



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S MNRL-S MNDCL-S FFL

Introduction

The landlord's Application for Dispute Resolution (application) seeks remedy under the *Residential Tenancy Act* (Act) for the following:

- Monetary claim of \$6,845 for damages, for unpaid rent or utilities, for money owed,
- Retain the tenant's security deposit of \$1,020,
- Filing fee of \$100.

The landlord and agent attended the teleconference hearing and gave affirmed testimony. The landlord and their agent were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated March 16, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The landlord testified that the Hearing Package was served on the tenant by email on March 17, 2022. The tenancy agreement confirms that on page 1 that the tenant agreed to being served by the email address. Section 44 of the Regulation states that documents served by email are deemed served 3 days after they are mailed. Therefore, I find the tenant was served with the Hearing Package on March 20, 2022.

The landlord testified that the tenant was also served an evidence package (Evidence Package) by registered mail on October 16, 2022. The tracking number is RN 602 518 284 CA. The Canada Post registered mail tracking website indicates that the tenant

signed for and accepted the Evidence Package on October 19, 2022. Given the above, I find the tenant was served with Evidence Package on October 19, 2022.

Residential Tenancy Branch (RTB) Rule 7.3 of the Rules of Procedure (Rules) applies and states the following:

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Based on the above, I find this matter to be unopposed by the tenant and the hearing continued without the tenant present.

Preliminary and Procedural Matter

The landlord confirmed the email addresses for both parties. This decision will be emailed to both parties.

Issues to be Decided

- Is the landlord entitled to a monetary order?
- What should happen to the tenant's security deposit?
- What should happen to the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. Monthly rent as of March 2022 was \$2,450 per month and due on the 29th day of the previous month. The tenant paid a security deposit of \$1,020 at the start of the tenancy, which the landlord still holds and will be addressed later in this decision. The tenancy was confirmed as a fixed-term tenancy in March 2022 and was not scheduled to convert to a month-to-month tenancy until July 30, 2024.

The landlord submitted a Monetary Order Worksheet (MOW) as follows:

Document Number	Receipt / Estimate From	For	Amount
#1	Rent loss of March - Mid April 2022	Rental loss until unit rented	\$ 3675.00
#2	Rental adjustment loss for 10.5 months	New Rental contract adj	\$ 2677.00
#3	Fortis B.C electricity bill	March 1st - April 14th 2022	\$ 87.43
#4	Two indoor doors purchased (Home Dep	Damaged indoor doors	\$ 414.35
#5	Two indoor doors installed	Damaged indoor doors	\$ 199.50
#6	Two new indoor doors painted (2 coats)	Labor and painting of doors	\$ 215.00
#7	Two new doors delivery and disposal of o	Delivery, removal, dispose	\$ 186.00
#8	Microwave damaged, not working	Replacement of microwave	\$ 250.88
#9	Cleaning and advertising for unit	Cleaning and advertising ur	\$ 428.75
#10	Dispute filing fee	Dispute fee	\$ 100.00
Total monetary order claim			\$ 8233.9

As the amount above exceeds the \$6,845 amount claimed, I will not consider any amount over the served amount listed as \$6,845 to ensure a fair hearing and to be consistent with the Principles of Natural Justice. Given the above, I will not address the items listed on the MOW, which does not match the application. Rather, I will list the items as follows from the application as follows:

1. \$4,900 for new rental contract was a long term strict fixed term binding lease signed for the amount of \$2450.00 to be paid stating March 1st/2022 till July 30th/2024 Tenant left premises without providing adequate notice or proper end of tendency notice. A mutual agreement did not take place.
2. \$1,495 for damage to inside master bedroom door (punched in), also same damages to ensuite second door (punched in). Two new doors to the master and ensuite were replaced by the owner due to damages to the previous ones. Doors transported, painted (two coats), and installed by certified worker. \$950.00 dollars for new doors to be bought and installed. Damage to front entrance door and doorway. (\$95) House was left in dirty/dusty and uncleaned manner, proper cleaning was not done. Proper cleaning \$420.00
3. \$350 for utilities not paid (Fortis bill) for the month of March and April. For rental unit advertising costs.

[reproduced as written]

Item 1 – The landlord is seeking \$4,900 for loss of rent for March 2022 until April 13, 2022, when new tenants were found. The landlord testified that the new tenants paid \$2,195 for rent of April 13 2022. The landlord stated that the tenants vacated on February 28, 2022 without any mutual agreement being signed.

The landlord explained that \$4,900 is comprised of \$2,450 owing for March, 2022, \$2,450 owing for April, 2022 less the half of \$2,195, or \$1,097.50 received from the new tenants for the last half of April 2022 rent. I find there to be an adding error as $\$2,450 \times 2$ is \$4,900 and \$1,097.50 from that amount is \$3,802.50. As a result, I find the landlord's claim for item 1 is actually \$3,802.50, not \$4,900 as the landlord failed to account for the amount received from the new tenants in their calculation, which I will address in further detail later in this decision.

