



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 1:30 p.m. and ended at 2:30 p.m.. 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 attended the hearing, represented by property manager, MC. (“landlord”). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he served the tenant with the Notice of Dispute Resolution Hearing package together with a copy of a substitutional service order granted by the adjudicator on July 7, 2022 via email. The documents were sent to the tenant at the email address recorded on the cover page of this decision and to a second email address provided to the landlord at the beginning of the tenancy. Pursuant to section 71, I deem the tenant served with the Notice of Dispute Resolution Hearing package on July 10, 2022 three days after being sent via email.

This hearing proceeded in the absence of the tenant.

Issue(s) to be Decided

Is the landlord entitled to the monetary orders as sought?

Can the landlord retain the tenant's security deposit and pet damage deposit?

Can the landlord recover the filing fee?

Background and Evidence

The following testimony was not disputed by the tenant.

The tenancy began on July 1, 2021 with rent set at \$3,600.00 per month, payable on the first day of each month. There are multiple people named as tenants on the tenancy agreement, however the landlord only seeks an order against the sole named tenant as the landlord is unsure whether any of the other named tenants moved in.

At the commencement of the tenancy, the landlord collected a security deposit of \$1,800.00 and a pet damage deposit of \$700.00. No condition inspection report was written up or signed by the parties however the landlord did a video recording of the condition of the rental unit. This video was not provided as evidence for the hearing due to the size of the file.

The landlord testified that the rental unit is an entire house with 6 bedrooms and 2 kitchens, one on the upper and one on the lower. The house was built in the 1970's, however much of it has been renovated over the years.

On May 10th, the landlord emailed the tenant advising her that rent for the month of May, 2022 wasn't paid. After a verbal conversation with the tenant the same day, the landlord went into the rental unit and discovered the property appeared to be abandoned with broken furniture, used tires, garbage and dog facies all around the front and back. In an email sent to the tenant, the landlord notes the following:

The interior of the house is in even worse shape. There is a very bad smell in the house. Some smell seems to come from the wet carpet on the stairs. There is a very strong smell of urine in all 3 washrooms. The bedrooms on the ground floor have various damages, the kitchen is in very dirty shape. Fridges have left over, rotting food. Bedrooms on the upper floor are filled with used personal items. There is a mattress and a piece of plywood in the hallway, the kitchen is in a huge messs. There are boxes with personal items, and piles of garbage throughout the house.

On May 19th, the property manager changed the locks to the rental unit. The landlord sent another email to the tenant saying:

In addition to the email below, a fridge on the ground floor, the new washer and dryer are missing. A property theft report has been filed with the [police agency] regarding these missing items (case number provided in email). Additional damages have been found since the email communication below. The door separating the basement suite and the laundry room has been ripped out of the door frame. The door separating the main suite and the basement suite is damaged beyond repair. The toilets are plugged up. There are various damages throughout the house. The list goes on. We will fill a complete list of damages with the Board. Since no keys have been returned since the house is abandoned, locks on the front, rear, and kitchen doors have been changed. Regarding items left behind, a contractor has been hired to remove items left behind as trash. The contractor and his team will clean the house and make necessary repairs to damaged items. The bill for the clean-up and repair work will be forwarded to you for payment. The clean up and junk removal will start on May 25th, 2022.

Please do not hesitate to contact me should you have any questions or concerns regarding this matter.

The landlord testified that the tenant never ended up paying the outstanding arrears in rent for May, \$3,600.00. The landlord also seeks the following 13 items as listed on a spreadsheet provided as evidence:

	Description	Estimated Cost
1	Damaged carpet	\$ 1,750.00
2	Paint 1 bedroom	\$ 400.00
3	unclog toilet	\$ 600.00
4	Replace damaged doors	\$ 700.00
5	Repair closet door	\$ 200.00
6	Replace laundry room sink	\$ 350.00
	Major cleaning - large items and garbage - Tires,	
7	Mattress, old furniture	\$ 1,200.00
8	Move-out cleaning - rooms, kitchen, bathrooms etc	\$ 1,000.00
9	locks	\$ 93.17
10	lock change labour	\$ 150.00
11	1 month of rent	\$ 3,600.00
12	stolen fridge	\$ 500.00
13	stolen washer/dryer	\$ 1,600.00

