



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

Both parties attended and were given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The parties are referenced in the singular.

The parties stated they were not recording the hearing.

The parties provided their email address for delivery of the Decision.

The tenant did not submit documentary evidence. The landlord provided testimony they sent their evidence by registered mail on July 5, 2022 and February 13, 2023 to the tenant at his residential address. The landlord provided copies of the receipts and tracking numbers in support of service.

The tenant confirmed the address was correct. While the tenant did not acknowledge receipt of the registered mail, I find the landlord's evidence to be credible and supported by documentary evidence.

I therefore find the landlord served the tenant in compliance with the Act.

Settlement Discussions

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. I informed both parties that I could not provide legal advice to them. I informed them I make my Decision after the hearing and not during the hearing.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

The Arbitrator assisted the parties in efforts to settle the matter. Settlement discussions were unsuccessful, and the hearing continued.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

The landlord requested a Monetary Order for compensation for damages for which the tenant is responsible. The landlord requested authorization to apply the security and pet deposits to the award.

The tenant denied the landlord was entitled to any award.

Background

The parties agreed the tenant rented a unit from the landlord which was new on moving in. They agreed on the background of the tenancy:

INFORMATION	DETAILS
Tenancy Agreement, Signed, Submitted	yes
Type of Tenancy	Month-to-month
Beginning Date	December 1, 2019
Fixed Term End Date	December 1, 2020, then month-to-month
Vacancy Date	June 1, 2022
Rent payable on first of month	\$3,900.00
Security deposit	\$1,950.00
Pet deposit	\$1,950.00
Condition Inspection Report on Move-In signed by both and submitted	yes
Condition Inspection Report on Move-out submitted	Not signed by parties
Arrears of Rent	no

Landlord application	June 15, 2022, within time
----------------------	----------------------------

Condition Inspection Report

The landlord submitted a condition inspection report on moving in which was signed by both parties and indicated the unit was in good condition in all relevant aspects.

The landlord submitted a condition inspection report on moving out which was not signed. The landlord explained the tenant did not agree with the landlord's findings during the inspection and refused to sign.

The tenant stated the landlord claimed damages for which he was not responsible so he refused to sign the report on moving out.

Landlord's Claims

During the hearing, considerable time was spent clarifying the landlord's claims.

The following was reviewed carefully with the landlord during the hearing. The landlord agreed the following table accurately states his claim:

	ITEM	AMOUNT
1.	NSF cheque	32.00
2.	Handles and hinges (2 doors)	124.32
3.	Strata fines - smoking	600.00
4.	Painting and repair holes	1,750.00
5.	Replacement door	1,858.00
6.	Replacement door	1,858.00
7.	Fridge door - replacement	1,500.00
8.	Closet doors – 2 - replacement	500.00
	TOTAL CLAIM BY LANDLORD	\$8,222.32

The tenant agreed to reimburse the landlord for the cost of the NSF cheque in the amount of \$32.00.

The tenant disputed each remaining claim.

The remainder of the claims are divided into two groups:

1. Expenses for which the landlord provided receipts.
2. Expenses based on estimates.

1. Expenses – Receipts Provided

The landlord's claim for compensation for the following items was supported by submitted receipts or documentary evidence.

2.	Handles and hinges (2 doors)	\$124.32
3.	Strata fines - smoking	\$600.00
4.	Painting and repair wall damages	\$1,750.00

The landlord testified as follows. The tenant removed two high quality interior doors and hardware without the landlord's consent. The tenant did not provide the doors to the landlord, and he does not know why the tenant replaced them. The landlord discarded the low-quality doors and hardware.

The landlord incurred a cost of \$124.32 for the hardware and seeks compensation in this amount. The landlord submitted photos of the original hardware, the replacement hardware, and the invoice in support of his claim.

The tenant acknowledged he replaced the doors and hardware without explaining why he did so. However, he stated the replacement hardware was adequate and the landlord is not entitled to replace the hardware with items of a different (better) quality.

Secondly, the landlord submitted an email from the strata stating the tenant was fined \$600.00 for smoking in the unit. The landlord stated he paid the fine and requested compensation.

