



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-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 1:40 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 address for service of this Decision.

Preliminary Issue- Service

The landlord testified that the tenant was served with the landlord's application for dispute resolution and evidence via email on June 3, 2022. The serving emails were entered into evidence.

The landlord testified that the tenant signed RTB Form #51 authorizing email service. The RTB Form #51 signed by the tenant was entered into evidence.

Section 89 of the *Act* sets out the approved methods of service for applications for dispute resolution as follows:

- 89** (1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a)by leaving a copy with the person;
 - (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
 - (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
 - (e)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
 - (f)by any other means of service provided for in the regulations.

Section 43(2) of the Regulation to the Residential Tenancy Act states:

For the purposes of section 89 (1) (f) [*special rules for certain documents*] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

I find that the tenant was served with the landlord's application for dispute resolution and evidence in accordance with section 89(1)(f) of the *Act* because the tenant authorized the landlord, via RTB Form #51, to serve the tenant via email.

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 June 1, 2017 and ended on April 22, 2022. Monthly rent was originally set at \$2,000.00 per month and the landlord raised the rent on two occasions during the tenancy. A security deposit of \$1,000.00 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 through a Direct Request Decision, he received an Order of Possession for unpaid rent. The Direct Request file number is located on the cover page of this decision. The landlord testified that the tenant did not provide him with a forwarding address is writing at the end of this tenancy.

The landlord testified that move in and move out condition inspection reports were completed with the tenant at the start and end of this tenancy. The move in and out condition inspection reports signed by the landlord and the tenant were entered into evidence. The tenant signed that she agreed with the contents of both the move in and move out condition inspection reports.

The landlord is seeking the following damages stemming from this tenancy:

Item	Amount
Raw materials for repairs	\$302.01
Garbage disposal costs	\$350.33
Travel costs	\$269.54
Unpaid utilities	\$727.81
Unpaid rent	\$5,900.00
Possession fees	\$291.64
Total	\$7,841.33

Raw materials for repairs

The landlord entered into evidence the following receipts pertaining to the claim for “raw materials for repairs”:

Items	Amount
Light bulbs	\$54.06
Light switch/outlet cover/vent covers	\$97.06
Door lock repair	\$83.17
Door handle	\$21.27
Rekey	\$19.03
Screen repair and wallpaper repair supplies	\$7.29
Garbage bags	\$8.96
Dummy knob	\$11.20
Total	\$302.04

The landlord testified that numerous light bulbs were either burnt out or broken at the end of the tenancy. The landlord testified that he paid \$54.06 for new light bulbs. The move out condition inspection report states that light bulbs are burned out. Photographs of light fixtures without lights and dead bulbs were entered into evidence.

The landlord testified that at the start of the tenancy the forced air vent covers, outlet switches and light switches were all in good condition at the start of the tenancy and several were broken or missing at the end of the tenancy. The move in condition inspection report does not note any damage the above items. The move out condition inspection report states that several forced air vents are missing and light switches are

broken. The landlord testified that he paid \$97.06 to repair and replace the above items. Photographs of missing vent covers were entered into evidence.

The landlord testified that the tenant replaced the front door lock with a smart lock and when the tenant left, the tenant took the smart lock with her and did not re-install the original lock. The landlord testified that the tenant could not find the original lock to re-install it. The landlord testified that he paid \$83.17 to repair the door lock. The move in condition inspection report states that the front entrance is in good condition. The move out condition inspection report states that the front entrance needs to be cleaned. No photographs of the front door were entered into evidence.

The landlord testified that the door handle to the laundry room was missing at the end of the tenancy. The move in condition inspection report states that the utility room which contained the washer and dryer was in good condition at the start of the tenancy. The move out condition inspection report did not note any damage to the door. The landlord testified that he paid \$21.27 to replace the door handle. No photographs of the damage were entered into evidence.

