



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:45 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord confirmed his email addresses for service of this decision and order.

The landlord testified that the tenant was served with the landlord's application for dispute resolution and evidence in person on December 23, 2021. No proof of service documents for this service were entered into evidence. As no proof of service documents pertaining to the in-person service were entered into evidence, I find that the landlord has not proved that in person service occurred.

The landlord testified that the tenant was also served with the landlord's application for dispute resolution and evidence via registered mail on December 22, 2021. The landlord entered into evidence the December 22, 2021 Canada Post registered mail receipt. I find that the tenant was deemed served with the above documents on December 27, 2021, five days after their registered mailing, pursuant to sections 89 and 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
4. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
5. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on February 1, 2021; however, occupancy was granted on January 25, 2021. This tenancy ended on November 30, 2021. This was originally a fixed term tenancy set to end on February 1, 2022. Monthly rent in the amount of \$1,650.00 was payable on the first day of each month. A security deposit of \$825.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that he was not sure if a move in condition inspection report was completed with the tenant. The landlord testified that he lives out of province and his brother acts as his agent (the “agent”) and may have completed one.

The landlord entered into evidence a move in condition inspection report dated February 1, 2021. On page two of the move in condition inspection report the tenant and the agent initial a correction under the subheading “Start of a Tenancy”. The tenant initialed that he agreed that the move in condition inspection report fairly represents the condition of the rental unit. The tenant signed the move in condition inspection report on page six. The landlord and or agent did not sign the move in condition inspection report; however, as stated above, the agent initialed a change on page two.

The landlord entered into evidence an email from the landlord to the tenant dated February 1, 2021 which states in part:

I hope you enjoy the brand new apartment. You are the first person to live in it since it has been built. I hope you enjoy living in B.C. compared to Alberta. Get used to replacing snow with rain. Thank you for allowing a walk through video inspection of the property, unit 502, today on February 1, 2021....

The landlord testified that a move out condition inspection report occurred with the tenant on November 30, 2021. In the move out condition inspection report the tenant signed, on November 20, 2011 that he agreed that the move out condition inspection report fairly represents the condition of the rental unit and authorized the landlord to retain his entire security deposit in the amount of \$825.00. The tenant and the landlord/agent did not sign the move out condition inspection report in the signature area below authorization of the landlord to retain the security deposit.

Cleaning Claim

The landlord testified that the tenant left the subject rental property and carpets dirty at the end of the tenancy and that they required cleaning at the end of the tenancy. The move in condition inspection report states that the entire subject rental property is clean. The move out condition inspection report states that the following areas are dirty:

- entry ceilings,
- living room ceilings,
- kitchen ceilings,
- walls and trim,
- master bedroom carpet, and
- bedroom 2 carpets.

The landlord testified that the tenant did not clean the carpets at the end of this tenancy and did not clean the subject rental property. The landlord testified that the tenant left food and other random items at the property which had to be cleaned up.

The landlord entered into evidence a receipt for cleaning in the amount of \$210.00 and a receipt for carpet cleaning in the amount of \$105.00. The joint receipt totalled \$315.00.

Repair Claim

The landlord testified that the subject rental property was brand new and in new condition when the tenant moved in and required the following repairs when the tenant moved out:

- Repair blinds,
- Repair flooring,
- Repair closet doors,
- Repair drywall, and
- Repair paint.

The landlord testified that the tenant messed up the cords on the blinds and the cord had to be removed and re-installed. The move in condition inspection report states that the window coverings are all in good condition. The move out condition inspection report states that the blinds are bent and strings are damaged.

The landlord testified that the tenant broke two transition strips between different flooring types. The move in condition inspection report states that the floors are all in good condition. The move out condition inspection report states that the floors are all in good condition, except the bedrooms which are dirty/stained. The landlord entered into evidence photographs of two broken transition strips.

The landlord testified that the closets were in good condition at the start of this tenancy and were damaged at the end of this tenancy. The move in and out condition inspection reports state that all the closets in the subject rental property are in good condition. No photographs of the claimed damage were entered into evidence.

The landlord testified that the drywall in the subject rental property was in good condition at the start of this tenancy and required patching and repair at the end of this tenancy. Photographs of dents and scratches in the drywall were entered into evidence. The landlord testified that the walls of the subject rental property that were patched required re-painting.

The move in condition inspection report states that the walls/trim in the subject rental property are all in good condition. The move out condition inspection report states that the following areas of walls and trim are damaged:

- entry,
- living room,
- master bedroom, and
- bedroom #2.

The landlord entered into evidence a global invoice for the repair of the blinds, flooring, closet door, and drywall totalling \$498.75. A breakdown for each item was not provided.

Fob Claim

The landlord testified that at the end of the tenancy the tenant did not return either of the two fobs provided at the start of the tenancy. The move in condition inspection report states that two fobs were issued at the start of the tenancy and zero were returned at the end of the tenancy. The landlord testified that he is seeking \$262.50 for their replacement. Receipts for same were not entered into evidence.

Breach of Fixed Term Tenancy Claim

The landlord testified that the tenant informed him verbally on November 29, 2021 that he was moving out November 30, 2021. The landlord testified that he is seeking December 2021 and January 2022's rent for breach of the fixed term tenancy agreement.

The landlord testified that he immediately started advertising the subject rental property for rent and new tenants moved in on December 25, 2021 at a rental rate of \$1,750.00 per month.

Analysis

Damages

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states 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.

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.

Useful life of building elements

Residential Tenancy Guide #40 (PG #40) states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

I find that when building elements are replaced, a useful life calculation is necessary to determine the loss suffered by the landlord. I find that when items are repaired, a useful life calculation is not required because the repair will not likely increase the useful life of the repaired item but will return it to its pre-damaged state.

