



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDL, MNDCL, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking the following relief:

- a monetary order for unpaid rent or utilities;
- a monetary order for damage to the rental unit or property;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

At the commencement of the hearing the landlord indicated that there is no claim for unpaid rent or utilities and withdrew that portion of the application. Therefore, I dismiss it without leave to reapply.

Issue(s) to be Decided

The issues remaining to be decided are:

- has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of income?

Background and Evidence

The landlord testified that this month-to-month tenancy began on September 1, 2012 and ended at the end of September, 2022; the landlord had given notice to end the tenancy for the landlord's daughter to live there, and the notice was effective October 1, 2022.

Rent in the amount of \$1,550.00 was originally payable on the 1st day of each month, and was increased to over \$1,700.00 during the tenancy, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$775.00 as well as a pet damage deposit of \$200.00, both of which are still held by the landlord. The landlord received the tenant's forwarding address on January 3, 2023 by registered mail.

A move-in condition inspection report was completed by the parties, along with the tenant's father at the beginning of the tenancy. The landlord emailed the tenant on September 25, 2022 to schedule the move-out condition inspection. The tenant replied that everything would be ready for the inspection on October 1, 2022 at 9:00 a.m. The parties, and the tenant's father attended. When the landlord arrived, cleaning and repairs were not done. The tenant's father took over, followed the landlord into the first bedroom while the tenant stayed in the living room, and the landlord had to remind the tenant's father of stuff to be done. The landlord had the inspection sheet with her, and as they continued, the landlord found damage in the bathroom. The tenant and father left to go get supplies, then the landlord got a text from the tenant saying she had an appointment and must go. The landlord had gone to purchase light bulbs, but never heard back from the tenant, who left without completing the inspection and report.

The landlord contacted the Residential Tenancy Branch and explained that the tenant had left without completing the inspection and report, and was told to make a note on the form that the tenant participated and left. The landlord did so and did not complete the move-out condition inspection report.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$2,350.56:

- \$13.76 missing light bulbs in both bedrooms;
- \$180.81 paint & supplies, repair plaster walls & holes;
- \$566.70 for replacement doors for both bedrooms;
- \$187.42 for 7 hours lost wages;
- \$13.64 cleaning supplies;
- \$141.72 deodorize carpet downstairs;
- \$168.00 for cleaning help; blinds, walls, light fixtures;
- \$256.62 for a bath fitter service call; fixed rod, cover plates & holes;
- \$112.00 quote for missing screens in bedrooms;
- \$709.86 quote for damaged window blinds in bedrooms.

The landlord has also provided a receipt for the light bulbs in the amount of \$13.76.

The rental unit was last painted in 2012. The landlord was not able to purchase a quart of paint and had to purchase a gallon.

Photographs of the damaged doors have been provided for this hearing. They are originals, and no holes or damage existed at move-in. The house was built in 1957.

With respect to lost wages, the landlord testified that when cleaning and damage wasn't done or repaired by the tenant, and the work was completed during the day and during a labour shortage. The landlord took a personal leave day from the landlord's employer, and a copy of a cheque stub has been provided for this hearing.

Receipts for cleaning supplies, carpet cleaning and cleaning help have also been provided for this hearing.

The landlord has also provided an Invoice for a Bath Fitter service call, who fixed the shower rod, cover plates and holes. The Bath Fitter was new in 2012 during a major renovation, which has a life-time warranty, meaning that the landlord has to use that vendor.

Quotes have also been provided for missing screens in the bedrooms and damaged blinds in the bedrooms. Two blinds were damaged, and the tenant noticed that. They are no longer replaceable because of draw strings.

The tenant testified that when the landlord arrived for the move-out condition inspection, another person was with her, as well as the tenant's father. The landlord asked the tenant's father to fill nail holes, but it's not a quick process, requiring filling and sanding. The tenant did not find paint for the first bedroom; it did not match and that's the only paint that the tenant didn't have. The tenant was not given a chance to complete the work required.

There is a hole in a bedroom door, and the tenant sent the landlord information about keeping a portion of the security deposit or the tenant would replace or fix it. The landlord stopped communication with the tenant because the tenant said they were cheap hollow doors.

The blinds were very old, 10 years, metal, and 2 or 3 slots on the bottom could have been replaced easily.

The bathroom rod was broken, so during the move-out condition inspection the landlord asked the tenant's father to fill them, and he did. The shower curtain rod was there, it was not missing.

At the end of it all the tenant left because the landlord left and didn't come back. The landlord said she was going to get coffee and the tenant and her father waited. The tenant and father had done everything the landlord asked for. The tenant didn't leave, but went to get supplies, but the landlord didn't come back and did not give the tenant an opportunity to clean or repair or do anything.

The landlord's daughter moved in on October 1, 2022, and the rental unit was left in a clean condition.

Analysis

Firstly, I disagree with the tenant that the landlord did not give the tenant an opportunity to clean or make repairs. A tenant is required to do so prior to completing the move-out condition inspection.

