



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RENT IT FURNISHED REALTY
(AGENT) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the landlord seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of \$4,002.10 for damages to the unit, site or property, to retain the tenant's security deposit towards any amount owing, and to recover the cost of the filing fee.

An agent for the corporate landlord, AM (agent) and the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The tenant confirmed that they had received documentary evidence from the landlord and had the opportunity to review that evidence prior to the hearing. As a result, I find the was sufficiently served in accordance with the Act. In addition, the tenant confirmed that they did not serve documentary evidence on the landlord.

Preliminary and Procedural Matters

The parties confirmed their respective email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to the parties as a result.

In addition to the above, the agent was advised at the start of the hearing that the amount claimed when the application was served was \$3,902.10 before the \$100.00 filing fee, and not the \$7,572.09 amount listed in an amended Monetary Order Worksheet. The agent was advised that to increase a monetary claim, the landlord must

fill out the proper amendment form and re-serve the amended application, which the landlord failed to do. As a result, the agent was given 2 options, either proceed with the original claim of \$4,002.10 including filing fee or withdraw their application and have leave to reapply. The agent decided to proceed with the claim of \$4,002.10 only and understood that the landlord is not permitted to divide a claim under Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 2.9. Given the above, I proceeded with the claim for \$4,002.10 and dismiss any additional amount without leave to reapply.

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 under the Act?
- Is the landlord entitled to recover the cost of the filing fee under the Act?

Background and Evidence

A fixed-term tenancy began on April 1, 2019 and was extended for another fixed-term after March 31, 2020 until March 31, 2022. Monthly rent in the amount of \$2,800.00 was due on the first day of each month. The tenant paid a security deposit of \$1,497.50 at the start of the tenancy which the landlord continues to hold. The parties agree that the rental unit keys were returned to the landlord on May 21, 2020.

The landlord's monetary claim of \$4,002.10 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Extra cleaning	\$356.26
2. Stove top replacement	\$1,192.79
3. Damaged walls	\$2,353.05
4. Filing fee	\$100.00
TOTAL	\$4,002.10

Settlement Agreement

During the hearing, the parties agreed on a partial settlement agreement regarding item 1. The parties agreed that all matters which form part of the settlement agreement were agreed upon by the parties, pursuant to section 63 of the Act, and form a final and

binding agreement between the parties as mutually resolved matters related to this tenancy.

The parties agreed that the tenant would pay the landlord **\$161.26** for extra cleaning required and would also surrender their \$195.00 credit on file which was originally listed as a non-refundable deposit. As part of this mutual agreement, the tenant confirmed that they would not have their \$195.00 credit on file returned and would owe the landlord an additional \$161.26 for the cleaning required at the end of the tenancy.

Remaining items

Regarding item 2, the landlord has claimed \$1,192.79 for the cost to replace the stove cook top. The agent stated that the rental unit was new in 2011. The incoming Condition Inspection Report indicated wear and tear marks on the stove cook top, however the photo evidence shows cracks and chips in the glass of the stove cook top. The tenant admitted during the hearing that a spice fell down from above and cracked the stove cook top glass. The landlord submitted two invoices, one for \$110.88 for the cost to measure for a new stove cook top and the other for the stove cook top replacement of \$1,366.76, both of which include taxes and the latter of which includes installation.

The agent testified that when the stove cook top is cracked, it is not safe to use as the sharp edges can cause injury and water could leak through into the electronics and cause a fire hazard. The tenant replied that they wish someone told them that it was unsafe because nothing was done for 6 months before they vacated on October 31, 2021.

Regarding item 3, the agent indicated that this amount was reduced from \$2,353.05 to \$1,948.80 as the landlord deducted the \$385.00 portion plus tax for repainting the walls so as a result, the landlord is only seeking \$1,948.80 for item 3 as a result. The agent testified that the tenant damaged a frosted bedroom door and a broken glass closet door during the tenancy. The tenant denied damaging both the frosted door and glass closet door and referred to the Condition Inspection Report (Report) that had at least two areas of the Report that clearly had white out applied at some point, which the agent did not dispute. I will address this matter later in this Decision.

