



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes (L) MNRL, MNDL-S, MNDCL, LRSD, FFL
 (T) MNDCT, MNSD, FFT

Introduction

This hearing was scheduled on:

The Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for unpaid utilities under section 67 of the Act;
- a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under 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 under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing also concerned the Tenant's Application for Dispute Resolution under the Act for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- return of security and pet damage deposits under section 38 of the Act, and
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find the Tenant was served the proceeding package by the Landlord by email on March 29, 2024, in accordance with an order granting substitute service to the Tenant by the method.

I find the Landlord was served with the proceeding package, including copies of evidence, by the Tenant on April 19, 2024, by email. The Tenant provided a copy of the email to the Landlord, also indicating items of evidence included in the email.

Service of Evidence

This hearing was initially adjourned as each party stated they had not received the other party's evidence. The adjournment required each party to exchange copies of their evidence by email. At the start of this re-scheduled hearing, each party affirmed receipt of the other party's evidence, as well as an opportunity to review the evidence in preparation of the hearing.

Issues to be Decided

Landlord's Application

Is the Landlord entitled to a Monetary Order for unpaid utilities owing under the tenancy agreement?

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

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Tenant's Application

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Is the Tenant entitled to a Monetary Order for all or a portion of the security and/or pet damage deposit?

Is the Tenant entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

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

Evidence was provided establishing this tenancy began on February 22, 2022, for an annual term and thereafter to continue monthly. The Tenant provided to the Landlord a security deposit in the amount of \$840.00 and a pet damage deposit in the amount of \$840.00 on February 22, 2022. The Landlord confirmed he continues to hold these deposits in trust. A copy of the tenancy agreement with addendum was provided in evidence.

The Tenant provided his forwarding address to the Landlord using RTB Form 47 on April 20, 2023. The Tenant texted the forwarding address form to the Landlord. A copy of the text message and completed forwarding address form were submitted into evidence.

Landlord's Application

The Landlord states the Tenant is responsible for items of damage to the rental unit and owes unpaid utilities from his last month's occupancy. The Landlord alleges the Tenant owes \$150.00 for an outstanding electric utility bill. The Landlord did not submit a copy of the billing statement from the utility company. During the hearing, he testified that the \$150.00 was an estimate of the amount he believed the Tenant owed for utilities.

The Landlord also requested he retain the entire pet damage deposit for damage he states the Tenant's dog caused to the unit. The Landlord testified the Tenant's pet damaged a door and drywall, resulting in the replacement of the door and drywall, which required the replacement of all baseboards, and painting. The Landlord stated he did the repairs to the door, and also submitted an invoice that specifically itemized pet damage. That invoice included \$600.00 for repair of drywall, \$400.00 repair of baseboard and \$300.00 for painting.

The Landlord requested compensation from the Tenant for damage to the kitchen cupboard below the kitchen sink and faucet. The Landlord provided an invoice for replacement of the cupboard in the amount of \$718.00. The Landlord explained that the Tenant had misused the kitchen faucet such that it resulted in water leaking into the cabinet below. A photograph of the interior of the kitchen cabinet showing water stains was provided in evidence.

Lastly, the Landlord seeks compensation for water damage caused to the unit from the toilet not draining properly which caused water to spill into the unit and infiltrated into the two units on the two levels below the rental unit. The Landlord submitted an invoice he received from the strata when the building manager contacted a plumber to attend to the leak. A copy of the billing invoice for \$467.25 dated December 18, 2023, together

with a letter from the strata stating the Landlord was responsible for payment, was provided by the Landlord in evidence. The Landlord took the position that the Tenant had clogged or otherwise damaged the toilet in a manner that it malfunctioned and water leaked from it. He further stated that the toilet worked fine before and after the tenancy ended (when the toilet was replaced) as support for his position.

The Landlord stated that due to the water damage, he incurred costs for replacing flooring in the unit and provided an invoice for the flooring material in the amount of \$677.10 as well as \$800.00 for installation. The flooring was replaced in the living room, bedroom and hallway area (the kitchen and bath having tile flooring). The Landlord stated the Tenant did not have insurance, and although the other two affected units in the building had not made a claim against him, that he estimated those damages to be \$30,000.00. The Landlord requested a monetary award for the floor replacement as well as the damages he estimated the other units may have sustained.

