



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, LRSD, FFL; MNDCT, MNSD, 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*.
- 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:

- A monetary order 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 for the landlord to return the security deposit pursuant to section 38.
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

This is a continuation of a hearing which began August 28, 2023.

The parties attended and had opportunity to provide affirmed testimony, present evidence and make submissions.

Preliminary Issue

During settlement discussions, the tenant agreed to compensate the landlord for damages of **\$547.92**. I grant the landlord an award in this amount.

The balance of the landlord's claim and the tenant's claim remained in dispute.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for compensation for damages caused by the tenant and authorization to apply the security deposit to the award?

Is the tenant entitled to 12 months rent as compensation as the landlord failed to move into the unit within a reasonable time after issuing a Two Month Notice?

Is a party entitled to reimbursement of the filing fee?

Background and Evidence

Not all evidence submitted by the parties is referenced in the Decision. I only refer to key facts and findings upon which my Decision is based. The parties submitted substantial documentation and conflicting testimony in a lengthy hearing.

Overview

This is a cross application. The tenant agreed to compensate the landlord for \$547.92.

The landlord clarified their remaining claim:

1. Compensation for damage caused by the tenant during the tenancy.

Item	Amount
Toilet replacement	128.58
Vanity replacement	402.12
Countertops kitchen replacement	814.56

2. Authorization to apply the security deposit to the award.

The tenant clarified that their application is for:

1. The return of double their security deposit (\$1,100.00 x 2 = \$2,200.00)
2. Compensation of twelve months' rent for the landlord's failure to move into the unit in a reasonable time.

Tenancy

The parties agreed the tenancy began on September 1, 2015, and ended on October 31, 2022. The rent was \$1,100.00. The tenant paid a security deposit and pet deposit each in the amount of \$550.00 for a total deposit (the security deposit) of \$1,100.00. The landlord holds the deposits without the tenant's authorization.

Two Month Notice

The parties agreed as follows. The landlord served the tenant with a Two Month Notice, the tenant disputed the Notice within the permitted time, an Order of

Possession was granted on October 5, 2022, and the tenant moved out on October 31, 2022.

The reason stated in the Notice was that the landlord would occupy the unit.

Condition inspection Report

The parties agreed no condition inspection was conducted on moving in or out. No signed condition inspection reports were submitted as evidence.

The landlord testified she did not issue a Final Notice at the end of the tenancy.

Forwarding address

The parties agreed the tenant provided their forwarding address before moving out.

Landlord's Testimony

1. The landlord referenced *RTB Policy Guideline 40: Useful Life of Building Elements* in calculating her claim. This Guideline provides guidance on the life span of specific building components in calculating damages.
2. The landlord purchased the home in May 2010, a 2-bedroom, 1 bath detached residence.
3. After purchase, the landlord remodelled the interior.
4. In September 2013, the landlord moved out of the home to care for her parents.
5. On August 1, 2015, the tenancy agreement began and lasted 7.5 years.

6. The landlord went into the unit annually but acknowledged she did not thoroughly inspect the unit during the seven-year tenancy. She did not conduct a formal inspection as she had no previous experience as a landlord and no knowledge of structural building elements.
7. During the pandemic, the landlord did not enter the unit for an inspection because the tenant stated they were not complying with covid protocols and were not vaccinated. As soon as the landlord believed it was safe to move back into the house, she gave the tenant a Two Month Notice.
8. The tenant disputed the Two Month Notice and an Order of Possession was granted on October 5, 2022, requiring the tenant to vacate by October 31, 2023. The tenant moved out then.
9. Before the tenant moved out, the landlord believed the unit was in good condition. She was not expecting significant renovations or repairs.
10. The landlord had no experience with repairs. She believed the unit had been well cared for as the tenant had never complained about anything major.
11. After the tenant moved out, the landlord had a good look at the house for the first time since the tenant moved in. The landlord became aware of the poor condition of the unit. She suddenly realized the house needed significant work.
12. When the tenant moved out, the landlord observed there was mold in the unit, the kitchen and bathroom flooring was damaged, and the kitchen countertops were damaged.
13. The parties agreed there was mold in the house at the end of the tenancy. The landlord submitted many photographs showing widespread distribution of black mold. Drywall had to be replaced throughout the house. The landlord does not seek compensation for the cost.

14. The work carried out involved the removal of drywall, walls, flooring and replacement of some doors. A new stove and kitchen countertop were installed. Living in the unit would have been impossible while the work took place. The renovations were not cosmetic. Some work remains to be done. Scheduling and completion have been delayed because of other circumstances, such as availability of labour and products.
15. The landlord said renovations continued in the house from shortly after the tenant moved out until mid-September 2023. The work is not totally completed.
16. The landlord moved into the house on September 24, 2023. Accordingly, the house was vacant after the tenant moved out, from November 1, 2022, until September 24, 2023, almost 11 months.
17. The landlord did not rent the unit to anyone in this time. Repair work took place continuously.
18. The landlord claimed compensation for a new toilet and vanity. Each were new in 2010. The landlord submitted supporting receipts. She claimed the tenant damaged the toilet thereby requiring its replacement. She claimed the tenant caused water damage to the vanity thereby requiring its replacement. The tenant said the plumber who attended at the unit told her the tenant was responsible. No supporting documents such as a report from the plumber were submitted.
19. The landlord claimed compensation for a replacement kitchen countertop, new in 2010. The landlord submitted a supporting receipt. She claimed the tenant damaged the countertop thereby requiring its replacement.
20. The landlord did not submit evidence of the age of the items or the condition of the unit on moving in.

