



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The landlord applied on June 9, 2022 for:

- compensation for damage caused by the tenant, their pets, or their guests to the unit or property, requesting to retain the security and/or pet damage deposit;
- compensation for monetary loss or other money owed, requesting to retain the security and/or pet damage deposit; and
- recovery of the filing fee.

The hearing was attended by the landlord's agent ("the landlord") and the tenant. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

- 1) Is the landlord entitled to compensation for damage caused by the tenant, their pets, or their guests to the unit or property, in the amount of \$1,380.00?
- 2) Is the landlord entitled to compensation for monetary loss or other money owed, in the amount of \$400.00?
- 3) Is the landlord entitled to the filing fee?

Background and Evidence

While I have considered all the documentary evidence presented and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claims and my findings around each are set out below.

The parties agreed on the following facts. The tenancy began January 27, 2007; rent was \$765.00, due on the first of the month; the tenant paid a security deposit of \$470.00, which the landlord still holds; the tenancy ended on May 31, 2022; and the tenant provided a forwarding address in writing on June 10, 2022. The parties agreed that a move-in inspection was completed, the tenant was provided with a copy of the move-in inspection report, and that at the end of the tenancy the tenant did not agree in writing for the landlord to keep any part of the security deposit.

The landlord testified that a move-out inspection was conducted with the tenant, and that a copy of the move-out inspection report was sent to the tenant. The tenant testified that a move-out inspection was “not really” conducted, and that the tenant did not receive a copy of the move-out inspection report.

A move in/out inspection report is submitted as evidence. It is undated. It notes the condition of the unit on move in, but for the move out, the column states only “no longer manage” and “security deposit to tenant,” and the move-out section at the bottom of the form has a signature for the manager, but not the tenant, and lists the address of the rental unit as the tenant’s forwarding address. The report does not describe the condition of the unit at the end of the tenancy.

No documentary evidence was submitted to support the landlord’s claim that they sent a copy of the move-out inspection report to the tenant.

Regarding their claim for \$1,380.00 in damages, the landlord submitted a Monetary Order Worksheet as evidence, listing the following amounts:

- painting and repair: \$900.00
- cleaning: \$357.00
- junk removal: \$105.00

I note that those items total \$1,362.00.

The landlord testified that they understood there would be wear and tear on the unit as the tenant lived there for over 10 years, but that there was also damage to the unit, including a broken light fixture in the bathroom and a water stain on the floor. When I asked the landlord for a breakdown of the \$900.00 claimed, he directed me to a contractor invoice in evidence, which lists \$700.00 for painting, and \$200.00 for “broken bathroom light glass, switch cover” and “closet door frame.”

The tenant testified that he was a professional painter and cleaner, and that the painting is not his responsibility as he lived there for 15 years. The tenant testified that he had filled, sanded, and primed some areas, and that the walls had no damage. The tenant testified he was willing for the landlord to retain \$45.00 for two broken light fixtures. The tenant testified that the landlord had removed a piece of the closet trim to adjust a sliding door, and that the trim piece simply needed to be pushed back onto its three nails by hand, and that it did not need painting. The tenant agreed he had left a large water stain on the floor.

The landlord testified that the tenant did not clean anything, including the bathroom, kitchen, and the bedroom carpet. A photo of the bedroom carpet is submitted, showing darker areas surrounding a central lighter area. Also submitted is an invoice for cleaning, listing \$240.00 for “cleaning service,” \$100.00 for “carpet shampooing and steam clean,” and five percent tax.

The tenant testified he could not clean the carpet because his furniture had been in the bedroom, then the landlord had been rushing him. The tenant testified that he cleaned the remainder of the unit to rentable standards.

The landlord testified that the tenant left behind some furnishings on the patio and a washer and dryer in his storage locker. The landlord testified that as these items were too heavy for him to deal with, he had to hire a junk removal company which charged \$105.00. An invoice and cheque for \$105.00 are submitted in support, along with a photo of a chest of drawers, some garbage bags, and some small miscellaneous items.

The tenant testified that at the end of the tenancy the landlord was rushing him to hand over the keys and leave as soon as possible. The tenant testified that as his truck was full, he had told the landlord he would return for the remaining items, but that the landlord had said he would take care of it, and said: “I want the keys right now.”

The landlord testified he did not recall the exchange described by the tenant.

The landlord testified they seek to recover \$400.00 from the tenant because on two occasions he did not follow the strata bylaws, resulting in two strata fines of \$200.00. Submitted as evidence are two letters from the strata to the landlord, stating that a resident of the unit address disposed of a ladder and a piece of furniture, “probably a closet door panel,” in the outdoor garbage area. The letters state that they are notices of bylaw infractions, that the notice is the occupant’s opportunity to answer the complaint, and that an “owner or tenant may be fined an amount of \$200.00 for each contravention.”

