Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application, filed on August 2, 2021, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order of $1,580.53 for damage to the rental unit and for compensation under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit of $1,300.00, pursuant to section 38; and
- authorization to recover the $100.00 filing fee paid for this application, pursuant to section 72.

The "first hearing" occurred on February 15, 2022 and lasted approximately 63 minutes. The "second hearing" occurred on August 19, 2022 and lasted approximately 72 minutes.

The first hearing began at 1:30 p.m. The landlord suddenly disconnected from the first hearing at 2:29 p.m. and called back in at 2:30 p.m. The landlord stated that he was calling long-distance from Europe. I informed the landlord that I did not discuss any evidence with the tenant in his absence. The tenant intended to call his wife as a witness. She was excluded from the outset of the first hearing and did not return to testify. The hearing ended at 2:33 p.m.

The second hearing on August 19, 2022, occurred from 9:30 to 10:42 a.m. The tenant's witness attended the second hearing only to provide affirmed testimony from 10:08 to 10:33 a.m.

At both hearings, the landlord and the tenant were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At both hearings, the landlord and the tenant both confirmed their names and spelling. At both hearings, the landlord and the tenant both provided their email addresses for me to send copies of my decisions to them after the hearings. At both hearings, the landlord stated that he owns the rental unit and confirmed the rental unit address.

At the outset of the first hearing, I notified both parties that recording of RTB hearings were not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure*. At the outset of both hearings, the landlord and the tenant both separately affirmed, under oath, that they would not record both hearings. During the second hearing, the tenant's witness affirmed, under oath, that she would not record the second hearing.

At both hearings, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. At both hearings, both parties had an opportunity to ask questions, which I answered. At the first hearing, I informed both parties that I could not provide legal advice to them. At both hearings, neither party made any adjournment or accommodation requests.

At the first hearing, both parties attempted to settle this application but were unable to do so. At the second hearing, both parties were given multiple opportunities to settle this application and declined to do so. At both hearings, both parties asked that I make a decision regarding this application.

At the second hearing, the landlord affirmed that he was prepared to accept the consequences of my decision if he was unsuccessful in this application, received $0, and was required to return the tenant's security deposit of $1,300.00. At the second hearing, the tenant affirmed that he was prepared to accept the consequences of my decision if he was unsuccessful in this application, he had to pay the landlord $1,680.53, including the $100.00 filing fee, and he did not receive his security deposit of $1,300.00 back from the landlord.

At the first hearing, the tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's evidence. In my interim decision, I found that, in accordance with sections 88, 89 and 90 of the *Act*, the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's evidence.

Preliminary Issue - Adjournment of First Hearing

During the first hearing, I informed both parties that the first hearing on February 15, 2022, was adjourned for a continuation after 63 minutes because it did not finish within the 60-minute hearing time and both parties had further submissions to make.
By way of my interim decision, dated February 15, 2022, I adjourned the landlord's application to the second hearing date of August 19, 2022. I noted that the tenant still had further submissions to make and witness testimony to provide, and the landlord wanted to reply to the tenant's evidence and witness. During the second hearing, both parties confirmed their understanding of same and agreed that the above information was correct.

At the first hearing, I notified both parties that they would be sent copies of my interim decision and notice of reconvened hearing with the second hearing date information, from the RTB. At the second hearing, both parties confirmed receipt of my interim decision and the notice of reconvened hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit and for compensation under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

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

Both parties agreed to the following facts at the first hearing. This tenancy ended on July 31, 2021. Monthly rent in the amount of $2,600.00 was payable on the first day of each month. A security deposit of $1,300.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. The tenant provided a written forwarding address on August 1, 2021, which

was received by the landlord, on the move-out condition inspection report. Move-in and move-out condition inspection reports were completed by the landlord's brother and the tenant. The landlord did not have written permission to keep any amount from the tenant's security deposit.

At the first hearing, the landlord confirmed that he was seeking a monetary order of $1,580.53 plus the $100.00 filing fee paid for this application.