1. The carpets were pretty old, over 10 years and needed to be replaced. No photos of any bedrooms with carpeting were provided in the landlord's evidence package.
2. The landlord stated there is a photo titled **damaged.wall.jpg** in his evidence, however none was supplied in evidence.
3. The tenants jammed paper products down 2 of the 3 toilets in the house. The contractor had to remove 2 toilets, snake the plumbing to clear the lines then reinstall the toilets.
4. One door separating the laundry room from the house and a second door to the basement kitchen were damaged. No photos of the door damage were supplied into evidence however the landlord testified that the hinges broke off completely, requiring replacement of the door. He has video evidence; however he didn't upload it for this hearing.
5. No photos of damaged closet doors were supplied as evidence.
6. The laundry room sink was damaged when the tenant or somebody allowed onto the property by the tenant stole the washer and dryer. A photo of the laundry room sink with broken legs was provided as evidence.
7. The landlord paid their contractor to do the work of cleaning out the items left behind by the tenant. Photos of the rental unit depicting garbage everywhere was provided, as was a copy of the contractor's invoice.
8. it took 2 people 3 days to clean the unit, however the landlord does not have any invoices for the work done.
9. The landlord provided an invoice for the lock he purchased to replace the ones the tenant still had in her possession. The tenant did not return the landlord's keys when she abandoned the unit.
10. The landlord replaced the locks himself but estimates it would have cost \$150.00 to have them done by a professional.
11. The landlord did not pay rent for the month of May, \$3,600.00. The tenant seemingly abandoned the unit on May 19th, the day the landlord changed the locks.
12. The landlord gave confusing, conflicting testimony regarding the issue of the missing fridge. In evidence, there is a newer stainless-steel fridge in the kitchen, as well as photos of an older white fridge with food left behind in it.. The landlord testified that there is a missing third fridge he acknowledged as belonging to the tenant. The landlord provided an old photo still taken from a video but he was unable to advise as to when the photo was taken. The old fridge was about 4 years old and the landlord has not replaced it.

13. The landlord purchased a brand-new washer and dryer set while the tenant was living in the rental unit. A copy of the invoice dated 08/04/2021 was provided. It was missing by the time the landlord discovered the unit was abandoned by the tenant.

Analysis

Section 14 of the Residential Tenancy Regulations (“Regs”) state: the landlord and tenant must complete a condition inspection described in section 23 or 35 of the *Act* [condition inspections] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

Sections 23 and 35 of the *Act* require the landlord and tenant to participate in move-in and move-out condition inspections and document them in written reports. Sections 17 and 18 of the Regs indicate it is the landlord’s responsibility to schedule the inspections and provide a copy to the tenant. During the hearing, the landlord acknowledged he did not perform a condition inspection report with the tenants at the commencement of the tenancy.

Section 21 of the Regulations state that 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. Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put himself in a position where he cannot prove, on a balance of probabilities, the existence of the damages allegedly caused by the tenants when the tenancy ended. Though his testimony bears some weight, he has not met the burden of proof to show me the difference in condition between move-in and move-out. While the condition inspection report would provide the most compelling proof of damage, photographs taken at the beginning of the tenancy to compare the difference in condition would have been informative. I was not provided with any such evidence.

Further, the Residential Tenancy Branch Rules of procedures states:

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

During the hearing, the landlord acknowledged that he had multiple photographs, some which he provided to me, others not. The majority of the photos provided to me were marked **garbage_(number).jpg**. When I asked the landlord to direct my attention to which photo best describes the damage he sought for each of the items listed in his spreadsheet, the landlord was unable to do so. Throughout the hearing, the landlord had difficulty in showing me the extent of the damage claimed, item by item.

