



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNRL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of \$3,857.51 for damages to the unit, site or property, for unpaid rent or utilities, for compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenants' security deposit towards any amount owing, and to recover the cost of the filing fee.

The landlords WW and FW (landlords), an agent for the landlords AW (agent) and tenant DM (tenant) attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. The parties were affirmed and both parties stated that they understood the expectations surrounding their conduct during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed that they received and had the opportunity to review the landlord's documentary evidence prior to the hearing. The tenants did not submit documentary evidence in response to the landlord's application. The tenant requested an adjournment for two reasons. The first reason was due to their co-tenant KH (co-tenant) being in the hospital at the time of the hearing, as the tenant was scheduled to pick up their co-tenant at 4:00 p.m. Pacific Time. I note that the hearing was only scheduled for one hour from 1:30 p.m. Pacific Time. The second reason stated by the tenant was to provide the opportunity for the tenants to submitted documentary evidence.

The tenant was advised that their request for an adjournment was being dismissed for several reasons and after considering the criteria for granting an adjournment pursuant

to Rule 7.9 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Firstly, the tenant was advised that the timeline to serve evidence had already passed and that an adjournment would not provide an extension of time for serving documentary evidence. Secondly, the tenant failed to provide a sufficient reason for why they could not proceed without the co-tenant present at the hearing. As a result, the hearing continued without the co-tenant present as a tenant did attend the hearing and had already reviewed the landlord's application and documentary evidence.

Preliminary and Procedural Matters

At the outset of the hearing the parties confirmed their email addresses. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party for service on the other party.

During the hearing, the tenant was cautioned on several occasions to cease interrupting the landlord, agent and the undersigned arbitrator. The tenant was advised that if they continued to interrupt, that they would be muted for the remainder of the hearing, and almost immediately after that final warning, the tenant once again interrupted the arbitrator and at 25 minutes into the hearing, the tenant was muted for the remainder of the hearing due to their inability to follow the instructions of the arbitrator and to stop interrupting the landlord, agent and the undersigned arbitrator. The hearing lasted for a total of 50 minutes.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A fixed-term tenancy began on December 26, 2018 and was scheduled to revert to a month to month tenancy after December 31, 2020. Monthly rent was \$2,100.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$1,050.00 at the start of the tenancy, which has accrued no interest under the Act, and which the landlord continues to hold.

The landlord's monetary claim of \$3,857.51 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid portion of rent for September 2019	\$1,050.00
2. Unpaid water, sewage and garbage	\$582.21
3. Carpet replacement	\$1,092.00
4. Deck repairs	\$560.00
5. Sink gable, kitchen holes	\$90.00
6. Bedroom wall repair	\$200.00
7. Blind cleaning	\$258.30
8. Late rent fee for August 2019	\$25.00
TOTAL	\$3,857.51

Regarding item 1, the landlord has claimed \$1,050.00 for the unpaid portion of September 2019 rent. The landlords testified that the tenants paid \$1,050.00 for September 2019, and failed to pay the remaining \$1,050 in rent before vacating the rental unit on September 15, 2019.

The landlords testified that the tenants were served a 1 Month Notice to End Tenancy for Cause (1 Month Notice) on August 23, 2019, and that the 1 Month Notice had an effective vacancy date listed as September 30, 2019. There is no dispute that the tenants did not apply to dispute the 1 Month Notice. The landlord stated that although they have not re-rented the rental unit since the tenants vacated the rental unit, they are not seeking the loss of October 2019 rent, only the remainder owing for September 2019, in the amount of \$1,050.00. As a result of the above, the parties were advised that since the tenants had no right to end the tenancy early under the Act on September 15, 2019, that I found in favour of the landlords, the reasons of which I will described further below.

Regarding item 2, the landlord has claimed \$582.21 for unpaid water, sewage and garbage fees. The landlord testified that the timeframe of the unpaid utility bills was from July 10 to September 15 of 2019. The landlord referred to the tenancy agreement and addendum that supports that water, sewage and garbage fees were not included in the monthly rent. The landlord also referred to water, sewage and garbage bills submitted in evidence, which total with late fees, \$582.21. The tenant's response to this item was that they never received a final copy of the bills and had no response once seeing the bills in evidence.

Regarding item 3, the landlord has claimed \$1,092.00 for the cost to replace damaged carpet. The landlord testified that the carpet was two years old at the start of the tenancy, which would make the carpets three years old by the end of the tenancy. The landlord presented the incoming and outgoing Condition Inspection Report (CIR) in support of this item. The incoming CIR was completed on December 26, 2018 and the outgoing CIR was completed on September 15, 2019.

