



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order of \$3,688.45 for monetary loss or other money owed pursuant to section 67 and to retain the security and/or pet damage deposit pursuant to section 72(2)(b); and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord confirmed that she sent the notice of dispute resolution proceeding package (the "NDRP Package") and her documentary evidence (collectively, the "First Package") to the Tenant on June 15, 2022 via registered mail (first tracking number referenced on the cover page of this decision). The Landlord indicated that the First Package was not picked up. The Landlord stated that she called the Residential Tenancy Branch and was told that she had done her due diligence.

The Landlord stated that she had also forwarded the NDRP Package to the Tenant via email on June 15, 2022 (Tenant's email referenced on the cover page of this decision).

The Landlord stated that before her evidence deadline, she decided to do double her duty and send the documents again. The Landlord stated that she was going through the parties' email correspondence and found an email reply from the Tenant sending her address again in October 2022. The Landlord stated that she realized the Tenant had inverted the numbers in her address the first time. The Landlord resent the NDRP Package and evidence to the Tenant via registered mail on January 24, 2023 (the "Second Package") (tracking number also referenced on the cover page of this decision).

The Tenant acknowledged the Landlord had told her about putting in an application last year. The Tenant confirmed receipt of the Second Package on January 27, 2023.

Based on the evidence presented, I accept the Landlord's testimony that she had emailed the Tenant a copy of the NDRP Package on June 15, 2022. I find the Tenant was in the habit of corresponding with the Landlord via email. I find the parties' email addresses are stated on the tenancy agreement as part of their contact information. Therefore, pursuant to section 71(2)(b) of the Act, I find the Tenant was sufficiently served with the NDRP Package on June 18, 2022, three days after the Landlord emailed it to the Tenant. I find the Tenant received a paper copy of the NDRP Package on January 27, 2023. I find the Tenant was served with the Landlord's documentary evidence in accordance with section 88 of the Act.

The Tenant acknowledged that she did not serve the Landlord with a copy of her documentary evidence at all. Under Rule 3.15 of the Rules of Procedure, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. Since the Tenant did not serve the Landlord with a copy of her evidence as required under the Rules of Procedure, I am unable to consider that evidence as it would be procedurally unfair for me to do so.

The Tenant requested more time to serve the Landlord with her evidence. The Landlord opposed that request. The Landlord testified that the Tenant refused to provide her new address at the previous hearing (file number referenced on the cover page of this decision) and subsequently provided a wrong address. The Landlord argued that the Tenant had received her email and knew this hearing was taking place.

I find the Tenant knew or ought to have known of this hearing date and the Landlord's claims since last year when she received the Landlord's email. Furthermore, I find the Tenant still had time to serve the Landlord with her evidence even after she received the Second Package on January 27, 2023, that is, until February 6, 2023. I find the Tenant did not give any evidence to the Landlord during this time and did not explain why she could not have done so.

Under these circumstances, I am not satisfied that the Tenant had acted with due diligence to serve the Landlord with her evidence, and I find an adjournment would be substantially prejudicial to the Landlord, as there would be an approximate four-month delay to reconvene due to scheduling availability. Furthermore, I find it would be in the best interests of both parties to have this matter resolved. Therefore, I did not grant an adjournment under Rule 7.8 of the Rules of Procedure. I directed the hearing to proceed and the parties to make best use of the time already allotted.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to reimbursement of the filing fee and to retain the security deposit and pet damage deposit?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is the lower suite of a house. This tenancy commenced on December 1, 2021 and ended on May 31, 2022. Rent was \$1,200.00 per month due on the first day of each month. The Tenant paid a security deposit and pet damage deposit of \$500.00 each. A copy of the tenancy agreement has been submitted into evidence.

The Tenant had moved into the rental unit prior to the effective commencement date of the tenancy agreement, while the Landlord was still renovating. The Landlord stated that the Tenant had offered to rent during the construction period for a reduced price.

The parties did not do a move-in inspection or sign a move-in condition inspection report. According to the Landlord, the rental unit was brand new and immaculate.

The parties did not complete a move-out inspection together. The Landlord submitted a condition inspection report and notice of final opportunity to schedule a condition inspection to show that she completed the move-out inspection without the Tenant.

