



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, MNDCL-S, FFL

### Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on April 12, 2022 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation, or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time. The Tenant had a witness available, however, the Tenant did not call their witness in during the 60-minute hearing.

### Preliminary Matters

At the start of the hearing, the parties agreed that they had a previous dispute resolution hearing. The Tenant stated that she has since submitted another application on December 5, 2022 and that the parties have another hearing scheduled for April 11, 2023. The Tenant requested that her application be considered along with the Landlord's Application during this hearing. The file numbers are listed on the cover page of this decision.

The Landlord confirmed that she has received the Tenant's Application, however, has not yet had time to provide evidence in response to the Tenant's Application. As such, I find that I am unable to consider the Tenant's application during this hearing as doing so would prejudice the Landlord. The hearing continued based on the Landlord's Application.

The Tenant confirmed receipt of the Landlord's Application and evidence. The Landlord confirmed receipt of the Tenant's evidence. As there were no issues raised relating to service, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage compensation or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retaining the security deposit and pet damage deposit, pursuant to Section 38, and 72 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 16, 2021. The Tenant was required to pay rent in the amount of \$2,200.00 which was due on the first day of each month. The Tenant paid a security deposit and a pet deposit, each in the amount of \$1,100.00, both of which the Landlord continues to hold. The Tenant moved out of the rental unit on March 31, 2022. The Landlord confirmed having received the Tenant's forwarding address in writing on April 1, 2022.

The parties agreed that the Tenant reported a leak in the rental unit to the Landlord on September 27, 2021.

The Landlord is claiming \$1,938.81 for the cost associated with Strata hiring Circle Restoration to investigate the cause of the leak and to assess the damage caused by the leak. The Landlord stated that they determined that the cause of the leak was due to a faulty shower faucet. The Landlord stated that she was not satisfied with this assessment, therefore, hired Pioneer Plumbing to investigate and is claiming \$333.85 for the cost of this investigation. The Landlord stated that the plumber determined that the leak may have been cause by the unit above the rental unit. The Landlord stated that she later hired XTR Building Services to attend and is claiming for the cost of

\$682.50 for leak and mold investigation. The Landlord state that the findings showed that the leak may have been caused by the Tenant's improper use of the shower curtain. The Landlord provided a copy of each report in support.

The Tenant responded by stating that she notified the Landlord at the start of the tenancy that there was an issue with the bathtub faucet. The Tenant stated that the Landlord's father replaced the faucet on April 23, 2021. The Tenant stated that the faucet was not replaced correctly, which is what caused the leak. The Tenant provided her own Plumbing Report which was conducted by Marvel Drainage and Plumbing which indicated that the faucet caused the leak. The Tenant provided a copy of the communications between the Tenant and the Landlord, as well as the plumber's report in support.

The Tenant states that the assessment completed by the Strata shows that the bathtub faucet caused the leak. The Tenant stated that the Landlord's plumber indicated that the leak may have been caused by the unit above. The Tenant stated that the XTR conducted their investigation several months after the leak and determined that the leak may have been caused by the improper use of the Tenant's shower curtain. The Tenant denies misusing her shower curtain. The Tenant states that there is no evidence to determine that the Tenant is responsible for the leak.

The Landlord is claiming \$294.00 to replace the locks to the rental unit and mailbox. The Landlord is also \$130.00 to deactivate a fob as a result of the Tenant not returning the keys and fob at the end of the tenancy. The Landlord submitted receipts in support.

The Tenant stated that the move out inspection was tense at the end of the tenancy, therefore, the Tenant notified the Landlord that she would return the keys and fob by Registered Mail. The Tenant provided pictures of the registered mailing in support. The Landlord denied that this was communicated to her by the Tenant.

The Landlord is seeking to recover \$2,200.00 for loss of April 2022 rent as the Landlord was required to make repairs to the rental unit as a result of the leak. As such, the Landlord stated that she was unable to re-rent the rental unit for the month of April 2022. The Tenant denies being responsible for the leak, therefore, she does not feel as though she should be responsible for pay in the loss of rent.

The Landlord is claiming \$5,000.00 for a repair quote that the Landlord received from XTR Repairs to repair the bathroom and hallway in the rental unit as a result of the leak.

