



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes MNDL-S, LRSD, OLRD, FFL, MNSDB-DR, FFT

Introduction

This hearing dealt with the Landlord and Tenants Applications for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

The Landlord applied for:

- a Monetary Order for damage to the rental unit or common areas under sections 32 and 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

The Tenants applied for:

- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Landlord J.C. attended the hearing for the Landlord.

Tenants M.D., A.B. and B.S. attended the hearing for the Tenants.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Tenant T.A.Y. was served on January 28, 2025, by pre-agreed e-mail in accordance with section 43(2) of the *Residential Tenancy Regulation*. The Landlords provided a copy of the outgoing e-mail showing the documents were included as attachments to confirm this service. The Landlords also submitted a copy of an Address

for Service form which was signed by the Tenant on January 26, 2025, indicating the Tenant agreed to receive documents by e-mail.

Service of Evidence

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

No evidence was received by the Residential Tenancy Branch from the Tenant. The Tenant confirmed that they did not submit any evidence for consideration.

Preliminary Issue – Tenants' Application

At the outset of the hearing, I found that the Tenants did not serve the Landlord with Notice of Dispute Resolution Proceedings or evidence, and therefore I dismissed the Tenants' application in its entirety, including their evidence, without leave to reapply rather than with leave as the same matter, namely the disposition of the Tenants' security deposit, forms part of the Landlord's claim and will be determined through adjudication of the Landlord's application.

Preliminary Issue – Respondents on Landlord Application

At the outset of the hearing, I found that the Landlord only served Notice of Dispute Resolution and evidence to Respondent M.D. The Landlord was given the option to request an amendment to remove the other two Respondents and proceed only against M.D. The Landlord indicated that he wished to proceed against Respondent M.D. only. The Respondents did not raise any objection to the Landlord's amendment request and the application was amended in accordance with Residential Tenancy Branch Rules of Procedure 7.12 and section 64(3)(c) of the Act.

Issues to be Decided

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

Is the Landlord entitled to authorization to retain all or a portion of the Tenant's security deposit and pet deposit in satisfaction of the Monetary Order requested under section 38 of the Act?

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

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.

Evidence was provided showing that this tenancy began on September 1, 2024, with a monthly rent of \$2,250.00, due on the first day of the month, with a security deposit in the amount of \$1,125.00 and a pet damage deposit in the amount of \$1,125.00. The tenancy ended on February 1, 2025.

According to the Landlord, the Tenants did not leave the unit in a sufficiently clean state at the time the tenancy ended. He testified that the Tenants failed to attend the scheduled move out inspection on February 1, 2025, and therefore he and his partner K., had to undertake the cleaning of the unit and shampooing of the carpets, which were covered in cat hair, and removing a moldy shower curtain as a new tenant was moving in that same day. He testified that the Tenants also failed to pay their \$25.00 per month garbage fee for three months in the amount of \$125.00 or to pay their portion of the final water bill in the amount of \$63.29. A copy of an invoice charging the Tenants \$50.00 for general cleaning and garbage disposal, \$200.00 for carpet cleaning, \$125.00 for garbage fees and \$63.29 for a three-month water bill was submitted as evidence.

The Landlord testified that he retained \$200.00 of the Tenants' pet damage deposit and \$238.29 of the Tenants' security damage for a total of \$438.29 to cover the costs noted above and returned the balance of \$1,811.71 on February 2, 2025. He testified that he conducted a move-in inspection and gave the Tenants a copy of the report. He testified that he gave a copy of the move-out inspection to the Tenants after they failed to attend the February 1, 2025, scheduled inspection. He further testified that the Tenants provided him with their forwarding address on February 1, 2025.

A.B. testified that no move-in inspection was conducted by the Landlord. She stated that they had fully cleaned the unit and vacuumed and shampooed the carpets. She stated that they intended to grab the shower curtain and any other miscellaneous garbage during the move out inspection on February 1, 2025. She disputed the \$188.29 the Landlord was claiming for services and utilities and argued that they owed 50% at most. She stated that the Landlord was given their forwarding address on December 15, 2024, by text and again by email on February 2, 2025.

B.S. testified that the highway was unsafe and shut down due to snowfall on February 1, 2025, and therefore they were physically unable to attend.

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.

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

I find, based on the evidence submitted, the testimony provided and on a balance of probabilities that the Landlord has failed to provide any evidence that the Tenants damaged the unit as cleaning does not constitute damage.

I further find that unpaid utility bills do not constitute damage.

I find, however, that under section 37(2)(a) of the Act the Tenants are required to “leave the rental unit reasonably clean” clean and the Landlord has duly served them with notice that compensation for this matter and the matter of unpaid utilities formed part of his claim, the Landlord’s incorrect selection of the type of claim notwithstanding.

I will therefore adjudicate the claim as submitted rather than dismiss the Landlord’s claim with leave to reapply.

I find, based on the evidence submitted, the testimony provided and on a balance of probabilities that the Landlord has failed to provide sufficient evidence over and above his testimony to prove that the unit required cleaning, shampooing and garbage removal to counter the Tenants’ testimony that they had left the unit in a reasonably clean state, the invoice from a company that the Landlord was employed by notwithstanding, and therefore the Landlord’s claim for these costs is dismissed without leave to reapply.

I find that the Landlord has failed to provide sufficient evidence, over and above his testimony, to counter the Tenants testimony that they did not owe him the amount of

unpaid utilities as claimed and therefore this portion of the Landlord's application for compensation is dismissed without leave to reapply.

For the above reasons, the Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed, without leave to reapply.

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

Residential Tenancy Branch Rules of Procedure section 2.6 states:

2.6 Point at which an application is considered to have been made

The Application for Dispute Resolution has been made when it has been submitted and either **the fee has been paid** or when the fee waiver application has been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application. (emphasis added)

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. As the forwarding address was provided on either February 1 or 2, 2025, and the Landlord made payment for their application on February 18, 2025, I find that the Landlord did not make their application within 15 days of the tenancy ending or the forwarding address being provided.

Section 36 (2) of the Act states that, unless the tenant has abandoned the rental unit, the right of a landlord to claim against a security deposit for damage to the rental unit is extinguished if, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the Landlord has not provided proof that a move-in inspection report was completed and given to the Tenants at the start of the tenancy, that the Landlord failed to offer two opportunities to conduct a move-out inspection at the end of the tenancy and that the move-out inspection report that was completed is not in compliance with section 20 of the Regulation and therefore in addition to failing to comply with section 38 of the Act, the Landlord has extinguished his right to claim against the deposits for damages.

For the above noted decisions, the Landlords' application for 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 is dismissed, without leave to reapply.

As I have dismissed the Landlord's application to retain a portion of the Tenants' security and pet damage deposits, I find, under section 38(6) of the Act, that the Tenant is entitled to a monetary award for double the security and pet damage deposits in the amount of \$4,528.10, including \$28.10 interest on the original deposits of \$2,250.00, less the \$1,811.71 returned to the Tenants on February 2, 2025, for a total of \$2,716.39.

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

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$2,716.39** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for the Tenant for the return of double their deposits from the Landlord	\$2,716.39
Total Amount	\$2,716.39

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.

The Landlord's application for a Monetary Order for damage to the rental unit or common areas under sections 32 and 67 of the Act is dismissed, without leave to reapply.

The Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

The Tenants' application is dismissed in its entirety.

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 14, 2025

Residential Tenancy Branch