Item 2 – The landlord is seeking \$1,495 for damages as follows:

- A. \$950 for new doors to be bought and installed,
- B. \$95 for damage to front door and doorway,
- C. \$420 for proper cleaning.

I find that item 2 contains an adding error and that the actual total is \$1,465. The landlord confirmed that they did not submit a copy of the incoming Condition Inspection Report (CIR) in evidence. The landlord provided a police file number, which has been included on the cover page of this decision to support the amount of damage by the tenant. The landlord presented several colour photos of punch holes in more than one door.

The landlord also submitted a receipt in the amount of \$414.35 plus labour of \$199.50 to replace and reinstall the broken lock where it shows as split apart in one photo. In addition, there is an amount listed for \$123.90 to repair the broken door frame. The landlord stated that they did the labour themselves for the remainder of the repairs which they are charging \$30 per hour x 7.16 hours for a total of \$215 of the landlord's labour.

The landlord presented photo evidence, showing the following:

- 1. Dirty baseboards,
- 2. Dirty walls and fixtures,
- 3. Rust on a curtain rod,
- 4. Oil-stained patio,

5. Scuffs on corner of master bedroom wall,
6. Dirty window sill,
7. Dirty oven,
8. Dirty stovetop.

The landlord also submitted a photo showing all of the cleaning supplies of the landlord inside the rental unit while cleaning. The landlord stated that they spent 12 hours cleaning the rental unit to a reasonable standard and are charging \$35 per hour for their labour.

The final amount of \$95 is for an additional lock plate that was required to repair the locking front door.

Item 3 – The landlord has claimed \$350 for unpaid utilities. The landlord submitted a Fortis bill for the month of March and April and is seeking for rental unit advertising costs. The tenancy agreement confirms that heat and utilities were not included in the monthly rent.

The landlord presented several invoices and receipts. The first is a utility bill for \$87.43, the advertising cost receipts total \$78.75 and the last amount is the \$100 filing fee, for a total of \$266.18. Given the above, I find there is another adding error and that the \$350 amount should actually read \$266.18.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the landlord and agent provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was deemed served and did not attend the hearing, and as noted above, I consider this matter to be unopposed by the tenant. I have considered the undisputed testimony of the landlord and agent and the documentary evidence before me.

Item 1 – Although the landlord is seeking \$4,900, and as mentioned above, I find the landlord's claim for item 1 is actually \$3,802.50, as I find the landlord failed to account for the amount received from the new tenants in their calculation of \$1,097.50 for the last half of April 2022. Therefore, I find the tenant owes the landlord \$2,450 for unpaid

March 2022 rent, and \$1,352.50 for the first half of April 2022, for a total item 1 award of \$3,802.50.

Item 2 – I find the landlord has claimed \$1,465 for this item relating to damages, which I find the landlord has supported with photo evidence and receipts. I find the tenants purposely damaged the rental unit by punching holes through doors and I decline to apply any depreciation as a result. I find the tenant breached section 37(2)(a) of the Act, which requires that the rental unit be left in a reasonably clean condition and only provides for reasonable wear and tear. I find the photo evidence supports that the tenants exceed reasonable wear and tear by purposely punching holes in doors and left the rental unit dirty and in need of cleaning. Therefore, I grant the landlord the full amount claimed of \$1,465 for this item.

Item 3 – The landlord has claimed \$266.18 for unpaid utilities, advertising costs and the filing fee. I find this item was supported by utility bills and advertising receipts. As the tenants also breached a fixed-term tenancy, I find the landlord's advertising costs are also recoverable from the tenant. I find the tenant breached section 45(2) by vacating before the end of the fixed-term tenancy. Section 72 of the Act allows for the filing fee, so I grant that amount of \$100 as the claim was successful. I award the full amount of \$266.18 as claimed for this item.

Given the above, I find the landlord has established a total monetary claim of **\$5,533.68**. As the landlord continues to hold the tenant's security deposit of \$1,020, I find the security deposit has accrued \$4.80 in interest under the Act, for a total security deposit \$1,024.80, including interest.

I authorize the landlord to retain the tenant's full \$1,024.80 security deposit including interest in partial satisfaction of the monetary award, and I grant the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord of **\$4,508.88**.

Conclusion

The landlord's reduced monetary claim is fully successful.

The landlord has established a total monetary claim of \$5,533.68 and has been authorized to retain the tenant's full security deposit including interest of \$1,024.80. The landlord has also been granted a monetary order pursuant to section 67 of the Act, in the balance owing by the tenant to the landlord of \$4,508.88.

Should the landlord require enforcement of the monetary order, the landlord must serve the tenant with the monetary order and may enforce the monetary order in the British Columbia Provincial Court, Small Claims Division.

This decision will be emailed to both parties.

The monetary order will be emailed to the landlord only for service on the tenant.

The tenant is further cautioned that they can be held liable for all costs related to enforcement of the monetary order, including court costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 29, 2023

Residential Tenancy Branch