



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: MNDCT, RPP, OLC, FFT
 TT: MNSDS-DR, FFT
 LL: MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant submitted two Applications. The Tenant’s first Application for Dispute Resolution was made on October 25, 2023 and the Tenant’s second Application was made on December 10, 2023, (the “Tenants’ Applications”). The Tenant applied for the following relief, pursuant to the *Act*:

- a monetary order for damage or compensation;
- an order for the Landlord to return the Tenant’s personal property;
- an order that the Landlord comply with the Act, tenancy agreement, or regulations;
- an order granting the return of all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Landlord’s Application for Dispute Resolution was made on November 14, 2023 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the original hearing at the appointed date and time. At the start of the original hearing, the parties confirmed that the tenancy has since ended. As such, I find that the Tenant's claim for an order that the Landlord comply is now moot, as there is no longer a tenancy in place. I therefore dismiss this claim without leave to reapply. The original hearing was adjourned based on the Landlord's request for medical reasons based on medical documents submitted in support.

The hearing was reconvened on April 16, 2024 and was attended by the Tenant, the Tenant's witness and the Landlord. The Landlord confirmed receipt of the Tenant's proceeding package and evidence relating to the Tenant's first Application made on October 25, 2023. I find these documents were sufficiently served pursuant to Section 71 of the Act.

The Tenant confirmed receipt of the Landlord's proceeding package relating to the Landlord's Application made on November 14, 2023. I find this document was sufficiently served pursuant to Section 71 of the Act.

The Tenant stated that they were provided with a disk containing the Landlord's evidence, however, he was not able to open the documents on the disc. The Tenant confirmed that he received the Landlord's follow up emails containing the Landlord's evidence attached. The Tenant stated that he was unable to view the video evidence.

According to Rule of Procedure 3.10.5 Confirmation of access to digital evidence

The format of digital evidence must be accessible to all parties. Before the hearing or conference, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence. If a party or the Residential Tenancy Branch is unable to access the digital evidence, the director may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10 and fifteen days for an application under Rule 11), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

In this case I find that the Landlord did not submit evidence to support that they confirmed the Tenant has playback equipment or is otherwise able to gain access to the

evidence. As such, I find that I am unable to consider the Landlord's video evidence, as by doing so would prejudice the Tenant who was unable to view the videos.

The Landlord confirmed receipt of the Tenant's Proceeding Packages and evidence relating to the Tenant's second Application. During the second adjourned hearing, the Landlord stated that they could not access the Tenant's digital evidence. The Tenant provided several links on a word document to access their digital evidence. I was unable to retrieve the Landlord's digital evidence through the links provided. As such, I am unable to consider the Tenant's digital evidence as well.

Issue(s) to be Decided

1. Is the Tenant entitled to monetary compensation, pursuant to Section 67 of the Act?
2. Is the Tenant entitled to an order for the return of their personal property, Pursuant to Section 65 of the Act?
3. Is the Tenant entitled to the return of their security deposit, pursuant to Section 38 and 67 of the Act?
4. Is the Tenant entitled to the return of their filing fee, pursuant to Section 72 of the Act?
5. Is the Landlord entitled to a monetary order for unpaid rent or utilities, pursuant to Section 67 of the Act?
6. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 of the Act?
7. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the Act?
8. Is the Landlord entitled to retain the Tenant's security deposit pursuant to Section 38 of the Act?

Background and Evidence

The parties testified and confirmed to the following terms of the tenancy; the tenancy began on August 15, 2021, the Tenant received the keys on August 14, 2021. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,226.83 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$592.50 which the Landlord continues to hold. The Tenant vacated the rental unit on October 28, 2023.

Tenant's Claims

The Tenant is claiming for the return of their personal property or compensation in the amount of \$3,615.98. The Tenant stated that on October 3, 2023 he notified the Landlord that he would be going on a trip until October 16, 2023. The Landlord requested access to the rental unit to have the carpets cleaned. The Tenant consented to the Landlord's entry. On October 21, 2023 the Tenant noticed his archery equipment was missing. The Tenant stated that he tried to discuss the whereabouts of the missing equipment with the Landlord and reported the missing equipment to the Police. To date, the Tenant's archery equipment has not yet been returned to the Tenant.

The Tenant stated that his possessions could have been taken by the Landlord, or the carpet cleaner while the Tenant was away from the rental unit. The Tenant stated that the Landlord also conducted several showings in the rental unit once he returned from his trip. As such, it could have been taken by someone viewing the unit.

The Tenant provided an itemized list of missing items and their value, which has been reproduced below;

- Plano - Bow Guard Case - \$119.99
- 6 arrows \$120.00
- 2 trigger releases - \$100.00
- Hoyt Carbon Matrix Bow - \$1,999.00
- Sjut Hagg bow site - \$597.00
- QAP Ultra Rest HDX - \$229.99
- Hoyt Stabilizer - \$110.00
- Bow Tools & Accessories \$50.00
- Bushnell Vortex Range Finder \$300.00

The Landlord denied taking any of the Tenant's possessions. The Landlord stated that she accompanied the carpet cleaner during the entire visit and that they did not take the items either. The Landlord stated that she has the carpets cleaned annually. The Landlord stated that she suspects that the Tenant is fabricating the story as he did not provide sufficient notice to end tenancy prior to vacating the rental unit and is trying to justify his actions.

