



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0851189 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FFL MNDL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

NF ("landlord") appeared as agent for this landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

The tenant confirmed receipt of the landlord's application and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with the landlord's application and evidence package. The landlord confirmed that they had received the tenant's evidence package, and that they had the opportunity to review the materials. I find the landlord duly served with the tenant's evidence package in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for losses?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence before me and the testimony provided for this hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 1, 2018, and ended on April 16, 2022. Monthly rent was set at \$1,522.00, payable on the first of the month. The landlord still holds a security and pet damage deposit of \$750.00 each deposit for this tenancy.

The landlord filed their application for dispute resolution requesting the following monetary orders:

Item	Amount
Cleaning Invoice	\$682.50
Kitchen Island Repair	1,250.35
Laminated Gable	560.00
Water leak repair	(amended to \$300.00 in hearing)420.00
Remove dishwasher	251.90
Filing fee	100.00
Total Monetary Order Requested by Landlord	\$3,265.75

During, the hearing, the tenant confirmed that they are not disputing the claim for professional cleaning.

The landlord is also seeking monetary orders related to damage that took place during the tenancy. The landlord feels that the tenant failed to properly maintain the rental unit, and report outstanding issues, such as a loose kitchen faucet, which caused mould and damage to the rental unit. The landlord is also seeking compensation related to a leaking dishwasher. The landlord is seeking reimbursement for the losses associated with this damage due to what the landlord considers to the tenant's negligent actions.

The landlord pointed out that as shown in the email correspondence between the parties, the tenant had agreed to reimburse the landlord \$428.04 for repairs. The tenant

testified that at this time, the landlord had yet to present an invoice for the repairs, and that the tenant had agreed to a partial reimbursement for repairs related to the dishwasher only.

The tenant testified that although they take partial responsibility for the dishwasher, the tenant feels that they had notified the landlord as soon as they realized there was a problem. The tenant testified that they never notified the landlord about the faucet as they did not notice there was a problem, and would have otherwise done so. The tenant disputes that they are responsible for the damage, and argued that the landlord has a duty to mitigate their losses by performing regular inspections and maintenance.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the landlord must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (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.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the

Act on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

Landlord and tenant obligations to repair and maintain

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) 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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Residential Tenancy Policy Guideline #1 further clarifies the landlord and tenant's responsibilities during a tenancy:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. 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 or Manufactured Home Park Tenancy Act (the Legislation).

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

I have considered the testimony of both parties, and the written evidence before me. I find that it was undisputed that the landlord did suffer a monetary loss associated with leaks in the rental unit. I must, however, consider whether the landlord had provided sufficient evidence to establish that the losses claimed were due to the tenant's failure to fulfill their obligations under the Act.

In consideration of the evidence before me, I am satisfied that the tenant had notified the landlord immediately on November 25, 2021, informing the landlord that they had "noticed today that the dishwasher in my unit is leaking". I find that this communication shows that the tenant was cognizant of the fact that issues had to be reported to the landlord as soon as possible to mitigate further damage and losses.

Although the landlord argued that the tenant was negligent and failed to report outstanding issues such as the loose faucet, and failed to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit, I note the onus falls on the landlord to support that this was in fact the case.

Although the tenant is responsible for reporting issues, I am not convinced that the faucet leak was visible or obvious to the tenant. I find that failure to detect the leak and subsequent damage does not automatically mean that the tenant was negligent. The onus still falls on the landlord to show that the tenant should have known that repairs were required. In this case, I am not convinced that the tenant was aware that there was a leak in the rental unit, other than one reported on November 25, 2021. I do not find it reasonable to expect the tenant to report an issue that they were unaware of, which I find to be the case here. Although I accept that the tap was loose, the landlord did not provide sufficient evidence to show that this would have been an obvious repair issue. In review of the evidence provided, I find that the evidence does not show that the leak or damage would have been visible or obvious to the tenant in their daily use of the rental unit. As shown by the tenant's email to the landlord on November 25, 2021, the

tenant was aware of their responsibility to report issues to the landlord, and did so accordingly. I am not satisfied that the tenant was aware of the leak or damage, or ought to have been aware. For these reasons, I dismiss the landlord's monetary claims for repairs related to the leaking faucet.

As noted in section 32(2) of the *Act*, "*a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access*". In this case, I find that the tenant took partial responsibility for the dishwasher leak and repair, and the landlord should be compensated for some of the subsequent repairs. I note that *Residential Tenancy Policy Guideline #40* speaks to the useful life of an item. As per the policy, the useful life of a dishwasher is 10 years. Although the dishwasher may have been in good condition, one must still consider whether the appliance had exceeded its useful life. In this case, I find that a combination of factors, including wear and tear may still have been a contributing factor for the leaking dishwasher. I find that the tenant had agreed to reimburse the landlord the requested \$428.04 before the final invoice was presented to the tenant, and the tenant had agreed that they were "partially responsible for the dishwasher". I do not find it fair for the tenant to reimburse the landlord for losses before a final invoice was presented to the tenant. I also do not find that the landlord has established that the tenant is completely responsible for the dishwasher leak. I find that reimbursement of the 50% of the cost of repairs (\$671.90) to be reasonable and fair. Accordingly, I allow the landlord a monetary order in the amount of \$335.95 as compensation for the damage to the dishwasher.

As the tenant agreed to reimburse the landlord for the cleaning, I also allow the landlord's monetary claim for cleaning in the amount of \$682.50.

As the landlord's application had merit, I allow the landlord to recover the \$100.00 filing fee.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security and pet damage deposit plus applicable interest in satisfaction of the monetary awards granted in this decision. As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the period of this tenancy, \$3.13 is payable as interest on the tenants' deposits from when the deposits were originally paid, until the date of this decision, February 8, 2023.

Conclusion

The landlord is granted the following monetary awards as set out in the table below. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security and pet damage deposit plus applicable interest in satisfaction of the monetary awards granted in this decision. I issue a

Monetary Order in the amount of **\$384.68** in the tenant's favour for the return of the remaining deposits.

Item	Amount
Cleaning	\$682.50
Compensation for damage related to dishwasher	335.95
Filing Fee	100.00
Less Security & Pet Damage Deposit Held plus applicable interest	- 1503.13
Total Monetary Order to the Tenant	\$384.68

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. 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.

I dismiss the remaining claims without leave to reapply.

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 08, 2023

Residential Tenancy Branch