



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL; MNSDB-DR**

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*.
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*.
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38.

Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

Both parties provided their email addresses to which the Decision will be sent.

Each party acknowledged service of the other party's documents. I find service complied with the Act.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order?

Is the tenant entitled to return of the deposits?

Is the landlord entitled to reimbursement of the filing fee?

Analysis

This is a cross application. The landlord applied for compensation for various expenses caused by damages done by the tenant. The landlord claimed the tenant abandoned the unit.

The tenant claimed the landlord locked her out, did not store or care for her possessions, damaged them, and denied her the chance to clean. She denied the landlord is entitled to any damages.

The tenant requested the return of double her pet and security deposits.

Tenancy

The parties submitted a copy of the tenancy agreement. The unit is a residence with a lawn. The agreement included a clause the tenant would maintain the lawn.

They agreed the tenancy began December 1, 2021. Rent was \$2,450.00 payable on the first of the month. The tenant provided a security deposit of \$1,225.00 and a pet deposit of \$750.00.

The landlord holds the deposits without the consent of the tenant.

The landlord obtained an Order of Possession for outstanding rent on June 20, 2022. The tenant paid the arrears but did not pay rent due on July 1, 2023.

The parties hold differing accounts of what happened in the first ten days of July 2023.

The landlord claimed the tenant did not pay rent due July 1, 2023. The landlord returned on July 6 (or July 9) 2023 and found the tenant had vacated the unit. The tenant had removed her possessions, leaving some strewn about the house and yard. The power was cut off and food was rotting in the fridge and freezer. The house was dirty and uncleaned. The landlord said the tenant left the key.

The tenant denied the landlord's version of events. She stated she was away and returned on July 6 (or 9), 2023 to find her personal possessions had been removed from the house. Many were missing or damaged and put outside. Nothing was returned to her. The locks were changed, and she never returned to the unit although she lived nearby. The tenant testified she intends to bring an application against the landlord for damage and compensation.

Condition inspection Report

The parties agreed a condition inspection report was not conducted on moving in or moving out.

Forwarding Address

The parties agreed the tenant provided a forwarding address in writing.

The tenant submitted a copy of a letter to the landlord dated July 6, 2023, providing her forwarding address. The landlord denied receipt of this letter.

The landlord acknowledged receipt of the tenant's forwarding address in writing in December 2022.

Landlord's Claim

The landlord claimed the following:

	ITEM	AMOUNT
1.	Cleaning, repainting walls	1,500.00
2.	Lawn repair	480.00
3.	Deep clean house	300.00
4.	Disposal of garbage	200.00
5.	Shower repairs	164.33
6.	TV replacement (50% of 229.99	115.00
7.	Fridge replacement (11/15 x	966.53
8.	Flooring (11/15 x 1298.65)	952.34
9.	Filing fee	100.00
	TOTAL	\$4,778.20

The landlord claimed the unit was in good condition when the tenant moved in. The house had been fully renovated in 2019. All appliances, flooring and building components were new in 2019. The landlord did not submit any supporting evidence of the condition on move-in or any receipts to establish the age of the building components relevant to her claims.

The landlord claimed that the unit was dirty and damaged when the tenant abandoned the unit. The hydro had been cut off. There had been smoking inside and the unit needed repainting. The lawn was untended. The house was dirty, and the tenant's items were outside and had to be disposed of. The shower was damaged. The TV, provided by the landlord, was missing. The fridge contained rotting food, requiring replacement of the appliance. The flooring was damaged, probably by water, and had to be replaced.

The landlord submitted receipts for each expense and some supporting photographs.

Tenant's Claims

The tenant denied all the landlord's claims.

The tenant claimed a doubling of her pet and security deposits as the landlord extinguished her right to retain the money in the absence of a condition inspection report.

While there was a dispute about when the forwarding address was provided, the landlord agreed she had not returned the deposits within 15 days of the December 2022 receipt.

The landlord agreed the tenant was entitled to a doubling of the deposits.

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.

Credibility

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 unit was damaged as she asserts.

The parties expressed strong emotions and anger in recounting their version of events. Each party blamed the other.

The landlord's recital of the events is unsupported by documents which are often submitted in cases like this. For example, no condition inspection report on moving in or out took place. The landlord did not submit photographs of what the

unit looked like when the tenant moved in. The landlord submitted no receipts to show, for example, that the flooring was new in 2019. The photographic evidence was unconvincing and limited.

Similarly, the tenant's version of what took place is not supported by independent evidence. The tenant claimed to have reported the landlord's conduct to the police, but no supporting evidence was submitted. The tenant called no witnesses.

The landlord has the burden of proof. Without supporting evidence, I find the landlord has failed to establish that her version of events is more likely than the tenant's. The landlord has failed to build a credible case for many of her claims which depend solely on verbal testimony.

Each claim is dealt with individually below.

Standard of Proof

As stated, 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.

When the tenant moved out, the landlord testified as follows.

1. *Cleaning, repainting walls* *\$1,500.00*

The tenant acknowledged smoking took place the unit. Accordingly, I accept the landlord’s claim that the walls had to be treated and repainted. I find the landlord incurred an expense in the amount claimed for which she submitted a receipt.

I find the landlord has established this aspect of their claim. I award the landlord compensation in the amount claimed.

2. *Lawn repair* *\$480.00*

The landlord testified the tenant did not maintain the lawn as required in the tenancy agreement. The landlord submitted a copy of a photograph of the lawn showing it was brown. She submitted a receipt for maintenance.