The Tenant is also seeking the return of their security deposit. The Tenant stated that they provided the Landlord with his forwarding address in writing on October 28, 2023. The Landlord confirmed receipt on October 31, 2023.

Finally, the Tenant is seeking the recovery of their \$100.00 filling fee.

The Landlord's claims

The Landlord is seeking monetary compensation in the amount of \$3,325.90. The Landlord has provided a monetary order worksheet containing an itemized list of claims which has been reproduced below;

The Landlord is claiming \$1,226.83 for loss of rent for November 2023. The parties agreed that the Tenant provided the Landlord with their proper notice to end tenancy on October 17, 2023, with a move out date of end of November 2023. The Landlord stated that the Tenant vacated the rental unit before the end of October 2023 and did not pay rent for November 2023. The Landlord stated that despite their best efforts, they were unable to re-rent the rental unit for November 2023.

The Tenant stated that the Landlord had offered a possible end of October 2023 move out date if she could find a new tenant in time. The Tenant stated that he vacated the rental unit before the end of October 2023 under duress, after finding his possessions had been taken. The Tenant stated that the Landlord completed a renovation after the Tenant vacated the rental unit and that the Landlord reposted the rental unit for rent on November 4, 2023 advertising a renovated rental unit. The Landlord stated that she was using older photos in the advertisement and that she did not complete any renovations.

The Landlord is claiming \$ 193.78 to change the locks and keys to the rental unit. The Landlord stated that the Tenant did not return the keys at the end of the tenancy. The Landlord provided the receipt in support. The Tenant stated that they left the keys on the washing machine along with their forwarding address.

The Landlord is claiming \$198.80 for cleaning the rental unit. The Landlord stated that it took 7 hours of cleaning to clean the rental unit at the end of the tenancy. The Landlord provided several pictures and the receipt in support. The Tenant stated that they left the rental unit clean. The Tenant had their witness call into the hearing who submits that the rental unit was left clean and in good condition, with no damage.

The Landlord is claiming \$135.45 for professional carpet cleaning. The parties agreed that the Landlord had the carpets professionally cleaned two weeks prior to the end of the tenancy. The Landlord stated that the carpet under the Tenant's furniture had not yet been cleaned. The Landlord stated that the Tenant did not have the carpets cleaned, which is a requirement in the tenancy agreement.

The Tenant stated that he had booked the carpet cleaner to attend the rental unit, however, once the Tenant found some of his possessions were missing, he cancelled the carpet cleaner.

The Landlord is claiming \$462.00 for blind cleaning and repair. The Landlord stated that a blind was broken and that some needed cleaning. The Landlord stated that she paid for a service to send the blinds off for cleaning before they were later returned. The Landlord provided pictures of the blinds, a receipt, and referred to the tenancy agreement which contains a term that the Tenant agreed to clean the blinds at the end of the tenancy. The Tenant stated that he cleaned the blinds at the end of the tenancy and that they were in perfect condition.

The Landlord is claiming \$68.99 for blind replacement. The Landlord stated that the kitchen blinds were broken and could not be repaired. As such, the Landlord replaced the blinds and provided a receipt in support. The Tenant denied any damage to the blinds.

The Landlord is claiming \$672.00 for paint, varnish, and repairs. The Landlord stated that several walls required repair and repainting at the end of the tenancy. The Landlord stated that the rental unit had been repainted two years prior.

The Tenant stated that he had prepped each dent with filler and sanded so that the Landlord could paint at the end of the tenancy. The Landlord stated that they were unable to touch up the walls with paint as it was too apparent, therefore, the entire walls needed to be repainted.

The Landlord is claiming \$255.78 for over usage of utilities. The Landlord stated that the Tenant overused the laundry machine and used hot water to wash their clothes. The Landlord stated that the Tenant used the laundry more than their allotted two times per week. The Landlord stated that they communicated their concerns to the Tenant. The Landlord also stated that the Tenant brought in a dishwasher which contributed to more consumption of utilities. The Landlord compared their bills to the previous year to determine the overage.

The Tenant stated that they only did laundry once in a while. The Tenant stated that sometimes he would be away from the rental unit for up to a month. As such, the Tenant stated that they did not overuse the utilities.

The Landlord is claiming \$112.27 for the return of the filing fee and postage fees. During the hearing, the Landlord was notified that these costs are not recoverable as it is the cost of doing business as a Landlord/Tenant.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Applicant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Respondent. Once that has been established, the Applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Applicant did what was reasonable to minimize the damage or losses that were incurred.

The Tenant's Claim

The Tenant is claiming for the return of their personal property or compensation in the amount of \$3,615.98. I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord took the Tenant's possessions or that the Landlord is responsible for their disappearance. As such, I dismiss the Tenant's claims for the

return of their personal property or for monetary compensation relating to the loss, without leave to reapply.

