



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The tenants CMB and CNB attended (“the tenant”). The landlord attended

Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. Each party confirmed they were not

recording the hearing.

Each party confirmed their email addresses to which the Decision will be sent.

Interruption in Hearing

The hearing began at 1:30 PM. As the hearing was completing at 2:48 PM, the Arbitrator was disconnected from the call. The hearing resumed with the Arbitrator and landlord at 2:12 PM. We waited for the tenant and the tenant CNB rejoined the hearing at 3:15. The hearing continued and concluded at 3:35 PM.

Preliminary Issue – Settlement

I explained to the parties that under section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute. If the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

I explained to the parties that I do not provide legal or any advice. They could call the RTB Information Officers or consult the website for help and information. They could settle the issues outside or during the hearing.

The parties spent considerable time discussing possible settlement. They did not reach settlement.

Accordingly, the hearing continued

Preliminary Issue – Service

After considerable discussion, the tenant agreed they received the landlord's Notice of Hearing and Application for Dispute Resolution sent by registered mail on December 15, 2022. The tenant did not submit documents in this Application.

Preliminary Issue – Adjournment

At the commencement of the hearing, the tenant sought an adjournment. The landlord objected.

Each party was given an opportunity to address the issue. I read aloud the considerations in Rule 7.8 for the granting of an adjournment and asked each party to address the factors in turn.

Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* allow parties to request that hearings be adjourned.

Residential Tenancy Branch Rule of Procedure 7.9 states that, without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

The tenant acknowledged service of the documents above, but testified they believed the documents related to a closed RTB matter between the parties. Accordingly, they did not respond. The tenant acknowledged receipt of a reminder email from the RTB and still did not respond. The tenant did not contact the RTB.

Nevertheless, the tenant stated they forgot about today's hearing and needed time to prepare. They also testified they submitted evidence to the closed files between the parties in error. However, a search of the closed files did not reveal

any evidence submitted to another matter in error. They requested time to search for copies of communication between the parties.

The tenant acknowledged there was little or no likelihood of the adjournment resulting in a resolution.

The landlord objected to the request for an adjournment saying they had applied in December 2021, more than 6 months previously. They requested the hearing go ahead.

In considering the application, I weighed the credibility of the parties. I found the tenant's explanation of why they did not have time to prepare for the hearing to lack credibility.

I determined that an adjournment of this case would not assist the parties in resolving the issues. I concluded the need for the adjournment was brought about by the failure of the tenant to prepare for the hearing. The tenant has had ample time and a fair opportunity to prepare for the hearing after being served over 6 months ago and following receipt of the automatically generated notice from RTB.

Accordingly, I denied the request for an adjournment. The hearing continued. The hearing in its entirety lasted 129 minutes.

Issue(s) to be Decided

Is the landlord entitled to the relief requested?

Background and Evidence

The parties gave considerable conflicting testimony in the 81-minute hearing. I have considered all relevant evidence and only key admissible facts are referenced.

The landlord submitted a copy of the tenancy agreement between the parties. The tenancy began on September 1, 2018, and ended on December 1, 2021. Rent was \$1,500.00 monthly. At the beginning of the tenancy, the tenant paid a security deposit of \$750.00 which the landlord holds.

The tenant, two parents and three children, rented the upper two floors of a house built by the landlord more than 20 years ago.

Condition Inspection Report

The parties conducted a condition inspection on moving in signed by both parties which indicated the unit was in good condition in all material respects.

The parties conducted a condition inspection on moving out signed by both parties which noted the front entrance door which contained a window was broken.

The landlord submitted a copy of both Condition Inspection Reports.

Summary of Landlord's Claims

The landlord claimed as follows:

ITEM	AMOUNT
Outstanding Rent November 2021	\$350.00
Door replacement cost	\$1,828.81
Carpet Cleaning	\$250.00
TOTAL	

Each claim is addressed.

Landlord's Claim – Outstanding rent

The landlord claimed the tenant owed \$350.00 for rent. The landlord stated he did not receive the \$350.00 owing.

The tenant testified the parties agreed the tenant could deduct this amount from rent for vehicle equipment damage for which the landlord was responsible. Nevertheless, the tenant said that when they deducted \$350.00 from the rent due November 1, 2021 as agreed, the landlord issued a 10 Day Notice. To stay in the unit, the tenant testified they paid the \$350.00 and agreed to sort it all out with the landlord when they moved out. The tenant testified they were under a lot of strain as the male tenant had already moved to another province and the family was to end the tenancy before going there as well.

The landlord submitted as evidence an email to the tenant dated November 3, 2021, stating the tenant could not deduct the \$350.00 from the rent and was required to pay the rent in full:

You have to pay your full rent less **the \$350.00 we agreed on** for the damage to the vehicle

(emphasis added)

In an email of November 7, 2021, a copy of which was submitted, the landlord stated:

Please send the final full rental payment of \$350.00 by tomorrow Monday November 8, 2021 **so you can stop the eviction notice**, which states you will have to move out November 13, 2021.

All these monies will be sorted out on your moving day.

The landlord did not submit copies of a tenant ledger or receipts for rent received. During the hearing, the landlord denied agreeing to pay the tenant \$350.00 for the vehicle damage.

The tenant submitted no evidence they paid the rent in full.

Door Replacement

The parties agreed the door was in poor condition when the tenant vacated.

The landlord testified they incurred expenses of \$1,828.81 to buy and install a new door. They acknowledged the door was over 20 years old and was original to the house. The landlord testified the door was in good working order when the tenant moved in.

