



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNRL-S, MNDL-S, MNDCL, FFL**
 MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the Applicant's application under the *Residential Tenancy Act* (Act) for:

1. A Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit under sections 26, 38, 46 and 67 of the Act;
2. A Monetary Order for the Respondent to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit under sections 38 and 67 of the Act;
3. A Monetary Order for compensation for a monetary loss or other money owed under section 67 of the Act; and,
4. Recovery of the application filing fee under section 72 of the Act.

This hearing also dealt with the Applicant's repeat application under the Act for:

1. A Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit under sections 26, 38, 46, and 67 of the Act;
2. A Monetary Order for the Respondent to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit under sections 38, and 67 of the Act;
3. A Monetary Order for compensation for a monetary loss or other money owed – holding security and/or pet damage deposit under sections 38, and 67 of the Act; and,
4. Recovery of the application filing fee under section 72 of the Act.

The hearing was conducted via teleconference. The Applicant B.X., Applicant's witness, L.H., the Respondent, J.C., and interpreter, M.X., attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (RTB) Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Respondent J.C. was deemed served on September 27, 2023 with the Applicant's primary application, by registered mail in accordance with sections 89(1)(c) and 90(a) of the Act, the fifth day after the registered mailing. The Applicant provided a Proof of Service form #RTB-55 attesting to this service. The Respondent confirmed receipt.

I find that Respondent J.C. was deemed served on October 26, 2023 with the Applicant's secondary application, by registered mail in accordance with sections 89(1)(c) and 90(a) of the Act, the fifth day after the registered mailing. The Applicant provided a Proof of Service form #RTB-55 attesting to this service. The Respondent confirmed receipt.

Service of Evidence

Based on the submissions before me, I find that the Applicant's evidence was served to the Respondent in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Respondent's evidence was served to the Applicant in accordance with section 88 of the Act.

Issues to be Decided

Applicant's primary application:

1. Is the Applicant entitled to a Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit?

2. Is the Applicant entitled to a Monetary Order for the Respondent to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit?
3. Is the Applicant entitled to a Monetary Order for compensation for a monetary loss or other money owed?
4. Is the Applicant entitled to recovery of the application filing fee?

Applicant's secondary application:

1. Is the Applicant entitled to a Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit?
2. Is the Applicant entitled to a Monetary Order for the Respondent to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit?
3. Is the Applicant entitled to a Monetary Order for compensation for a monetary loss or other money owed – holding security and/or pet damage deposit?
4. Is the Applicant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on May 1, 2022. The fixed term ended on April 30, 2023, then the tenancy continued on a month-to-month basis. Monthly rent was \$1,700.00 payable on the last day of each month. A security deposit of \$850.00 and a pet damage deposit of \$850.00 were collected at the start of the tenancy. The Respondent applied to have the deposits returned to him, and his direct request application was granted. The previous file number is copied on the cover sheet of this Decision.

The tenancy ended June 30, 2023.

The Applicant said the parties did a walk through of the rental unit at move-in but the Applicant did not produce a report of their findings.

At move-out, the Applicant stated they did not do a move-out condition inspection because they were too busy at that time. The Applicant did not produce a report of the move-out condition inspection. The Respondent stated that the Applicant did come in

four or five days before the Respondent moved out, but the Applicant did not mention any damage at that time.

Utilities for last two months of tenancy

The Applicant testified that the Respondent was responsible for 2/3 of the utilities bills as noted on section 10. Electricity of the Additional Agreement. The Applicant uploaded a copy of the last two months of the Respondent's tenancy. The Applicant seeks \$189.04.

The Respondent agrees that they owe their share of the utility bills for the last two months of their tenancy.

The Applicant seeks \$240.00 towards cleaning the rental unit after the Respondent vacated. The Applicant uploaded pictures of dirty baseboards, dirty shower stall and baseboards around the shower enclosure, dirty range hood buttons, garbage left under both beds, dirty floors, dirty bottom of kitchen countertop next to the floor, and dirty toilet.

According to the Residential Agreement Addition Clause (Additional Agreement) which is attached to the tenancy agreement between the parties, section 6. Obligation of Damage, says the Respondent is responsible for repairing damage, repairing water pipes, electric lighting, or other equipment in the house. Section 15. Hygiene, of the Additional Agreement says that the Respondent has to keep the house nice and clean.

The Applicant did the cleaning herself with the help of some friends. The Applicant said they had to purchase the cleaning products, and they had to take the day off work, and do all the cleaning.

The Respondent said prior to move-in, they never discussed damage with the Applicant. The Respondent submits that most of the damages the Landlord is claiming are reasonable wear and tear.

The Applicant claims \$100.00 to replace a damaged sofa. The Applicant rented a furnished rental unit to the Respondent. The Applicant did not upload an inventory of the furniture items left in the rental unit for the Respondent's use.

The Applicant claims \$200.00 to replace damaged flooring in the washroom. The Applicant relies on section 18 of their Additional Agreement which states:

18. Flood

- a. If the tenant(s) cause any flooding damage during their tenancy term, the tenant(s) will respond the fee of repair.*

The Applicant claims \$150.00 to replace the washroom baseboard because it was rotted.

The Applicant claims \$350.00 to repair a damaged wall. The Applicant said the Respondent left a large scratch on the wall. The Applicant uploaded picture evidence of this damage.

Analysis

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.

Is the Applicant entitled to a Monetary Order for unpaid rent or utilities?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations, or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

The tenancy agreement requires the Respondent to pay 2/3 of the total utility charges to the Applicant. The Respondent agrees that they owe 2/3 of the two utility bills which totals \$189.04.

Based on the testimonies of the parties, I find that the parties have settled this matter. Under section 63 of the Act, I find this matter is settled. Therefore, I grant the Applicant **\$189.04** compensation for unpaid utilities under section 67 of the Act.

Is the Applicant entitled to a Monetary Order for damage to the rental unit or common areas?

Section 32(3) of the Act states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act states 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.

To be awarded compensation for a breach of the Act, the Applicant must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

The parties did not participate in move-in and move-out condition inspections. The Applicant seeks compensation for alleged needed cleaning, replacement of alleged damaged furniture, and replacement or repairs of alleged damages. The Respondent testified that the damages the Applicant is reporting are just reasonable wear and tear.

Sections 23 and 35 of the Act say the parties must participate in move-in and move-out condition inspections. I find there is no ability to assess the condition of the rental unit at the start of the tenancy and compare it to the condition of the rental unit at the end of the tenancy as the parties did not participate in move-in and move-out condition inspections. I find the Applicant has not substantiated their claims for cleaning, replacement of furniture, and other damages. I decline to order compensation to the Applicant for those claims.

Is the Applicant entitled to recover the application filing fee?

As the Landlord was partially successful in their application, I find that the Landlord is entitled to recover one **\$100.00** application filing fee under section 72 of the Act.

Conclusion

I grant the Applicant a Monetary Order in the amount of \$289.04, and the Respondent must be served with this Order as soon as possible. Should the Respondent fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

The Applicant's claims for a Monetary Order for the Respondent to pay to repair the damage to the rental unit is dismissed.

The Applicant's claims for a Monetary Order for compensation for a monetary loss or other money owed is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: February 27, 2024

Residential Tenancy Branch