



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

<u>Dispute Codes</u>	For the landlord:	MND-S, MNDC
	For the tenant:	MNSD, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act).

The landlord applied for the following:

- compensation for alleged damage to the rental unit by the tenant;
- compensation for a monetary loss or other money owed; and
- authority to keep the tenant's security deposit to use against a monetary award.

The tenant applied for the following:

- a return of their security deposit; and
- recovery of the filing fee.

The landlord, the landlord's agent (KM), and the tenant attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties did not present any issue with respect to the other's application or evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

- Is either party entitled to a monetary order?
- What should happen to the tenant's security deposit?
- Is the tenant entitled to the filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

I heard evidence the tenancy began on October 1, 2015, ended on September 30, 2022, and the amount of monthly rent was unclear as the parties could not agree. The tenant submitted they paid a security deposit of \$600. The landlord submitted they were not aware of the tenant paying a security deposit.

Filed in evidence was a copy of a tenancy agreement, which showed a 5 year, fixed-term tenancy beginning on October 1, 2015, for a monthly rent of \$1200. The tenancy agreement was not fully completed with required information; however, both parties signed the tenancy agreement.

Landlord's application

The landlord's monetary claim was listed incorrectly in their amended application. The claim of \$15,658.86 was incorrectly filed in this application, which related to a different application against the tenant's father.

Through the evidence and testimony, the landlord's actual claim was \$669, listed on the spreadsheet, but listed as \$600 on the application as they want to keep the security deposit to offset the claim. The breakdown was \$218 for blinds cleaning, \$210 for excessive nail holes and wall hangings, and move-out cleaning of \$240.75.

The other part of the landlord's claim was for appliance replacement. Two monetary order worksheets were filed. One worksheet listed a claim of \$6809.03. It was clear this worksheet related to the amended application in the landlord's other claim against the tenant's father.

The worksheet that related to this claim was \$3016.68, for appliance replacement, \$1899.78 for the washer/dryer and \$1116.90 for the stove.

By way of explanation, the tenant's father rented the main house on the property and the tenant here rented the cottage on the same property. The landlord during the tenancies did not reside on the property.

As to the claim for cleaning and repair, the landlord wrote in their application the following:

Tenant left the Suite filthy with dirty blinds, that were removed professionally, cleaned and replaced an uncleaned fridge as well as numerous holes in the walls which had to be patched and therefore repainted in most of the suite, f except the small bedroom which was in good order. Front door lock had to be replaced due to deadbolt key not working, only the code to open the door. Currently only requesting damage deposit to cover the cleaning costs and hole patching

The landlord submitted that the rental unit required cleaning and repairs at the end of the tenancy. The landlord filed receipts for the claim.

In response, the tenant said that the blinds were not left dirty and they cleaned the rental unit prior to vacating. The nail holes were not excessive and were only from normal reasonable wear and tear from living in the cottage for 7 years.

The tenant said there was no move-in or move-out condition inspection and consequently, no associated report made.

As to the claim for appliances, in their amended application, the landlord wrote the following:

[redacted] served me with documents ending his tenancy of the [redacted]

When I did the walk around, [redacted] was not in attendance. At that time I observed that the stove in the kitchen area of the suite was missing. I never gave him any permission to the removal any appliances from the [redacted] building.

When I went to the lower part of the Apt where the washer and dryer should have been located, they too were missing. At no time did I tell him he could take any appliances.

I therefore request that he pays for these appliances.

[Reproduced as written except for anonymizing
personal information to protect privacy]

The landlord testified to the following: When the tenant's father moved into the other house, they never said that they were going to take stuff. At the end of the tenancy at the cottage, the washer/dryer and stove were missing. The tenant never said that the appliances were broken.

The landlord confirmed that they bought the property in 2008 and put in all used appliances at that time. Prior to this tenant, the landlord had 3 previous tenants.

