



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Landlord: MNRL-S, MNDL-S, MNDCL-S,, FFL
Tenant: MNDCT, MNSD, FFT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for unpaid utilities, money owed or monetary loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- a monetary order for money owed or monetary loss pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch’s teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence packages. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant duly served with each other's the Applications and evidentiary materials.

Issue(s) to be Decided

Are the parties entitled to the monetary orders requested?

Is the tenant entitled to the return of their security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications before me, and my findings around it are set out below.

This fixed-term tenancy began on November 1, 2021, and ended on or about February 28, 2023. Monthly rent was originally \$2,300.00 and increased to \$2,400.00, payable on the first of the month. The landlord still holds the security deposit of \$1,500.00 for this tenancy. Both parties confirmed that the tenant sent the landlord their forwarding address on May 11, 2023.

Tenant's Claims

The tenant filed an application on June 30, 2023, requesting the following monetary claims:

Item	Amount
Lack of carpet repair	\$1,800.00
Lack of access to elevator for 86 days due to broke key fob	600.00
Rent overcharge	162.00
Strata move-in fee	75.00
Return of security deposit	1,500.00

Total Monetary Order Requested by the Tenant	\$4,137.00
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The tenant is requesting the return of their security deposit, plus the additional monetary orders listed above. The tenant noted that the landlord failed to fill out move-in and move-out inspection reports for this tenancy.

The tenant testified that the landlord failed to replace the damaged carpet after a water leak in the unit. The tenant is requesting compensation in the amount of \$1,800.00 for the lack of proper repair.

The landlord responded that the carpet was cut in order to dry it out after the leak. The landlord testified that a rug was placed over the area, and the tenant's ability to enjoy the suite was not affected by the condition of the carpet. The landlord feels that the tenant failed to support the loss in the amount claimed, and notes that the current tenant is not affected by the carpet.

The tenant is requesting compensation in the amount of \$600.00 as they were unable to use the FOB for 86 days, which is used to access the two elevators. The tenant testified that they had to use a workaround, which was to buzz themselves in using their phone. The tenant testified that this was problematic as the access would frequently time out. The tenant feels that their access to an essential facility was denied due to the broken FOB.

The landlord testified that they had attempted to address the FOB issue right away, and had informed the building manager about the issue. The landlord testified that they tried to resolve the issue to the best of their ability, and that the issue resolved when the FOB started working again.

The tenant is also requesting a refund of \$162.00 in rent as they feel that the landlord had raised the rent above the allowable maximum. The tenant testified that the landlord increased the rent from \$2,300.00 to \$2,400.00.

The landlord responded that the tenant had agreed to the additional rent increase, and disputes that the additional rent should be refunded.

Lastly, the tenant is requesting reimbursement of a move-in fee that they had paid the landlord. The tenant testified that this move-in fee was not disclosed to them on the tenancy agreement, nor did they agree to it.

The landlord responded that the move-in fee was \$150.00, and that they had already reimbursed the tenant \$75.00. The landlord testified that they had noted on the online advertisement that the tenant would be responsible for the move in fee.

Landlord's Claims:

The landlord filed an application on May 25, 2023, requesting the following claims.

Item	Amount
Unpaid utilities	\$88.84
Quote for repairing damage to the rental unit	2,500.00
Cleaning	\$326.81
Total Monetary Order Requested by the Landlord	\$2,915.65

The landlord testified that the tenant owes \$88.84 in unpaid utilities, which is not disputed by the tenant.

The landlord testified that the tenant caused significant damage to the suite, which was not properly repaired by the tenant. The landlord testified that the tenant had installed an exercise pole without the landlord's permission, and caused damage to the popcorn ceiling. The landlord testified that the tenant's attempted repairs were insufficient, and is very noticeable. The landlord obtained three quotations for repairs, and submitted a claim for the least expensive repairs.

The landlord testified that the wall was also damaged by the tenant's office chair, and that the attempted repairs were obvious and not sufficient.

The tenant disputes the landlord's monetary claims, and feels that \$500.00 is excessive for the amount of damage to the wall. The tenant also feels that the repairs they made to the popcorn ceiling were sufficient, and argued that the landlord was able to re-rent the suite as is.

The landlord also submitted a claim for cleaning as they feel that the tenant failed to leave the suite in reasonably clean condition. The landlord submitted the invoice for the cleaning, as well as a video they took of the suite at the end of the tenancy. The landlord notes that several areas were not properly cleaned, and noted that the move-out inspection was rushed as the tenant had to leave.

