



Dispute Resolution Services

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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* (Act) for a monetary order for \$20,053.39 for unpaid rent or utilities, for damages to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenant's security deposit and pet damage deposit towards money owing, and to recover the cost of the filing fee.

The landlord, WW (landlord) attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the 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.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated December 30, 2020 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing and application were served on the tenant by registered mail on December 30, 2020 to the forwarding address the tenant provided via email received on December 7, 2020. The landlord filed their application on December 21, 2020. The registered mail tracking number has been included on the style of cause for ease of reference and has been identified as 1. According to the online registered mail tracking website, the registered mail package was eventually returned to sender and marked as "unclaimed". Section 90 of the Act states that documents served by registered mail are deemed served 5 days after they are mailed. Therefore, I find the tenant was deemed served as of January 4, 2021 with the Notice of Hearing and application.

In addition to the above, the landlord testified that a second package containing their documentary evidence was mailed in the same manner on April 7, 2021. The registered mail tracking number has been included on the style of cause for ease of reference and has been identified as 2. According to the online registered mail tracking website, the registered mail package was eventually returned to sender and marked as “unclaimed”. Section 90 of the Act states that documents served by registered mail are deemed served 5 days after they are mailed. Therefore, I find the tenant was deemed served as of April 12, 2021 with the documentary evidence. Given the above, I find this application to be unopposed by the tenant as I find the tenant was deemed served and did not attend the hearing.

Preliminary and Procedural Matters

The landlord was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The landlord was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the landlord was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The landlord had no questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlord confirmed the email addresses of the parties at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to the landlord and that the decision only would be emailed to the tenant.

Furthermore, the landlord confirmed at the outset of the hearing that their actual monetary claim was \$19,953.39 instead of \$20,053.39 as listed on their application. I find that a reduction in the monetary claim does not prejudice the tenant and as a result, I will only consider the total claim of \$19,953.39.

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 tenant’s security deposit and pet damage 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 the tenancy agreement was submitted in evidence. A fixed-term tenancy began on October 15, 2018 and reverted to a month to month tenancy as of October 15, 2019. The tenant paid a security deposit at the start of the tenancy in the amount of \$950.00, which was increased by \$400.00 as of July 18, 2019 when the parties signed an amendment to the tenancy agreement increasing the size of the rental unit from the suite to the entire home, which raised the rent from \$1,900.00 per month to \$2,700.00 per month and due on the first day of each month. The pet damage deposit, according to the landlord was \$950.00 and was not increased during the tenancy even after the amendment was signed by the parties. As a result, the total combined deposits that the landlord continues to hold is \$2,300.00 in combined deposits (combined deposits).

The landlord's monetary claim of \$19,953.39 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning after move out	\$983.62
2. More cleaning required	\$607.50
3. Cleaning supplies	\$240.13
4. Screen door repair	\$179.20
5. Unpaid rent/utilities	\$8,510.50
6. Rental of seller accommodation to due breach of contract caused by tenant	\$8,469.00
7. Utilities related to #6 above.	\$803.94
8. Carpet cleaning	\$45.00
9. Filing fee	\$100.00
10. Mailing costs	\$14.50
TOTAL	\$19,953.39

Regarding item 1, the landlord has claimed \$983.62 to clean the rental unit after the tenant vacated the rental unit. The landlord testified that the tenant failed to clean the rental unit and submitted an invoice in the amount of \$983.62 in support of this portion of their claim. The photo evidence presented by the landlord shows a very dirty rental unit.

Regarding item 2, the landlord has claimed \$607.50 for their time to clean the rental unit, which is in addition to item 1 described above. The landlord presented many colour photos showing drawings all over windows and other dirty areas of the rental unit. The landlord testified that they spent a total of 40.5 hours cleaning the rental unit and is

charging \$15.00 per hour for their labour. A spreadsheet was submitted in support of the number of hours spent cleaning by the landlord.

Regarding item 3, the landlord has claimed \$240.13 for the cost of cleaning supplies associated with item 2. The landlord supported this portion of their claim by referred to an invoice submitted in evidence.

Regarding item 4, the landlord has claimed \$179.20 to repair a damaged screen door, which the landlord testified was full of holes from the tenant's bulldog and later on, a puppy. The landlord stated that the damage was not reasonable wear and tear as it could not be repaired and was in good condition at the start of the tenancy. An invoice of \$179.20 was submitted in support of this portion of the claim.