The landlord testified that the carpet was in the downstairs bedroom only and that the carpet and underlay could not be repaired as the carpet was no longer available as the mill where it was produced was closed, as noted on the carpet quote submitted in evidence. The landlord stated the carpet had extensive stains and odour, and was pulled in one area as well. The landlord submitted several colour pictures in evidence to show staining, damage and the pull damage. The quote for the carpet and underlay replacement was submitted in evidence in the amount of \$1,092.00. The landlord stated that the work has not been completed as of the date of the hearing.

The tenant's response to this item was that the carpet had regular wear and tear and that the carpet was two years old at the start of the tenancy and that there was no picture of the damaged underlay submitted in evidence. The tenant also stated that the landlord did not submit any before photos of the carpet in evidence. As noted above and due to continued interruptions by the tenant, it was at this point in the hearing that the tenant was muted for the remainder of the hearing. The landlord denied that the damage was regular wear and tear, which the landlord stated was shown in the photo evidence.

Regarding item 4, the landlord has claimed \$560.00 for deck repairs. In support of this item the landlord submitted an invoice from TC (construction company), which indicates \$80.00 for labour and material to board missing glass panel, \$130.00 for labour and material to remove 6x6 trellis work done by tenant on deck and replace top railing back to original material. In addition, the invoice indicates \$350.00 for material and labour to replace broken glass panel on deck. The landlord also presented photo evidence and described that the tenants cut a portion of the top rail of the original wooden deck to install their own trellis without permission of the landlord.

The landlord also stated that they advised the tenants that they would be required to repair and return the deck to its original condition before they vacated the rental unit, which they failed to do. In addition, the landlord presented the CIR, which supports that the deck was damaged.

Regarding item 5, the landlord has claimed \$90.00 to repair the sink gable and kitchen holes, which was damaged caused by the tenants during the tenancy. In support of this item the landlord referred to their photo evidence which shows holes that the landlord stated were made so that the tenants could install a light fixture above the sink and were never repaired before they vacated the rental unit. The landlord explained that the other holes were where the light fixture was installed and removed by the tenants, leaving exposed damage to the kitchen cabinets. The landlord also presented the CIR in support of this portion of their claim, which supports that the cabinets were damaged. The landlord also referred to the construction company invoice, which supports the amount claimed.

Regarding item 6, the landlord has claimed \$200.00 for a bedroom wall repair. The landlord presented the CIR and indicated that the report supports that the master bedroom walls were in good condition at the start of the tenancy and were damaged at the end of the tenancy. Furthermore, the landlord presented photo evidence, which the landlord testified shows damage to the closet that was altered with improperly installed shelving by the tenants and without permission of the landlords.

The landlord stated that the photo of the holes was taken during a routine inspection of the rental unit in July 2019 and that the tenants filled the holes with spackle upon move out but did not sand or paint the filled holes, which showed at least 6 holes in the photo presented. The landlord stated that the screw protruded right through the wall of the closet into the other room, requiring additional repair and was installed wrong. The landlord also referred to the construction invoice, which lists \$200.00 for material and labour to sand and paint bedroom walls.

Regarding item 7, the landlord has claimed \$258.30 for blind cleaning. The landlord testified that the blinds were covered in pet hair, which was supported by the photo evidence presented during the hearing. The landlord also referred to the CIR and invoice, which supports the amount claimed and that the blinds were listed as dirty at the end of the tenancy.

Regarding item 8, the landlord has claimed \$25.00 for the late payment of rent for August 2019. The landlord referred to the tenancy agreement addendum term #3, which states:

3. ARREARS. Late payments, returned or non-sufficient funds (NSF) are subject to a minimum service charge of \$25.00 each.

The landlord testified that the tenants did not pay August 2019 rent until August 6, 2019 and that rent was due on the first day of each month, as supported by the tenancy agreement.

Regarding the security deposit, the landlord stated that the tenants provided their written forwarding address on the outgoing CIR on September 15, 2019. The landlord submitted their application claiming against the tenants' security deposit on September 26, 2019.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Item 1 - The landlord has claimed \$1,050.00 for the unpaid portion of September 2019 rent. I accept the landlord's testimony that the tenants were served a 1 Month Notice to End Tenancy for Cause (1 Month Notice) on August 23, 2019, and that the 1 Month Notice had an effective vacancy date listed as September 30, 2019. Section 47(5) of the Act applies and states:

47(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

[Emphasis added]

Based on the above, even though the tenants vacated the rental unit on September 15, 2019, I find the tenancy ended on September 30, 2019, which is the effective vacancy date listed on the 1 Month Notice. I also find that the tenants had no right under the Act to end the tenancy earlier than September 30, 2019, and therefore breached section 26 of the Act, which applies and states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the above, I find the tenants provided insufficient evidence that they had a right under the Act to deduct all or a portion of the rental for September 2019.

Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$1,050.00** for the unpaid portion of September 2019 rent.

