



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROBERT WANG INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDL, FFL; RR, OLC, FFT

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.

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

- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65.
- An order requiring the landlord to comply with the Act pursuant to section 62.
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

R.W. attended for the landlord. The tenants attended and are referenced in the singular.

Both parties acknowledged receipt of the other's documents. I find service complied with the Act.

Preliminary Issues

1. Adjournment
2. Amendment
3. Severance

1. Preliminary Issue – Adjournment

This matter was adjourned on August 14, 2023, to today. In my Interim Decision of August 14, 2023, I directed that the applications be joined and heard at the same time.

At the beginning of the reconvened hearing, the landlord requested an adjournment as he was calling into the hearing from a foreign country.

The tenant did not agree to the request for the adjournment as they had taken a day off work to be present. This was the second hearing. They said there was no likelihood of a settlement. They wanted the hearing to go ahead so the stressful and time-consuming matter could be resolved.

After hearing both parties and considering the criteria in Rule 7.9 of the RTB Rules, I denied the request for an adjournment. The hearing continued.

2. Preliminary Issue – Amendment

At the hearing, the tenant requested authorization to add a request for reimbursement of the security deposit of \$2,000.00 which the tenant paid at the beginning of the tenancy. The tenant testified the landlord holds the security deposit and the tenant has not provided authority to the landlord to retain it.

Section 64(3)(c) and Rule 4 of the *Rules of Procedure* allow for an amendment of an application at the hearing. Rule 4 states the amendment may be allowed in circumstances that can be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

The tenant testified as follows and submitted supporting documentary evidence which is reviewed in detail later.

The tenant submitted their Application for Dispute Resolution on April 25, 2023. At the time, the tenant still occupied the unit. The tenant vacated on September 30, 2023. The right to request the return of the security deposit arose after the application was filed.

No condition inspection report on moving out was completed or submitted.

The tenant gave the landlord a forwarding address which the landlord acknowledged. He did not return the security deposit which is retained without the tenant's consent.

The landlord objected to the return of the security deposit saying he kept it because the tenant damaged the unit.

The primary purpose of this application is to obtain an award for the return of double the security deposit.

Further to Rule 4, I find the landlord could have anticipated that the tenant would claim return of the tenant's security deposit. I find the landlord knew, or should have known, that this matter would be addressed at the hearing.

The amendment is not prejudicial to either party.

I accordingly allow the tenant to amend the application.

The tenant's application is therefore amended to allow for the tenant to apply for the return of the security deposit and a doubling pursuant to the provisions of the Act.

3. Preliminary Issue – Severance

As the tenant has vacated the unit, I dismiss the application for an order requiring the landlord to comply with the Act pursuant to section 62 which is only available in ongoing tenancies.

The application under section 62 is dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an award for damages and reimbursement of the filing fee?
Is the tenant entitled to a rent reduction, doubling of the security deposit and reimbursement of the filing fee?

Background and Evidence

Considerable disputed testimony was submitted during the hearing. I have reviewed all evidence before me that met the requirements of the Act and the Rules of Procedure. Not all this evidence is referenced in my Decision. I refer to only the relevant, admissible and significant evidence in support of my conclusions and the facts as I find them.

Nature of Applications

This is an application by a landlord for compensation for damages caused by a kitchen faucet water leak. The landlord claims the faucet was in good condition and the tenant must have damaged it to cause the flooding. Alternatively, the landlord claimed the tenant caused the damage by attempting to fix the leaking faucet.

The tenant denies they did anything to the faucet except to use it normally. They did not cause the leak. They also stated they attempted to fix the leaking faucet merely by wrapping cloths around it to soak up the water and placing bowls out to catch the drips. They made no attempt to repair it, and, indeed lack the knowledge or tools to embark on a repair.

The tenant in turn brought an application claiming compensation. They claim a rent reduction for the period they lived in the unit without water (17 days) and for a subsequent longer period (six months) without access to all kitchen amenities included in the tenancy agreement (unusable kitchen cabinets from water damage). They also claim reimbursement of double the security deposit.