The Landlord requested that he retain the Tenant's security and pet damage deposits totaling \$1,680.00 in partial satisfaction of the requested compensation.

In response, the Tenant stated he had paid all utilities and did not owe any outstanding utility payments to the Landlord.

The Tenant admitted his dog did minor damage to the rental unit, specifically to the bathroom door and wall, but stated he estimated the actual damage to be \$450.00, rather than the amount requested by the Landlord.

The Tenant stated he did not misuse the kitchen faucet and cause it to leak water into the cabinet below. The Tenant submitted copies of text message to the Landlord reporting the water dripping into the kitchen cabinet. The Tenant testified the Landlord did not come to examine the kitchen cabinet for approximately two weeks and in the interim he placed towels where the water was to mitigate damage to the cabinet.

With respect to the water in the unit from the toilet, the Tenant testified he did not do anything to the toilet to cause a clog or the fill valve to not operate properly. He provided text messages he sent to the Landlord about water leaking from the base of the toilet when he flushed. At the time of the incident, he stated he was at work when he received a call to come to the unit due to the water coming from the unit. He testified he did not know how the toilet was leaking water. He further testified there was no provision in the tenancy agreement that required he maintain renter's insurance and denied the Landlord ever requested he obtain renter's insurance. The Tenant testified that the Landlord and his son installed the flooring and there was no additional worker(s) involved.

Tenant's Application

The Tenant requested a monetary award from the Landlord for costs he incurred to clean the rental unit at the start of the tenancy in the amount of \$180.00. The Tenant also submitted photographs of the rental unit when he took possession and a copy of the invoice for cleaning dated March 2, 2022, to substantiate his request.

The Tenant also requested lost wages totaling \$750.00 due to the alleged conduct of the Landlord requiring the Tenant to return to the unit on several occasions on short notice to allow the Landlord access to make repairs. The Tenant testified he constantly was required to leave work due to the Landlord coming to the unit and this caused him significant stress. He stated the Landlord was verbally abusive, calling him "stupid." The Tenant claimed the Landlord's conduct toward him during the tenancy resulted in "moral damages" for stress in the amount of \$5,413.72. The Tenant also requested reimbursement for cleaning supplies in the amount of \$31.33 for cleaning the floor after the toilet leaked (submitting a bank statement for payments to a local hardware store) and replacement of a television in the amount of \$624.95, damaged in the incident (a copy of the receipt for the replacement t.v. together with a photograph of the damaged t.v. were provided in evidence).

The Landlord denied ever entering the unit without the Tenant's knowledge and/or presence at the time. He further stated that it is a common requirement that Tenant's purchase renter's insurance.

Analysis

Is the Landlord entitled to a Monetary Order for unpaid utilities?

To be awarded compensation for a breach of the Act, the landlord 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 Landlord did not present sufficient evidence the Tenant had not paid utilities in the amount of \$150.00. The Landlord testified he estimated this to be the amount due but failed to provide a utility billing statement or evidence to substantiate that he had paid it or that the Tenant remained obligated for this amount.

For the above reasons, the Landlord's application for a Monetary Order for unpaid utilities under section 67 of the Act is dismissed, without leave to reapply.

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

Section 35 of the Act establishes that, at the end of the tenancy, a landlord must inspect the condition of the rental unit with the tenant, the landlord must complete a condition inspection report with both the landlord and the tenant signing the condition report.

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.

To be awarded compensation for a breach of the Act, the landlord 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

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has established a claim for damage to the rental unit or common areas.

I find both parties have agreed the Tenant's dog damaged the rental unit, and the extent of that damage. The parties differed on the cost to repair the damage. While the Landlord maintained he wanted the entire pet damage deposit for the damage caused by the Tenant, he submitted an invoice placing the repair costs at \$1,300.00. The Landlord did not present evidence he had incurred either \$1,300.00 or \$840.00 in payment for the pet's damage to the unit. Additionally, the Landlord did not present evidence to support what areas of the room were painted as a result of the dog's damage, or when the unit had last been painted. Based upon the photographs of the damage provided in evidence attributed to the Tenant's dog, I find a reasonable sum for the damage caused by the pet to be \$500.00.

