



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNRL-S, MNDCL-S, FFL**

Introduction

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

1. A Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit pursuant to Sections 38, 62 and 67 of the Act,
2. A Monetary Order for compensation for a monetary loss or other money owed – holding security and/or pet damage deposit pursuant to Sections 38 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that she was not recording this dispute resolution hearing.

The Landlord testified that she served the Tenant with the Notice of Dispute Resolution Proceeding package and evidence on June 23, 2022 (date copied from the uploaded receipt) by Canada Post registered mail (the "NoDRP package"). The Landlord referred

me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord called Canada Post and requested the name and signature on the received package, and she said it was the Tenant's name and signature. I find that the Tenant was deemed served with the NoDRP package five days after mailing them on June 28, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Tenant uploaded a one-page summary of his version of events, but he did not serve his written submission on the Landlord. Pursuant to Section 88 of the Act, the Tenant's evidence that is required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) *by leaving a copy with the person;*
- (b) *if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) *by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) *if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) *by leaving a copy at the person's residence with an adult who apparently resides with the person;*
- (f) *by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;*
- (g) *by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;*
- (h) *by transmitting a copy to a fax number provided as an address for service by the person to be served;*
- (i) *as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*
- (j) *by any other means of service provided for in the regulations.*

As the Tenant did not serve the Landlord in one of the above ways, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure that parties know the case being made against them, are given the opportunity to reply, and have the right to have their case heard by an impartial decision maker: *AZ Plumbing and Gas Inc. (Re)*, 2014 CanLII 149849 (BC EST) at para. 27. Procedural fairness requirements in administrative law are not technical, but rather functional in nature. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 (CanLII) at para. 65. I find that service of the Tenant's evidence was not effected and it would be administratively unfair to consider this evidence in this matter and I decline to do so.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit?
2. Is the Landlord entitled to a Monetary Order for compensation for a monetary loss or other money owed – holding security and/or pet damage deposit?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord testified that this periodic tenancy began on June 4, 2021. Monthly rent was \$1,900.00 payable on the first day of each month. A security deposit of \$950.00, and a pet damage deposit of \$950.00 were collected at the start of the tenancy and are still held by the Landlord.

On May 20, 2022, the Landlord received an email from the Tenant that he was leaving in June and he no longer wanted the rental unit. She told the Tenant that he was obligated to give one month's notice that he was going to leave. The Tenant left on June 4, 2022. The Tenant did not pay June's rent of \$1,900.00.

When the Landlord's sister went into the house, she saw that no cleaning had happened, and it appeared like the house had not been cleaned in months. The Landlord uploaded picture evidence of the state of the house. The Landlord uploaded the invoice from the cleaning company. The total cleaning cost was \$708.25.

The Landlord discovered a hole in the drywall which was covered with a poster. She got a handyman in to repair this large hole in the drywall. The total amount claimed for drywall repair was \$150.00.

The Landlord seeks costs for steam cleaning the carpets and the sofa. The Landlord relies on Appendix 2: Rental Unit Pet Policy which states, "*6. As the house is rented as semi-furnished, the tenant will have the sofas and carpets shampooed and cleaned at their own expense at the end of the tenancy.*" She said the carpets and sofa were covered in dirt and dog hair. The Landlord is claiming 325.00.

The Landlord seeks costs for yard work, which was needed to be done twice, as the lawn and garden were in such a bad state. The Landlord said a bunch of junk was left in the house and bags of plastic flowers. The garden work company hauled all this garbage away. The total claimed for yard work is \$135.00.

The tenancy agreement states that the "Tenant is responsible for the payment of all utilities in relation to the Property." The Landlord is seeking \$50.00 each, an estimate, for gas and electricity utilities for the month of June 2022. The total utility expense the Landlord is claiming is \$100.00.

The Landlord claims property management fees which she stated she pays for mother for this job. The Landlord did not upload any contract details for this expense.

Analysis

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 their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Tenant's notice

- 45** (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*
- (a) is not earlier than one month after the date the landlord receives the notice, and*
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The Tenant gave the Landlord notice to end the tenancy on May 20, 2022. Pursuant to Section 45(1)(a) of the Act, the Tenant may give notice on a date that is not earlier than one month after the date the landlord receives the notice. The Landlord is entitled to rent for the month of June 2022. I grant the Landlord **\$1,900.00** for June's rent.

Leaving the rental unit at the end of a tenancy

- 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*

...

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline 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.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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 Tenant left the rental unit dirty beyond reasonable wear and tear when he vacated the rental unit breaching Section 37(2)(a) of the Act. The Landlord incurred costs for housecleaning (**\$708.25**), repairs to holes in the walls (**\$150.00**), steam cleaning (**\$325.00**), and yard work (**\$135.00**). I find the Landlord has proven on a balance of probabilities that she incurred these expenses when the Tenant failed to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I grant the Landlord \$1,318.25 for the cleaning expenses she incurred.

The Tenant is responsible for utilities expenses in relation to the property. I find the Landlord is entitled to **\$100.00** for gas and electricity moderate costs for the month of June 2022.

The Landlord claims property management fees of \$600.00 for which she pays her mother to do. I find this is a cost of doing business expense that the Landlord must bear. I decline to award compensation for this expense.

Pursuant to Section 72(2)(b) of the Act, I Order that the Landlord is authorized to retain the security deposit and pet damage deposit held by the Landlord in partial satisfaction of the monetary award. Having been successful, I find the Landlord is entitled to recover the application filing fee paid to start this application, which I order may be deducted from the security deposit held pursuant to Section 72(2)(b) of the Act. The Landlord is entitled to the following monetary award:

Expense	Amount
June 2022 rent	\$1,900.00
Housecleaning	\$708.25
Drywall repair	\$150.00
Steam cleaning	\$325.00
Yard work	\$135.00
Utilities	\$100.00
Application filing fee	\$100.00
Less: security deposit	-\$950.00
Less: pet damage deposit	-\$950.00
TOTAL Monetary Award:	\$1,518.25

Conclusion

I grant a Monetary Order to the Landlord in the amount of \$1,518.25. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of 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 Act.

Dated: March 26, 2023

Residential Tenancy Branch