Tenancy

The parties agreed as follows:

1. The tenancy began on Oct 8, 2022, and ended on September 30, 2022.
2. The tenant paid rent of \$4,000.00 monthly.
3. The tenant paid a security deposit of \$2,000.00.
4. The landlord did not conduct a condition inspection on moving out. No condition inspection report was completed or submitted.
5. The tenant provided their forwarding address in writing to the landlord before the end of the tenancy.
6. The landlord retains the security deposit without the consent of the tenant.
7. The tenant notified the landlord of a water leak in the faucet on March 9, 2023. The text stated in part:

- We are having a leak underneath our kitchen sink from the pipe. Is it possible to have a plumber in today?

8. The landlord replied:

Hello [tenant], I will arrange a check in as soon as possible but it may take few days.

9. At the landlord's request, the tenant sent him a picture of the leaking part on March 10, 2023.
10. On March 11, 2023, the leak worsened requiring the emergency restoration and plumbing services, and subsequent repairs to the unit and three other units.

Landlord's Testimony

The landlord testified as follows.

11. The tenant is responsible for the leak in the first instance as the faucet and connecting plumbing was previously in good condition. Alternatively, the tenant tried to fix the leak thereby causing worsening of the situation leading to widespread damage.
12. The landlord initially submitted a spreadsheet listing repair expenses of \$28,953.65. An updated Monetary Order worksheet listed repair expenses of \$41,853.00. Subsequent invoices and estimates were submitted.

13. The landlord submitted a Water Loss Project Portal report prepared by the restoration company dated March 26, 2023, which stated (repeated throughout),

“Leak was due to kitchen faucet deficiency”.

14. The report provided details of the attendance of an emergency technician beginning on March 11, 2023, installation of dehumidifiers and air movers (four days), repair and restoration in the kitchen from March 11 – 28, 2023, and estimated costs for repair of kitchen cabinets. Damages to three other units were detailed. The lengthy report included many photographs.

15. The landlord submitted a video of a conversation between him and the tenants on March 11, 2023. The landlord stated the tenants admitted to trying to fix the faucet earlier that day.

16. The landlord claimed the tenant’s attempt to fix the faucet resulted in a small leak becoming a major leak resulting in significant damage.

Tenant’s Testimony

17. The tenant did not damage the faucet or cause the leak. They promptly notified the landlord of the problem, asked for a plumber, and did everything they could to minimize the damage. They did nothing to cause the damage or contribute to the severity of the leak or resultant damage. The landlord is fully responsible as he failed to respond in a responsible, timely, careful and efficient manner.

18. Without delay, the tenant notified the landlord of the leak on March 9, 2023, and asked for a plumber. The landlord did not provide a plumber.

19. The tenant wrapped cloths around the leak and set out bowls for the drips. They stated they knew nothing about plumbing and had no tools. They said this was their attempt to fix the leak, by which they meant to capture the water and prevent run off. The tenant has no tools, such as a wrench. They have no plumbing knowledge. They did nothing except try to contain the water.

20. On March 11, 2023, the leaking worsened. The tenant telephoned the landlord right away and explained the situation was now urgent. The landlord still did not attend or arrange appropriate repair services. Instead, he gave ineffectual, useless advice to the tenant. The parties spoke several times by phone.

21. The tenant did not have an emergency contact for urgent situations. So, that same day, the tenant told the concierge about the situation, and they called an emergency plumber.
22. The landlord finally came to the unit later March 11, 2023. Without the tenant's consent, he secretly recorded a conversation with the tenant. The tenant repeated what is set out above. They did not say they carried out unauthorized repairs.
23. The kitchen had no water and was unusable for 17 days from March 11-28, 2023. They ate meals elsewhere and incurred unexpected expenses.
24. The lower kitchen cupboards were unusable for the duration of the six months of the tenancy. This caused inconvenience and worry about mold.
25. The tenant requested the return of double the security deposit as there was no condition inspection report on moving out, they did not consent to the landlord retaining the security deposit, and he did not return it within 15 days of the later of the provision of the forwarding address or the end of the tenancy.
26. The tenant informed the landlord they did nothing wrong and would not be paying for any damages. Nevertheless, the landlord repeatedly demanded payment from them. The tenant felt harassed. They decided they could not continue living in the unit in the circumstances and vacated after notice at the end of September 2023.
27. The tenant claimed the following in rent reduction:

ITEM	AMOUNT
Rent reduction - 17 days without use of kitchen \$2,193.55 x 20%	548.00
Rent reduction - April to September 2023, 6 months without use of all kitchen cabinets x 5%	1,200.00
TOTAL	5,748.00

Analysis

Only relevant, admissible evidence is considered. Only key facts and findings are referenced.

