



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COAST ISLAND PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL, MNDCL-S, OLRD, MNSD, FFT, MNDCT

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is either party entitled to a monetary award for loss or damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security and pet deposit in partial satisfaction of the monetary award requested? If not, should the deposits be returned to the tenants?

Is either party entitled to recover the filing fee for their application?

Background, Evidence

RN testimony is as follows. The tenancy began on March 1, 2020 and ended on August 31, 2021. The tenants were obligated to pay \$3185.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1500.00 security deposit and \$750.00 pet deposit.

The landlord is applying for the following:

1.	Interior\Exterior	\$6473.14
2.	Garage Rent	2142.00
3.	Utilities	2601.83
4.	Drywall, repair, paint	6549.92
5.	Sand and re-stain floor estimate	4000.00
6.	Broken Window	401.74
7.	Coit and Tayde Cleaning	579.50
8.	Management Time	7234.99

9.	Yard damage	4789.62
10.	Filing Fee	100.00
	Total	\$34,872.74

RN testified that the tenants left the home dirty and damaged. RN testified that the tenants did not pay for the parking space provided in the garage. RN testified that the tenants were aggressive and harassing to the point that it triggered his wife's autoimmune illness. RN testified that the tenants were careless in the unit and caused damage to walls, floors, a window, and the yard. RN testified that the tenants caused so much stress that they sold the home. RN testified that whatever amount he is granted from this hearing will be donated.

The tenants gave the following testimony. NR testified that he and SW adamantly dispute the landlords claim. NR testified that the only portion they agree to is the replacement of the "chicken wire" fencing for \$121.00. NR testified the deny they caused the damage as alleged by the landlord. NR testified that even if they were responsible for anything, the landlord did not provide the tenants any opportunity to remedy the matter.

SW testified that the NR continually threatened that if they didn't do as he says, he would affect their credit rating. SW testified that the landlord presented him with a list of alleged costs and damages just days before the end of the tenancy and wanted money for them. SW testified that some of the items were over five months old and that it was the first time he was made aware of them. NR testified that many other claims were only provided two days before the original hearing date in May 2022. NR and SW testified that the landlord didn't address a skunk issue during the tenancy. NR and SW testified that RN was constantly harassing and threatening them with numerous issues and seek compensation. The tenants submit that the landlord was trying to get the tenants to pay for updates to the property to help sell it.

The tenants are applying for the following:

1.	One Months Rent for dealing with Skunk	\$3185.00
2.	Compensation for ongoing harassment	8315.00
3.	Return of Deposit	1500.00
4.	Return of Pet Deposit	750.00
5.	Filing Fee	100.00
6.		

	Total	\$13,850.00
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Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below. It is worth noting that both parties were extremely disorganized when presenting their claims. Each party was unable to answer basic questions or provide answers to the claim they put forth and frequently asked me how to proceed with their own claim. It was explained to both parties that they were free to present their claim as they thought best and I assisted when appropriate.

Each party presented their claim in a scattered, disjointed, and illogical fashion, this is not a criticism of the parties, but an observation of how they presented their claim. Their documentary evidence was disorganized, lacked a table of contents, numbered pages or some cohesive organized manner to follow. The landlord's application and monetary claim was particularly lacking in that it was at odds with much of their own documentation. Despite attempts by me to have each party answer direct questions, each party would refer to irrelevant issues not before me and used their opportunity to attack the other and makes themselves out to be the victim.

Each party claimed that the other harassed them and that they were a victim throughout this tenancy. I find that both parties were equally willing to engage in hostilities and that neither party exercised the ability find a common ground and respond reasonably. Neither party provided tangible evidence that they attempted to deescalate the hostilities. The acrimonious relationship was evident throughout the hearing with each party accusing the other of not telling the truth.

I must also note that each party's documentary evidence was not submitted in accordance with the rules of procedure as required as follows:

Residential Tenancy Branch Rules of Procedure 3.7 and 3.10 addresses this issue as follows.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

3.10 Digital evidence

Digital evidence may include photographs, audio recordings, video recordings or electronic versions of printable documents in an accepted format.

3.10.1 Description and labelling of digital evidence

To ensure a fair, efficient and effective process, where a party submits digital evidence, identical digital evidence and an accompanying description must be submitted through the Online Application for Dispute Resolution or Dispute Access Site, directly to the Residential Tenancy Branch or through a Service BC Office, and be served on each respondent.

A party submitting digital evidence must:

- include with the digital evidence:

- o a description of the evidence;

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identification of photographs, such as a **logical number system and description;**

- o a description of the contents of each digital file;

- o a time code for the key point in each audio or video recording; and

- o a statement as to the significance of each digital file;

- submit the digital evidence through the Online Application for Dispute Resolution system under 3.10.2, or directly to the Residential Tenancy Branch or a Service BC Office under 3.10.3; and

- serve the digital evidence on each respondent in accordance with 3.10.4

Both parties failed to provide their evidence as noted above, however I have reviewed it and considered it in making a decision.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party, the applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. As each party has filed an application, they must each provide sufficient evidence to support their claim.

Landlords Claim

The landlord filed their application seeking \$35,100.00. RN testified that the landlord actually spent \$34,772.74. Many of the items claimed for lacked actual receipts or paid invoices. Much of the documentation provided by the landlord were screen shots for items that he says were replaced, but again, without any corroborating documentation. The tenants pointed this out to the RN during the hearing, yet he did not address this deficiency. In addition, the landlord failed to mitigate losses as required and as noted above, by not advising the tenants of some of the issues, sometimes for as long as five months.