Bearing this in mind, as well as the lack of a condition inspection report done at the beginning and end of the tenancy, I make the following rulings with respect to each of the portions of the landlord's claim.

1. Damaged carpet The useful life of a carpet is 10 years, pursuant Residential Tenancy Branch Policy guideline 40 [Useful life of building elements]. As the landlord testified the carpets were approximately 10 years old, I find that they have outlived their useful life and the cost to replace them with hardwood flooring is dismissed.
2. Paint 1 bedroom. No photos of the bedroom requiring repainting was supplied as evidence. This item is dismissed.
3. unclog toilet The landlord provided photographic evidence of the clogged toilets and I find it reasonable that they were in good working order at the commencement of the tenancy. I award the landlord the **\$600.00** it cost to have them disassembled and unclogged.
4. Replace damaged doors. The landlord was unable to direct my attention to any photos of damaged doors. I dismiss this item as I cannot determine their condition at the commencement of the tenancy or examine the extent of the alleged damage done.
5. Repair closet door – no photos were provided. Dismissed. Same reasons as above.
6. Replace laundry room sink – I find it reasonable that the sink was broken during the tenancy, and I find the cost to replace it at **\$350.00** is reasonable. I award the landlord this damage claim.

7. Major cleaning - large items and garbage - Tires, Mattress, old furniture – I have reviewed the photos of the condition of the rental unit, and I find the garbage removal it exceeds reasonable wear and tear for a tenancy of approximately one year. I find the cost of **\$1,200.00** to be reasonable in the circumstances, given the amount of debris left by the tenant when she abandoned the rental unit. This amount is awarded to the landlord.
8. Move-out cleaning - rooms, kitchen, bathrooms etc. No invoices were provided to substantiate this portion of the landlord's claim. I dismiss this issue for insufficient evidence in support.
9. Locks – section 25 of the Act requires that the landlord must rekey or otherwise alter locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and pay all costs associated with the change. As section 25 states the requirement falls to the landlord to change the locks, I dismiss the landlord's application seeking this cost from the tenant.
10. lock change labour– dismissed. Same reasons as above.
11. 1 month of rent – Based on the undisputed testimony of the landlord and evidence provided, I am satisfied the tenant was required to pay \$3,600.00 per month rent for the month of May, abandoned the unit on or about May 19th and failed to pay rent. The tenant's actions breached section 26 of the Act, and in accordance with section 67, the landlord is awarded **\$3,600.00** as rent for the month of May 2022.
12. stolen fridge – Based on the testimony of the landlord and the evidence provided, I am not satisfied the tenant "stole" the landlord's fridge. From the photos provided, there were two fridges left at the end of the tenancy and the landlord was unable to provide clear testimony or documentary evidence to substantiate this loss. I dismiss this portion of the claim.
13. stolen washer/dryer – The landlord provided photos of the washer and dryer present during the tenancy and an invoice showing they were new. I accept the landlord's uncontroverted testimony that they were stolen by the tenant, or a person allowed into the rental unit by the tenant during the tenancy and I award the landlord the full cost of replacement, **\$1,540.02**.

The majority of the landlord's claim was successful. I order that the landlord shall recover the \$100.00 filing fee.

The landlord continues to hold the tenant's security deposit of \$1,800.00 and a pet damage deposit of \$700.00. In accordance with the offsetting provisions of section 72, the landlord may retain both deposits in partial satisfaction of the monetary order.

Item	Amount
Repair clogged toilets	\$600.00
Replace Laundry room sink	\$350.00
Major cleaning - large items and garbage	\$1,200.00
May 2022 rent	\$3,600.00
Stolen washer/dryer	\$1,540.42
Filing fee	\$100.00
Less security deposit and pet damage deposit	(\$2,500.00)
Total	\$4,890.42

Conclusion

I award the landlord a monetary order in the amount of \$4,890.42 pursuant to section 67 of the Act.

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: February 17, 2023

Residential Tenancy Branch