No documentary evidence was submitted to demonstrate that the fines were charged to the landlord, or that the landlord paid the fines.

The tenant testified that he was fined for disposing of the items, though he removed the ladder from the garbage the next day.

Analysis

Section 36 of the Act provides that the right of a landlord to claim against a security deposit for damages is extinguished if they do not give the tenant a copy of the completed inspection report at the end of the tenancy.

The landlord stated he sent the tenant a copy of the inspection report; the tenant testified he was not given a copy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The landlord has not submitted documentary evidence demonstrating that they sent a copy of the move-out inspection report to the tenant.

Therefore, based on the evidence before me, I find the landlord failed to provide a copy of the move-out condition report to the tenant as required by the Act. Consequently, I find that the landlord has extinguished his right to make a claim against the security deposit for damages. Though the landlord did not return the tenant’s security deposit, the value of the security deposit is not doubled, pursuant to section 38 of the Act, because the landlord was holding the security deposit for a claim for other than damages.

Damages

Section 67 of the Act establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I dismiss the landlord's application for compensation for damages, as the landlord has extinguished his right to make a claim against the security deposit for damages, as reasoned above. This is further supported by the fact that the inspection report submitted as evidence lists no damage to the unit.

The Residential Tenancy Act Regulation states at section 21 that in dispute resolution proceedings, a condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In the absence of any explanation of why it was beyond the control of the landlord to document the damage to the rental unit at the time of the move-out inspection, pursuant to the Regulation, I rely on the condition inspection report as the evidence of the state of repair of the rental unit.

I find the tenant agreed at the hearing to pay the landlord \$45.00 for the replacement of two broken light fixtures.

Section 37 states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. As the parties agree the tenant did not clean the carpet at the end of the tenancy, I find the landlord is entitled to the \$105.00 (\$100.00 + 5% tax) they paid for carpet cleaning.

Considering the cleaning of the remainder of the unit, the parties have provided conflicting testimony. The tenant submitted that he cleaned the remainder of the unit to rentable standards, and the landlord testified that the tenant did not clean anything, just moved out. As the landlord has submitted the cleaning invoice in support of their claim, which states that the landlord paid \$240.00 plus five percent tax for cleaning, I find it

more likely than not that the tenant did not leave the unit reasonably clean as required by section 37, and that the landlord is entitled to recover the \$252.00 they paid for cleaning (\$240.00 + 5% tax).

Section 37 states that at the end of the tenancy, the tenant must vacate the unit by 1:00 p.m. The landlord testified that he paid \$105.00 for junk removal because the tenant left behind some furnishings on the patio, and a washer and dryer in his storage locker. The tenant testified that at the end of the tenancy the landlord was rushing him to leave and hand over the keys as soon as possible. The tenant testified that as his truck was full, he had told the landlord he would return for the remaining items, but that the landlord had said he would take care of it. The landlord testified he did not recall such a discussion. The tenant did not testify that after his truck was full he still had time before 1:00 p.m. to retrieve the rest of his belongings.

Considering the conflicting testimony of the two parties, I find it unlikely that a landlord would incur the trouble and cost to remove a tenant's unwanted items when the tenant was going to remove the items themselves by 1:00 p.m. on the last day of the tenancy. Therefore, on this point I favour the testimony of the landlord over that of the tenant, and find that the landlord is entitled to recover from the tenant \$105.00 for junk removal.

Monetary Loss

The landlord testified they seek to recover \$400.00 from the tenant because on two occasions he did not follow the strata bylaws, resulting in two fines of \$200.00. Two letters from the strata are submitted in support, stating that an owner or tenant may be fined an amount of \$200.00 for each contravention of the bylaws.

As noted above, the landlord must prove their loss stemmed directly from a violation of the tenancy agreement or a contravention of the Act. Although the tenant may have breached strata bylaws, the landlord has not proven that the tenant breached the tenancy agreement or the Act. I find the landlord is not entitled to \$400.00.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was partially successful in their application, I grant their claim for reimbursement of the filing fee of \$100.00.

I find the landlord is entitled to a monetary award as follows:

Interest on \$470.00 security deposit (Jan. 27, 2007 – March 21, 2023)	\$15.77
Security deposit	\$470.00
Value of tenant's security deposit	\$485.77
Light fixtures	\$45.00
Cleaning, including carpet	\$357.00
Junk removal	\$105.00
Filing fee	\$100.00
Value of money owed to landlord	\$607.00
Monetary award to the landlord (607.00 – 485.77)	\$121.23

Conclusion

The landlord is granted a monetary order in the amount of \$121.23. The monetary order must be served on the tenant. The monetary order 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 23, 2023

Residential Tenancy Branch