The landlord submitted photographs of the damaged door as well as copies of receipts.

The tenant acknowledged they damaged the glass in the door's window. However, they stated the door was in poor condition when they moved in as it was hard to close properly. The problem worsened during the tenancy. The tenant attempted to fix the door and so did his father.

The tenant submitted that the landlord was not entitled to a new door to replace a poorly working door well past its functioning life.

Landlord's Claim – Carpet Cleaning

The landlord submitted a receipt in support of a claim for carpet cleaning in the amount of \$250.00.

The tenant denied the landlord is entitled to any claim for carpet cleaning stating they cleaned the carpet thoroughly before they left, and the unit was immaculate.

The tenant claimed that no mention was made of the carpet during the condition inspection on moving out.

Security deposit

The tenant testified that when they moved out, they asked the landlord to replace the glass in the door and send the rest of the security deposit to them. The landlord agreed.

The landlord denied there was any such request or agreement. The landlord requested authorization to apply the security deposit to the award.

Analysis

This is an application by a landlord for compensation for damages allegedly caused by the tenant. The landlord submitted considerable evidence and testimony in a lengthy hearing. The tenant submitted no documentary evidence but responded to the landlord's claims in extensive testimony.

Only relevant, admissible evidence is considered. Only key facts and findings are referenced.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

It is up to the party to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

In this case, it is up to the landlord to prove their claims.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Four-part Test

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the other party failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the claiming party proven the amount or value of their damage or loss?
4. Has the claiming party done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Credibility

In considering the application, I weighed the credibility of the parties. I considered the two competing versions of responsibility for the landlord's time and expenses (or estimate expenses). Each party vehemently blamed the other and accused the other of lying.

The tenant acknowledged that he still had the emails sent to the landlord about the matters. The tenant did not provide a convincing reason for failing to produce even one document for the hearing.

While the landlord's testimony was supported by some documents, I find they failed to dispel the tenant's assertions about the condition of the door being caused by normal ageing and decay of the unit for which the tenant is not culpable.

Each claim is addressed.

Outstanding Rent November 2021 \$350.00

I have considered the landlord's evidence and find the tenant did not pay their full rent on the due date. The parties agreed on this.

However, I find the landlord has not established that the tenant failed to pay the balance owing of \$350.00 during the final month of the tenancy and that this amount is owing.

The parties acknowledged that the landlord had begun eviction proceedings. The November 7, 2021 email (cited above) submitted by the landlord stated:

Please send the final full rental payment of \$350.00 by tomorrow Monday November 8, 2021 so you can stop the eviction notice, which states you will have to move out November 13, 2021.

The eviction notice was “stopped” according to the parties’ evidence and the tenants moved out on December 1, 2021. During his testimony, the landlord said he agreed the tenant could stay an extra day.

The landlord submitted no documentary evidence showing the amount of \$350.00 as outstanding. The landlord did not submit a tenant ledger or any similar document showing the history of rent paid or reminder correspondence with the tenant about the balance.

I find it more likely than not that the tenant paid the outstanding balance of \$350.00 to stop the eviction. I base my findings on a review of the testimony, the email exchange, and the fact that the landlord permitted the tenant to stay one extra day in the unit..

I therefore find the landlord has not met the burden of proof with respect to this claim. I therefore dismiss this claim without leave to reapply.

Carpet Cleaning \$250.00

I accept the landlord’s statement that they incurred carpet cleaning expenses after the tenant moved out.

However, I find the landlord conducted a condition inspection of the unit upon vacating and made no observation regarding the carpet needing cleaning.

I accept the tenant's testimony that they cleaned the carpet, and its condition met the landlord's approval during the inspection.

While the landlord may have later decided to have the carpet cleaned an additional time, I find this does not create an obligation on the tenant compensate the landlord for this expense.

I therefore find the landlord has not met the burden of proof with respect to this part of the claim. I therefore dismiss this claim without leave to reapply.

Door replacement cost \$1,828.81

The landlord acknowledged the door was over 20 years old. According to *RTB Policy Guideline 40*, the "useful life" of a door is 20 years. Nevertheless, the landlord argued that the door was in good condition when the tenancy started and they should be compensated for this expense.

The tenant stated when they moved out they agreed the landlord could replace the window in the door and take the cost from the security deposit. The tenant testified they did not discuss this amount and assumed it would not be very much as the landlord was capable of fixing it easily himself.

I find the landlord is not entitled to compensation for the cost to replace the door as claimed. I find the tenant agreed to pay the cost of the replacement of the window in the door. Neither party submitted any evidence as to what such a cost could be.

I considered Policy Guideline 16: Compensation for Damage or Loss which states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

· “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find this is an appropriate situation for the award of a nominal amount.

Considering the testimony, the evidence and this Policy Guideline, I therefore award the landlord a nominal amount for the door repair in the amount of \$200.00.

Filing fee

In the circumstances, as the landlord has only been partly successful in their claim, I do not grant an award for reimbursement of the filing fee.

Award

I authorize the landlord to apply the security deposit to the award. I order the landlord to return the balance of the security deposit of \$550.00 to the tenant:

ITEM	AMOUNT
Damage award	\$200.00
(Less security deposit)	(\$750.00)
Balance of security deposit	(\$550.00)

Conclusion

The landlord may retain the security deposit in the amount of \$200.00 in satisfaction of the monetary award.

I grant the tenant a Monetary Order of \$550.00 for the return of the security deposit. The Monetary Order may be filed and enforced in the courts of the province of BC.

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: July 20, 2022

Residential Tenancy Branch