With respect to the Tenant's claim for \$592.50 for recovery of their security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. If a landlord fails to repay deposits or make a claim against them within 15 days, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

I find the Tenant provided the Landlord with their forwarding address in writing, which was received by the Landlord on October 31, 2023 which is after the tenancy had ended. Therefore, pursuant to section 38(1) of the *Act*, the Landlord had until November 15, 2023, to repay the deposit or make a claim against it. I find that the Landlord submitted their Application on November 14, 2023, which is within the time limit permitted under the *Act*. Accordingly, I find the Tenant is not entitled to the return of double the amount of the deposit.

As the Tenant was not successful with their Applications, I find that they are not entitled to the return of their filing fees.

The Landlord's Claim

The Landlord is claiming \$1,226.83 for loss of rent for November 2023. According to Section 45 (1) of the *Act*; a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that;

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, the parties agreed that the Tenant provided the Landlord with his notice to end tenancy on October 17, 2023 before the tenancy ended at the end of October 2023. While the Teant stated that they felt the need to end the tenancy sooner after finding his possessions missing, I find that this does not negate the Tenant's obligations to provide sufficient notice under the *Act*.

I further find that the Tenant provided insufficient evidence to demonstrate that the Landlord consented the Tenant moving out earlier, or that the Landlord performed renovations instead of attempting to re-rent the rental unit. I find that the Tenant ended the tenancy early, without providing the Landlord with proper notice pursuant to Section 45(1) of the *Act*. I find that the Landlord is entitled to monetary compensation in the amount of **\$1,226.83** for loss of November 2023 rent.

The Landlord is claiming \$ 193.78 to change the locks and keys to the rental unit.

Section 37(2) When a tenant vacates a rental unit, the tenant must;

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that the Landlord provided insufficient evidence to demonstrate that the Tenant did not return the keys to the Landlord at the end of the tenancy, as indicated by the Tenant. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$198.80 for cleaning the rental unit. In this case, I find that the Landlord provided sufficient evidence to demonstrate that the rental unit required further cleaning at the end of the tenancy. As such, I find that the Landlord is entitled to compensation in the amount of **\$198.80**.

The Landlord is claiming \$135.45 for professional carpet cleaning. The Tenant stated that he had booked the carpet cleaner to attend the rental unit, however, once the Tenant found some of his possessions were missing, he cancelled the carpet cleaner. I find that the parties had agreed in their tenancy agreement that the Tenant was responsible for cleaning the carpets at the end of the tenancy. As such, I find that the Landlord is entitled to **\$135.45** for the cost of cleaning the carpets.

The Landlord is claiming \$462.00 and a further \$68.99 for blind cleaning and repair and replacement. The Landlord stated that a blind was broken and that some needed cleaning. The Landlord stated that she paid for a service to send the blinds off for cleaning before they were later returned.

In this case, I find that the Landlord has provided insufficient evidence to demonstrate that the blinds were so dirty and damaged, that they needed to be sent away to be

cleaned and repaired. I find that the Tenant left the blinds reasonably clean and minor damage which can be attributed to reasonable wear and tear. I find the Landlord has not mitigated their loss and I dismiss these claims without leave to reapply.

The Landlord is claiming \$672.00 for paint, varnish, and repairs. The Tenant stated that he had prepped each dent with filler and sanded so that the Landlord could paint at the end of the tenancy. The Landlord stated that they were unable to touch up the walls with paint as it was too apparent, therefore, the entire walls needed to be repainted.

I find that the Landlord has provided sufficient evidence to demonstrate that some walls in the rental unit needed to be painted. The Tenant acknowledged patching some walls, which further confirms the need to paint. I accept that the walls needed to be repainted in their entirety to avoid a touched-up appearance. I find that the Landlord has provided insufficient evidence to demonstrate a need to varnish the rental unit.

The Landlord provided a detailed receipt which breaks down the cost of paint and varnish. I therefore award the Landlord **\$357.00** for the cost of painting plus tax. The remaining cost associated to varnish is dismissed without leave to reapply.

The Landlord is claiming \$255.78 for over usage of utilities. I find that the Landlord provided insufficient evidence to demonstrate that the Tenant breached the Act or the tenancy agreement relating to usage of utilities. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$112.27 for the return of the filing fee and postage fees. As previously stated this cost is not recoverable. I dismiss this claim without leave to reapply.

Having been partially successful, I find that the Landlord is entitled to the return of their **\$100.00** filing fee.

In summary, I find the Landlord has demonstrated an entitlement to a monetary award of \$2,018.08.

The Landlord continues to hold the Tenant's security deposit in the amount of \$592.50. I find that the Tenant's deposit has accrued interest in the amount of \$17.93, bringing the value of the Tenant's deposit to \$610.43.

Pursuant to section 67 of the *Act*, I find that the Landlord is entitled to retain the Tenant's security deposit in the amount of \$610.43 in partial satisfaction of the monetary award granted. I grant the Landlord with a monetary order in the amount of \$1,407.65 (\$2,018.08 - \$610.43).

Conclusion

Pursuant to section 67 of the *Act*, the Landlord is granted a monetary order in the amount of \$1,407.65. The monetary order must be served on the Tenant and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 22, 2024

Residential Tenancy Branch