The tenant said he was not the one smoking, should not have been fined, and he should not have to pay the landlord or the strata.

Thirdly, the landlord stated the tenant damaged the walls of the unit and submitted pictures of some holes which required filling. The landlord also submitted copies of photos of the walls which appeared to be touched up or painted with a different color paint than the original.

The landlord submitted a copy of a receipt for \$1,750.00 for the repair and painting required.

The tenant stated he fixed the walls adequately and used the same color paint for touch up. He denied the landlord is entitled to any compensation for painting as he had rented the unit for 3 years.

2. Expenses – Based on Estimates

The landlord requested compensation for the following damages for which he did not provide receipts. The landlord stated he was waiting for my Decision to purchase replacement items.

5.	Replacement door	\$1,858.00
6.	Replacement door	\$1,858.00
7.	Fridge door	\$1,500.00
8.	Closet doors – 2	\$500.00

Firstly, as stated above, the landlord testified as follows. The tenant removed two high quality interior doors and hardware without the landlord's consent. The tenant did not provide the doors to the landlord, and he does not know why the tenant replaced them. The landlord discarded the low-quality doors and hardware.

The landlord anticipates incurring a cost of for the replacement of each door in the amount of \$1,858.00. The original doors are not available. The landlord submitted a copy of a similar door from a website although the name of the vendor does not appear on the copy. It was not clear from the testimony if the landlord intended to replace the door frame or whether the panel merely had to be purchased and hung.

In support of his claim, the landlord submitted photos of the original door (a 3-pannelled door), the replacement door (no panels) and the copy of a similar door costing \$1,858.00 from a website. The landlord testified the replacement cost of each door was going to be \$1,858.00.

The tenant acknowledged he replaced the doors and hardware. However, he stated the replacement doors were adequate and the landlord is not entitled to replace the doors with items of a different quality.

Secondly, the landlord stated the fridge door had to be replaced. He obtained a verbal quote of \$1,500.00. The landlord submitted photos of the door surface showing a discolored section in one of the upper corners and expressed the opinion the damage came from removal of a sticker. The landlord claimed the entire surface was scratched, but that was not apparent from the submitted photos. The door is currently in use and the landlord intends to replace it when he receives my Decision.

The tenant denied there was any damage to the fridge door or there was any need to replace it.

Thirdly, the landlord stated the tenant replaced two sets of closet doors for reasons which were not explained and for which the landlord did not provide consent. The landlord submitted a picture of the original doors and the replacement doors, which appear to be hung poorly and do not meet in the middle. The landlord submitted copies of an advertisement for new doors and requested \$500.00 for both, which was less than the purchase price of 2 new sets. He intended to replace the door upon receipt of my Decision.

The tenant acknowledged he replaced the doors but said the replacements were adequate and the landlord did not need to change the doors. The tenant refused to say why he replaced the doors.

Summary of Landlord's Claim

The landlord requested a Monetary Order and authorization to apply the deposits to the award as follows:

ITEM	AMOUNT
Award (above)	\$8,222.32
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$1,900.00)
(Less pet deposit)	(\$1,900.00)
TOTAL AWARD REQUESTED	\$4,522.32

Summary of Tenant's Evidence

The tenant stated the landlord's claims are inflated and unreasonable. He requested the claim be dismissed without leave to reapply. He requested the return of his deposits.

Analysis

The parties submitted considerable evidence. While the tenant did not submit any documents, he testified at length disagreeing with every aspect of the landlord's claim with the one exception noted for the NSF cheque.

Only relevant, admissible evidence is considered. Only key facts and findings are referenced.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* state that 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.

Here, it is up to the landlord to establish his claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

Statutory Provisions

Damages

When an applicant, the landlord in this case, seeks compensation under section 7 or 67 of the Act, they must prove on a balance of probabilities the following :

1. The tenant failed to comply with the Act, regulations, or the tenancy agreement;
2. The loss or damage resulted from the non-compliance;
3. The amount or value of their damage or loss; and
4. They have done whatever is reasonable to minimize the damage or loss.