Regarding item 5, the landlord has claimed \$8,510.50 for unpaid rent and unpaid utilities, which included a discount of \$350.00 provided by the landlord to the tenants for showings, which although the landlord was not required to provide discounts for showings, the landlord stated they did to appease the tenant who was displeased with showings of the rental unit when the property was for sale. The landlord submitted a spreadsheet for the breakdown of \$8,510.50 as follows:

Comments	Rent	Utilities	Due Date	Amount Due	Amount Paid
Regular Month of June	\$2,700.00	\$ 263.00	June 1, 2020	\$2,963.00	\$ 2,368.00
Regular Month of July	\$2,700.00	\$ 263.00	July 1, 2020	\$2,963.00	\$ 2,368.00
August rent minus payment for showings: \$2700-\$350 discount	\$2,350.00	\$ 263.00	Aug. 1, 2020	\$2,613.00	\$ -
Regular Month of September	\$2,700.00	\$ 263.00	Sept. 1, 2020	\$2,963.00	\$ -
October discounted - Moved half way through Nov.	\$1,350.00	\$ 263.00	Oct. 1, 2020	\$1,613.00	\$ -
Last month free - Half month utility charge	0	\$ 131.50	Nov. 1, 2020	\$131.50	\$ -
TOTAL	\$11,800.00	\$1,446.50		\$13,246.50	\$4,736.00
BALANCE OWING					\$8,510.50

Regarding item 6, the landlord has claimed that due to the tenant failing to vacate the rental unit by September 30, 2020 the effective vacancy listed on the undisputed 2 Month Notice to End Tenancy for Landlord's Use of Property dated July 25, 2020 (2 Month Notice). The files numbers of a previous decision dated December 7, 2020 (Previous Decision) have been included on the style of cause for ease of reference. In the Previous Decision, two landlord file numbers were combined into one hearing, a cross-application. In the Previous Decision, the arbitrator found that the 2 Month Notice was not disputed and that the tenant overheld in the rental unit as the tenant claimed that it was not enough time to vacate. Although the tenant vacated on November 16,

2020, that was well after the September 30, 2020 effective vacancy date and according to the landlord, because the reason on the 2 Month Notice was due to the purchasers requiring vacant possession, the tenant's actions by overholding cause the landlord to be in Breach of Contract due to the tenant's breach. As a result, the landlord was forced to pay for a rental home for the purchasers in the amount of \$8,469.00. This amount was supported by the following spreadsheet and a tenancy agreement made between the purchasers until such time that the tenant vacated the rental unit, which was not until the middle of November 2020. The landlord testified that the rent for December 2020 had to be paid as the landlord for the purchasers could not be given notice until the rental unit was eventually vacated by the overholding tenant. The breakdown of \$8,469.00 is as follows:

Comments	Rent	Due Date	Amount Due	Amount Paid
Pro-rated October Rent Plus Damage Deposit (\$2569 plus \$1875 for damage and pet deposit)	\$4,444.00	October 1, 2020	\$4,444.00	\$ -
November	\$2,950.00	November 1, 2020	\$2,950.00	\$ -
December	\$2,950.00	December 1, 2020	\$2,950.00	\$ -
				\$ -
Refund for Pet and Damage Deposit	(\$1,875.00)			
TOTAL	\$8,469.00		\$8,469.00	\$0.00
BALANCE OWING				\$8,469.00

Similar to item 6, item 7 is for the cost of utilities paid for the rental property for the purchasers according to the landlord due to the tenant's overholding causing a Breach of Contract. The breakdown of \$803.94 is as follows:

Receipt Number	Utility	Due Date	Amount
#7. a.	BC Hydro	Nov. 12, 2020	\$ 52.14
#7. b.	Fortis	Nov. 17, 2020	\$ 124.99
#7. c.	Fortis	Dec. 17, 2020	\$ 189.35
#7. d.	BC Hydro	Jan. 11, 2021	\$ 137.91
#7. e.	BC Hydro	Jan. 27, 2021	\$ 160.35
#7. f.	Fortis	Jan. 28, 2021	\$ 139.20
			\$803.94

Regarding item 8, the landlord has claimed \$45.00 for the cost of carpet cleaning. The landlord testified that the carpets were not cleaned by the tenant prior to the end of the tenancy. An invoice for \$45.00 for carpet cleaning was submitted in evidence.

Regarding item 9, this item refers to the filing fee, which I will address later in this decision.

And finally, regarding item 10, the landlord has claimed \$14.50 for mailing costs, which was dismissed during the hearing as there is no remedy for mailing costs under the Act.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

Item 1 - The landlord has claimed \$983.62 to clean the rental unit after the tenant vacated the rental unit. I find the invoice in the amount of \$983.62 supports this portion of their claim and is also supported by the photo evidence. Furthermore, I find the tenant breached section 37(2) of the Act, which requires that the rental unit be left reasonably clean at the end of the tenancy. Accordingly, I find the landlord has met the burden of proof and is awarded **\$983.62** as claimed.

