord to incur the expenses claimed for which the landlord fairly seeks compensation. I find the expenses for cleaning and repairs are reasonable given the photographs, the landlord's testimony, and the remainder of the evidence.

I accept the landlord's evidence that they made reasonable efforts to mitigate loss and reduce expenses and carried out the work in a timely manner.

I find the landlord is entitled to reimbursement of the cleaning and repair expenses as claimed.

Filing Fee

As the landlord has been successful in this matter, I award reimbursement of the filing fee of \$100.00.

Security deposit

I grant the landlord authorization to apply the security deposit to the award under section 72.

Monetary Order

I grant a monetary award to the landlord summarized as follows:

ITEM	AMOUNT
Carpet cleaning	\$105.00
Replacement hood fan	\$96.75
Replacement broken items	\$282.95
Labour	\$1,257.00
Fridge damage	\$110.06
Replacement 2 doors	\$190.33
TOTAL AWARD	\$2,042.09

Considering my ruling with respect to the filing fee and the security deposit, my final award is:

ITEM	AMOUNT
Total claim for compensation, above	\$2,042.09
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$675.00)
TOTAL CLAIM	\$1,467.09

Conclusion

The tenant's claim is dismissed without leave to reapply.

I grant the landlord a Monetary Order of **\$1,467.09**. **This** Monetary Order must be served on the tenant. 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: July 18, 2022

Residential Tenancy Branch