



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOUAT PRINCIPAL RESIDENCE
TRUST nd [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the Residential Tenancy Regulation (the Regulation) or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

The applicant was represented by CM (the landlord). Tenants JT and MW also attended the hearing and were assisted by agent WZ (the tenant). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

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 \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Preliminary Issue – Witness

The landlord asked to call a witness. I informed the landlord that her witness could join the teleconference hearing, which remained open until 2:35 PM. The landlord's witness did not call into the teleconference hearing.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain the deposit?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on March 01, 2020 and ended on April 30, 2022. Monthly rent was \$1,827.00, due on the first day of the month. The landlord collected and currently holds in trust the deposit in the amount of \$900.00. The tenancy agreement was submitted into evidence.

Both parties agreed the tenants served their forwarding address in writing on May 09, 2022 and the landlord received it on that day. The tenants did not authorize the landlord to retain the deposit.

The landlord did not conduct a move in inspection because the tenants did not inform when they would be available. The landlord emailed the tenants on February 06, 2020: "I know how hard it is to move when working. You will need to show me your tenants insurance, pay the damage deposit and rent. I have a checklist so we can go over deficiencies etc that we can do as well."

The landlord conducted a move out inspection alone because the tenants move out late and gave the rental unit's key to the new tenant. The parties did not schedule a move out inspection. The landlord submitted the move out inspection into evidence.

The landlord did not serve a final opportunity for the tenants to schedule the move in or a move out inspection form, namely RTB 22.

The landlord is claiming \$441.79, as the tenants damaged the living room window and did not replace it. The landlord submitted an estimate indicating a cost in the amount claimed to replace the window.

The tenant affirmed she did not damage the window and the tenant informed the landlord that the window had a small crack a few days after the tenancy started. The tenant stated the landlord asked the tenant not to open the window. The tenant submitted a text message from the landlord on October 04, 2021: "Next project is replacing broken window in your living room".

The landlord is claiming \$131.25, as the tenants did not clean the dryer and left cat hair in the dryer. The landlord tried to clean the dryer but was not able to do so. The landlord hired a contractor to clean the dryer and submitted a receipt for the amount claimed. The tenant testified that there was no cat hair in the dryer and that it was clean.

The landlord is claiming \$12.49, as the tenants damaged a chair. The tenant agreed to pay this amount.

The landlord is claiming \$34.30, as the tenants installed a cabinet and are responsible for an excessive amount of holes in the wall. The tenant said she patched and sanded the holes and that the number of holes was small.

The landlord is claiming \$49.61, as the tenants did not clean the quilt. The tenant affirmed she dry cleaned the quilt in the rental unit's dryer, the quilt was clean and sanitized when the tenancy ended. The landlord stated the quilt does not fit in the rental unit's dryer.

The landlord is claiming \$22.14, as the tenants did not clean the washing machine and the landlord purchased cleaning products needed to clean the washing machine. The tenant testified the washing machine was clean when the tenancy ended.

The landlord is claiming \$137.58, as the tenants removed items (the missing items) from the furnished rental unit. The landlord submitted a document stating: "compensation for replacement of missing items as per photo log done February 28, 2020 – 2 tall clear plastic storage containers with lids, frying pan which was burned

black, 3 white Ikea plastic tubs, kitchen towels, Henckels boning knife, Ikea full length mirror". The landlord submitted a receipt indicating an expense in the amount claimed.

The tenant said she is not responsible for the missing items. The tenant affirmed the frying pan had regular wear and tear. The tenant disposed of two kitchen towels because they were ragged due to regular wear and tear. The mirror fell and broke because it was improperly installed by the landlord.

The landlord stated the mirror was properly installed by a contractor 13 years ago and it was removed by the tenants when they moved out. The landlord testified the mirror did not seem to be broken and the tenants did not inform her about issues with the mirror.

The tenant said she did not inform the landlord the mirror broke because the landlord did not ask about the mirror. The tenants submitted text messages between parties not named in the tenancy agreement on March 22, 2022: "MW left for work yesterday and came back and it had fallen from the wall? It's the landlady's and whoever installed it was an idiot".

Both parties agreed that a similar new mirror costs \$100.00.

The landlord is claiming \$280.00, as the tenants did not clean the rental unit's blinds. The landlord submitted a quote dated May 24, 2022: "Here is the price for blind cleaning. To clean 2 silhouette blinds = 280 plus GST." The tenant affirmed she did not clean the blinds, but they can be cleaned in ten minutes.

The landlord is claiming \$300.00, as the tenants did not clean the one bedroom, 825 square feet rental unit. The landlord stated she cleaned the rental unit for probably 10 hours at the hourly rate of \$30.00. The landlord submitted photographs taken on April 30, 2022 showing a dirty oven, carpet and pan. The landlord testified there was cat hair in the rental unit, and the bathroom was not clean.

The tenant said she cleaned the rental unit. Later the tenant affirmed she should have further cleaned the oven, the carpet and the kitchen drawers. The tenant agreed to pay one hour of cleaning at \$75.00.

The landlord submitted an email from the current tenant dated June 09, 2022:

I am writing to confirm a few details about my moving-in day. I arrived at 13:30 on April 30, 2022 as per our communication. I was quite surprised to find that the previous tenants had not moved out. They continued to pack and take things in their truck to

their new home. I waited and waited. They did not finish moving their possessions out of the suite, nor did they clean the suite to the required standard for me to live in it. There is dust, greasy spots and cat fur all over the place. They finally removed the last of their possessions at about 7 pm that day and handed me the key. I was exhausted and spent the next weeks cleaning the suite while the landlord repaired some of the damage. Later I received \$300.00 for cleaning and \$100.00 for the tenants' overstay of 6 hours from the landlord.

