



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes For the Landlord: MNDL-S, LRSD, FFL
For the Tenants: MNSDB, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The landlord's application pursuant to the Act is for:

- a monetary order for compensation for damage and loss under the Act, the Regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain part of the security and pet deposits (the deposits), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

The tenants' application pursuant to the Act is for:

- an order for the return of the deposits, pursuant to section 38 of the Act; and
- an authorization to recover the filing fee for this application, under section 72.

Landlord ME (the Landlord) and tenants WS (the Tenant) and KH attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties each confirmed receipt of the notices of application and the evidence (the materials) and had enough time to review these documents.

Based on the testimonies I find that each party served the materials in accordance with section 89 of the Act.

Issues to be Decided

Is the Landlord entitled to:

1. a monetary order for loss?
2. an authorization to retain part of the deposits?
3. an authorization to recover the filing fee?

Are the Tenants entitled to:

1. an order for the return of the deposits?
2. an authorization to recover the filing fee?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Both parties agreed the tenancy started on November 1, 2020 and ended on August 5, 2023. Monthly rent when the tenancy ended was \$1,800.00, due on the first day of the month. The Landlord collected and holds the \$900.00 security deposit and \$900.00 pet deposit.

The Landlord received the forwarding address in writing on September 2, 2023.

The Tenants did not authorize the Landlord to retain the deposits.

The Landlord submitted her application on September 17, 2023.

The total amount the Landlord is seeking to retain from the deposits, including the filing fee, is \$1,736.41.

The parties agreed they inspected the rental unit when the tenancy ended but did not complete a condition inspection report (the report). The Landlord completed the move out report later and forgot to sign it.

The Landlord is seeking \$729.31 to purchase a new yard faucet and \$257.60 for the labour to replace it, as the Tenants did not replace the damaged faucet. The Landlord submitted a quote showing an "outdoor hot and cold frost free sill faucet" and the shipping cost is the amount claimed. The Landlord also submitted an email regarding the labour cost to replace the faucet:

As per our phone conversation: Our service rates are \$115/hr with a minimum 1-hr call out, rounding +/- to the nearest ¼ hour once the 1-hr minimum is reached.
We would allow for 2 hours for the plumber to complete the work, however, he may

complete in less time, so long as he doesn't run into any issues.

The Woodford Freezeless Hot/Cold wall faucet assembly is showing as available to order from our supplier @ \$285.98 +\$25 freight and would need 3-5 business days for delivery.

You would be looking at approximately. \$475-550 for the job, including parts and labour and tax.

The Landlord is seeking \$257.60, as this is 2 hours of labour at \$115.00 plus 12% tax.

The Tenant affirmed that the damaged faucet is not available for sale in Canada and a similar faucet costs less than the amount claimed by the Landlord. The Tenants submitted a quote for a similar faucet emailed to the Landlord on September 2, 2023: "Faucet, sillcock, freezeless, hot and [MISSING INFORMATION], \$238.28" and stated that his friend would have replaced the faucet in less than one hour.

The Landlord testified the faucet mentioned in the Tenant's quote has a different handle and the damaged faucet had a unique single handle.

The Landlord believes the damaged faucet was installed prior to 2018. The Tenants do not know when it was installed.

The Landlord said the amount claimed for the new faucet and labour were subtracted from the payment received for the sale of the rental unit. The Tenants do not believe that these amounts were subtracted from the payment received for the sale of the rental unit.

The Landlord is seeking \$649.50, as the Tenants damaged the refrigerator. The Landlord submitted two photographs showing a cracked bin in the door and a crack on the refrigerator's interior bottom. The Landlord also submitted a quote indicating that a similar new refrigerator cost \$1,549.99 on sale. The Landlord is only seeking the amount claimed because the refrigerator was 6-year-old when the tenancy ended.

The Tenant affirmed the refrigerator was working when the tenancy ended and there was no need to replace it due to the cracks.

The Landlord stated she paid around \$150.00 to replace the door bin, the refrigerator was working when the tenancy ended and when she sold the rental unit there was no deduction in the payment received for the sale of the rental unit.

The Tenant does not agree to pay for the repair as he is not sure how much the Landlord paid.

Analysis

Pursuant to Rule of Procedure 6.6, 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 the case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the who claims compensation must minimize the losses.

Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act or the tenancy agreement is due. It states the applicant has to prove the respondent failed to comply with the Act or the agreement, the applicant suffered a loss resulting from the respondent's non-compliance, and the applicant proves the amount of the loss and reasonably minimized the loss suffered.