The landlord testified regarding the following facts at the first hearing. This tenancy began on April 2, 2018. He lives overseas in Europe and has not lived locally for 20 years. This was a three-year tenancy. There was a leak in the rental unit below the tenant's apartment. The leak originated from a kinked supply line for a bidet that the tenant installed in one of the toilets. The tenant did not obtain the landlord's permission to install the bidet. There was damage and call out charges, as well as reports from the insurance company, plumber, and strata agents. The landlord was not there when this occurred, but the documents were provided to him. There were faulty seals under the toilet from condensation on the toilet, which could have passed through the seals. There were five independent parties. The insurance adjuster indicated that the leak was due to the tenant's lifestyle and diet, the condensation in the toilet, and mold. There was a faulty install with the bidet. The tenant blocked work regarding the seals for the toilet. The tenant then removed the bidet. The plumber in the apartment below indicated that it was an unapproved toilet not installed correctly. The landlord fixed stuff at the beginning of this tenancy. The tenant claimed that the fridge drawers were broken already at the beginning of this tenancy.

The tenant testified regarding the following facts at the first hearing. This tenancy began on April 6, 2018, when he began occupying the rental unit. The first issue claimed by the landlord is the leak. The tenant provided a summary of the timeline. This was a 40-month tenancy. One bathroom on the right side of the rental unit had a bidet installed. The master bedroom bathroom, which is on the left side of the rental unit, had no bidet in the bathroom and the leak was directly below there. None of the landlord's documents mention that the bidet is the cause of the leak. The tenant never removed the bidet and was not asked to. The tenants made a video on July 30, before they left the rental unit. They continued to use the bidet from the beginning to the end. The water leak in the rental unit below was in the master bedroom. On March 28, when the leak was first detected, the occupant living below told the tenant that it was coming from one of the bathrooms. She did not know where the leak was coming from and asked the tenant to stop using the bathrooms. She then said that the source was the master bathroom. She asked if the tenant had the silicone toilet seals fixed at the base

of the toilet, as per the strata notice. The tenant did not use the master bathroom but used the other bathroom with the bidet on the opposite side of the rental unit. If the bathroom with the bidet was the source of the leak, the tenant would have been instructed to stop using it, but he was not. The plumber looked at the leak and never told the tenant to stop using the bathroom with the bidet. On March 29, strata asked for access and the tenants provided it on April 1. The tenant provided an email to strata to tell the landlord about the issue. The tenant informed the landlord regarding the leak in the master bathroom. Strata and the building manager did not see the source of the leak. The supply line and the kinked line was replaced in the bathroom and the plumber reinstalled the bidet and connected it to the new supply line. The plumber would not have reinstalled the bidet if it was the cause of the leak. On March 30, the landlord emailed the plumber's report to the tenant.

The tenant stated the following facts at the first hearing. The tenant kept the landlord informed because the landlord was out of the country. The plumber's report states that he checked the toilet, there was no silicone around the base, and no water spilled on the floor. There was a water stain inspection in the unit below, where there was no leak at the time. The plumber checked both bathrooms. There was no silicone around the base of both toilets in both bathrooms. The tenant used the bathroom with the bidet and there was no leak, as it was the guest bathroom. It is the landlord's duty to replace the silicone seals and it was not done since the beginning of the tenancy, as per section 32(4) of the *Act*. There were no next steps to remove the bidet because it was in the wrong bathroom. The plumber's invoice states that the wax seal and silicone was replaced, and the test was done with no leaks. There were no monthly inspections done by the landlord for the silicone. The tenant never blocked the plumber's access, and they agreed on dates for access. The landlord did not ask for the tenant to remove the bidet. The insurance report and plumber's report do not say that the bidet is the cause of the leak. The plumber said that both supply lines had to be replaced as a precaution and because they were old. The move-out condition inspection report has nothing flagged and says there was good care and hygiene at the rental unit. The tenant's mother-in-law and father-in-law gave statements that there was no leak of water. There was no kink caused by the tenant in the supply line. The kink and the bidet do not leak water. The refrigerator drawers were broken when the tenant moved in, but they are not noted in the move-in condition inspection report. This is a 19-year-old building, so Residential Tenancy Policy Guideline 40 is applicable. The landlord's repair estimates are in Euros, which do not apply here.