Regarding item 4, I will address the \$100.00 filing fee later in this Decision.

Regarding the tenant's written forwarding address, the tenant did not provide their written forwarding address on the outgoing Condition Inspection Report. The tenant

provided their written forwarding address on November 3, 2021 and the landlord filed their application on November 18, 2021, which is within the required 15-day timeline under section 38 of the Act.

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what is reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what is reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 – As indicated above, this item was resolved pursuant to section 63 of the Act by way of a mutually settled agreement. The parties agreed that the tenant would surrender their \$195.00 credit on file plus pay an additional **\$161.26** for cleaning costs. As a result, I order the parties to comply with their mutually settled agreement pursuant to sections 62(3) and 63 of the Act.

Item 2 – Regarding the stove cook top, the landlord has claimed \$1,192.79 to replace a damage stove cook top. As the home was new in 2011 according to the agent, I find the stove was 10 years old by the end of the tenancy as of October 31, 2021. I find there is insufficient evidence before me to find that the stove was any newer than 10 years old. Accordingly, RTB Policy Guideline 40 – Useful Life of Building Elements states that the useful life of a stove is 15 years. As a result, although I normally would find the amount claimed would be depreciated by 2/3 or 66.66% I do not apply depreciated value when negligence has occurred. Given that the tenant admitted to dropping a spice container onto the glass stove cook top, causing the stove to crack in more than one location, I find the tenant was negligent and that this damage was not the result of normal wear and tear. As a result, I find the tenant is responsible for 75% of the cost of the replacement stove. The remaining 25% value I dismiss without leave to reapply as I find the landlord did not mention the safety issues to the tenant for 6 months prior to the end of the tenancy, which I find results in 25% liability to the landlord. Given the above, I find the landlord is entitled to 75% of \$1,192.79, which is **\$894.59**. Any additional amount is dismissed without leave to reapply, due to insufficient evidence.

Item 3 – As the agent did not deny the Condition Inspection Report had at least 2 areas whited out after it was completed, I find the entire Condition Inspection Report is void and afford it no weight as I find the document has been altered and that by doing so was a fatal flaw by the landlord. Given that the tenant denied damaging the frosted bedroom door and the glass closet door, and without the Condition Inspection Report to afford weight to, I find the landlord has failed to meet the burden of proof for this item. Therefore, this item is **dismissed without leave to reapply** due to insufficient evidence.

I caution the landlord not to alter any documents in the future once they have been signed and that prior to being signed, any alterations or modifications to a document be initialled by both parties.

Monetary order – Based on the above, I find the landlord has established a total monetary claim of **\$1,155.85**, comprised of a mutual agreement for item 1 of \$161.26, \$894.59 for item 2, and the filing fee of \$100.00. As the landlord continues to hold the tenant's security deposit of \$1,497.50 which has accrued \$0.00 in interest under the Act, **I authorize** the landlord to retain **\$1,155.85** from the tenant's security deposit in full satisfaction of the landlord's monetary claim. I grant the tenant a monetary order pursuant to section 67 of the Act for their security deposit balance owing by the landlord to the tenant in the amount of **\$341.65**.

Conclusion

The landlord's application was partly successful. In addition, a portion was settled by way of a mutually settlement agreement pursuant to section 63 of the Act. The parties confirmed that their mutual agreement was made on a voluntary basis and that the parties understood the binding nature of this full and final settlement of these matters.

Based on the above, the landlord has established a total monetary claim of \$1,155.85. The landlord is authorized to retain \$1,155.85 from the tenant's security deposit of \$1,497.50, which has accrued no interest. The tenant has been granted a monetary order pursuant to section 67 of the Act for the security deposit balance owing by the landlord to the tenant in the amount of \$341.65.

Should the landlord failed to pay that amount, the tenant must serve the monetary order on the landlord with a demand for payment letter. Then the tenant may enforce the monetary order as an order of the Provincial Court of British Columbia (Small Claims). The landlord is reminded that they may be held responsible for the costs related to enforcing the monetary order.

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

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: July 6, 2022

Residential Tenancy Branch