



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

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

- a monetary order for compensation for unpaid rent, money owed, or monetary loss 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.

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 confirmed that they understood.

The landlord confirmed that they had filed an application on June 2, 2022, and a second application on July 13, 2022. The landlord confirmed that they wished to proceed with the second application filed on July 13, 2022 as the claims are duplicates. Accordingly, the landlord's application filed on June 2, 2022 was cancelled, and the hearing proceeded to hear the application filed on July 13, 2022. The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of the June 2, 2022 file, the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

The tenant confirmed receipt of the landlord's application ('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. The tenant did not submit an evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as requested for losses or money owed?

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 properly before me and the testimony of the parties, 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 fixed term tenancy originally began on June 1, 2021, and ended on May 31, 2022. Monthly rent was set at \$2,300.00, payable on the first of the month. The landlord still holds the security deposit of \$1,150.00 for this tenancy.

The landlord testified that the tenant failed to leave the rental unit in reasonably clean and undamaged condition, and did not attend a move-out inspection, but instead texted the landlord to inform the landlord that the keys were in the mailbox, and blocked the landlord from calling them. The landlord testified that no forwarding address was provided by the tenant. The landlord testified that in addition to the damage and lack of cleaning, the tenant also failed to pay the outstanding utilities and rent for this tenancy. The landlord is seeking the following monetary claims:

Item	Amount
Laminate flooring-2 rooms	\$620.73
Laminate install-2 rooms	891.00
Paint (3 cans & labour)	935.91
Drywall repairs	30.72
Cleaning lady-6 hours	180.00
Dump fee for garbage	250.00
Utility bills-April 2022	599.04
Utility bills-May 2022	311.48
Missed Rent-May 2022	1,150.00
Loss of rent-June 2022	2,300.00
Total Monetary Order Requested	\$7,268.88

The landlord testified that due to the condition of the rental unit, they were unable to show the rental unit until July 2022. The landlord was able to find a new tenant for August 2022. The landlord submitted a copy of the move-in inspection, as well as photos taken after the tenant had moved out.

The tenant questioned whether the landlord had mitigated their losses as required by the Act, and whether the landlord truly suffered the losses claimed. The tenant argued that the landlord was out of the country in June 2022, and could not have shown prospective tenants the rental unit. The tenant testified that the landlord could have found a new tenant earlier if they had started advertising and showing the rental unit earlier. The tenant testified that the landlord did not start showings until they were back in the country.

The tenant does not dispute blocking the landlord from calling them because they felt the landlord was harassing them. The tenant testified that the landlord was out of the country, and did not attempt to schedule a move-out inspection with the tenant. The tenant confirmed that they did not provide the landlord with a forwarding address, but argued that the landlord had their email contact information.

Furthermore, the tenant argued that the landlord failed to support their losses with receipts and invoices, and questioned whether the cleaning was necessary as the tenant had hired their own cleaner to clean the rental unit.

The landlord testified that the tenant had blocked them from calling them, and as a result, the landlord was unable to arrange a move-out inspection with the tenant. The tenant confirmed in the hearing that they are not disputing the unpaid utilities for April and May 2022, and the unpaid rent for May 2022. The tenant is disputing the rest of the claims.

The landlord confirmed that they had only submitted estimates for this application as they did not want to miss evidence deadlines. The landlord testified that they felt that the estimates are reasonable and should be considered.

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 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 claims 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.

Residential Tenancy Policy Guideline #5 addresses the duty of the claimant to mitigate loss:

“Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation². Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed."

Lastly, RTB Policy Guideline #16 speaks to the amount of compensation:

"In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence."

As the tenant is not disputing the landlord's claims for utilities for April and May 2022, and the unpaid rent for May 2022, the landlord is granted a monetary order for these amounts.

Section 37(2)(a) of the Act stipulates 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.

Sections 35 and 36 of the Act set out the requirements for a move-out inspection. Section 35(2) of the Act requires that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

Residential Tenancy Regulation further clarifies the requirements for how two opportunities for an inspection must be offered to the tenants:

Two opportunities for inspection

17 (1) *A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.*

(2) *If the tenant is not available at a time offered under subsection (1),*

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) *When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.*

As stated above, the landlord's final opportunity to attend an inspection must be proposed to the tenant in the approved form. Although the landlord provided evidence of text message communication with the tenant about a move-out inspection, I find that the landlord failed to establish that they had ever attempted to serve the tenant with the proposed time and date in the approved form, specifically RTB Form *RTB-22 Notice of Final Opportunity to Schedule a Condition Inspection*. I do note that this does not extinguish the landlord's right to claim for damages arising out of the tenancy, including damage to the rental unit.

