



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNDCL-S FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the landlord seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of \$869.75 for damages to the unit, site or property, for compensation for money owed, to retain the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

An agent for the landlords, CT (agent) and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed that they had received documentary evidence from the landlord and had the opportunity to review that evidence prior to the hearing. As a result, I find the tenant was sufficiently served in accordance with the Act. In addition, the tenant confirmed that they did not serve documentary evidence on the landlord.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to the parties as a result.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?

- Is the landlord entitled to recover the cost of the filing fee under the Act?

Background and Evidence

A fixed-term tenancy began on March 26, 2021 and was scheduled to convert to a month-to-month tenancy after March 31, 2022. Monthly rent in the amount of \$1,000 was due on the first day of each month. The tenant paid a security deposit of \$500 at the start of the tenancy which the landlord continues to hold. The parties agree that the tenant vacated the rental unit on March 30, 2022.

The landlord's monetary claim of \$869.75, which I find actually totals \$869.20 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cracked bedroom window	\$498.75
2. Cleaning	\$100
3. Gas and Hydro utilities owing	\$170.45
4. Filing fee	\$100
TOTAL	\$869.20

Regarding item 1, the landlord has claimed \$498.75 for the cost to replace a cracked bedroom window that the tenant admitted during the hearing was cracked during the tenancy. The tenant stated that they did not know how the window was cracked as they had their window blinds always closed because otherwise, people could see into their bedroom.

The agent stated that at the time the tenancy began the home was less than one year old and that by the end of the tenancy the home was about two years old. The agent presented a text with photos to support a quote of \$475 plus GST to have the broken window replaced.

The incoming Condition Inspection Report was reviewed during the hearing and is dated March 26, 2021. The outgoing Condition Inspection Report was also reviewed and is dated March 30, 2022. The Condition Inspection Reports that the bedroom window only cracked at the end of the tenancy and not at the start of the tenancy. Regarding item 2, the landlord has claimed \$100 for cleaning costs. The agent stated that the stove was dirty and that a cleaner charges a minimum of \$100 to clean and that

the agent paid \$100 to have the rental unit cleaned. The tenant replied by stating that they did clean the rental unit and that the landlord is over-charging to clean the inside of the stove. The photo of the stove does show a dirty inside of the stove, which I will address later in this decision.

Regarding item 3, the landlord has claimed \$170.45 for unpaid utilities and the tenant asked why the most recent utility bills were submitted for their consideration. The agent stated that they forgot to submit the bills on behalf of the landlord.

The landlord is also seeking the cost of the filing fee, which I will address later in this decision.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what is reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 – Regarding the cracked bedroom window, there is no dispute that the window was not cracked at the start of the tenancy and was cracked at the end of the tenancy. The tenant states they are unsure how it cracked as they always kept their blinds closed for privacy reasons. I find the window was 2 years old by the end of tenancy, given the testimony of the agent. Residential Tenancy Branch (RTB) Policy Guideline 40 – *Useful Life of Building Elements* (Guideline 40) states that the useful life of a window is 15 years. Therefore, I find that 2 divided by 15 equals 13.33%, and that as a result, any amount granted will be reduced by 13.33% to account for 2 of 15 years of depreciation under Guideline 40 for a window.

In addition to the above, I find that a cracked window is not normal wear and tear and that the tenant must compensate the landlord the following amount as a result. I am satisfied on the amount \$498.75 represents a replacement cost of \$475 plus GST and that the amount is reasonable. Therefore, I reduce that \$498.75 by 13.33%, which is \$66.48, which I find accounts for depreciation. Consequently, I find the landlord is entitled to a depreciated award of **\$432.27**. Any additional amount is dismissed without leave to reapply, due to insufficient evidence.

Item 2 – I have reviewed the cleaning costs of \$100 and find that that amount is excessive to clean the inside of a stove. Although the tenant stated that the rental unit was dirty at the start of the tenancy, the tenant is required under the Act to leave the rental unit in a reasonably clean condition at the end of the tenancy. Therefore, I agree with the agent that the tenant breached section 37(2)(a) of the Act, which applies and states:

Leaving the rental unit at the end of a tenancy

37(2) When a tenant vacates a rental unit, the tenant must

- (a) **leave the rental unit reasonably clean**, and undamaged except for reasonable wear and tear, and
[emphasis added]

Given that I find the amount of \$100 is not reasonable or justified, I award the landlord a nominal amount of **\$30** to reflect the breach of the Act by the tenant and to have the inside of the stove cleaned, which I find is a reasonable amount. I dismiss any additional amount without leave to reapply, due to insufficient evidence.

Regarding, item 3, I find the landlord has failed to meet the burden of proof by failing to provide the updated utility bills. Therefore, this item is dismissed without leave to reapply, due to insufficient evidence.

Regarding the filing fee, I grant the **\$100** filing fee as the claim before me was partially successful.

Given the above, I find the landlord has established a total monetary claim as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
1. Cracked bedroom window	\$432.27
2. Cleaning	\$30
3. Gas and Hydro utilities owing	dismissed
4. Filing fee	\$100
TOTAL	\$562.27

Based on the above, I find the landlord has established a total monetary claim of **\$562.27**. As the landlord continues to hold the tenant's security deposit of \$500, which has accrued no interest under the Act, **I authorize** the landlord to retain the tenant's entire **\$500** from the tenant's security deposit including no interest, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the Act for the amount owing by the tenant to the landlord in the amount of **\$62.27**.

Conclusion

The landlord's application was partly successful.

The landlord has established a total monetary claim of \$562.27. The landlord is authorized to retain the tenant's entire \$500 security deposit including no interest. The landlord has been granted a monetary order pursuant to section 67 of the Act in the amount of \$62.27.

Should the tenant fail to pay that amount, the landlord must serve the monetary order on the tenant with a demand for payment letter. Then the landlord may enforce the monetary order as an order of the Provincial Court of British Columbia (Small Claims).

The tenant is reminded that they may be held responsible for the costs related to enforcing the monetary order including court fees.

The decision will be emailed to the parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 11, 2023

Residential Tenancy Branch