Item 2 - The landlord has claimed \$607.50 for their time to clean the rental unit, which is in addition to item 1 described above. I find the many colour photos supported the testimony of the agent. Given the photo evidence and the detailed spreadsheet, I find that additional cleaning was necessary to return the rental unit to a reasonably clean condition as required by Section 37(2) of the Act. Accordingly, I find the landlord has met the burden of proof and is awarded **\$607.50** as claimed.

Item 3 - The landlord has claimed \$240.13 for the cost of cleaning supplies associated with item 2. I find the invoice submitted supports this part of the landlord's claim. Accordingly, I find the landlord has met the burden of proof and is awarded **\$240.13** as claimed.

Item 4 - The landlord has claimed \$179.20 to repair a damaged screen door, which I accept was damaged by the tenant's bulldog and puppy. I also accept the undisputed testimony that the screen door could not be repaired due to the damage and was in good condition at the start of the tenancy. I also find the invoice of \$179.20 supports this claim. I find the tenant breached section 37(2) of the Act, which requires that the rental

unit be left undamaged, less reasonable wear and tear and I find the damage to the screen door exceeds reasonable wear and tear and was negligent damage. Accordingly, I find the landlord has met the burden of proof and is awarded **\$179.20** as claimed.

Item 5 - The landlord has claimed \$8,510.50 for unpaid rent and unpaid utilities and I accept the undisputed testimony and amounts listed on the spreadsheet submitted in evidence. I also find the tenant breached section 26 of the Act by failing to pay rent on the date that it is due and for the time period the tenant was overholding the rental unit. Accordingly, I find the landlord has met the burden of proof and is awarded **\$8,510.50** as claimed.

Item 6 - The landlord has claimed that due to the tenant failing to vacate the rental unit by September 30, 2020 the effective vacancy date listed on the undisputed 2 Month Notice. I find the tenant was overholding the rental unit until November 16, 2020, and that the tenant is responsible for the Breach of Contract related to the sale of the property as a result, which resulting in a loss to the landlord in the amount of \$8,469.00. I find this amount to be supported by the detailed spreadsheet and the tenancy agreement made between the purchasers until such time that the tenant vacated the rental unit, which was not until the middle of November 2020. Accordingly, I find the landlord has met the burden of proof and is awarded **\$8,469.00** as claimed due to the tenant failed to comply with a lawful and undisputed 2 Month Notice with an effective vacancy date of September 30, 2020.

Item 7 – Consistent with my finding for item 6 above, and for the same reasons, I find the landlord has met the burden of proof for the cost of utilities paid for the rental property for the purchasers due to the tenant's overholding causing a Breach of Contract. Accordingly, I award the landlord **\$803.94** as claimed.

Item 8 - The landlord has claimed \$45.00 for the cost of carpet cleaning. I accept the landlord's undisputed testimony that the carpets were not cleaned by the tenant prior to the end of the tenancy. In addition, I find the invoice supports the amount claimed of \$45.00. I find the tenant breached section 37(2) of the Act, which requires that the rental unit be left reasonably clean at the end of the tenancy. Accordingly, I find the landlord has met the burden of proof and is awarded **\$45.00** as claimed.

Item 9 – As the landlord's application has merit, I grant the landlord the filing fee pursuant to section 72 of the Act in the amount of **\$100.00**.

Item 10 – As this item relates to \$14.50 for mailing costs, it was dismissed during the hearing as costs to mail documents associated with the dispute resolution hearing are not recoverable under the Act. As such, they are dismissed without leave.

I find the landlord has established a total monetary claim as follows:

ITEM DESCRIPTION	AMOUNT AWARDED
1. Cleaning after move out	\$983.62
2. More cleaning required	\$607.50
3. Cleaning supplies	\$240.13
4. Screen door repair	\$179.20
5. Unpaid rent/utilities	\$8,510.50
6. Rental of seller accommodation to due breach of contract caused by tenant	\$8,469.00
7. Utilities related to #6 above.	\$803.94
8. Carpet cleaning	\$45.00
9. Filing fee	\$100.00
10. Mailing costs	Dismissed
TOTAL	\$19,938.89

As the landlord continues to hold the tenant's combined deposits of \$2,300.00, which have accrued no interest since the start of the tenancy, I authorize the landlord to retain the full combined deposits of \$2,300.00 in partial satisfaction of the landlord's claim pursuant to section 38 of the Act.

I grant the landlord a monetary order pursuant to section 67 of the Act in the balance owing by the tenant to the landlord of **\$17,638.89**.

Conclusion

The landlord's application is mostly successful.

The landlord has been authorized to retain the tenant's full combined deposits of \$2,300.00, including \$0.00 in interest, and has also been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in

the amount of \$17,638.89. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision will be emailed to both parties.

The monetary order will be emailed to the landlord only for service on the tenant.

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: May 5, 2021

Residential Tenancy Branch