



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL

### Introduction

On July 3, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages, to apply the security deposit to the claim, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

Residential Tenancy Branch - Rule of Procedure 3.14 states, in regard to evidence not submitted at the time of Application for Dispute Resolution by the Applicant, that documentary and digital evidence that is intended to be relied on at the hearing must be received by the Respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.

The Landlord did not submit any evidence for this hearing until 6 days prior and stated that he sent the evidence package via email to the Tenant. The Tenant stated that he is not willing to consent to the admission of the Landlord’s evidence. I find that the Landlord failed to provide evidence in accordance with the Rules of Procedure and

therefore, I find the Landlord's evidence is inadmissible and will not be referred to in this hearing.

The Tenant provided his evidence to the Residential Tenancy Branch on time; however, also served the Landlord via email. The Tenant submitted one page of evidence that quoted the Residential Tenancy Act and as such, was not referred to in the hearing.

### Issues to be Decided

Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Sections 38 and 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

### Background and Evidence

The Landlord and the Tenant agreed on the following terms of the tenancy:

The one-year, fixed term tenancy began on October 1, 2016 and continued on as a month-to-month tenancy as of October 2017. The monthly rent of \$1,600.00 was due on the first of each month and the Landlord collected and still holds a security deposit of \$800.00. The tenancy ended on June 30, 2018.

#### Landlord Evidence:

The Landlord testified that there were no move-in or move-out inspections completed, or any written reports provided to the Tenant. The Landlord stated that he accepted the Tenant's forwarding address via email on June 18, 2018. The Landlord acknowledged that he did not receive any verbal or written consent from the Tenant to keep the security deposit.

The Landlord testified that he incurred losses as a result of the Tenant causing damage to the rental unit as follows:

The Landlord stated that the washing machine broke during the tenancy and the Tenant paid to fix the washing machine and deducted the amount from his rent. The Landlord

stated the washing machine was not working when he inspected it after the Tenant had moved from the rental unit. The Landlord did not elaborate on a monetary amount to fix the washing machine.

The Landlord said that the glass of the oven door was broken during the tenancy. The Landlord had to replace the oven and bought a used one for \$500.00.

The Landlord stated that the condition of the rental unit at the end of the tenancy required 32 hours of cleaning for a total of \$1,600.00. The Landlord stated that the blinds were dirty and that they had to replace them. The Landlord did not provide any receipts for the cost of new blinds.

The Landlord testified that the Tenant was required to maintain the yard as a term in the Tenancy Agreement. The Landlord claimed that the lawn and gardens were not maintained.

#### Tenant's Evidence:

The Tenant testified that the washer was operating as normal at the end of the tenancy. He stated that the pump had broken during the tenancy; however, it was fixed and the machine was in working order.

The Tenant stated that the glass in the oven door was cracked when he moved in and that it worsened through regular use during the tenancy.

The Tenant said that he and his wife spent 3 days cleaning the rental unit and put some effort into cleaning the blinds. The Tenant stated that the Landlord was responsible for damaging one of the blinds.

The Tenant stated that he had brought his own lawnmower to the rental property and maintained the lawns and gardens. The Tenant said that he left the rental unit in better condition than when he moved into the unit.

#### Analysis

Section 23 and 35 of the Act directs a Landlord and Tenant to inspect the condition of a rental unit at both the beginning and end of the tenancy. The Landlord must offer the Tenant at least two opportunities for the inspections and the Landlord must complete

condition inspection reports in accordance with the *Residential Tenancy Regulations*. Both parties must sign the condition inspection reports and the Landlord must give the Tenant a copy of the reports. The Landlord must make each inspection, complete and sign the reports without the Tenant if the Landlord has offered two opportunities for both the beginning and end of tenancy inspections and the Tenant does not participate on either of the occasions.

Sections 24(2) and 36(2) of the Act explain that the Landlord's right to claim against a security deposit for damage to the residential property is extinguished if the Landlord does not comply with Sections 23 or 35 of the Act. In this case, the Landlord has testified that both a move-in and move-out condition inspection was not completed and, that no condition inspection reports were ever completed; therefore, copies were not provided to the Tenant. As a result, I find that the Landlord has extinguished their right to claim against the security deposit for damages to the residential property, pursuant to Sections 24(2) and 36(2) of the Act.

As the Landlord cannot claim damages to the residential property against the security deposit, I order the Landlord to return the Tenant's security deposit within 15 days of receiving this Decision.

Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply.

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the Landlord was unable to provide sufficient evidence that his claims of damage were as a result of the Tenant's violation of the Tenancy Agreement or the Act for two reasons. Firstly, that the Landlord's evidence was excluded from this hearing due to late submissions and secondly, due to the Landlord's failure to document the condition of the rental unit at the beginning and end of the tenancy in accordance with

Sections 23 and 35 of the Act. As a result of the Landlord failing to provide sufficient evidence to prove he incurred a monetary loss due to the Tenant's actions, I dismiss his Application without leave to reapply.

As the Landlord was unsuccessful with his Application, I decline to award compensation for the cost of the filling fee.

### Conclusion

I dismiss the Landlord's Application without leave to reapply.

I order the Landlord to return the security deposit of \$800.00 to the Tenant, within 15 days of receiving this Decision. If the Landlord fails to return the security deposit within 15 days, the Tenant may apply for Dispute Resolution for compensation for double the amount of the security deposit.

I grant the Tenant a Monetary Order for the return of the security deposit, in the amount of \$800.00, in accordance with Section 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 21, 2018

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Residential Tenancy Branch