Failure to prove one of the first three points above means the claim fails. If the landlord has failed to minimize the damage or loss, the amount of damages compensable would be reduced.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

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.

...

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Obligations of Tenants and Landlords

The obligations of the parties are set out in the Act. Section 32(3) imposes obligations on a tenant:

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant ...

Policy Guideline # 1. Landlord & Tenant – Responsibility for Residential Premises also states:

The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible

Section 32(4) and *Guideline # 1* state that a tenant is not required to make repairs for reasonable wear and tear.

Guideline 1. Landlord & Tenant – Responsibility for Residential Premises states in part as follows (emphasis added):

*Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. **An arbitrator may determine whether or not repairs***

or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

As stated earlier, the landlord submitted his claims under two broad categories: claims based upon expenditures for which he had receipts, and claims based on estimates.

Each category is considered.

Findings

Expenses with Receipts

The landlord claimed the following:

2.	Handles and hinges (2 doors)	\$124.32
3.	Strata fines - smoking	\$600.00
4.	Painting and repair wall damages	\$1,750.00

I find the landlord has met the burden of proof with respect to #2 and # 3, handles/hinges and strata fines. That is, I find the tenant has breached the Act by removing the original hardware, the landlord incurred the loss in the amount claimed to replace the removed items, the claimed compensation is reasonable, and the landlord minimized his loss and damage.

With respect to the claim for painting, the *Guideline #40 - the useful Life of Building Elements* states that "landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement item". The landlord testified the unit had been painted before the tenant moved in, three years ago. The tenant agreed the unit was new.

The Guideline states that paint has a useful life of 4 years.

Accordingly, the paint had a remaining useful life of 1 year.

Accordingly, I grant the landlord $\frac{1}{4}$ of the painting costs claimed which I find is \$437.50.

Therefore, my award under this grouping of claims is as follows:

2.	Handles and hinges (2 doors)	\$124.32
3.	Strata fines - smoking	\$600.00
4.	Painting and repair wall damages	\$437.50

Expenses based on Estimates

The landlord claimed the following based on estimates.

5.	Replacement door	\$1,858.00
6.	Replacement door	\$1,858.00
7.	Fridge door	\$1,500.00
8.	Closet doors – 2x	\$500.00

I find the tenant acknowledged removal of the doors. He asserted the doors he put in place were adequate. He denied damage to the fridge door.

I find the landlord has met the burden of proof that the tenant breached the agreement by removing/replacing the doors with doors of lesser quality and by damaging the fridge door.

I am unable to determine the precise amount of the loss or damage.

I considered *Policy Guideline 16: Compensation for Damage or Loss* which states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded 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.

I have considered the evidence the landlord submitted and the testimony of the parties. I award damages as follows:

5.	Replacement door	\$1,000.00
6.	Replacement door	\$1,000.00
7.	Fridge door	\$1,000.00
8.	Closet doors – 2 sets	\$500.00

Security Deposit

The tenant did not answer questions about why he had replaced the doors. The tenant did not give the landlord the damaged doors and the landlord was unable to guess what the cause of the damage was.

Based on the evidence, I am unable to determine which part of the pet deposit could be applied to the damage.

Accordingly, I find the landlord may apply both deposits to the award as follows:

1.	NSF cheque (acknowledged)	32.00
2.	Handles and hinges (2 doors)	\$124.32
3.	Strata fines - smoking	\$600.00
4.	Painting and repair wall damages	\$437.50
5.	Replacement door	\$1,000.00
6.	Replacement door	\$1,000.00
7.	Fridge door	\$1,000.00

8.	Closet doors – 2 sets	\$500.00
TOTAL AWARD		\$4,693.82

The Monetary Order after application of the deposits:

Total Award (Above)	\$4,693.82
(Less security deposit)	(\$1,900.00)
(Less pet deposit)	(\$1,900.00)
Monetary Order to Landlord	\$893.82

I grant the landlord a Monetary Order of **\$893.82**.

Conclusion

I grant the landlord a Monetary Order of **\$893.82**. This Order must be served on the tenant. The landlord may file and enforce this Order in the Courts of the Province of BC.

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 3, 2023

Residential Tenancy Branch