



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*;
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

The parties acknowledged service of each other's evidence.

The parties provided their addresses for delivery of the Decision.

Issue(s) to be Decided

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the Rules of Procedure, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

Tenancy

The unit is a house the tenant rented from the landlord. She lived upstairs and rented out the downstairs portion whose occupants paid her directly.

The tenancy began February 1, 2016, and ended August 31, 2021. Rent was \$2,100.00. The tenant paid a \$1,050.00 security deposit which the landlord holds. Occupants stayed in part of the unit for two weeks after she vacated, leaving September 15, 2021.

The relationship between the parties deteriorated resulting in police attendance at the unit the day the tenant moved out. The police were later called when the overholding occupants refused to vacate.

Condition inspection Report

The parties signed a condition inspection report on moving in and a copy was submitted.

The tenant moved out on August 31, 2021. The parties carried out a condition inspection, but the tenant refused to sign as she disagreed with the landlord's observations.

At the time of the tenant moving out, the parties agreed the downstairs portion of the rental unit was occupied. The landlord provided testimony the downstairs occupants finally vacated mid-September 2021 after the police came. The tenant did not know when they moved out.

Forwarding Address

The tenant provided her forwarding address in the condition inspection report on moving out.

The landlord filed this application September 1, 2022, outside the 15-day period.

Landlord's Claims

The landlord stated the tenant lived in the upstairs portion of the unit. The interior was left in good condition.

The downstairs portion was occupied for two more weeks after the tenant moved out.

The landlord submitted photographs of items and bags of garbage abandoned outside the unit as well as the interior of the downstairs portion in a very cluttered and messy condition.

The total requested compensation for out-of-pocket expenses is \$416.15. The landlord submitted receipts for garbage removal and a patio door part.

The landlord's evidence included photographs taken August 31, 2021. Some items were picked up or discarded subsequently. The landlord said the photographs were an accurate reflection of the condition the unit was in when the tenant moved out.

The landlord stated they made 4 dump runs to get rid of everything remaining at the unit. Several friends and family members helped to clean out the unit at no cost. The landlord requested 12 hours for just his own time and gas costs of \$100.00. No ledger, itemization, receipts or contemporaneous timeline was submitted.

The landlord was quoted over \$2,000.00 for the removal of the items at the unit.

The landlord's claims:

	ITEM	AMOUNT
1.	Repairs and garbage disposal fees (above)	\$416.00
2.	12 hours @ \$50.00 cleaning and dump runs + gas (\$100.00)	\$700.00
3.	Filing fee	\$100.00
	TOTAL	\$1,216.00

The landlord requested their claim be capped at the amount of the security deposit of \$1,050.00 to be paid from the security deposit held by them.

Tenant's Claims

The tenant described the landlord as dishonest. She said the photographs submitted by the landlord are not representative of what the unit looked like when she finished taking everything that belonged to her on September 3, 2021.

The tenant denied the overholding occupants left as much stuff as claimed. The tenant said there were no pictures of what the unit was like when she finished moving out or when the downstairs occupants moved.

The tenant acknowledged she did not inspect the downstairs unit before she moved out. She did not know when the occupants moved out. She did not know what they left behind for the landlord to dispose of. She did not visit the unit after vacating.

The tenant denied the landlord's claims in their entirety. She submitted no evidence of the condition of the unit.

Analysis

The parties submitted conflicting testimony in key aspects of this claim. I consider all the documentary evidence and the testimony in reaching my Decision. However, I do not repeat all the facts and arguments claimed by each side. Only relevant, admissible evidence is considered. The principal aspects of the claim and my findings around each are set out below.

Standard of Proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities. This means that it is more likely than not that the facts occurred as claimed.

The responsibility to prove their case is on the person making the claim. In this case, the landlord must prove their claim.

The landlord must prove four items:

1. Did the tenant fail to comply with their legal obligations?
2. If yes, did loss or damage result?
3. What is the value of this loss or damage?
4. Did the landlord try to reduce their losses?

The Act

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

Section 37(2)(a) of the Act requires that a tenant “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear” when they vacate.

Credibility

I find the landlord provided the most credible version of events. It is most likely the events occurred as the landlord described. The landlord frankly acknowledged the conflict with the tenant and the presence of the police. They clearly described the work to clean out the unit and the volunteer work of many people to make it happen. The photographs provide supporting documentary evidence of the substantial cleanup and cluttered condition of the unit. I find considerable items were left requiring clean up as described.

Where their versions of events differ, I prefer the landlord's version in all respects to the tenant's.

1. *Repairs and garbage disposal fees (above)* \$416.00

I find the landlord has established this part of their claim. The landlord submitted receipts, photographs, and believable testimony. The landlord used his own vehicle and the volunteer labour of friends and family to keep costs down. The tenant did not leave the unit in a reasonably clean condition.

I find the landlord has proven each part of this claim. I award the landlord \$416.00

2. *12 hours @ \$50.00 cleaning and dump runs + gas (\$100.00) - \$700.00*

It is up to the landlord to support their claim with documentary evidence. I have no doubt that the landlord, friends and family, spent considerable time getting the unit back into condition to rent again. However, the landlord did not produce any log or contemporaneous proof of time spent. The time and expenses are estimates only.

Policy Guideline 16: Compensation for Damage or Loss allows me to award compensation in situation where the value is not straightforward. I have no doubt that the landlord spent some time and incurred some expenses for gas. I therefore find this is an appropriate situation for nominal damages which I award in the amount of \$550.00.

3. *Filing fee* \$100.00

As the landlord has been successful in this claim, I award the landlord reimbursement of the filing fee of \$100.00.

Award to landlord:

	ITEM	AMOUNT
1.	Repairs and garbage disposal fees (above)	\$416.00
2.	12 hours @ \$50.00 cleaning and dump runs + gas (\$100.00)	\$550.00
3.	Filing fee	\$100.00
	TOTAL	\$1,066.00

The award is capped at \$1,050.00 at the request of the landlord.

I grant the landlord an award of \$1,050.00

Security Deposit

The tenant requested a Monetary Order for the doubling of the security deposit

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution to keep the deposit. This must happen 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

Section 38(6)(b) says that if the landlord does not do this, the landlord must pay double the security deposit. This does not apply if the tenant agreed the landlord could keep the security deposit.

The landlord did not bring the application within the 15-day period. The tenant has not consented that the landlord could keep the security deposit.

The parties agreed that the tenant gave the landlord written notice of their forwarding address on August 31, 2021.

Under these circumstances I find that the tenant is entitled to an award of doubling of the security deposit.

The tenant participated in the move out condition inspection. Although she did not sign the report, she is still entitled to doubling of the security deposit under the Act. Her right is not extinguished.

The tenant is entitled to:

ITEM	AMOUNT
Security deposit	\$1,050.00
Security deposit doubling	\$1,050.00
Interest	\$8.48
TOTAL	\$2,108.48

Summary

I award the landlord \$1,050.00.

I award the tenant \$2,108.48.

ITEM	AMOUNT
Award to tenant	\$2,108.48
(Less award to landlord)	(\$1,050.00)
TOTAL MONETARY ORDER TO TENANT	\$1,058.48

I grant the tenant a Monetary Order of \$1,058.48.

Conclusion

I grant the tenant a Monetary Order of \$1,058.48.

This Monetary Order must be served on the landlord. If the landlord fails to comply with this Monetary Order, the tenant may file and enforce the Order in the Courts 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: May 29, 2023

Residential Tenancy Branch