The tenant stated the following facts at the second hearing. Regarding the first issue of the leak, the landlord says that the installation of the bidet was unauthorized. There

were no material terms of the tenancy agreement broken by the tenant by installing a bidet in the bathroom. The tenant was not asked by the stakeholders to remove the bidet. Four months later, there were no other issues with the bidet. None of the landlord's documents show that the bidet was the cause of the leak. The bidet was used until the end of the tenancy. The tenant provided a video of the bidet on the second last day of the tenancy. There were no issues regarding the installation or use of the bidet. It is a detachable bidet which takes five minutes to remove. If the toilet had proper silicone, there would be no leak. Regarding the broken fridge drawers, it was not broken by the tenant, as it was like that when he moved in. The move-out condition inspection report has old photos. The tenant had a discussion with the landlord. The broken fridge drawers were in the move-out condition inspection report. Residential Tenancy Policy Guideline 40 states that for a refrigerator appliance, the useful life is 15 years, and this refrigerator is 19 years old. The tenant provided evidence that the building is 19 years old. The tenant called the refrigerator supplier company and was told that it is not stored or shipped anywhere in Canada, since it is an old American model. The landlord provided estimate in Euros for the broken fridge drawers. The landlord did not provide any evidence of expenses incurred, such as receipts or proof of work done. As per section 33(5) of the *Act,* the landlord has to provide receipts to seek reimbursement from the tenant. Although this section refers to emergency repairs, the tenant is using it to demonstrate that the landlord should provide receipts for expenses incurred. Regarding the broken balcony door handle, this is a 19-year-old building. The tenant did not break the balcony door handle. When he tried to open the door, half of it snapped and came off. Residential Tenancy Policy Guideline 40 regarding balcony railings, show the useful life is 10 years. The landlord only provided an estimate in Euros for the broken balcony door handle and did not provide proper proof of the money owed.

At the second hearing, the landlord testified regarding the following facts. The damages were caused by the leak from the bidet. Prior to the bidet being installed, there were no issues. The tenant did not seek any approval for a structural change to the rental unit. The bidet required plumbing, so it was not a "snap-on," as per the tenant. This was an emergency call-out leak. The broken fridge drawers and the broken balcony door handle were not flagged during the move-in condition inspection, even though it was thorough, and the tenant pointed out a scratch on the wall that had to be painted by the landlord. The landlord was never asked to perform an inspection by the tenant. The landlord lives abroad and does not want to infringe on the tenant's space. The unit below had water seeping through both extraction fans, not the other bathroom, as per the tenant. In the plumber's report, the plumber replaced the supply line attached to the bidet and the unauthorized installation of the bidet was defective. There were major

kinks and bubbling. The insurers could not provide a cause of the leak because the bidet was removed by the tenant so they could not see and it. The bidet should have been left there by the tenant. The insurance report states that there was a kinked supply line causing the leak, there was water seeping through the base, and there was a water stain on the ceiling in the unit below. There was line leak, the tenant disagrees, and there was no evidence because the bidet was not there. The bidet was the cause of the leak, as per the report. The landlord never raised the tenant's rent. The landlord wrote on behalf of the tenant regarding the dispute with strata. The landlord was bombarded with legal notices and information from the tenant. The tenant monopolized almost the entire first hearing. The landlord provided two offers to settle, which were both declined by the tenant.

The tenant stated the following facts in response at the second hearing. When the insurance company and the landlord's brother came to the rental unit, the bidet was still there. The tenants never removed the bidet, and it was not the cause of the leak because it was in the other bathroom. The tenant was not given a strata notice regarding the silicone and asked the landlord to submit it before the hearing but it was not done. The notice was issued to all owners, not the tenant. The tenant received all of the landlord's documents for this hearing.

The landlord stated the following facts in response at the second hearing. He thought he submitted receipts for the refrigerator drawers and the broken balcony door handle. He provided estimates in Euros and that was his mistake, so if it is dismissed, that is the landlord's error. The landlord did not say that the tenant maliciously caused the broken balcony door handle. However, the tenant opened the door and it broke, so even if it was an accident, the tenant is responsible for it.