I find the Landlord has not provided sufficient evidence to establish, on a balance of probabilities, the Tenant damaged the toilet that, in turn, caused water to leak through the unit as well as the two units on the two levels below. The plumber's invoice provided a synopsis of the problem with the toilet in the rental unit. The plumber's statement is the "toilet was not draining and the fill valve was running continually and causing water to spill out at a steady state." The Tenant testified he did not alter or clog the toilet and it was working when he left for work that morning. The Tenant further testified the problem he encountered with the toilet was when it leaked at the base when he flushed it, and he had advised the Landlord of that issue. Therefore, I decline to award the Landlord monetary compensation for replacing the flooring in the unit that was damaged as a result of the water from the toilet, and I further decline the Landlord's request for a monetary order for reimbursement of the plumber's charges.

Finally, with regard to the damage to the kitchen cabinet from water leaking from the faucet, I find the Landlord has not provided sufficient evidence to establish, on a balance of probabilities, that the Tenant damaged or misused the kitchen faucet that resulted in water leaking into the cabinet and staining it. The Tenant provided evidence that he contacted the Landlord and advised him of the issue, that the Landlord waited two weeks before attending to the matter, and this delay resulted in the water stains on the cabinet.

Section 67 of the Act states 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.

Therefore, I find the Landlord is entitled to a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act, in the amount of \$500.00.

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, the landlord 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

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has not established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for estimated costs for water damage the Landlord has not been assessed by the tenants in the two units on the two floors below the rental unit when the water leaked from the toilet. There was no evidence submitted by the Landlord that he has sustained damages in claims from the other two units in the amount of \$30,000.00; the Landlord testified this was an estimate and he had not received demands from the other unit owners for compensation for damage. The Landlord did not provide evidence that he required the Tenant to have renter's insurance which may have provided coverage, and the Landlord stated he did not obtain insurance for the unit.

Therefore, I find the Landlord is not entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act, for estimated damages to the other units in the strata building that may have sustained damaged from the toilet leaking water in the rental unit.

Is the Landlord entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary award requested?

Is the Tenant entitled to a Monetary Order for all or a portion of the security and/or pet damage deposit?

Section 38 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, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. In this case, the Landlord filed his application on March 12, 2024, before the Tenant provided his forwarding address on April 20, 2024 after moving out of the rental unit on February 29, 2024.

Under section 72 of the Act, I allow the Landlord to retain \$500.00 for the pet damage established by the evidence in full satisfaction of the monetary award to the Landlord in this application. The remainder of the pet damage deposit, security deposit, and accrued interest is awarded to the Tenant. This conclusively deals with the Tenant's security and pet damage deposits.

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, the landlord 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

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Tenant has not established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, from the Landlord.

I find the Tenant has not provided probative evidence for "moral damages" or loss of income as a result of stress caused by the Landlord with respect to this tenancy. The Tenant provided no medical records or billing statements from treating physicians or medical facilities to corroborate the Tenant's claim that he suffered from stress as a result of the tenancy, the Landlord's liability for the alleged stress, in the amount of \$5,413.72. Likewise, the Tenant has not established a claim for \$750.00 of lost wages. The Tenant provided no corroborating evidence, such as a statement from his employer, pay stubs or similar, to support his request for lost wages. The Tenant's request for \$31.33 in cleaning supplies was not supported by adequate evidence as to the products purchased and the Landlord's liability for this cost. As noted, the plumber's statement on the invoice does not suggest that either party was the cause of the toilet leaking in the manner stated by the plumber.

I decline to award monetary damages in the amount of \$180.00 the Tenant stated he incurred for cleaning the rental unit when he moved in. There was no evidence that this cost was incurred as a result of the move-in condition of the rental unit.

I also find the Tenant did not provide evidence to establish his claim for reimbursement of a television in the amount of \$624.95. The Tenant did not provide evidence as to the value of the television he replaced, particulars as to how the television was damaged, and that the Landlord was liable.

Is the Landlord or the Tenant entitled to recover the filing fee for this application from the other party?

As each party was successful on a portion of their respective applications, I decline to award either the Landlord or the Tenant reimbursement of the filing fee for their respective applications under section 72 of the Act.

Conclusion

I grant the Tenant a monetary order pursuant to section 38 of the Act, for the balance of the security and pet damage deposits (\$1,180.00), plus accrued interest (\$44.44), for a total of \$1,224.44.

The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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: August 27, 2024

Residential Tenancy Branch