In response, the tenant testified to the following: When they moved into the cottage in 2015, the previous tenant had gone out of their way to destroy the appliances. As the appliances were not working, they removed the washer/dryer and stove, and put them outside under cover. They also had the fridge from the main house, but had to put it outside on the deck as well. Finally, after informing the landlord about the appliances with nothing done, they removed the appliances with the landlord's permission to the landfill, and paid the fees just to get them off the deck.

Tenant's application –

In their application, the tenant wrote the following:

I am requesting my original damage deposit of \$600.00, an additional \$600.00 as the damage deposit was not returned to me within 15 days of the end of the tenancy, and \$100.00 to cover the fee to file this dispute.

The tenant submitted they provided their written forwarding address to the landlord on August 30, 2022, by hand delivery, and their move-out date was September 30, 2022.

Filed in evidence was a copy of the proof of service of the forwarding address on an RTB form and a video showing delivery of the forwarding address.

In response, the landlord said the tenant did not clean the rental unit.

The landlord submitted they had a walk through, but no inspection with the tenant.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, 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 party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

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Landlord's application –

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Under sections 23 and 35 of the Act, a landlord or agent and tenant must inspect the rental unit at the beginning and end of the tenancy and the landlord must complete a condition inspection report in accordance with the regulations.

As to the landlord's claims against the tenant for damage to the rental unit and cleaning, I find a critical component in establishing a claim for damage or cleaning is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. In the circumstances before me, there was no evidence of a move-in inspection or move-out condition Report and no evidence the tenant was offered two opportunities for the inspection. I find the landlord breached the Act.

Further, no photographic evidence was submitted showing the condition of the rental unit at the beginning and end of the tenancy.

Without the required documents or photographs, I find the landlord submitted insufficient evidence to support their claim for cleaning and repairs. I **dismiss** the landlord's claim of \$600, **without leave to reapply**.

As to the landlord's claim for missing appliances, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, which are depreciating throughout a tenancy through normal wear and tear.

Under section 40 of the Policy Guideline, the useful life of a washer/dryer and stove is 15 years. As the appliances were used in 2008, I find it reasonable to conclude the appliances had depreciated 100% by the end of the tenancy on September 30, 2022. Apart from that, I find the tenant provided compelling testimony that the appliances were no longer working when they moved in due to past tenant use.

I also find that if the landlord was compensated for new, in consideration of the appliances having depreciated, they would be put in a better position than if the damage had not occurred.

I **dismiss** the landlord's claim for compensation for the washer/dryer and stove replacement, **without leave to reapply**.

Tenant's application –

In this case, the landlord's application claiming against the security deposit was filed on October 13, 2022, within 15 days of the end of the tenancy on September 30, 2022. Although I find the landlord's right to claim against the security deposit for damage to the rental unit was extinguished, the landlord's claim also included a claim for cleaning, which I find is not damage. As part of the landlord's claim was not for damage to the property but cleaning, I find that the landlord complied with the requirement under section 38 to make an application to keep the deposit within 15 days of the end of the tenancy. I find the tenant is not entitled to double recovery of the deposit.

Although I find the tenant is not entitled to double his security deposit, as I have dismissed the landlord's monetary claim against the tenant's security deposit, I find the tenant is entitled to a return of their security deposit of \$600.

Pursuant to section 62(3) of the Act, I order the landlord to return the tenant's security deposit of \$600, plus interest of \$7.21, immediately, for a total of **\$607.21**.

I also grant the tenant recovery of their filing fee of **\$100**.

To give effect to this order, I grant the tenant a **monetary order** pursuant to section 67 of the Act for the amount **\$707.21**.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application was dismissed with leave to reapply, for the reasons cited.

The tenant's application for a return of their security deposit and recovery of the filing fee was successful. The tenant's request for their security deposit to be doubled was declined. The tenant is granted a monetary order for the amount awarded.

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*. Pursuant to

section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: August 11, 2023

Residential Tenancy Branch