The tenant felt that they had left the rental unit in reasonably clean condition, and argued that the landlord did not raise any issues before they filed this application.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the party making the claim to prove, on a balance of probabilities, that the other party had caused damage and losses in the amounts claimed in their application.

Landlord's Monetary Claims:

Sections 23 and 35 of the *Act* require the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that “the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished”, as noted in sections 24(2) and 36(2) of the *Act*.

As noted in Residential Policy Guideline #17:

The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required (the landlord must use Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22) to propose a second opportunity); and/or*
- *having made an inspection does not complete the condition inspection report.*

I must note, however, that the above does not exclude the landlord from being able to file a monetary claim for damages as noted in the policy guideline:

A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:

- *to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;*

- *to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- *to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and*
- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

Accordingly, I will consider the landlord's claims.

As the tenant does not dispute that they owe the unpaid utilities, I allow the landlord's monetary claim in the amount of \$88.84.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, I am satisfied that the landlord had provided sufficient evidence that the despite the cleaning done by the tenant, the rental unit was not reasonably clean. The video submitted by the landlord shows several areas that were not clean, including the shower and dirty carpet. I find that the landlord provided sufficient proof of the loss claimed. Accordingly, I allow the landlord's claim for reimbursement for the cost of professional cleaning.

I am also satisfied that the tenant had caused substantial damage to the rental unit, which was not properly repaired or restored to the original condition by the tenant. I find that the ceiling and walls were obviously very damaged at the end of the tenancy. I accept that the landlord obtained multiple quotes, and I find the amounts claimed to be reasonable estimates of the cost of repairing this damage. Accordingly, I allow the landlord's monetary claim for repairs.

Tenant's Monetary Claims:

Section 43 of the *Act* states the following about rent increases:

Amount of rent increase

- 43** (1)A landlord may impose a rent increase only up to the amount
- (a)calculated in accordance with the regulations,
 - (b)ordered by the director on an application under subsection (3), or

(c)agreed to by the tenant in writing.

I am not satisfied that the tenant had agreed to the additional rent increase in writing. Accordingly, I allow the tenant's monetary claim for reimbursement in the amount of \$162.00.

I have considered the tenant's monetary claim of \$1,800.00 for the carpet. In assessing a monetary claim, I note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. In this case, although the carpet may have been damaged during this tenancy, I find that the tenant failed to support that the condition of the carpet caused them a loss of \$1,800.00, or any loss whatsoever. Accordingly, I dismiss the tenant's monetary claim for the carpet in the amount of \$1,800.00 without leave to reapply.

Similarly, although I find that the tenant's FOB was not working properly, and although I acknowledge that the tenant was impacted by the FOB issue, I am not satisfied that the tenant provided sufficient evidence to support the rent reduction claimed. I find that the tenant was provided with a temporary workaround, and although inconvenient, the tenant still had a method of accessing the elevators. I find that the landlord had attempted to resolve the issue as soon as possible, but due to unknown reasons, the FOB did not work for a period of time. I find that the tenant suffered a slight inconvenience rather than any actual loss, and therefore I dismiss the tenant's claim for loss in the amount of \$600.00, without leave to reapply.

The tenant also requested reimbursement of the move in fee. In this case, I find that the tenant agreed to pay this fee to the landlord, which was reduced by 50% by the landlord. As the tenant agreed to pay this amount, I do not find that the tenant is entitled to a refund of the move-in fee paid.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary awards granted to the landlord. As per the RTB Online Interest Tool found at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>, over the period of this tenancy, \$30.44 is payable as interest on the tenant's security deposit.

I allow both parties to recover the filing fees paid for their applications. As both parties obtained the following offsetting monetary awards for the filing fee, no order will be made in regards to the recovery of their filing fees.

Conclusion

I issue a Monetary Order in the amount of **\$1,223.21** in the landlord's favour, as set out in the table below:

Item	Amount
Total Monetary Orders to Landlord	\$2,915.65
Total Monetary Order to Tenant	-162.00
Less security deposit plus applicable interest	-\$1530.44
Total Monetary Order to Landlord	\$ 1,223.21

The Landlord is provided with this Order in the above terms and the tenant must be served with a copy of this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the remaining 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: January 10, 2024

Residential Tenancy Branch