The Landlord submitted a signed monetary order worksheet seeking compensation for the following:

Item	Amount
Carpet Cleaner Rental	\$94.42
Labour to Clean Carpet	\$155.58
BC Hydro (March 10 to May 6, 2022)	\$242.00
BC Hydro (May 7 to May 31, 2022)	\$58.80
Furnace Oil (February 28 to May 31, 2022)	\$237.59
Paint and Labour	\$400.00
Cleaning (Windows, Walls, Cupboards)	\$200.00
Kitchen Laminate Floor	\$945.00
Loss of June 2022 Rent	\$1,200.00
Lawn Mowing and Missing Bookcase	\$200.00
Total	\$3,733.39

The Landlord stated that the rent did not include utilities such as hydro and heat (oil), and the Tenant had neglected to pay her utilities for the last few months before moving out. The Landlord referred hydro and furnace oil invoices submitted into evidence. These invoices include handwritten calculations for the Tenant's share, which was half.

The Landlord stated that the suite was brand new with new drywalling and carpets. The Landlord explained that the carpet cleaning costs were due to the Tenant's unapproved pet hamster. The Landlord stated that the hamster cage was placed on the ground, which caused urine to leak onto the carpet. The Landlord stated that there is still an odour in the carpet. The Landlord stated that the Tenant had two dogs which were part of the tenancy agreement, but the hamster had not been approved.

The Tenant acknowledged that she did not clean the carpets before moving out, but had cleaned them when she moved in.

The Landlord stated that the rental unit was left dirty. According to the Landlord, the Tenant's male dog had sprayed all over the walls. The Landlord stated that she tried to take pictures of this but it didn't really show up. The Landlord stated that the bedroom windows were left filthy and full of bugs and mould. The Landlord stated that the appliances were left dirty. The Landlord referred to pictures of the rental unit taken on May 31, 2022. The Landlord sought compensation for June 2022 rent due to the condition of the rental unit left by the Tenant.

The Landlord stated that the Tenant had painted a third of the rental unit grey, while the suite was originally an off-white colour. The Landlord stated that she had put in new drywalling. According to the Landlord, the Tenant did not receive prior permission for painting. The Landlord stated that the Tenant neglected to paint the bottom few inches and did a terrible job around certain electrical outlets. The Landlord submitted that the cost to repaint was \$400.00 for materials and the Landlord's labour.

According to the Tenant, the rental unit was nicotine stained and the Landlord said she would install moulding, but it didn't happen.

The Landlord stated that the Tenant never mowed the lawn as required under the terms of the tenancy agreement. The Landlord referred to pictures of the lawn dated May 31, 2022. The Tenant disagreed and stated she mowed the lawn several days before moving out. The Tenant stated that her co-worker would also come and cut the lawn.

The Landlord stated that she had included a bookcase in the rental unit, which the Tenant took when she vacated. The Landlord submitted a picture of the missing bookcase. The Tenant denied having taken the Landlord's bookcase.

The Landlord submitted that in May 2022, a dishwasher hose from the upper suite caused a leak into the rental unit. The Landlord stated that when she got the keys to the rental unit back, she found the brand-new laminate floors soaked. The Landlord stated that she messaged the Tenant to ask why the Tenant didn't tell the Landlord about damage to the floors. The Landlord submitted pictures of the damaged laminate floor. The Landlord also submitted an invoice dated June 15, 2022 for removing and reinstalling the kitchen floor, island, and lower kitchen cabinets. The Landlord stated that the estimate was \$945.00, but the actual cost ended up being around half that amount.

The Tenant stated that she was unhappy with how things were going. The Tenant stated that people upstairs were fighting and the police were being called. The Tenant stated that she told the Landlord she was leaving as soon as she could find somewhere else, and will be sending the Landlord confirmation of the amount of time needed before she moves. The Tenant stated that the Landlord got angry and “evicted” the Tenant the next day. The Tenant stated that the Landlord realized her mistake and tried to “repeal” the eviction.

The Landlord stated that her son was supposed to be in the rental unit from the beginning, but the Tenant had wanted the rental unit instead of the upper suite because it was cheaper. The Landlord stated that she “took back” the notice to end tenancy when she found out she had to give the Tenant the last month rent-free.

The Tenant stated that she didn’t need to pay the last month’s rent and didn’t need to pay utilities. The Landlord argued that the Tenant does not get free utilities.

The Tenant disputed the Landlord’s notice (file number referenced on the cover page of this decision) but moved out before the hearing date. According to the Tenant, she moved out on May 25, 2022. The Tenant stated she left the keys and took pictures of the rental unit on May 24, 2022. The Tenant stated that she left the rental unit spotless. The Tenant argued that she is entitled to the return of her security deposit and pet damage deposit with interest.

The Tenant stated that she informed the Landlord about the floors being wet and the Landlord had texted back to thank her. The Tenant argued that she should not be liable for damage caused by a dishwasher leak from upstairs.

Analysis

1. Is the Landlord entitled to compensation for monetary loss or other money owed?

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 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.

In addition, Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss ("Policy Guideline 16") states:

C. COMPENSATION

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.