The tenant's witness testified regarding the following facts at the second hearing. She is the wife of the tenant and she lived with him at the rental unit during this tenancy. The tenant never removed the bidet. The insurance adjuster was there with the landlord's brother and another person. She read all the documents provided, including the plumber's report and the insurance adjuster's report. On March 28, 2021, the occupant in the unit below the tenant's unit told the tenant that there was a leak in the bathroom and to stop using both bathrooms for 30-35 minutes, saying that the manager would look at the building plan. The occupant said that the leak was under the master bathroom, which has no bidet there. The toilet in the master bathroom was not used by the tenant, as only the small bathroom with the bidet was used, which did not cause the leak. The tenant's witness went to visit the unit below and discussed the leak with the occupant and they both exchanged phone numbers. On March 31, 2021, the tenant

called the landlord. None of the landlord's documents say that the bidet was the cause of the leak. The documents say that silicone was needed for the toilet seat, that the bidet was not the cause, and that bidets are common and to keep using it. The tenant was not that he could not use the bidet. On May 21, 2021, the tenant's witness visited the unit below and got a tour of the occupant's unit and saw the leak. The occupant told her that the leak could have been avoided, if the toilet seat was re-silicone. The occupant was unwilling to be involved and give a report to the tenant regarding this incident.

The tenant's witness stated the following facts at the second hearing. The refrigerator drawers were already broken when the tenant moved in, and they did not break them. There was no damage to the balcony door handle, as it came out when they opened the door, but it was not broken, and this is a 19-year-old building. There were no receipts, only estimates in Euros, and no proof of expenses incurred by the landlord. There was no permission given to the tenant to install the bidet, as required by the tenancy agreement. There were no leaks prior to or after the bidet being installed. There is no note of the broken refrigerator drawers on the move-in condition inspection report, and they continued to use it. They are new to Canada and used to own their own house overseas, before. They did not know that they had to inspect and make a note of everything, and they were not told to do so. They never thought it would come to this situation. They signed the move-in condition inspection report and asked the landlord to paint a scratch. They never troubled the landlord because he was living out of country. They did not report issues as a courtesy to the landlord. It is the responsibility of the landlord to regularly visit the rental unit, as per the tenancy agreement and to see how they are doing. The landlord had a local representative who is his brother, as per the tenancy agreement, but they were hesitant to contact him because they did not know him and did not have any contact with him. An annual inspection could have been done if required and there is a right to privacy. The plumber's report does not explicitly state the bidet was the cause of the leak and it says that there is a damaged supply line, a kink and bubble at the source installed for the bidet. Resealing of the toilet is needed.

The landlord stated the following facts in response at the second hearing. The landlord is not an expert, plumber, or lawyer. The bidet was installed with a faulty supply line to service the bidet, so it was not the bidet itself, that caused the leak. The tenant refused the work, and it was still done because it was so damaged. The landlord did not know that a reseal of the toilet was needed but accepts this.

The tenant stated the following facts in response at the second hearing. He is not a plumber, insurance adjuster, or expert. Why would permission be required to attach a

detachable bidet component to the toilet, since it is similar to wall mounting a television or putting photos on the wall. The cause of the leak is undetermined as per the expert. The base of the toilet seat was not silicone. Why did the landlord's brother fail to tell the landlord that the bidet was still there when he visited the rental unit. This is the tenant's first time at an RTB hearing. Repairs were not done on move-in by the landlord.

Analysis

Burden of Proof

The landlord, as the applicant, has the burden of proof, on a balance of probabilities, to prove his application and monetary claims. The *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide evidence of his claims, in order to obtain a monetary order.

The landlord received an application package from the RTB, including instructions regarding the hearing process. The landlord served his application to the tenant, as required. The landlord received documents entitled "Notice of Dispute Resolution Proceeding" ("NODRP") from the RTB, after filing his application and after the first hearing was adjourned to the second hearing. These documents contain the phone number and access code to call into both hearings.

The NODRP states the following at the top of page 2, in part (emphasis in original):

> *The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*
>
> - *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the Residential Tenancy Branch website on submitting evidence at www.gov.bc.ca/landlordtenant/submit.*
> - *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at www.gov.bc.ca/landlordtenant/rules.*
> - *Parties (or agents) must participate in the hearing at the date and time assigned.*
> - *The hearing will continue even if one participant or a representative does not attend.*

- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document.

The landlord received a detailed application package from the RTB, including the NODRP documents, with information about the hearing process, notice to provide evidence to support his application, and links to the RTB website. It is up to the landlord to be aware of the *Act, Regulation*, RTB *Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord to provide sufficient evidence of his claims, since he chose to file this application on his own accord.