Credibility

In considering the application, I weighed the credibility of the parties.

I find the tenant's testimony to be supported in all material aspects by documentary evidence and to be the more credible. As they lived in the unit, I find their description of the effect of not having a fully functioning kitchen to be direct, accurate and believable. Their testimony was well supported by evidence including copies of communications with the landlord.

I therefore give little credence to the landlord's assertion that the tenant failed in their responsibility to take care of the faucet, negligently or improperly tried to fix it, or are in any way responsible for the water damage. I find the landlord is attempting to pass a cost onto the tenant for which he is responsible.

So, where the versions of events differ, I give greater weight to the tenant's evidence.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that 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.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to each party to prove their claims.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Four-part Test

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the party failed to comply with the Act, regulations, or the tenancy agreement?

2. If yes, did the loss or damage result from the non-compliance?
3. Has the party proven the amount or value of their damage or loss?
4. Has the party done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act.,

For the following reasons, I find the landlord has failed to meet the burden of proof in his claim against the tenant for damages.

Landlord's Claim --Obligations under the Act

Under the Act, the landlord is responsible for regular repairs and maintenance, such as plumbing. The tenant is required to pay for repairs where damages are caused, either deliberately or because of neglect, by the tenant or guests. The tenant is not responsible for reasonable wear and tear. These obligations are discussed in *RTB Policy Guideline 1.*

Landlord & Tenant – Responsibility for Residential Premises.

I accept the evidence of the landlord's report and its findings, that is, that the cause of the leaking was a deficient kitchen faucet. I find the landlord was responsible to maintain the faucet in good, working condition. When notified by the tenant of a leak, the landlord had an obligation to attend to the matter in a timely way. The landlord failed to do this.

After reviewing all the evidence, texts and reports, I find the tenant did not cause the damage to the faucet or neglected it. I accept their credible testimony they were normally using the faucet when it started to leak and promptly reported it. Their use of the faucet accords with the concept of normal wear and tear. They did nothing to amount to neglect or negligence. This did not try to fix the leak except to attempt to capture the water and minimize the damage.

Emergency

Section 33 states the landlord must provide an emergency contact name and phone number to the tenant. The tenant must contact the landlord or the contact person to report an emergency and ask for repairs.

The tenant only had the landlord's name and number for emergencies. They reported the leak right away to the landlord. They asked for a plumber. The landlord failed in his obligation to provide a plumber, or to attend and investigate. After two days, the tenant reported the worsening situation several times to the only number they had, the landlord's number. Again, the landlord failed to respond in a responsible, timely manner.

The Act states that if there is no response, the tenant must make two attempts to phone, allow a reasonable amount of time to pass, and then arrange to have the repairs done.

I find the tenant complied with the Act, sought help from the concierge who arranged for an emergency plumber, and by acting in a commonsense manner to a worsening situation, helped avert even greater damages. The tenant acted responsibly and sensibly.

The landlord placed considerable importance on his clandestine recording of a conversation with the tenant on March 11, 2023. The video shows the participant's legs, feet and the floor. No faces are shown. The audio is poor and difficult to understand. I do not interpret the conversation to mean anything other than that the tenant tried to soak up and contain the water. I reject the landlord's assertion that the tenant says in the video that they caused the leak to worsen by attempting repairs. I accept the tenant's believable testimony in all respects.

In short, I find the tenant complied with their responsibilities and acted prudently throughout. I find the landlord failed in his obligations to provide an emergency contact and to attend in a prudent and responsible manner when the leak was reported.

I therefore find the landlord has not established the tenant failed to comply with the Act, regulations or tenancy agreement. The landlord has failed to establish the first step in the four-step criteria.

I consequently dismiss the landlord's claim under this heading without leave to reapply.

Tenant's claim

I find the tenant has met the burden of proof for a rent reduction as claimed. The landlord failed to provide a functioning kitchen with running water for 17 days. The landlord then failed to replace the water damaged kitchen cabinets for an additional period of six months.

