



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding RELIANCE PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

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

1. A Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit under Sections 26, 38, 46 and 67 of the Act;
2. A Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit under Sections 38 and 67 of the Act; and,
3. Recovery of the application filing fee under Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's agent, witness and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's 10 Day Notice served by attaching a copy to the Tenant's door on May 6, 2022, the Tenant confirmed receipt, deemed served on May 9, 2022;

- the Landlord's Notice of Dispute Resolution Proceeding package served by email on August 29, 2022, the Tenant confirmed receipt, deemed served on September 1, 2022;
- the Landlord's evidence package served by email on April 11, 2023, the Tenant confirmed receipt, deemed served on April 14, 2023; and,
- the Tenant's evidence package served by registered mail on April 27, 2023, Canada Post Tracking Number on cover sheet of decision, the Landlord confirmed receipt, deemed served on April 30, 2023.

Pursuant to Sections 88, 89 and 90 of the Act, and Sections 43 and 44 of the *Residential Tenancy Regulation*, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent – holding security and/or pet damage?
2. Is the Landlord entitled to a Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit?
3. Is the Landlord entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on September 1, 1998. The fixed term ended on August 31, 1999, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,055.00 payable on the first day of each month. A security deposit of \$312.50 was collected at the start of the tenancy and is still held by the Landlord.

The parties both confirmed that the Tenant remained in the rental unit until August 8, 2022.

The Landlord testified that the Tenant's rent payments for May and June were returned to them as NSF with two service fees from the bank of \$40.00 each. She stated they would not process July's rent because of the two NSF cheques, and they required a certified cheque from the Tenant for the total outstanding rent. A July 26, 2022 email from the Landlord to the Tenant states:

If you plan to pay the outstanding rent from May to July (and soon August is due too), please provide us with a certified cheque or money order in the name of [Landlord company name]. At this point, due to your account being declared NSF 3 times in a row, we will not attempt to withdraw the rent anymore directly from it.

The Landlord's witness, their accountant, testified that the total outstanding account for the Tenant is \$5,845.59 which includes rent from May to August, 2022, and for replacement of a broken window. The Landlord received an order of possession with an end date of tenancy being July 31, 2022. The Landlord stated they are claiming for the whole month of August because the Tenant stayed longer than they all agreed.

The Tenant did not have any questions of the Landlord's witness.

The Landlord is not seeking any compensation for missing handles on a cabinet or cleaning costs. The Landlord is seeking compensation to replace a broken window in the rental unit. The Landlord testified there was a hole in the window. The Landlord said the Tenant never reported to them that the window had a hole in it or was broken.

The Landlord's move-out condition inspection report does not indicate that there was a hole in the living room window, or any other kind of damage to the windowpane.

The Tenant testified that when she moved into the rental unit in 1998, there was a very tiny hole in the living room window. She said it was like a small bullet hole, although she said she did not know what a bullet hole would look like. She stated she did mention it to the building manager at the time, and that building manager said it was not a big deal. The Tenant was not overly bothered by this small hole. The Tenant stated she mentioned it to the next building manager, asking if he thought it was a bullet hole. He told her he did not know. She said it was so small, she could not get her pinky finger to fit through the hole, that she never applied to get it fix.

The Tenant stated there was never a move-in condition inspection done at the beginning of the tenancy. She maintained that the state of the rental unit was not good at the start of her tenancy.

The Tenant stated that her bank statement showed that her rent payments came out of her account. She uploaded screen shots of her online bank app.

Analysis

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.

Unpaid rent:

Section 26(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant uploaded screenshots of her banking app into evidence, calling it her bank statement, and stating that her May and June rent payments were taken out of her bank account. The Landlord also pointed to email evidence showing conversations between the Landlord and the Tenant on May 14, 2022 that the Tenant still had not paid her May rent. The Landlord's evidence was that they have not received rent since May 1, 2022 from the Tenant.

The Tenant's evidence in conjunction with the Landlord's evidence does not prove that the Tenant had paid her rent for May and June 2022. The Tenant did not upload bank statements, rather what the Tenant uploaded was information from her bank app that showed that the Landlord had attempted to withdraw their rent from the Tenant's account. I find the Tenant was in rent arrears from May 1, 2022 to the end of July 2022.

The Landlord received an order of possession for July 31, 2022 from a decision dated July 21, 2022. That decision stated that the tenancy ended on July 19, 2022. After July 19, 2022, the Tenant became an overholding tenant. Pursuant to Section 57(3) of the Act, a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

The parties both agree that the Tenant remained in the rental unit until August 8, 2022. I find that the Tenant owes rent from May to the end of July 2022, plus eight days for the overholding period in August.

The Landlord's ledger supports that the Landlord claimed \$40.00 for a service fee charged by the bank to the Landlord for May, June, and July 2022. The Landlord's July 26, 2022 email supports that the Landlord incurred this fee three times as opposed to two times as stated in her evidence. I find the rent amount owing to the Landlord is \$1,055.00 each for May, June, and July, and \$272.26 for the eight days in August, totalling \$3,437.26 for unpaid rent. The Landlord is also entitled to return of the bank fees totalling \$120.00. The total outstanding rent and bank fees are **\$3,557.26** (\$3,437.26 + \$120.00).

Broken window:

Landlord and tenant obligations to repair and maintain

- 32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*
- (a) *complies with the health, safety and housing standards required by law, and*
 - (b) *having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

Residential Tenancy Policy Guideline #1- Landlord & Tenant – Responsibility for Residential Premises (PG#1) provides a statement of the policy intent of the legislation. PG#1 clarifies the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property and manufactured home parks, and obligations with respect to services and facilities. Dealing with windows, PG#1 states:

WINDOWS

1. *At the beginning of the tenancy the landlord is expected to provide the tenant with clean windows, in a reasonable state of repair.*
2. *The tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould. The tenant is responsible for cleaning the inside and outside of the balcony*

doors, windows and tracks during, and at the end of the tenancy The landlord is responsible for cleaning the outside of the windows, at reasonable intervals. (emphasis added)

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, “*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*” This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Tenant testified that she made enquiries about the small hole in her living room window to previous building managers, but none of these managers felt the hole was a big problem. The Tenant also was not particularly bothered by this hole in the window. She said it was small and she could not get her pinky finger through it.

The Landlord's move-out condition inspection report does not indicate that there was damage in the living room windowpane.

I find that the Landlord had not proven that there was damage to the living room window, or that the Tenant caused the damage to the living room window. Based on the totality of the evidence from both parties, I find the Tenant is not responsible for the window replacement for which the Landlord is claiming. I decline to award compensation to the Landlord for this item.

Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the security deposit held by the Landlord in partial satisfaction of the monetary award. Since the Landlord was successful in their claim, I grant them recovery of the

application filing fee pursuant to Section 72(1) of the Act. The Landlord's monetary order is calculated as follows:

Items	Amount
Unpaid rent	\$3,437.26
Service fee charged by bank	\$120.00
Less security deposit	-\$312.50
Plus application filing fee	\$100.00
Total Monetary Award:	\$3,344.76

Conclusion

I grant a Monetary Order to the Landlord in the amount of \$3,344.76. The Tenant must be served with 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 of British Columbia 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 Act.

Dated: June 04, 2023

Residential Tenancy Branch