The tenant stated the months of the tenancy were hot and dry. The lawn was merely dormant. No work needed to be done other than to water it.

While the tenant had an obligation to maintain the lawn and it was brown when the tenancy ended, I find the tenant’s argument that the grass merely needed to be watered to have merit. It is more likely than not to be true.

I am unable to find the landlord has established this aspect of their claim which I dismiss without leave to reapply.

3 *Deep clean house* *\$300.00*

The landlord submitted a receipt for cleaning expenses. She said the house was dirty and in disarray.

The tenant is required to leave a unit reasonably clean. The receipt refers to a "deep clean" which I assume is a higher standard of cleanliness.

I cannot determine if the tenant abandoned the unit or if she was locked out. If the latter, her explanation that she could not get in to clean, is justified.

For these reasons, I am unable to find the landlord has established this aspect of their claim which I dismiss without leave to reapply.

4. Disposal of garbage

\$200.00

The landlord said the tenant left personal items and furnishings at the unit. She submitted pictures of items on the front yard and in a commercial sized garbage container. The landlord submitted a receipt for garbage disposal.

The tenant said the landlord moved her possessions out of the house without complying with the law. The tenant did not abandon the unit. The landlord owes her compensation for damaged and missing items.

As already mentioned, I cannot determine if the tenant abandoned the unit or if she was locked out. If the latter, her explanation that she could not remove everything is justified. However, it is not clear to me why the tenant did not arrange to collect her belongings and why the landlord did not store them.

For these reasons, I am unable to find the landlord has established this aspect of their claim which I dismiss without leave to reapply.

5 Shower repairs

\$164.33

The landlord testified the tenant broke the shower and repairs were required. The landlord submitted a receipt.

The tenant stated the landlord's husband was in the process of repairing the shower at the end of the tenancy. The tenant was not responsible for any damage which were caused by the age of the components.

While I acknowledge the landlord incurred repairs for the shower, I find the landlord has not met the burden of proof that the tenant is responsible for damages. I accept the tenant's evidence that she had reported the maintenance issue to the landlord and her spouse was carrying out repairs.

Accordingly, I find the landlord has not met the burden of proof under this claim.

<i>6 TV replacement (50% of \$229.99)</i>	<i>\$115.00</i>
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The landlord testified a TV was missing from the unit although the agreement does not include a TV in the tenancy. The landlord claimed half of the replacement value for which she submitted a receipt.

The tenant denied there was a TV in the unit provided by the landlord.

The landlord has submitted no supporting documentary evidence that there was a TV in the unit.

I am unable to find the landlord has established this aspect of their claim which I dismiss without leave to reapply.

<i>7 Fridge replacement</i>	<i>\$966.53</i>
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The landlord claimed the fridge was full of rotting food, the power was cut off, and the fridge had to be replaced. The fridge was 4 years old, and the landlord claimed compensation for the remaining life of the appliance in the above amount.

The tenant said she was locked out, could not clean or remove her food, and the landlord owes her compensation. If she were unlawfully locked out, the tenant's version of events may be justified.

Because the fridge had to be cleaned, does not lead me to conclude it needed to be replaced. I am unable to find the landlord has established this aspect of their claim which I dismiss without leave to reapply.

8 Flooring (11/15 x \$1,298.65)

952.34

The landlord claimed the tenant damaged the flooring of the house which was new in 2019. The flooring had to be replaced in the above amount which is the calculated value of the remaining life of the flooring. The landlord submitted a receipt for the installation and a picture of flooring which appeared damaged.

The tenant denied she is responsible for anymore than normal wear and tear. She did not damage the flooring.

The landlord did not submit any evidence of the age of the flooring or any supporting opinion from the flooring company describing the damage or the cause.

I am not convinced the entire floor had to be replaced.

I am unable to find the landlord has established this aspect of their claim which I dismiss without leave to reapply.

Summary

I award the landlord the following:

	ITEM	AMOUNT	Award
1.	Cleaning, repainting walls	1500.00	1500.00
2.	Lawn repair	480.00	0
3.	Deep clean house	300.00	0
4.	Disposal of garbage	200.00	0
5.	Shower repairs	164.33	0
6.	TV replacement (50% of 229.99	115.00	0
7.	Fridge replacement (11/15 x	966.53	0
8.	Flooring (11/15 x 1298.65)	952.34	0
	TOTAL	\$4,678.20	\$1,500.00

I do not award the landlord reimbursement of the filing fee.

Security deposit

The parties agreed there was no condition inspection on moving in or out.

I find that the landlord extinguished their right to claim against the security deposit for damages under sections 24 and 36 of the Act, for failure to complete move-in and move-out condition inspection reports.

I find the tenant is entitled to a doubling of the deposits as the landlord's right to claim against the deposit was extinguished.

In view of the evidence, I find the tenant is entitled to return of the deposits:

ITEM	AMOUNT
Security deposit	\$1,225.00
Security deposit doubled	\$1,225.00
Pet deposit	\$750.00
Pet deposit doubled	\$750.00
TOTAL	\$3,950.00

Offset of Awards

ITEM	AMOUNT
Award to tenant	\$3,950.00
(Less award to landlord)	(\$1,500.00)
TOTAL AWARD TO TENANT	\$2,450.00

I grant the tenant a Monetary Order of **\$2,450.00**

Conclusion

I grant the tenant a Monetary Order of **\$2,450.00**.

This Order must be served on the landlord. The Order may be filed and enforced as an Order of the Courts of the Province 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: September 08, 2023

Residential Tenancy Branch