The landlord testified that the tenants did not return the keys to the subject rental property and he had to take one of the exterior door locks in to get a new key made. The landlord testified that this cost him \$19.03. The landlord recorded a check mark in the move in condition inspection report where it states # of keys issued at the start of the tenancy and did not write anything for the end of the tenancy.

The landlord testified that the screens and wallpaper in the subject rental property were in good condition at the start of the tenancy and the screen door to the patio was damaged at the end of the tenancy and the wallpaper in the kitchen and living room required re-gluing. The landlord testified that he paid \$7.29 for supplies to repair the above noted damage.

The move in condition inspection report states that the patio door and living room walls are in good condition and that the kitchen walls have 2 nail holes. The move out condition inspection report states that the walls in the kitchen had > 10 nail holes and the walls in the living room were in good condition. The move out condition inspection report states that the patio door lock does not work but does not mention the patio screen.

The landlord did not provide any testimony on the claim for a dummy knob.

Travel costs

The landlord testified that he resides in the Lower Mainland and the subject rental property is on Vancouver Island. The landlord testified that after he served the Order of Possession on the tenant via registered mail, she said that she would move out. The landlord testified that he crossed the ferry and attended at the subject rental property, but the tenant refused to move out and a few days later he returned home. The landlord entered into evidence the following ferry tickets for which he is seeking compensation:

- April 6, 2022- \$18.00
- April 10, 2022- \$18.40

The above tickets are for one adult each way, walk on.

The landlord testified that he made a second trip to the subject rental property because he thought the tenant would leave but she did not. The landlord entered into evidence the following ferry tickets for which he is seeking compensation:

- April 15, 2022- \$47.90
- April 16, 2022- \$27.60

The April 15, 2022 ticket is for one adult and one vehicle. The April 16, 2022 ticket is for one adult and one child. The landlord did not provide any testimony on why a child was included on the April 16, 2022 ticket.

The landlord testified that he made a third trip to the subject rental property to help the tenant move out.

The landlord entered into evidence the following ferry tickets for which he is seeking compensation:

- April 18, 2022- \$27.60
- April 22, 2022- \$39.60

The April 18, 2022 ticket is for one adult and one child. The April 22, 2022 ticket is for one adult and one vehicle. The landlord did not provide any testimony on why a child was included on the April 18, 2022 ticket.

The landlord testified that he is also seeking to recover the gas costs expended travelling between the subject rental property and his home. Two gas receipts were

entered into evidence, the first in the amount of \$29.48 and the second in the amount of \$22.76.

Garbage disposal costs

The landlord testified that the tenant left garbage throughout the subject rental property. The landlord entered into evidence photographs showing piles of garbage and garbage bags full of refuse. The landlord testified that he bought garbage bags to collect the garbage and haul it to the dump. The move out condition inspection report states that the tenant is responsible for disposal costs at the end of the tenancy. The landlord testified that he paid \$8.96 for garbage bags.

The landlord testified that he helped the tenant remove the garbage and take it to the dump because it was cheaper than hiring a bailiff. The landlord testified that the tenant was willing to clean up the garbage at the subject rental property but could not afford to hire a truck or pay the dump fees. The landlord testified that he agreed to pay for the above and for the tenant to pay him back. The landlord testified that he rented a U-Haul truck to take the tenants garbage to the dump. A receipt for same in the amount of \$88.56 was entered into evidence.

The landlord entered into evidence two landfill receipts, the first in the amount of \$137.90 and the second in the amount of \$73.80.

Utility Bills

The landlord testified that utilities are not included in the rent. The tenancy agreement states at section 3(b) that the tenant is responsible for the payment of all utilities.

The landlord testified that the tenant did not pay the following water/sewer/garbage bills:

Billing Period	Amount
May 8, 2021 to August 30, 2021	\$281.88
August 31, 2021 to January 20, 2022	\$276.75
January 21, 2022 to April 14, 2022	\$169.18
TOTAL	\$727.81

The landlord is seeking compensation for the above bills. The landlord entered into evidence a statement signed by the tenant in which the tenant acknowledged that she did not pay all utilities owing.