21. The landlord did not submit supporting evidence that the tenant was responsible for the damage claimed.

The tenant testified as follows.

1. They did not cause any damage to the unit other than normal wear and tear.
2. The items for which the landlord claimed damages were in used condition when they moved in.
3. The items were past their useful life.
4. Although they did not submit any supporting evidence, they told the landlord many times about the deteriorating condition of the unit which she ignored.
5. The landlord knew or should have known that substantial repairs and renovations were needed.
6. The landlord should have issued a Four Month Notice.
7. The tenant was under extreme stress to find a new place to live that they could afford. They had to take time off work to search for housing on short notice.
8. They are not responsible for the damage.

When I asked the tenant if a year was reasonable for work like this to take place in the community, the tenant replied affirmatively. The tenant later changed their response.

The tenant seeks a Monetary Order of twelve times the rent pursuant to section 51 and reimbursement of the filing fee. They seek return of double their security deposit.

The landlord claims a Monetary Order for damages and authorization to apply the deposit to the award.

Analysis

Not all evidence submitted by the parties is referenced in the Decision. I only refer to key facts and findings upon which my Decision is based.

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 the landlord to prove their claims. Also, it is up to the tenant to establish 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 other 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 applicant proven the amount or value of their damage or loss?
4. Has the applicant 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.

Landlord's Claims - Damages

The landlord acknowledged the items for which she claims compensation were used when the tenant moved in. She did not provide a condition inspection report or any evidence of their state of repair at the beginning of the tenancy. The landlord did not provide evidence of the age or cost of the items when originally purchased and installed.

Without such evidence, I am unable to determine if the tenant is responsible for damage to the unit during the tenancy.

I find the tenant's use to be no more than normal wear and tear.

I find the landlord has failed to prove the tenant is in any way responsible for the damages claimed.

I therefore dismiss the landlord's application for damages without leave to reapply.

Tenant's Claim for Compensation

The landlord must do what they say they are going to do within a reasonable time after the effective date of the Notice.

In this case, the effective date of the Notice is October 31, 2022, and the tenant moved out then. So, the landlord must have moved in within a reasonable period after November 1, 2022.

RTA section 51(2)(b) says the landlord must pay an additional amount that is equivalent of 12 times the monthly rent if the rental unit is not used for the purpose stated in the Notice for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice

Residential Tenancy Policy Guideline #50 Compensation for Ending a Tenancy addresses the definition of reasonable time. The Guideline says a reasonable period is usually about 15 days. The period may be longer depending on the circumstances.

I have found the landlord moved in on September 24, 2023, eleven months after the tenant moved out. Considering the extent of the repairs needed, including the presence of mold throughout the unit, I find the landlord did move in within a reasonable time.

I accept the landlord's testimony she was unaware of the deteriorated condition of the house at the end of the tenancy, did not receive information from the tenant to the contrary, and was hindered by shortages of labor in getting the work done any quicker.

I find the landlord took steps, within a reasonable period after the effective date of the Notice, to accomplish the stated purpose for ending the tenancy.

I accept the landlord's testimony accompanied by dated receipts for work done. I dismiss the tenant's claim for twelve months rent as compensation.

I therefore dismiss the tenant's claim under this heading without leave to reapply.

Security deposit

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 in or 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 must 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 October 31, 2022. The tenant provided a written forwarding address at that time.

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.

The landlord applied for dispute resolution to claim against the deposit for damages on November 14, 2022..

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-in and move-out condition inspection report.

In accordance with section 38(6)(b) of the Act and Policy Guideline 17, the tenant is entitled to receive double the value of their security deposit of \$1,000.00 in the total amount of \$2,200.00. The landlord must pay interest of \$19.76.

Filing fee

I grant the tenant \$100.00 award for reimbursement of the filing fee.

Summary of Award

ITEM	AMOUNT
Security deposit	\$1,100.00
Security deposit	\$1,100.00
Interest on security deposit	\$19.76
Filing fee	\$100.00
(Less agreed award)	(\$547.92)
TOTAL	\$1,771.84

I grant the tenant an award of **\$1,771.84**.

Conclusion

I grant the tenant a Monetary Order of \$1,771.84. This Monetary Order must be served on the landlord. The Order may be filed and enforced in 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: December 1, 2023

Residential Tenancy Branch