Condition Inspection Reports

I find, on a balance of probabilities, that the tenant completed move in and out condition inspections and reports (the "reports") for the subject rental property with the landlord or

agent of the landlord because the tenant's signature is on both move in and move out condition inspection reports. This finding is supported by the February 1, 2021 email from the landlord to the tenant regarding the move in condition inspection report.

Section 21 of the Regulation to the Residential Tenancy Act Regulation states:

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.

Repair Claims

Pursuant to section 21 of the Regulation, I find that move in and out condition inspection reports are evidence of the condition on move in and move out of the subject rental property, unless a preponderance of evidence proves otherwise.

The move out condition inspection report notes damage to the blinds that was not noted on the move in condition inspection report. Based on the reports, I find that the tenant damaged the blinds in the subject rental property contrary to section 37(2)(a) of the *Act*.

The reports state that the floors are in good condition on move in and on move out. The landlord provided photographs of damage to the transition strips. I find that photographs of the damage constitute a preponderance of proof that the tenant damaged the flooring, contrary to section 37(2)(a) of the *Act*.

The reports do not note any damage to the closets of the subject rental property. I find that the landlord has not provided a preponderance of evidence to disprove the contents of the reports. I find that the landlord has not proved that the tenant damaged the closets.

The move out condition inspection report notes damage to the walls that was not noted on the move in condition inspection report. Based on the reports and the photographs entered into evidence, I find that tenant damaged the walls beyond reasonable wear and tear, contrary to section 37(2)(a) of the *Act*.

The invoice entered into evidence by the landlord does not provide a breakdown of each repair made but provides a comprehensive sum for all work listed. Since the

receipt does not break down the cost of each item, I am not able to calculate what percent of the work was for items the tenant damaged. I find that the landlord has not met his burden of proof as to the quantification of his damages.

Residential Tenancy Policy Guideline 16 (PG #16) states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the landlord has proved that a loss was suffered from the tenant's breach of section 37(2)(a) of the *Act*, but has not proved the value of that loss. Pursuant to PG #16, I award the landlord \$150.00 in nominal damages (\$50.00 for each item damaged) for each of the following:

- blinds,
- flooring, and
- drywall.

Cleaning Claim

The move in condition inspection report states that the subject rental property is clean and the move out condition inspection reports states that several areas are dirty. Based on the undisputed testimony of the landlord and the reports, I find that the tenant failed to clean the subject rental property at the end of this tenancy, contrary to section 37 of the *Act*.

I find that the landlord has proved the value of the loss suffered as a result of the above section 37 breach by way of the cleaning and carpet cleaning invoices entered into evidence totalling \$315.00. I award the landlord \$315.00. No mitigation issues were identified in the hearing.

Fob Claim

Section 37(2)(b) of the *Act* states:

(2)When a tenant vacates a rental unit, the tenant must

(b)give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the reports, I find that the tenant was provided with two fobs at the start of this tenancy and did not return any of the fobs to the landlord at the end of the tenancy, contrary to section 37(2)(b) of the *Act*.

I find that since the landlord did not provide a receipt or invoice for the loss, the landlord has not proved the quantification of damages and so the claim fails. Nonetheless, pursuant to PG #16, I find that the landlord is entitled to nominal damages in the amount of \$50.00 because the landlord proved that a loss was suffered.

Breach of Fixed Term Tenancy Agreement

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline #3 states:

....Compensation is to put the landlord in the same position as if the tenant had complied with the legislation and tenancy agreement. Compensation will generally include any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. It may also take into account the difference between what the landlord would have received from the defaulting tenant for rent and what they were able to re-rent the premises for during the balance of the term of the tenancy....

....In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent. The tenant is not entitled to recover any remainder....

I find that the tenant breached the fixed term tenancy by ending the tenancy prior to February 1, 2022. Pursuant to sections 7 and 67 of the *Act*, I find that the landlord is

entitled to collect loss of rental income.

The landlord testified that the subject rental property was re-rented for December 25, 2021 at rental rate of \$1,750.00 and that rent under the new tenancy agreement is due on the 25th day of each month. I find that had the tenancy continued until the end of the fixed term tenancy, the landlord would have received a total of \$3,300.00 for the months of December 2021 and January 2022. I find that under the new tenancy agreement, the landlord collected \$1,750.00 from December 25, 2021 to January 24, 2022 and the following pro-rated amount for January 25, 2022 to January 31, 2022:

$\$1,750.00 \text{ (new rental rate)} / 31 \text{ (days in rental period January 25, 2022 to February 24, 2022)} = \$56.45 \text{ (daily rate)}$

$\$56.45 \text{ (daily rate)} * 7 \text{ (days from January 25, 2022 to January 31, 2022)} =$
\$395.15

I find that the landlord received a total of \$2,145.15 (\$1,750.00 + \$395.15) under the new tenancy agreement for the period of December 1, 2021 to January 31, 2022 and would have received \$3,300.00 under the tenancy agreement with the tenant. I find that the landlord is entitled to the difference in the amount of \$1,154.85 which is the loss suffered.

Security Deposit and Filing Fee

Section 38(4) of the *Act* states:

(4)A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a)at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b)after the end of the tenancy, the director orders that the landlord may retain the amount.

Based on the move out condition inspection report, I find that at the end of the tenancy the tenant agreed in writing for the landlord to retain the tenant's entire security deposit in the amount of \$825.00. Pursuant to section 38(4)(a) of the *Act*, I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$825.00.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Nominal damages for repairs	\$150.00
Cleaning and carpet cleaning	\$315.00
Damages for breach of fixed term	\$1,154.85
Nominal damages for fobs	\$50.00
Filing Fee	\$100.00
Less security deposit	-\$825.00
TOTAL	\$944.85

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: July 21, 2022

Residential Tenancy Branch