Unpaid Rent

The landlord testified that rent at the start of the tenancy was \$2,000.00 due on the first day of each month and that during the tenancy the landlord increased the rent on two occasions. The landlord testified that he is not seeking compensation for the rent increases made during the tenancy and is only seeking \$2,000.00 per month from December 2021 to March 2022 and \$1,000.00 for April 2022 as it was a partial month.

The landlord testified that the tenant paid \$1,600.00 for December 2021's rent. The landlord testified that he is seeking \$500.00 for December 2021's rent.

The landlord testified that the tenant paid \$1,700.00 for January 2022's rent. The landlord testified that he is seeking \$400.00 for December 2021's rent.

The landlord testified that the tenant did not pay any rent for February 2022 to April 2022. The landlord testified that he is seeking \$2,000.00 per month for February and March of 2022 for a total of \$4,000.00 and is seeking \$1,000.00 for April 2022 because it was a partial month.

The landlord entered into evidence a statement signed by the tenant in which the tenant acknowledged that she owed rent from December 2021 to March 2022.

Possession fees

The landlord testified that he paid \$120.00 to file the Order of Possession with the Supreme Court of British Columbia. A receipt for same was entered into evidence. The landlord is seeking to recover the above cost.

The landlord testified that he paid \$163.47 to open a file with the bailiff. A receipt for same was entered into evidence. The landlord is seeking to recover the above cost.

Analysis

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.

Raw materials for repairs

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 21 of 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.

Based on the landlord's undisputed testimony and the move in and out condition inspection reports entered into evidence, I find that the landlord has complied with the *Act* regarding move in and out condition inspection reports. I accept the move in and out condition inspection reports as evidence of the state of repair and condition of the subject rental property on the date of the inspection.

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.

Residential Tenancy Branch Policy Guideline #1 states that the tenant is responsible for replacing light bulbs in his or her premises during the tenancy.

Based on the undisputed testimony of the landlord and the move out condition inspection report, I find that the tenant left the subject rental property with missing and burnt-out lightbulbs. I find that in doing so the tenant breached section 37(2)(a) of the *Act*. I find that the landlord has proved, by way of the light bulb receipt, that the tenant's breach of the *Act* resulted in a loss in the amount of \$54.06. I find that no mitigation issues were raised in the hearing. Pursuant to section 67 of the *Act*, I award the landlord \$54.06.

Based on the undisputed testimony of the landlord and the condition inspection reports, I find that the tenant damaged forced air vent covers and switch/outlet covers. I find that in doing so the tenant breached section 37(2)(a) of the *Act*. I find that the landlord has proved, by way of the receipt for the above items, that the tenant's breach of the *Act* resulted in a loss in the amount of \$97.06. I find that no mitigation issues were raised in the hearing. Pursuant to section 67 of the *Act*, I award the landlord \$97.06.

The move out condition inspection report pertaining to the front entrance door does not note any damage, only that it needs to be cleaned. The landlord did not enter into evidence any photographs of the alleged damage. As the move out condition inspection report is the accepted condition of the subject rental property as of the date of

inspection and as the landlord has not provided other documentary evidence to contradict the move out condition inspection report, I find that the landlord has not proved that the tenant damaged the front entrance door. The landlords claim for the front door lock is therefore dismissed without leave to reapply.

The move out condition inspection report pertaining to the utility/laundry room does not note any damage. The landlord did not enter into evidence any photographs of the alleged damage. As the move out condition inspection report is the accepted condition of the subject rental property as of the date of inspection and as the landlord has not provided other documentary evidence to contradict the move out condition inspection report, I find that the landlord has not proved that the tenant damaged the laundry room door. The landlords claim for the laundry room door is therefore dismissed without leave to reapply.

The move in and out condition inspection reports are vague on the number of keys provided and returned. As the move out condition inspection report is the accepted condition of the subject rental property as of the date of inspection and as the landlord has not provided other documentary evidence to contradict the move out condition inspection report, I find that the landlord has not proved that the tenant failed to return the keys. The landlords claim for rekeying door is therefore dismissed without leave to reapply.

