



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL, MNDCL, FFL**

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on June 9, 2022 (the "Application"). The Landlord's applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation, or loss;
- an order granting recovery of the filing fee.

The Landlord, the Tenant, and the Tenant's Advocate C.F. attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed receipt of the Landlord's Application and documentary evidence. I find these documents were sufficiently served pursuant to Section 71 of the Act.

The Tenant stated that he served his documentary evidence to the Landlord by Registered Mail. The Landlord stated that he did not receive the Tenant's evidence. The Landlord stated that they amended their Application on July 27, 2022 to change the Landlord's address for service. The Tenant stated that he did not receive the Landlord's amended address for service. The Landlord did not provided confirmation of the Registered Mailing of their amendment. Regardless, the Landlord wished to proceed with the hearing in lieu of an adjournment to allow the Tenant to re-serve the Landlord with his documentary evidence. As such, the Tenant's evidence will be considered in this decision even though the Landlord has not received these materials.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage compensation or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties confirmed the following terms of the tenancy; the tenancy began on February 3, 2019. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$2,945.00 which was due on the first day of each month. The Tenant paid a security deposit in the amount of \$1,450.00. The parties agreed that the Tenant consented to the Landlord retaining \$250.00 and the Landlord returned the remaining \$1,200.00 to the Tenant. The tenancy ended on May 31, 2022.

The Landlord outlined the following monetary claims on their monetary order worksheet;

The Landlord is seeking \$682.50 in relation to repairing a fireplace mantel which had rocks come loose during the tenancy. The Landlord stated that the Tenant misused the historic fireplace during the tenancy, which caused damage to fireplace mantel, displacing several rocks. The Landlord provided a letter from the previous Tenant which indicates the fireplace mantel was in good condition at the end of their tenancy. The Landlord also provided a statement from the masonry company that attended to repair the mantel, providing their observations of the damage caused to the mantel and subsequent need for repair. The Landlord provided an invoice in support.

The Tenant stated that the rental unit was built in 1913, therefore, the fireplace is old. The Tenant stated that they only used the fireplace a few times and noticed a loose rock. The Tenant stated that the damage could be attributed to normal wear and tear. The Tenant stated that they offered to glue the rocks back into the mantel, but the Landlord did not accept the offer.

The Landlord is seeking \$3,389.30 in relation to replacing the fireplace doors. The Landlord stated that the doors were bent due to extreme heat from the Tenant's misuse of the fireplace. The Landlord stated that he has not yet replaced the doors and provided a quote in support. The Tenant once again referred to the age of the fireplace and the fact that the Tenant rarely used the fireplace.

The Landlord is seeking \$1,232.00 to repair a stained-glass door. The Landlord stated that the Tenant broke a section of the stained glass during the tenancy. The Tenant confirmed that the glass was damaged during the tenancy, however, disagreed with the value of the loss. The Landlord provided an invoice in support.

The Landlord is seeking \$2,268.00 for rebuilding and reinstalling several items which were outlined on a separate invoice. This claim relates to the following items and amounts;

Rebuild kitchen pantry door \$195.00, remove stickers from bedroom ceiling \$67.50, reinstall light fixture \$97.50, attach pullcords lawnmower/weed Wacker \$97.50, replace deliberately damaged tools \$135.00, scanning yard with metal detector for razor blades \$90.00, tenant possessions moved to tenant's forwarding address \$157.50, demo and remove incomplete soundproof room in basement \$405.00, fix broken window \$195.00, wash walls and light fixtures \$720.00.

The Tenant agreed that they were responsible for, and intended to repair the kitchen pantry door, remove stickers, and reinstall the light fixture. The Tenant confirmed that they did not complete the work and disagrees with the value of the loss being claimed for. Furthermore, the Tenant stated that they consented to the Landlord retaining \$250.00 towards these claims.

The Tenant denies tampering with the Landlord's lawn equipment or power tools. The Tenant also denies being responsible for discarding razor blades in the yard. The Tenant stated that the Landlord did not have the authority to move the Tenant's possessions, therefore, should not be responsible for paying the cost associated with moving these items. The Tenant stated that the Landlord had given the Tenant permission to build an insulated sound room in the unfinished basement. The Tenant stated that the Landlord told him he can leave it as is.

The Tenant was uncertain on how the window broke but suspects that a branch hit it. The Landlord stated that the Tenant had stacked their firewood in front of the window. The Tenant denied that the rental unit required further cleaning.

The Landlord is seeking \$433.76 to replace deliberately damaged power tools. The Landlord stated that they found more of their tools damaged and suspects the Tenant is responsible for the damage. The Landlord provided a quote for the replacement costs. The Tenant denied causing any damage to the Landlord's tools.

The Landlord is seeking \$291.00 for unpaid utilities. During the hearing, the Tenant agreed to pay this amount of the Landlord.

The Landlord is seeking \$2,943.50 for loss of June 2022 rent. The Landlord stated that the Tenant denied him entry to the rental unit to conduct showings in May 2022. The Landlord provided a copy of the email sent to the Tenant attempting to schedule a showing date and time, followed by the Tenant's subsequent reply denying entry. The Landlord provided a screen shot of their rental advertisement along with several replies from interested parties. The Landlord stated that they were unable to re-rent the rental unit until July 1, 2022 as a result of the Tenant not permitting the Landlord entry to the rental unit during the last month of the tenancy.