I note in this case I find the Landlord's right to claim against the deposits for damage to the rental unit was extinguished under section 24(2) of the Act, because the Landlord did not offer the Tenant two opportunities for a move-in inspection and did not provide the Tenant with a move-in condition inspection report. According to Residential Tenancy Policy Guideline 17. Security Deposits and Set Off, a landlord who has lost the right to claim against the security deposit for damage to the rental unit retains the rights to file against the deposit for monies owing for other than damage to the rental unit, and to file a monetary claim for damages arising out of the tenancy, including damages to the rental unit. I find the Landlord has applied to claim against the deposits for losses other than damage to the rental unit, and that these losses as stated exceed the total amount of the deposits. I note that I do not find the costs claimed for cleaning to be claims for damage to the rental unit. I also accept the Landlord's evidence that she did not receive the Tenant's correct forwarding address until after this application was submitted.

The Landlord seeks compensation for (a) general and carpet cleaning, (b) unpaid utilities, (c) painting, (d) damage to laminate flooring, (e) loss of June 2022 rent, (f) lawn mowing, and (g) missing bookcase. I will address each of these items in turn.

a. General and Carpet Cleaning

Section 37(2)(a) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I note that the Tenant's obligation under this section is not contingent on the condition of the rental unit at the start of the tenancy.

According to Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises ("Policy Guideline 1"), where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

Policy Guideline 1 further states that the tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged.

I find the Tenant had two dogs and the Landlord submitted a picture to show the pet hairs left behind that were collected. I find the pictures of the carpet submitted by the Landlord also show spots of yellowish and brownish staining. Under these circumstances, I find the Tenant was responsible for shampooing the carpets at the end of the tenancy. I find the Tenant acknowledged that she did not do so. I have reviewed the Landlord's receipts for renting the carpet cleaner and purchasing the cleaning solution. I find the amount claimed by the Landlord for labour to be reasonable. Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$250.00 for carpet cleaning.

The Landlord submitted close-up pictures of the carpet, flooring, walls, windows, and inside a shelf. I find the pictures show some mould, dirt, and bugs inside the windows, a few small stains and scuffs on the walls, and some dirt inside a shelf. I find the pictures appear to show that the rental unit was otherwise emptied out. I do not find any pictures of personal belongings or garbage left behind by the Tenant in the rental unit. I accept the Tenant's evidence that she had cleaned the rental unit.

In the absence of a signed condition inspection report or pictures of the rental unit at the start of the tenancy, I find the Landlord has not provided sufficient evidence to show that the stains and scuffs on the walls were not pre-existing. I also find them to be relatively minor. I find the dirt inside the shelf to also be relatively minor as well. A tenant is

required to leave a rental unit reasonably clean, not perfectly clean, under section 37(2)(a) of the Act.

I accept that there was mould and debris on the windows such that the Tenant cannot be considered to have left the windows reasonably clean at the end of the tenancy. According to Policy Guideline 1, the tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould.

Under these circumstances, I find the \$200.00 cleaning fee claimed by the Landlord to be excessive. Pursuant to section 67 of the Act, I grant the Landlord \$20.00 for cleaning the mould and dirt on the windows.

b. Unpaid Utilities

I have reviewed the tenancy agreement and find that while electricity and heat are not included in the monthly rent, the tenancy agreement does not contain any express terms about how utilities would be paid to the Landlord. Nevertheless, I accept the Landlord's evidence that the Tenant had paid half of the utilities for the property to the Landlord on time earlier in the tenancy. Based on the parties' conduct, I find it was an implied term of the tenancy agreement that the Tenant would reimburse the Landlord for half of the hydro and furnace oil bills during the tenancy. I find the Tenant breached this implied term by failing to reimburse the Landlord for the Tenant's share of the March to May 2022 hydro and February to May 2022 furnace oil expenses.

I note that according to section 51(1) of the Act, a tenant who receives a notice to end tenancy under section 49 of the Act is entitled to receive from the landlord one month's rent payable under the tenancy agreement. Section 51(1) of the Act does not exempt a tenant from paying utilities that are not included in the rent. Furthermore, I find the period for the unpaid utilities claimed by the Landlord to span multiple months. Therefore, I am not satisfied that the Tenant did not have to pay her share of the utilities to the Landlord from February to May 2022.

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord $\$242.00 + \$58.80 + \$237.59 = \538.39 for unpaid utilities.

c. Painting

Policy Guideline 1 states that any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition. If the tenant does not return the rental unit and/or residential property to its original

condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant.

