



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, LRSD, FFL; MNSDB-DR, FFT**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to 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 pursuant to section 72 of the *Act*.
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

This hearing also dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38.
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The Landlord attended and provided uncontradicted evidence as the Tenant did not attend the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Landlord provided testimony and supporting documentary evidence that she sent the Proceeding Package and Evidence to the Tenant by registered mail on September 14, 2024. The Landlord provided the receipt and tracking number. The Landlord also sent the document package to the Tenant by pre-agreed email on October 30, 2024.

Further to the Landlord's testimony and supporting documents, I find the Landlord served the Tenant in compliance with the Act on September 17, 2024.

The Tenant brought a cross-application scheduled for hearing together with the Landlord's application. The Landlord acknowledged receipt of the Tenant's Proceeding Package and Evidence.

Preliminary Matters

The Tenant (applicant on the cross application) did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 15 minutes to allow the Tenant the opportunity to call.

The teleconference system indicated only the Landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the Tenant was provided.

Rule 7.3 of the *Rules of Procedure* provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

The landlord requested that a hearing take place and that I grant a Monetary Order.

As the Tenant did not attend the hearing and in the absence of any evidence or submissions on the tenant's behalf, I order the Tenant's application dismissed without leave to reapply.

I proceeded with the hearing.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for compensation, reimbursement of the filing fee and authorization to apply the deposits to the award?

Background and Evidence

The Landlord provided uncontested testimony and supporting documents as the Tenant did not attend the hearing. I considered the evidence submitted by the Tenant on her application although she did not attend the hearing.

Tenancy

The Landlord testified the tenancy started December 17, 2021 and ended on September 1, 2024. Rent was \$2,131.00 payable on the 15 of the month. The Tenant provided a security deposit and a pet deposit each in the amount of \$1,000.00 for a total of \$2,000.00 which the Landlord holds. Interest has accumulated on the deposits in the amount of \$88.18.

Condition inspection

The Landlord submitted a condition inspection report on moving in signed by both parties indicating the walls and flooring were in good condition at the beginning of the tenancy.

The Landlord submitted a condition inspection report on moving out signed only by the Landlord indicating damage to the walls and flooring. The Landlord provided an exchange of texts in which the parties agreed on a date for the inspection on moving out. However, the Tenant would not sign the report.

Forwarding address

The Tenant did not provide her forwarding address in writing in compliance with the Act.

The Tenant provided her forwarding address to the Landlord by text and email dated August 5, 2024, copies of which were submitted.

A Tenant is required to provide their forwarding address in writing. Text and email are not considered service under the Act.

Landlord's Claim

The Landlord claimed the walls and flooring were new when the Tenant moved in as stated in the submitted condition inspection report on moving in.

The Landlord claimed the Tenant damaged the walls and flooring of the unit which the Landlord repaired. Without the approval of the Landlord, the Tenant installed wallpaper which she promised to remove when she moved out but failed to do leaving the cost of removal to the Landlord. Some of the damage was caused by the Tenant's pet.

The Landlord said the Tenant refused to sign the condition inspection report on moving out, a copy of which the Landlord submitted.

The Landlord submitted an invoice in support of the claim for repairs as well as photos. The Landlord claimed half of the costs of the repairs as follows:

ITEM	AMOUNT
Painting 50%	\$420.00
Flooring 50%	\$472.50
TOTAL	\$892.50

Filing fee and deposits

The Landlord requested reimbursement of the filing fee and authorization to apply the deposits to the award as follows:

ITEM	AMOUNT
Painting 50%	\$420.00
Flooring 50%	\$472.50
Filing fee	100.00
(Less deposits and interest)	(\$2,088.18)
Return of Balance of Deposits to Tenant	(\$1,095.68)

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has responsibility to provide evidence over and above their testimony to prove their claim.

In this case, the Landlord's evidence was not contradicted as the Tenant did not attend the hearing.

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 that Landlord has met the burden of proof with respect to all aspects of their claim. I find the Tenant did not provide a forwarding address and did not sign the condition inspection although she attended.

The Landlord has established a claim for damage to the rental unit or common areas for damage to the floor and walls in the total amount of **\$892.50**, being half of the landlord's invoiced expense. I accept the landlord's evidence which included copies of the receipt, photos, and a supporting Monetary Order Worksheet.

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 **\$892.50**.

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

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.

I accept the Landlord's uncontradicted evidence that the Tenant did not provide a forwarding address in compliance with the Act

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

Under section 72 of the Act, I allow the Landlord to retain a portion of the Tenant's security and pet damage deposits of \$2,000.00, plus interest as follows:

ITEM	AMOUNT
Painting 50%	\$420.00
Flooring 50%	\$472.50
Filing fee	100.00
(Less deposits and interest)	(\$2,088.18)
Return of Balance of Deposits to Tenant	(\$1,095.68)

I direct the Landlord to return the balance of the deposit to the Tenant in the amount of \$1,095.68.

I grant the Landlord a Monetary Order in the amount of \$992.50, authorize the Landlord to apply the deposits to payment of the award, and direct the Landlord to return the

balance of \$1,095.68 to the Tenant. I grant the Tenant a Monetary Order in this amount which may be filed and enforced in the courts of the Province of BC.

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: November 22, 2024

Residential Tenancy Branch