The landlord submitted a list of items to the tenants that he wanted them to rectify with only a few days left in their tenancy. Furthermore, many of the items were only brought to the tenant's attention when the matter was scheduled for dispute resolution. As noted above, a party **must satisfy all four elements under section 67 of the Act to be successful.**

I address the landlords claims and my findings as follows.

Claim #1- Interior/Exterior

The tenants agree that they are responsible for the replacement of the chicken wire fencing, accordingly I find that the landlord is entitled to \$121.00. However, for the remainder of this claim; I find that RN has not provided sufficient evidence to show the actual out of pocket costs as some of the items are only quotes and he has failed to provide sufficient evidence that the tenants were reckless or negligent and were in contravention of the Act, accordingly; I dismiss this portion of the claim.

Claim # 2- Garage Rent

SW testified that there wasn't a specific agreement in place and wasn't told that he had to pay for the space in the garage until the end of the tenancy. RN submits an email as proof of their parking agreement; however, I find it insufficient. There is no agreed term of the parking arrangement. In addition, the tenant wasn't told that there were arrears until the end of the tenancy. I find that the landlord did not mitigate the losses as required under section 7(2) of the Act by advising the tenant after the first month of nonpayment, accordingly; I dismiss this portion of the landlords claim.

Claim # 3- Utilities

RN submits that the tenants took on unauthorized roommates increasing the amount of gas and electricity use. The tenants argue it was during the pandemic lockdown that resulted them being at home more and using more gas and electricity. In addition, the tenants submit that they did receive approval to have roommates from the landlord and that there was never an unauthorized person in the home. I find that the landlord has not provided sufficient evidence to show that the tenants had unauthorized occupants in the unit. In addition, I find the tenancy agreement about elevated utility cost to be ambiguous and therefore unenforceable, accordingly; I dismiss this portion of the landlords claim.

Claim # 4- Construction , Drywall Repair, Paint etc

RN submits that the tenants caused damage to walls that required painting. The parties did not agree to the condition of the unit at the move out condition inspection.

Residential Tenancy Policy Guideline 40 address the useful life of building elements as follows.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the

arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

The landlord did not provide the information as noted above. In addition, the landlord did not provide sufficient evidence to show the condition of the unit at the beginning of the tenancy versus the end, if any. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

Claim #5- Sand and Re-stain Floors

As I have noted in claim #4, the parties did not agree to the condition of the unit at the end of the tenancy. The landlord did not provide evidence to show how old the floors were or what change of condition the floors were in from the beginning of the tenancy to the end of the tenancy, if any. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

Claim #6- Glass Doctor

Again, the landlord has not provided sufficient evidence as to the age of the window as required or evidence to show that the tenants were reckless or negligent to cause the damage, accordingly; I dismiss this portion of the landlords claim.

Claim # 7- Coit and Tayde Cleaning

The landlord hired cleaners for the suite prior to the tenants moving out. The landlord relies on a clause that "at their discretion they can hire their own cleaners". I find that the tenants were not provided an opportunity to clean the unit to the landlord's satisfaction. In addition, I find that the landlord acted prematurely by hiring his own cleaners before the tenants had a chance to do it, accordingly; I dismiss this portion of the landlords claim.

Claim #8- Management Time

RN testified that he is entitled to management time as many of the items in this application far exceed the normal scope of what a landlord does. I find that the items claimed for were not outside of the normal scope of work that is to be expected in being a landlord. In addition, I find that the amount charged is far more than what would be

reasonable and appropriate. Furthermore, the landlord's calculation was vague and disjointed. Based on the insufficient evidence of actual costs incurred, I hereby dismiss this portion of this application.

Claim #9-Yard and Garbage removal

The landlord has failed to provide sufficient evidence that the tenants acted in contravention of the Act or tenancy agreement or that they were reckless or negligent. In addition, the landlord has not provided sufficient evidence of the exact costs incurred, accordingly; I dismiss this portion of the landlords claim.

I address the tenants' claims and my findings as follows.

Claim #1 - Skunk

The tenants are seeking one months rent as compensation for the skunk issue. RN submits that the skunks are a part of the North Shore and that wildlife is part of living there. RN testified that traps were put out for the skunks and that all reasonable steps were taken to address the issue. The tenants have failed to provide sufficient evidence that the landlord was negligent or reckless or that he did not in act in accordance with the Act, accordingly; I dismiss this portion of their application without leave to reapply.

Claim # 2 -Compensation for Harassment

As I have noted above, it was clear throughout the three separate hearing dates the animosity between the parties. It was also clear that neither party was willing to attempt to compromise. Although there are clearly issues between the parties, I am not satisfied on a balance of probabilities that the tenants are entitled to any compensation due to the insufficient evidence of harassment as alleged. I find that the parties were equal and willing participants in an ongoing negative relationship, accordingly; I dismiss this portion of their application.

As noted, the landlord is entitled to \$121.00 for the "chicken wire" fencing. The landlord is entitled to retain that amount from the deposit and return the remaining \$2129.00 to the tenants. The tenants will be granted a monetary order in that amount. The filing fee is a discretionary award usually issued by an Arbitrator after a party is fully successful

after a full hearing on the merits of the application. I decline to award the recovery of the filing fee to the applicants as neither party was fully successful.

Conclusion

The landlord has established a claim for \$121.00. I order that the landlord retain that amount from the deposit and order that the landlord return the remaining \$2129.00 to the tenants. I grant the tenants an order under section 67 for the balance due of \$2129.00. This order may be filed in the Small Claims Court 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 *Residential Tenancy Act*.

Dated: April 17, 2023

Residential Tenancy Branch