



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MNR, FF

Introduction

This hearing dealt with the cross applications pursuant to the *Residential Tenancy Act* ("Act")

The landlord applied for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

The tenant applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for damage and loss arising out of this tenancy? I

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?

Is the tenant entitled to a monetary order for compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act?

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

Background, Evidence

The landlord's testimony is as follows. The tenancy began on May 1, 2015 and ended on July 1, 2016. The tenants were obligated to pay \$2090.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1493.00 security deposit. The landlord testified that he and the tenants agreed that the amount of rent payable was lower than market rate, in turn; the tenants would undertake to help maintain the property. The landlord testified that the tenants did the exact opposite and neglected the property. The landlord testified that extensive renovations, remodelling and decorating was done to the property prior to the tenants moving in.

The landlord testified that the tenants had not kept up the yard, plants or shrubbery as agreed. The landlord testified that the tenants were equally negligent in the interior of the home causing damage to floors, fixtures, painting walls without consent and changing the color scheme of the home without consent. The landlord testified that the tenants put up wall paper without his consent. The landlord testified that the tenants caused miscellaneous damage throughout the home and failed to clean it at move out or even simply replace lightbulbs. The landlord testified that he hired the same contractors that did the original renovation and took great pains in minimizing the costs and choosing cheaper alternatives. The landlord testified that the claim brought forward is very reasonable for the damage the tenants caused and that he also seeks the loss of revenue for the month of July 2016 as the work was being conducted to bring the unit back to a rentable condition.

The landlord is applying for the following:

1.	Repairs and Remediation	\$11167.00
2.	Loss of Revenue July 2016	2090.00
3.	Filing Fee	100.00
4.	Minus Deposit	-1493.00
5.		
6.		
	Total	11864.00

The tenant gave the following testimony. The tenant testified that he took care of the home like it was his own but it was in a poor dilapidated condition when he moved in. The tenant testified that the landlord promised him a move out allowance as part of a previous settlement and that he should be given double his security deposit back as its not been returned. The tenant testified that this was a huge misunderstanding and that there is no damage to the home beyond normal wear and tear. The tenant also seeks compensation for the stress in dealing with this matter.

The tenant is applying for the following:

1.	Move out Allowance	\$2250.00
2.	Return of double the security Deposit	2986.00
3.	Stress	500.00
4.	Filing fee	100.00
5.		
6.		
	Total	\$5836.00

Analysis

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality I find the landlord to be a more credible witness than either of the tenants. The landlord provided consistent, logical testimony which was supported with documentary evidence where available. The landlord admitted when he could not recall specific facts and, where appropriate, referred to his notes and documents prepared prior to this hearing to assist his recollection.

The tenant was argumentative, focused on irrelevant matters and conducted himself in an agitated and irrational manner. I found that much of the tenant's submissions have little to do with the matter at hand and was concerned with attacking the landlord and making himself appear to be the wronged party. When given the opportunity to cross-examine the landlord the tenant chose to ask irrelevant personal questions rather than any substantive questions. Towards the conclusion of the hearing the tenant continually interrupted the landlord's testimony, shouting disagreement with his evidence. Despite my numerous attempts to explain to MM to focus on his application and provide clear and focused testimony, he chose to make editorial and personal comments about the landlord.

In fact, counsel for the landlord suggested on three separate occasions that MM would be well served to address each claim or seek some legal advice to assist him. MM continually stated "I don't even know why we're having a hearing, it was all resolved and this is just a waste of everyone's time". Although this matter was heard over two days and over five hours of hearing time, MM did not at any time, directly dispute the landlords' monetary claims in any substantive manner. MM was more intent in engaging the landlord in an argument and focused on irrelevant issues instead of addressing his or the landlords' application.

Based on the foregoing, where the evidence of the parties clashed I found that the landlord's version to be more credible and consistent with how a reasonable person would behave.