During the hearing, the Landlord stated that the actual cost associated with the repair was \$2,919.80. The Tenant doesn't feel she should have to pay for the repairs.

The Landlord is claiming \$300+ for Top Hat Cleaning as a result of the Tenant leaving the rental unit dirty at the end of the tenancy. The Landlord did not provide a copy of the invoice in support. The Tenant stated that she left the rental unit clean. Both parties provided pictures of the condition of the rental unit in support.

The Landlord is claiming \$1,100.00 in relation to a relocation estimate for placement of a new tenant at the end of the tenancy. The Tenant stated that the tenancy was ending anyways as the parties had mutually agreed to end the tenancy as of March 31, 2022 following the Landlord serving the Tenant with a 10 Day Notice for Unpaid Rent.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or 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 was reasonable to minimize the damage or losses that were incurred.

The Landlord is seeking to be reimbursed for three leak investigations that took place at the rental unit following the leak which was reported on September 27, 2021 in the amounts of \$1,938.81, \$333.85, and \$682.50.

According to Section 32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this case, I find that it would have been the Landlord's responsibility to incur the costs to investigate the leak. I find that the first two reports conducted by the Strata and the Landlord indicate that the Tenant is not responsible for the leak. I find the third assessment was conducted several months after the leak as is therefore less reliable than the two previous assessment which had been completed soon after the leak occurred. I accept that the Tenant also had their own assessment completed at the time of the leak which determined that the bathtub faucet caused the leak.

As such, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant is responsible for the leak and therefore not responsible to pay the costs associated with the three assessments. I dismiss the Landlord's claims relating to the assessments without leave to reapply.

The Landlord is claiming \$294.00 to replace the locks to the rental unit and mailbox, and also \$130.00 to deactivate a fob as a result of the Tenant not returning the keys at the end of the tenancy.

**According to Section 37 of the Act,** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends. (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

**(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.**

In this case, the parties confirmed that the Tenant did not provide the Landlord with the all the keys and Fob at the end of the tenancy during the move out condition inspection of the rental unit. While the Tenant stated that they notified the Landlord that they would send the keys and fob by Registered Mail, the Landlord stated that they did not receive this communication from the Landlord. I find that the Tenant would have been required to provide the keys and Fob to the Landlord at the end of the condition inspection of the rental unit.

As the Tenant failed to provide the keys and Fob to the Landlord on the last day of the tenancy, I find that it was reasonable for the Landlord to change the locks and deactivate the fob. I find the Landlord is entitled to compensation in the amount of **\$294.00** for the locks and **\$130.00** to deactivate the Fobs.

The Landlord is claiming \$2,200.00 for loss of April 2022 rent as the Landlord was required to make repairs to the rental unit as a result of the leak. The Landlord has also claimed \$5,000.00 for the repairs, however, during the hearing, the Landlord reduced this claim to \$2,919.80. I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant was responsible for the leak that caused damage to the rental unit. As such, I dismiss these claims without leave to reapply.

The Landlord is claiming \$300+ for Top Hat Cleaning as a result of the Tenant leaving the rental unit dirty at the end of the tenancy. I find that the Landlord provided insufficient evidence such as a receipt to demonstrate the value of their loss. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$1,100.00 in relation to a relocation estimate for placement of a new tenant at the end of the tenancy. According to the Residential Policy Guideline #4; a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I find that the tenancy agreement between the parties lacks a liquidated damages clause. As such, I find that the Landlord is not entitled to recovering the cost associated with re-renting the rental unit. I dismiss this claim without leave to reapply.

Having been partially successful, I find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain \$524.00 from the \$2,200.00 security and pet damage deposit held in satisfaction of the claim ( $\$2,200.00 - \$524.00 = \$1,676.00$ )

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$1,676.00, which represents the remaining balance of their security and pet damage deposits less the previously mentioned deductions.

### Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$524.00 which has been deducted from the security and pet damage deposits held by the Landlord. The Tenant is granted a monetary order in the amount of \$1,676.00 which represents the remaining balance of the Tenant's security and pet damage deposits. The order should be served to the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 20, 2023

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Residential Tenancy Branch