Legislation, Policy Guidelines, and Rules

The following RTB *Rules* are applicable and state the following, in part:

> *7.4 Evidence must be presented*
> *Evidence must be presented by the party who submitted it, or by the party's agent…*
> …
> *7.17 Presentation of evidence*
> *Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence…*
>
> *7.18 Order of presentation*
> *The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof…*

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish their claims. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 16 states the following, in part (my emphasis added):

> *C. COMPENSATION*
> *The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.* ***It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*** *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.*
>
> …
> *D. AMOUNT OF COMPENSATION*
> *In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element.* ***A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.***

I find that the landlord did not properly present his application, claims, and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having multiple opportunities to do so, during two hearings, as per Rules 7.17 and 7.18 of the RTB *Rules.* During both hearings, the landlord failed to properly go through his claims and the documents he submitted as evidence.

Both hearings lasted 135 minutes total, so the landlord had ample opportunity to present his application and respond to the tenant's evidence and witness. I repeatedly

asked the landlord if he had any other information to add and if he wanted to respond to the tenant's evidence and witness at both hearings.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application of $1,580.53 without leave to reapply. I find that the landlord failed the above four-part test, as per section 67 of the *Act* and Residential Tenancy Policy Guideline 16.

The landlord failed to provide receipts to show if, when, and how he paid for the water leak, replacing two broken refrigerator drawers, and replacing a broken balcony door handle. The tenant raised the issue of receipts during this hearing, stating that they were required, as per the *Act*, to show proof of the work done and proof of payment.

The landlord provided an invoice and a letter from strata, with a balance due of $1,261.58, for the water leak. The landlord did not sufficient documentary evidence, such as a receipt or other proof of payment, to show if, when, how, and to whom he paid for the water leak. The landlord did not provide sufficient testimonial evidence to indicate whether the above payment was made and if so, when, how, and to whom.

The landlord agreed at this hearing that he mistakenly provided estimates in Euros, for the refrigerator drawers and balcony door handle, as evidence. The landlord did not provide any invoices, receipts, or other sufficient documentary evidence, to show if, when, how, and to whom he paid for the above items. The landlord only provided photographs from online websites to show estimates for costs for the above items. The landlord did not indicate whether those items were actually purchased and if so, when, how, and from where. The landlord did not provide sufficient documentary or testimonial evidence to indicate who installed the above items, when it was done, how long it took, who it was done by, how many people completed it, what their pay rate was per hour, per worker, or per job, or other such information.

The landlord had ample time of over six months, from filing his application on August 3, 2021, to the first hearing date of February 15, 2022, to provide the above evidence of proper receipts and invoices but failed to do so.

Residential Tenancy Policy Guideline 40 states that the useful life of a refrigerator appliance is 15 years. The tenant raised the above issue at the second hearing, claiming that the rental unit was 19 years old, and the refrigerator was not replaced before or during the tenancy. The landlord did not dispute the above information during

the second hearing. Therefore, the landlord would be required to replace the entire refrigerator, not just the drawers, in any event, since it is over 15 years old.

As the landlord was unsuccessful in this application, I find that he is not entitled to recover the $100.00 filing fee from the tenant.

The landlord continues to retain the tenant's entire security deposit of $1,300.00. Over the period of this tenancy, no interest is payable on the deposit. I order the landlord to return the tenant's entire security deposit of $1,300.00 to the tenant. The tenant is provided with a monetary order for same.

Although the tenant did not apply for the return of his deposit, I am required to consider it on the landlord's application to retain it, as per Residential Tenancy Policy Guideline 17. I find that the tenant is not entitled to double the amount of the security deposit, since the landlord filed this application to retain it on August 3, 2022, which is within 15 days of the end of this tenancy on July 31, 2021, and the tenant's forwarding address being provided to the landlord on August 1, 2021. Although the tenant did not apply for the return of double the amount of the deposit, I am required to consider it since the tenant did not specifically waive his right to it, as per section 38 of the *Act* and Residential Tenancy Policy Guideline 17.

Conclusion

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

I issue a monetary Order in the tenant's favour in the amount of $1,300.00, against the landlord. The landlord must be served with a copy of this Order. 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: August 31, 2022

Residential Tenancy Branch