As per RTB Policy Guideline #17: *The right of a tenant to the return of a security deposit is extinguished if the landlord has offered the tenant at least two opportunities for a condition inspection as required by the Act and the tenant has not participated on either occasion.*

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph, retains the following rights:

- *to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*
- *to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- *to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

I also note that if a tenant fails to provide the landlord with a forwarding address within one year after the end of the tenancy, pursuant to section 39(b) of the Act, the right of the tenant to the return of their deposit is extinguished.

I will therefore consider the landlord's claim for cleaning and damage to the rental unit. Although the tenant claims that they had hired a professional cleaner to clean the rental unit, I find that the tenant has not provided sufficient evidence to support that the suite was cleaned. I am satisfied that the evidence provided by the landlord clearly shows that the rental unit was not reasonably clean at the end of the tenancy. The landlord claimed \$180.00 for 6 hours of cleaning. The landlord supported the calculation with an online cleaning advertisement for \$30.00 an hour. No invoices or receipts were provided to support the actual value of this loss. As noted in Policy Guideline #16, "*A party seeking compensation should present compelling evidence of the value of the damage or loss in question*". In this case, I find that the landlord failed to provide any receipts or invoices to support the value of this loss. Policy Guideline #16 allows an Arbitrator to award nominal damages where "*there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right*." In this case, I am satisfied that the tenant did indeed fail to leave the rental unit in reasonably clean condition. As the landlord failed to support the actual value of this loss, I award the landlord nominal damages of \$90.00, which is equivalent to 3 hours of cleaning at \$30.00 per hour.

Similarly, although the landlord did not provide an invoice for junk removal, I am satisfied that the tenant failed to remove the trampoline in the yard of the home. Although the tenant did provide an explanation for why the item was left behind, this explanation does not justify the fact that the tenant failed to properly dispose of or remove this item. I am satisfied that the landlord had to remove this item, and in doing so would incur a loss. In this case, I find that the landlord had only provided one advertisement to support the value of this loss, with no actual estimates, invoices, receipts, or competing quotations for junk removal. I do not find this advertisement as sufficient evidence to support the actual value of the loss the landlord suffered, or the \$250.00 claimed. As there is no way to determine the value of this loss, and as I

determine that there was in contravention of the *Act* by the tenant, I allow the landlord nominal damages of \$75.00 for removal of the trampoline.

Section 40 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. As per this policy, the useful life of interior paint is four years, and flooring is 10 to 20 years. As noted above, the burden of proof is on the applicant to support their claim. In this case, I find that the landlord failed to provide sufficient evidence to support when the home was last painted, or the age of the floors. As noted in Policy Guideline #40, the onus is on the landlord to support the age and maintenance of an item, especially when the item has exceeded its useful life. Although I am satisfied that there may have been some damage to the walls and floors, I am unable to ascertain how much of this damage can be attributed to wear and tear, and the general age of the item rather than the neglectful or intentional actions of the tenant. I am not satisfied that the landlord has proven, on balance of probabilities, that the tenant had caused the damages claimed. Furthermore, the landlord did not provide any actual receipts or invoices to support the losses claimed. I therefore dismiss the landlord's claims related to the damage without leave to reapply.

Lastly, the landlord made a monetary claim for lost rental income for June 2022. As noted above, the landlord has a duty to make reasonable efforts to mitigate the tenant's exposure to the landlord's monetary losses as is required by section 7(2) of the *Act*. In this case, I find that the landlord did not provide sufficient evidence to show what efforts were made by the landlord to re-rent the rental unit, or even whether the landlord suffered any lost rental income. The landlord did not provide documentary evidence to support when the unit was advertised for rent, or the details of the new tenancy. I find that the landlord's application falls short, and on this basis, I dismiss the landlord's monetary claim for loss of rental income without leave to reapply.

As the landlord's application had some merit, I allow the landlord to recover the filing fee for this application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit plus applicable interest in satisfaction of the monetary awards granted to the landlord. 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, \$4.48 is payable as interest on the tenant's security deposit from May 10, 2021, when the deposit was originally paid, until the date of this decision, March 14, 2023.

Conclusion

I allow the landlord a Monetary Order totalling \$1,171.04 as set out in the table below.

Item	Amount
Cleaning	90.00
Removal of trampoline	75.00
Utility bills-April 2022	599.04
Utility bills-May 2022	311.48
Missed Rent-May 2022	1,150.00
Recovery of filing fee	100.00
Less security deposit held plus interest	-1,154.48
Total Monetary Order to Landlord	\$1,171.04

The landlord is provided with this Order in the above terms and the tenant must be served with a copy of 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 and enforced as an Order of that Court.

I dismiss the remainder of the landlord's application 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: March 14, 2023

Residential Tenancy Branch