Section 65(1) of the Act states that if a landlord has not complied with the Act, the director may order a reduction in past rent by an amount that is equivalent to a reduction in the value of a tenancy agreement. *Policy Guideline 16 Compensation for Damage or Loss* provides guidance on the interpretation of this section.

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

Whether or not the restriction of a service or facility is caused by negligence or through no fault of the landlord, an arbitrator may find there has been a breach of contract and award a reduction in rent if the tenant has suffered some loss or damage.

I accept the tenant's credible and reliable testimony in all respects. I find they were without water for 17 days and incurred considerable inconvenience in being unable to use the kitchen for that time.

I accept their description of the partially unusable kitchen space because of water damaged cupboards for the last six months of the tenancy because the lower cabinets were unusable.

I find the tenant has established that the lack of a functioning complete kitchen for six months had a negative impact on their enjoyment of the unit. I accept their testimony that daily meal preparation and storage was hindered. Their ability to enjoy the rental unit was diminished. The tenant had a realistic expectation that they would have a functioning kitchen and that replacement cupboards would be installed in a reasonable time. I am not

convinced that the landlord made reasonable efforts in a sustained, timely and effective manner. I find six months is not a reasonable time.

I find the tenant has established that they incurred the loss they described and that they did what they could to minimize their expenses. However, I am not able to quantify the loss.

I have considered the history of this matter, the testimony and evidence, the Act and the Guidelines. Under the circumstances, I find that a nominal monetary award which reflects that the tenant did suffer some loss in the value of the tenancy agreement is appropriate.

In consideration of the quantum of damages, I refer to the *Residential Tenancy Policy Guideline # 6* which states that in determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

Considering all these factors, I grant the tenant an award of 20% reduction in rent for the 17 days without running water in the kitchen. I grant an award of 5% reduction in rent for the final six months of the tenancy when the tenant did not have use of all the kitchen cupboards, the lower part of which were water damaged.

ITEM	AMOUNT
17 days \$2,193.55 (monthly rent) x 20%	\$548.00
April to September 2023 - 6 months x 5%	\$1,200.00
TOTAL	\$5,748.00

I grant the tenant a Monetary Order of **\$5,748.00**.

Security deposit

I find the tenant is entitled to a doubling of the security deposit as the landlord's right to claim against the deposit was extinguished as they did not carry out the required condition inspection on moving-out.

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

Section 38 of the Act requires the landlord to either return the security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the provision of a forwarding address in writing.

If that does not occur, the landlord is required to pay a monetary award, under section 38(6)(b) of the Act, equivalent to double the value of the deposit.

However, this provision does not apply if:

- the tenant consented in writing that the landlord could keep some or all the deposit to offset damages (Section 38(4)(a)), or
- the tenant has been ordered to pay an amount to the landlord (section 38(3)(b)).

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

The tenancy ended on September 30, 2023. The tenant provided a written forwarding address before they moved out which was received by the landlord.

The tenant did not give the landlord written permission to retain any amount from their security deposit. The landlord did not return the deposit to the tenant.

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 a move-out condition inspection report.

Section 19 of the Residential Tenancy Regulation ("Regulation") requires that condition inspection reports must be in writing. Section 20 of the Regulation requires detailed, specific information to be included in the condition inspection reports.

In accordance with section 38(6)(b) of the Act and *Policy Guideline 17*, I find that the tenant is entitled to receive double the value of their security deposit of \$2,000.00 for a total of \$4,000.00.

I grant the tenant an award of \$4,000.00 under this heading.

Filing fee

As the tenant has been successful, I grant the tenant reimbursement of the filing fee of \$100.00. I deny the landlord's claim for reimbursement of the filing fee.

Summary of Award

ITEM	AMOUNT
Rent reduction	\$5,748.00
Security deposit – doubling	\$4,000.00
Filing fee	\$100.00
TOTAL	\$9,848.00

I grant the tenant a Monetary Order of \$9,848.00.

Conclusion

I grant the tenant a Monetary Order of \$9,848.00. This Monetary Order must be served on the landlord and may be enforced in the courts of the province of BC.

I dismiss the landlord's claims without leave to reapply.

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: November 13, 2023

Residential Tenancy Branch