With respect to the security deposit and pet damage deposit, I accept the testimony of the landlord that the Information Officer at the *Residential Tenancy Branch* advised the landlord to make a note on the move-out condition inspection report to the effect that the tenant did not remain in attendance for the inspection. However, the landlord did not testify that the Information Officer advised the landlord to not complete the move-out

condition inspection report in the absence of the tenant. I suspect that to be the case because the *Residential Tenancy Act* states, at Section **35**:

- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

I see 4 problems with the security deposit and pet damage deposit:

1. The *Act* states that the condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. Without a completed move-out condition inspection report, that evidence has been omitted.
2. A landlord's right to claim against a security deposit or pet damage deposit for damages is extinguished if the landlord, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy. A tenant's right to claim against the deposits is extinguished if the landlord scheduled the inspection and the tenant did not participate. In this case, both parties allege that the other disappeared and the inspection didn't get completed. I cannot determine which party left first without returning.
3. A landlord must only claim against a pet damage deposit for damages caused by a pet, and there is no evidence that the landlord is alleging damages caused by a pet.
4. Finally, and most importantly, the landlord has not made an application permitting the landlord to keep either of the deposits, and there is a specific space for that on the Application for Dispute Resolution.

A landlord must return a security deposit and/or pet damage deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application claiming against it within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. In this case, the landlord testified that the tenant's forwarding address was received in writing on January 3, 2023. The landlord has made

a claim for damages on January 16, 2023, but did not make a claim against the deposits.

The tenant has not made a claim for the security deposit or pet damage deposit, however I refer to Residential Tenancy Policy Guideline 17 – Security Deposit and Set off, which states that:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act¹⁶;
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

Therefore, I find that the tenant is entitled to double the amount of the \$775.00 security deposit and \$200.00 for the pet damage deposit, for a total of \$1,950.00.

The landlord's right to make a claim for damages is not extinguished. In order to be successful, the landlord must satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the landlord made to mitigate any damage or loss suffered.

I have reviewed all of the evidentiary material.

The tenant testified that the landlord did not give the tenant an opportunity to finish cleaning and making repairs. However, the *Act* requires a tenant to complete all of that at the end of the tenancy, not within a certain additional time that the landlord may allow. The parties attended and agreed to complete the move-out condition inspection report on October 1, 2022.

The tenant did not dispute the missing or burned out light bulbs, and I accept the landlord's claim of **\$13.76**.

The landlord testified that it has been 11 years since the rental unit was last painted. Any compensation the landlord may be entitled to must not put the landlord in a better financial situation than if no damage or loss occurred. I refer to Residential Tenancy Policy Guideline 40 – Useful Life of Building Elements which puts the useful life of interior paint at 4 years. Therefore, I find that the rental unit required painting in any event, and I dismiss the landlord's claim for painting.

The Policy Guideline also puts the useful life of wooden doors at 20 years. The landlord testified that the doors were originals and the home was built in 1957. Therefore, I dismiss the landlord's claim for damage to the doors.

I have also reviewed the Bath Fitter Invoice, and it shows that it was new in 2012. The tenant did not dispute the damage, but testified that the rod was broken and the tenant's father filled the holes. The Bath Fitter Invoice states: Fix chrome rod where other rod was to cover up the holes and is dated October 27. I find that the landlord has established a claim of **\$256.62**.

The landlord has provided a quote in the amount of \$112.00 to replace missing screens in the bedrooms, and the tenant did not dispute that they were missing at the end of the tenancy. The move-in condition inspection report does not indicate that screens were missing. Therefore, I find that the landlord has established a claim of **\$112.00**.

With respect to the landlord's claim for replacement of blinds in the bedroom, the move-in condition inspection report states that the blinds were new at the beginning of the tenancy, not 10 years old as the tenant testified. I find that the landlord has established a claim of **\$709.86** for damaged window blinds.

With respect to the landlord's claim for cleaning supplies, deodorizing or cleaning the carpet downstairs and for cleaning help, the tenant testified that the rental unit was clean at the end of the tenancy. In the absence of a move-out condition inspection report, I find that the landlord has failed to provide evidence sufficient to satisfy that the tenant did not comply with the *Act* or the tenancy agreement, and I dismiss those claims.

With respect to the landlord's claim for loss of wages, having found that the painting needed to be done in any event, and the dates on the landlord's paystub, I am not satisfied that any time missed by the landlord was a result of the tenant's failure to comply with the *Act* or the tenancy agreement, but largely to assist the landlord's daughter moving into the rental unit on October 1, 2022.

Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the **\$100.00** filing fee.

In summary, I find that the landlord has established a claim of \$1,192.24 (\$13.76.+ \$256.62 + \$112.00 + \$709.86 + \$100.00) for damage or loss.

Having found that the tenant is owed \$1,950.00 and the landlord is owed \$1,192.24, I set off those amounts, and I grant a monetary order in favour of the tenant as against the landlord for the difference in the amount of **\$757.76**. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division as an order of that Court.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$757.76.

This order is final and binding and may be enforced.

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: August 21, 2023

Residential Tenancy Branch