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below. It is worth noting that the tenant was extremely disorganized when presenting his claim. He was unable to answer basic questions or provide answers to the claim he put forth or able to explain the amount he noted on the application and what he was seeking on the day of the hearing.

Much of his claim lack clarity or logic. The tenant presented his evidence in a very disjointed and vague fashion. In addition, the tenant would add and subtract items from his claim during the hearing and would alter the amount he was seeking. The tenants' testimony and documentation were in conflict through much of the hearing, when it was; I considered the sworn testimony in coming to his monetary calculations. Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

In stark contrast, the landlords claim was presented in a very clear and precise fashion. The tenant accused the landlord of being dishonest and cited that because the landlord originally sought twenty five thousand dollars and reduced it by almost half, his claim must be without merit. I disagree with the tenant. Counsel for the landlord explained in great detail that the landlord negotiated alternative prices and materials for the repairs and took steps to minimize and mitigate the claim as required under Section 7(2) of the Act. Counsel advised that Residential Tenancy Policy Guideline 40 was used in factoring in the remaining "useful life" of items where appropriate and submitted only the pro-rated amount. Further, the landlord advised that he chose the more economical options in making the repairs, thus reducing the claim.

Both parties agreed that a move in condition inspection report was conducted in writing and both parties participated. However, another central issue that arose during the hearing was that the tenant alleged that the landlord did not provide the tenant two opportunities to participate in a move out condition inspection report. The landlord provided extensive documentation to support his position that two opportunities were in fact given and that the tenant was actually at one of the inspections. I am satisfied that the landlord has met the requirements under section 35(2) of the Act.

Section 67 of the *Act* establishes 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. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that

they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Firstly, I address the landlords claim and my findings as follows.

Damages and Cleaning – \$11, 167.00

As noted above, the landlord and his counsel provided extensive documentation to support their claim for damages, repairs, and cleaning by way of photos, testimony, and the testimony of witnesses, the condition inspection report and receipts. In addition, the landlord provided a detail breakdown of the cost of materials and labour for each item in each room which is far too voluminous to be reproduced as part of this decision, but is part of the Branch's file. Based on all of the above and on a balance of probabilities, I am satisfied that the landlord is entitled to the amount as claimed of 11,167.00.

Loss of Revenue - \$2090.00

Based on the sheer volume and scope of work done, I am satisfied that the unit was not in a condition to be rented and that condition was a result of the tenants' actions of neglect and recklessness, accordingly; I find that the landlord is entitled to \$2090.00.

The landlord is also entitled to the recovery of the \$100.00 filing fee.

I address the tenant's application and my findings as follows.

Move out allowance - \$2250.00

The tenant had stated that the landlord had "signed off" on the move out allowance, but then later the tenant stated it was a verbal agreement. The tenant submitted an unsigned settlement. The landlord disputes that there was an agreement in place. The tenant has not provided sufficient evidence to prove this claim and I therefore dismiss this portion of his claim.

Double the security deposit - \$2986.00

Both parties agree that the tenant provided his forwarding address on July 7, 2016. The landlord filed an application on July 20, 2016. Section 38 of the Act allows a landlord to file an application within 15 days of the end of the tenancy or when they receive the

tenants' forwarding address in writing, whichever the later. As the landlord has filed their application 13 days later, they have complied with section 38 of the Act and the tenant is not entitled to the return of double the security deposit.

Stress - \$500.00

The tenant abandoned this claim during the hearing; accordingly I dismiss that portion of his application. The tenant has not been successful in their application.

Conclusion

The landlord has been successful in the following claims:

Repairs and Remediation	\$11167.00
Loss of Revenue July 2016	2090.00
Filing Fee	100.00
Minus Deposit	-1493.00
Total	11864.00

I order that the landlord retain the \$1493.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$11864.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenants' application is dismissed in its entirety without leave to reapply.

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 30, 2018

Residential Tenancy Branch