The move out condition inspection report pertaining to the utility/laundry room does not note any damage to screens or wallpaper. The landlord did not enter into evidence any photographs of the alleged damage. As the move out condition inspection report is the accepted condition of the subject rental property as of the date of inspection and as the landlord has not provided other documentary evidence to contradict the move out condition inspection report, I find that the landlord has not proved that the tenant damaged the patio screen or wallpaper. The landlords claim for the repair products are therefore dismissed without leave to reapply.

The landlord did not provide any testimony on the claim for a dummy knob. I find that the landlord has not proved the dummy knob claim and it is therefore dismissed without leave to reapply.

Garbage disposal costs and travel costs

Based on the move out condition inspection report, the landlord's undisputed testimony and the photographs entered into evidence, I find that the tenant left large amounts of garbage at the subject rental property contrary to section 37 of the *Act*.

I find that the landlord has proved the value of the loss suffered from the tenant's breach of section 37 of the *Act* by way of the receipts for garbage bags, U-Haul truck and landfill receipts. Pursuant to section 67 of the *Act* I award the landlord \$309.22 for the above costs. I accept the landlord's submissions that the above costs were cheaper than hiring a bailiff. I find that the landlord mitigated his damages.

I decline to award the landlord ferry and gas costs because I find that the aforementioned expenses are part and parcel of being a landlord. I find that the tenant is not responsible for the landlord's choice to have a rental property a ferry ride away and that the landlords operating expenses to be a landlord are not recoverable from the tenant. The landlord's claim for travel costs are dismissed without leave to reapply.

Utility Bills

Based on the tenancy agreement I find that utilities are not included in the rent and are the responsibility of the tenant. I accept the landlord's undisputed testimony that the tenant did not pay the utility bills entered into evidence. I find that the tenant breached section 3(b) of the tenancy agreement and that the landlord has proved the value of the loss suffered by that breach by way of the utility invoices entered into evidence. Pursuant to section 67 of the *Act* I award the landlord \$727.81 for unpaid utilities.

Unpaid Rent

I accept the landlord's undisputed testimony that the tenant paid \$1,600.00 towards December 2021's rent and \$1,700.00 towards January 2022's rent. I find that the tenant did not pay the full amount of rent owed contrary to section 26(1) of the *Act*. The landlord testified that he is only seeking compensation up to \$2,000.00 per month. Pursuant to section 67 of the *Act*, I find that the landlord is entitled to \$400.00 for December 2021's rent and \$300.00 towards January 2022's rent.

Based on the landlord's undisputed testimony I find that the tenant did not pay any rent for February, March and April 2022. I find that the landlord is entitled to the claimed amount of \$5,000.00 for rent owed during that period.

Possession fees

I accept the landlord's undisputed testimony that he served the tenant with an Order of Possession via registered mail and that the tenant did not abide by that Order of Possession.

I find that the tenant's failure to comply with the Order of Possession issued pursuant to section 55 of the *Act* resulted in the necessity of the landlord to file the writ of possession and open a file with a bailiff. I find that the landlord has proved the value of this loss by providing the receipt for the Supreme Court filing fee and the invoice for opening a file with a bailiff. I find that the landlord acted reasonably in filing the Order of Possession and opening a file with a bailiff. Pursuant to section 67 of the *Act*, I award the landlord the above costs in the amount of \$283.47.

Security Deposit

Section 38(1) of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act*.

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

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$1000.00.

Conclusion

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

Item	Amount
Light bulbs	\$54.06.
Vent/ light switch/outlet covers	\$97.06
Garbage disposal costs	\$309.22
Unpaid utilities	\$727.81
Unpaid rent	\$5,700.00
Possession fees	\$283.47
Filing Fee	\$100.00
Less security deposit	-\$1,000.00
TOTAL	\$6,271.62

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: February 1, 2023

Residential Tenancy Branch