I accept the Landlord's evidence that the Tenant did not receive the Landlord's explicit permission prior to painting the walls in the rental unit. I find the Tenant did not provide any evidence to contradict the Landlord's position or explain when and how the Tenant might have received permission. I find that pursuant to Policy Guideline 1, the Landlord is entitled to re-paint the wall to its original colour and claim the costs against the Tenant.

I find the Landlord provided a receipt for the cost of painting materials. I find the amount claimed by the Landlord for labour to be reasonable considering the Tenant had painted multiple areas in the rental unit, including the master bedroom, bathroom, laundry room, and corridor.

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$400.00 for painting and labour costs.

d. Damage to Laminate Flooring

Section 32(3) of the Act states that a tenant 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. I find the Landlord's evidence is that the water damage was caused by a leaking dishwasher hose from the upper suite. I do not find the Landlord to allege that the Tenant's actions or neglect had caused the water damage in the rental unit.

In addition, I find the Landlord has not provided sufficient evidence to show that the Tenant had acted negligently to make the water damage worse. I find the Tenant had informed the Landlord about the leak and the Landlord was aware of the issue. I find that once the Landlord has been made aware of the issue, it would have been the Landlord's responsibility to thoroughly inspect the rental unit and determine the extent of the damage. Therefore, I conclude that the Tenant is not liable to the Landlord for the cost of repairing the laminate flooring.

The Landlord's claim under this part is dismissed without leave to re-apply.

e. Loss of June 2022 Rent

According to Residential Tenancy Policy Guideline 11. Amendment and Withdrawal of a Notice to End Tenancy, a landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given.

I find the Landlord had given the Tenant a notice to end tenancy for the Landlord's son to occupy the rental unit. I find the Tenant did not agree for the Landlord to withdraw this notice and moved out of the rental unit. Under these circumstances, I am not satisfied that the Tenant breached the Act or the tenancy agreement by moving out of the rental unit. Furthermore, I am not satisfied that the Landlord would have suffered a loss of rental income due to the Tenant's actions, because the rental unit was supposed to be occupied by the Landlord's son.

The Landlord's claim for loss of rental income is dismissed without leave to re-apply.

f. Lawn Mowing

According to the tenancy agreement addendum, the Tenant is "responsible for mowing grass, watering vegetation and maintaining in (*sic*) the rear/side yard". I have reviewed the pictures of the lawn submitted by the Landlord. While the lawn does not appear to be freshly mowed, I do not find the pictures to show the lawn to be in disarray, poorly maintained, or extremely overgrown. I accept the Tenant had the lawn mowed during the tenancy. Therefore, I am unable to conclude that the Tenant had breached her obligations under the addendum term.

The Landlord's claim for the cost of lawn mowing is dismissed without leave to re-apply.

g. Missing Bookshelf

I find there is insufficient evidence that the bookshelf had been included in the rental unit and was taken by the Tenant. I find the tenancy agreement does not indicate that furniture was included, and I find there is no move-in condition inspection report signed by both parties. Furthermore, I find there is insufficient evidence to show that the used bookshelf would be worth \$150.00. As noted in Policy Guideline 16, it is up to the person claiming compensation to provide evidence to show that compensation is due, to prove that there has been a breach and the value of the loss.

The Landlord's claim under this part is dismissed without leave to re-apply.

2. Is the Landlord entitled to reimbursement of the filing fee and to retain the security deposit and pet damage deposit?

The Landlord has been partially successful in this application. I award the Landlord reimbursement of her filing fee pursuant to section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's security deposit and pet damage deposit in partial satisfaction of the total awarded in this decision.

The Monetary Order granted to the Landlord for the balance is calculated as follows:

Item	Amount
BC Hydro (March 10 to May 6, 2022)	\$242.00
BC Hydro (May 7 to May 31, 2022)	\$58.80
Furnace Oil (February 28 to May 31, 2022)	\$237.59
Paint and Labour	\$400.00
Carpet Cleaning	\$250.00
Cleaning (Windows)	\$20.00
Filing Fee	\$100.00
Subtotal	\$1,308.39
Less Security Deposit and Pet Damage Deposit	- \$1,000.00
Total Monetary Order for Landlord	\$308.39

Conclusion

The Landlord's claims regarding unpaid utilities, painting, carpet cleaning, window cleaning, and the filing fee are granted for a total amount of \$1,308.39. The balance of the Landlord's claims are dismissed without leave to re-apply.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's **\$500.00** security deposit and **\$500.00** pet deposit in partial satisfaction of the total awarded in this decision.

Pursuant to sections 67 and 72 of the Act, I grant the Landlord a Monetary Order of **\$308.39** for the balance awarded. This Order may be served on the Tenant, filed in the Provincial Court of British Columbia, 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: March 16, 2023

Residential Tenancy Branch