The Tenant stated that they only had 16 days to vacate the rental unit when the Landlord requested access to the rental unit. The Tenant stated that they had their belongings everywhere and did not wish to have people come through the rental unit. The Tenant stated that they were doubtful that the Landlord would be able to re-rent the rental unit for June 1, 2022 regardless.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlords to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

Section 37(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, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The Landlord is seeking \$682.50 in relation to repairing a fireplace mantel which had rocks come loose during the tenancy. I find that the Landlord provided sufficient evidence to demonstrate that the fireplace mantel was in good condition at the start of the tenancy and that the rocks came loose during the tenancy. I accept based on the evidence submitted that the mantel was damaged due to misuse of the fireplace during the tenancy. As such, I find that the Landlord is entitled to compensation to repair the fireplace mantel in the amount of **\$682.50**.

The Landlord is seeking \$3,389.30 in relation to replacing the fireplace doors. The Landlord stated that the doors were bent due to extreme heat from the Tenant's misuse of the fireplace. The Landlord stated that he has not yet replaced the doors and provided a quote in support. In this case, I find that the Landlord has not yet conducted this repair, therefore, has not suffered a loss. As such, I dismiss this claim without leave to reapply.

The Landlord is seeking \$1,232.00 to repair a stained-glass door. The Landlord stated that the Tenant broke a section of the stained glass during the tenancy. I accept that the Tenant confirmed that the glass broke during the tenancy. I find that the Landlord suffered a loss to replace the glass and find that the Landlord is entitled to compensation in the amount of **\$1,232.00**.

The Landlord is seeking \$2,268.00 for rebuilding and reinstalling several items which were outlined on a separate invoice. I will address each of these claims in turn;

The parties agreed that the Tenant was responsible for these items; rebuild kitchen pantry door \$195.00, remove sticker from bedroom ceiling \$67.50, reinstall light fixture \$97.50. I accept that the Tenant does not agree with the cost associated with repairing these items, however, I find that it would have been the Tenant's responsibility to complete the repairs prior to the end of the tenancy. As they failed to do so, I find that the Landlord is entitled to compensation totaling \$360.00. However, during the hearing, the Tenant referred to having consented to the Landlord retaining \$250.00 from the security deposit for these items. I note that the condition inspection report refers to these above-mentioned claims. As such, I find that the Landlord is entitled to compensation in the amount of **\$110.00** (\$360.00 - \$250.00 = \$110.00).

The Landlord is claiming for the cost of attaching pullcords lawnmower/weed wacker \$97.50, replace deliberately damaged tools \$135.00, scanning yard with metal detector for razor blades \$90.00, and \$433.76 to replace deliberately damaged power tools. In this case, I find that the Landlord provided insufficient evidence to demonstrate that the Tenant was responsible for these items, therefore, I dismiss these claims without leave to reapply.

The Landlord is claiming compensation for having to move the Tenant's possessions to their forwarding address in the amount of \$157.50. I find that the Landlord has provided sufficient evidence to demonstrate that they provided the Tenant several opportunities to collect their remaining items prior to the Landlord decided to return them on his own. I award the Landlord **\$157.50**.

The Landlord is claiming to demo and remove incomplete sound room in the basement in the amount of \$405.00. I find that it would have been the Tenant's responsibility to return the rental unit to its original state at the end of the tenancy. I find that the Tenant did not provide sufficient evidence to indicate that the Landlord consented to the Tenant leaving the constructed site as is. I therefore award the Landlord compensation in the amount of **\$405.00** for its removal.

The Landlord is claiming for the cost of replacing a broken window in the amount of \$195.00. I find that the Landlord provided sufficient evidence based on the condition inspection report to indicate that the window was not broken at the start of the tenancy. I find that the window was broken during the course of the tenancy. As such, I find that the Tenant is responsible for replacing the window at a cost of **\$195.00**.

The Landlord is claiming \$720.00 to wash the walls and light fixtures in the rental unit. In this case I find that the Landlord has provided insufficient evidence to demonstrate that

the rental unit required further cleaning to that extent. As such, I dismiss the Landlord's claim without leave to reapply.

The Landlord is seeking \$291.00 for unpaid utilities. During the hearing, the Tenant agreed to pay this amount of the Landlord. As such, I award the Landlord **\$291.00**.

The Landlord is seeking \$2,943.50 for loss of June 2022 rent. I accept that the Tenant refused the Landlord entry to the rental unit to conduct showings. I find that the Tenant was not permitted to restrict the Landlord's access to the rental unit. I find that the Landlord made reasonable attempts at mitigated his loss of rent by placing an advertisement and attempting to conduct showings, however, was prevented by the Tenant to show the unit. As such, I find that that Landlord is entitled to compensation from the Tenant for loss of rent in the amount of **\$2,943.50**.

Having been partially successful, I find the Landlords are entitled to recover the **\$100.00** filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$6,116.50, which has been calculated below;

Claim	Amount
Mantel repair:	\$682.50
Stained glass replacement:	\$1,232.00
Pantry door, stickers, fixture:	\$110.00
Removal Tenant's possessions:	\$157.50
Demo of sound room:	\$405.00
Repair broken window:	\$195.00
Unpaid Utilities:	\$291.00
Loss of rent:	\$2,943.50
Filing fee:	\$100.00
TOTAL:	\$6,116.50

Conclusion

The Landlord has established an entitlement to monetary compensation and has been provided with a monetary order in the amount of **\$6,116.50**. The order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 15, 2023

Residential Tenancy Branch