The landlord submitted a monetary order worksheet indicating a claim in the total amount of \$1,409.10.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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.

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 the case is on the person making the claim.

Inspection

Section 23(1) of the Act states the landlord and tenant must inspect the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. Section 23(3) required the landlord to offer the tenant at least 2 opportunities for the inspection.

Regulation 17 states:

- (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
 - (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

I accept the uncontested testimony that the landlord did not serve the notice of final opportunity for the tenants to schedule a move in inspection (form RTB 22). The landlord emailed the tenants about the move in inspection on February 06, 2020 but did not serve the form RTB 22. I find the landlord failed to comply with regulation 17 and section 23(3) of the Act.

Section 24(2)(a) states:

The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
(a) does not comply with section 23 (3) [2 opportunities for inspection],

I find the landlord extinguished her right to claim against the deposit, per section 24(2)(a) of the Act.

Regulation 14 states:

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.

Regulation 21 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.

I am not relying on the inspection report, as the landlord did not serve the form RTB22 and completed the move out inspection report alone.

Deposit

Section 38(1) of the Act requires the landlord to either return the tenant's deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The tenancy ended on April 30, 2022 and the landlord confirmed receiving the forwarding address on May 09, 2022. The landlord retained the deposit and submitted this application.

RTB Policy Guideline 17 is clear that the arbitrator will double the value of the deposit when the landlord has not complied with the 15 day deadline; it states:

11. If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit. Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount before any deductions and is not doubled.

In accordance with section 38(6)(b) of the Act, as the landlord extinguished her right to claim against the deposit and did not return them within the timeframe of section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposit.

According to the deposit interest calculator (available at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>), the interest accrued on the deposit is \$1.83.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenants are entitled to a monetary award of \$1,801.83 (double the deposit of \$900.00 plus the interest accrued).

Windows replacement, dryer, washing machine and quilt cleaning, wall repairs

Section 37(2) of the Act states:

- (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

RTB Policy Guideline 1 states:

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

[...]

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises.

The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

(emphasis added)

The parties offered conflicting testimony about the windows damages, dryer, washing machine and quilt cleaning and wall repairs. The text message dated October 04, 2021 does not prove the tenants damaged the windows. The landlord did not explain how many holes in the wall the tenants caused.

I find the landlord failed to prove, on a balance of probabilities, that the tenants breached the Act.

As such, I dismiss the landlord's claims.

Damaged chair

Based on the uncontested testimony, I award the landlord \$12.49 in compensation for the damaged chair.

Missing items

Section 32(3) of the Act states: "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant."

Based on the tenant's convincing undisputed testimony, I find the tenant proved, on a balance of probabilities, that the frying pan and the kitchen towels had regular wear and tear. As such, I dismiss the landlord's claim for compensation for the frying pan and kitchen towels.

I find the landlord's testimony about the mirror more convincing than the tenants' testimony. The tenants did not dispute the landlord's testimony that they removed the mirror from the rental unit when they moved out. The tenants did not notify the landlord that the mirror broke during the tenancy.

I find the text message dated March 22, 2022 does not prove the mirror broke during the tenancy because it was improperly installed, as it is a message between parties not named in the tenancy agreement.

Based on the above, I find the landlord proved, on a balance of probabilities, that the tenants breached section 32(3) of the Act by removing the mirror from the rental unit.

RTB Policy Guideline 40 states:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

I accepted the uncontested testimony that the mirror was 13 years old and a new mirror costs \$100.00.

Considering that the mirror was 13 years old when the tenancy ended, I find it is reasonable to award the landlord 50% of the mirror's cost.

As such, I award the landlord compensation in the amount of \$50.00 (50% of \$100.00).

The landlord did not provide testimony about the remaining missing items claimed. I find the landlord failed to prove, on a balance of probabilities, that the tenants breached the Act by removing the remaining missing items.

Windows coverings

Based on the testimony offered by both parties and the quote dated May 24, 2022, I find the landlord proved, on a balance of probabilities, the tenants breached section 37(2) of the Act by not cleaning the windows coverings and the landlord suffered a loss of \$280.00, plus GST.

I find the tenant's testimony about how long it takes to clean the windows coverings was vague.

I award the landlord compensation in the amount claimed of \$280.00.

Cleaning

RTB Policy Guideline 1 states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

I find the tenant's testimony about cleaning the rental unit was not convincing.

Based on the landlord's convincing testimony, the photographs and the email dated June 09, 2022, I find the landlord proved, on a balance of probabilities, that the tenants breached section 37(2) of the Act by failing to reasonably clean the rental unit and the landlord suffered a loss of \$300.00.

I award the landlord compensation in the amount of \$300.00.

Filing fee, summary and set-off

As the landlord was successful, I award the recovery of the filing fee.

The landlord is entitled to:

Expenses	\$
Damaged chair	12.49
Mirror	50.00
Windows coverings	280.00
Cleaning	300.00
Filing fee	100.00
Total	742.49

The tenants are entitled to \$1,801.83

RTB Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

In summary, the tenants are entitled to \$1,059.34.

Conclusion

Pursuant to section 38(6)(b) of the Act, I grant the tenants a monetary order in the amount of \$1,059.34.

The tenants are provided with this order in the above terms and the landlord must be served with 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: February 09, 2023

Residential Tenancy Branch