Deposit

Section 38(4) allows a landlord to retain from a deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain the deposit, section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Section 38(6) of the Act states that if the landlord does not return the deposits or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposits.

Policy Guideline 17 states that "If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit."

Policy Guideline 17 also states “The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on: a landlord’s application to retain all or part of the security deposit unless the tenant’s right to the return of the deposit has been extinguished under the Act.”

I accept the undisputed and convincing testimony that the tenancy ended on August 5, 2023 and the Landlord received the forwarding address in writing on September 2.

As the Landlord submitted her application on September 17, 2023 seeking to retain \$1,736.41 and did not return the balance of the deposits, in accordance with section 38(6)(b) of the Act, I find the Tenants are entitled to double the deposits. If the Landlord does not seek to retain all the deposits the Landlord must return the balance of the deposit in the timeframe of section 38(1) of the Act.

Furthermore, per sections 35(3) and (4) of the Act, the Landlord had to complete the move out report and sign it during the move out inspection. As the Landlord did not sign the move out report on the move out inspection, the Landlord extinguished her right to claim against the deposits, per section 36(2)(c) of the Act. When a landlord extinguishes the right to claim against the deposit and does not return it within 15 days after the end of the tenancy and receiving the forwarding address, the landlord also must return double the deposits to the tenant.

According to the deposit interest calculator (available at <http://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html>), the interest accrued on the deposit is \$46.13.

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the Tenants are entitled to a monetary award of \$3,646.13 (double the deposits of \$1,800.00 plus the interest accrued).

Faucet

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.

I accept the uncontested testimony that the Tenants damaged the yard faucet.

The parties offered conflicting testimony about the faucet’s characteristics. The Landlord did not explain why the faucet suggested by the plumber is not similar to the faucet

mentioned in the \$729.31 quote. The Tenant did not sufficiently explain why the faucet in the \$238.28 quote is similar to the damaged faucet. The quote submitted by the Tenant is missing information.

Considering the suggestion from the plumber, I find it reasonable to award the Landlord a replacement faucet in the amount of \$285.98, plus \$25.00 freight and 12% tax, as the Landlord suffered this loss due to the Tenants' breach of section 32(3) of the Act by not replacing the damaged faucet before the end of the tenancy.

The labour quote is vague, as it states that the replacement labour would be a two hour service, but it could be less than this. The Tenant did not explain how his friend would have replaced the faucet in less than one hour.

Considering all of the above, I find it reasonable to award the Landlord one hour of labour at \$115.00, plus 12% tax.

I do not find reasonable to reduce the amount of the loss because of the faucet's useful life, as the Tenants damaged the original faucet. Furthermore, the Tenants only emailed the Landlord suggesting they would like to replace the faucet on September 2, 2023, almost one month after the tenancy ended. The Tenants had to repair the faucet by the end of the tenancy.

Based on the Landlord's more convincing testimony, I find the Landlord proved that the rental unit's sale price was reduced because of the damaged faucet.

Thus, I award the Landlord \$285.98 for the faucet, \$25.00 for the shipping, \$115.00 for the labour and 12% tax, in the total amount of \$477.10.

Refrigerator

I accept the uncontested testimony that the Tenants damaged the refrigerator by cracking its door bin and interior bottom, but the refrigerator was working when the tenancy ended.

As the refrigerator was working when the tenancy ended and it was 6-year-old, I do not find it necessary to replace it due to the two cracks caused by the tenants.

However, I find the Tenants breached section 32(3) of the Act by damaging the refrigerator, as they cracked its door bin and interior bottom and the Landlord suffered a loss due to the Tenants' actions.

Considering the Landlord did not submit a receipt for the replacement of the door bin, and the Landlord's vague testimony about the cost to replace the door bin, I find reasonable to award the Landlord compensation in the amount of \$100.00 for the refrigerator damages plus 12% tax.

Thus, I award the Landlord \$112.00.

Filing fee and summary

As both parties were successful with their applications, each party will bear their own filing fee.

In summary, I awarded the Landlord:

Item	Amount \$
Faucet	477.10
Refrigerator	112.00
Total	589.10

I awarded the Tenants \$3,646.13

Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties.

Thus, I award the Tenants \$3,057.03.

Conclusion

Per section 38 of the Act, I award the Tenants \$3,057.03. The Tenants are provided with this order in the above terms and the Landlord must be served with this order.

Should the Landlord 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.

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: March 21, 2024

Residential Tenancy Branch