Item 2 - The landlord has claimed \$582.21 for unpaid water, sewage and garbage fees. The landlord testified that the timeframe of the unpaid utility bills was from July 10 to September 15 of 2019. Having considered the tenancy agreement and addendum that supports that water, sewage and garbage fees were not included in the monthly rent and the bills submitted in evidence, I find the landlord has met the burden of proof. Therefore, I find the tenants are liable for the costs claim for this item and as a result I grant the landlord **\$582.21** as claimed for this item.

Item 3 - The landlord has claimed \$1,092.00 for the cost to replace damaged carpet. I find that based on the CIR and the photo evidence that the tenant's claim of reasonable wear and tear is not supported by the evidence before me. Therefore, I find that tenants damaged the carpets beyond reasonable wear and tear and the pulling of the carpets and the staining shown in the photos is not reasonable wear and tear and is consistent with negligence by the tenants. Therefore, as negligence has been proven, I will not be applying policy guideline 40 in terms of depreciating the carpet cost as I find the carpets would not have required replacement if not for the negligent actions of the tenants.

Section 37(2)(a) of the Act applies and states:

Leaving the rental unit at the end of a tenancy

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,
[Emphasis added]

Based on the above, I find the tenants breached section 37(2)(a) of the Act and were negligent with the carpets of the rental unit. Therefore, I find the landlord is entitled to the full amount claimed of **\$1,092.00** as claimed. I also note that I don't find the tenant to be credible based on their allegation that the carpet damage was reasonable wear and tear, which I disagree with based on the CIR and photo evidence before me.

Item 4 - The landlord has claimed \$560.00 for deck repairs. I accept the evidence before me that the landlord did not authorize the deck alterations made by the tenants,

which I find damaged the original deck, resulting in a total of \$560.00 in deck repairs. As a result, I find the landlord has met the burden of proof and that the tenants owe the landlord **\$560.00** as claimed. This is also a breach of section 37 of the Act.

Item 5 - The landlord has claimed \$90.00 to repair the sink gable and kitchen holes. I accept the photo evidence, CIR and invoice, which supports that the kitchen cabinets were damaged by the tenants during the tenancy. This is also a breach of section 37 of the Act. As a result, I find the landlord has met the burden of proof and I award the landlord **\$90.00** as claimed for this portion of their claim.

Item 6 - The landlord has claimed \$200.00 for a bedroom wall repair. I agree with the landlord that the tenants installed shelving incorrectly, which is supported by the photo evidence and the testimony of the landlord. I also accept the landlord's testimony that the tenants failed to sand and re-paint the damage to the bedroom wall and as a result, I find the landlord has met the burden of proof as the tenants breached section 37 of the Act. Therefore, I grant the landlord **\$200.00** as claimed for this item.

Item 7 - The landlord has claimed \$258.30 for blind cleaning. I accepted the landlord's testimony that the blinds were covered in pet hair, which I find is supported by the photo evidence presented during the hearing. I also note that the landlord referred to the CIR and invoice, which I find supports the amount claimed. Therefore, I find the landlord has met the burden of proof and I award the landlord **\$258.30** as claimed for this item.

Item 8 - The landlord has claimed \$25.00 for the late payment of rent for August 2019. Based on the clause #3 listed on the tenancy agreement addendum, I accept the landlord's testimony and find that the tenants breached section 26 of the Act and owe **\$25.00** as claimed for this portion of the landlord's claim.

I find the landlord applied within the required 15-day timeline provided under section 38 of the Act as the evidence before me supports that the tenants provided their written forwarding address on the outgoing CIR on September 15, 2019 and that the landlord filed their application claiming against the security deposit on September 26, 2019.

Based on the above, I find the landlord's claim is fully successful and as a result, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the Act. Therefore, I find the landlord has established a total monetary claim of **\$3,957.51** comprised as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
1. Unpaid portion of rent for September 2019	\$1,050.00
2. Unpaid water, sewage and garbage	\$582.21
3. Carpet replacement	\$1,092.00
4. Deck repairs	\$560.00
5. Sink gable, kitchen holes	\$90.00
6. Bedroom wall repair	\$200.00
7. Blind cleaning	\$258.30
8. Late rent fee for August 2019	\$25.00
9. Filing fee	\$100.00
TOTAL	\$3,957.51

As the landlord continues to hold the tenants' \$1,050.00 security deposit and pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain the tenant's full \$1,050.00 security deposit including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the balance owing by the tenants to the landlord in the amount of **\$2,907.51**.

I caution the tenants not to breach sections 26, 37 and 47 of the Act in the future.

Conclusion

The landlord's claim is fully successful.

The landlord has established a total monetary claim of \$3,957.51. The landlord has been authorized to retain the tenants' full security deposit including \$0.00 in interest of \$1,050.00 in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The landlord is granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of \$2,907.51. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenants have been cautioned as noted above.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 10, 2020

Residential Tenancy Branch