Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- a Monetary Order of $35,000.00 for the Tenant's monetary loss or money owed by the Landlord pursuant to section 67;
- return of the Tenant's security deposit and/or pet damage deposit in the amount of $2,700.00 pursuant to section 38; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Tenant and the Landlord's son KS attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. KS was assisted by the Landlord's advocate SS during this hearing. The Tenant called two witnesses, her daughter TC and her friend TJ, who gave affirmed testimony.

The parties were informed that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Materials

KS acknowledged receipt of the Tenant's notice of dispute resolution proceeding package (the "NDRP Package"), amendment form, as well as documentary and digital evidence for this application. I find the Landlord was served with the NDRP Package, the amendment form, and the Tenant's evidence in accordance with sections 88 and 89 of the Act.

The Tenant acknowledged receipt of the Landlord's evidence but noted that it was late. I find the Tenant was served with the Landlord's evidence in accordance with section 88 of the Act. The Tenant confirmed that she did not require additional time to review the Landlord's evidence and would prefer to proceed with the hearing.

Preliminary Matter – Clarification of Issues

According to the Landlord's written submissions, the Landlord claims $3,328.37 against the Tenant for unpaid water bills. However, the Landlord did not make his own application to claim against the Tenant for this amount. As such, I do not consider this claim or the parties' testimonies regarding this claim as part of this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss?
2. Is the Tenant entitled to return of double the security deposit?
3. Is the Tenant entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on July 8, 2019 and ended on November 30, 2021. Rent was $2,700.00 per month. The Tenant paid a security deposit of $1,350.00. A copy of the tenancy agreement has been submitted into evidence.

The parties did not do any move-in or move-out inspections of the rental unit and did not sign any condition inspection reports.

The Tenant referred to an email dated November 1, 2021 sent to SS, in which the Tenant gave her "30 day notice" to vacate the rental unit due to a "health hazard" from the "growing mold in the upstairs bathroom". The Tenant stated she gave her notice because there was a big flood that had happened. The Tenant stated that due to the rainfall, there were leaks and mouldy smells in the rental unit. The Tenant submitted pictures of the carpet with water damage.

The Tenant stated that she provided the Landlord with her forwarding address in writing on December 4, 2021, which was witnessed by her friend, TJ. The Tenant stated that the forwarding address she gave to the Landlord was TJ's address (referenced on the cover page of this decision). The Tenant confirmed that she gave the Landlord a piece of paper with the forwarding address in person. The Tenant stated that there was another gentleman with the Landlord at the time. TJ confirmed that she went with the Tenant though she did not recall the date. TJ confirmed that the Tenant gave the Landlord a letter with TJ's address on it. TJ explained she knew it was the Landlord because the Tenant had introduced him to her.

KS denied that the Tenant had given the Landlord a forwarding address in writing. KS confirmed the Landlord would be willing to return the security deposit to the Tenant right away.

The Tenant submitted a monetary order worksheet dated June 20, 2022 which claims the following amounts:

Item	**Amount**
Damage Deposit	$2,700.00
Yard Clean-Up	$1,154.00
Repairs Maintenance (May 2021 to November 2021)	$16,200.00
Rent Reduction (August 2020 to November 2021)	$10,500.00
Pain and Suffering from Homelessness	$4,446.00
Total	**$35,000.00**

The Tenant submitted that the Landlord refused to clean up debris and garbage in the yard left by the previous owner. According to the Tenant, she moved in shortly after the Landlord purchased the property. The Tenant stated that it cost her $344.00 to remove the debris. The Tenant stated that it took three men working six hours a day for three days $15.00 per hour for a total cost of $810.00 + $344.00 = $1,154.00. The Tenant submitted message correspondence with the Landlord in October 2020 and pictures of the yard. The Tenant submitted several receipts from a disposal company dated October 14, 17, and 20, 2020 which total $344.00.

SS argued that the Tenant had agreed to perform yard maintenance. SS referred to clause 2 of the tenancy agreement addendum which states that the Tenant agrees to "maintain yard" and "cut lawn". SS noted that the yard cleaning receipts are dated

October 2020. KS stated that the house was clean and there was no mess in July 2019 when the Tenant moved in. SS and KS questioned why the Tenant would wait over a year if the debris was there. SS argued that the Landlord did not agree to any amendment of the tenancy agreement to assume responsibility for yard maintenance.

The Tenant requested compensation of $16,200.00 representing rent of $2,700.00 for six months. The Tenant stated that she had asked the Landlord for repairs and maintenance from May 2021 to November 2021. The Tenant submitted that the Landlord refused to make repairs to bathroom tiles, leaking kitchen sink, leaking toilet which resulted in serious mould. The Tenant stated that there was mould in the bathroom and the drywall was turning black. The Tenant submitted that the house was built in the 60s and the Landlord's intention was to tear down the house, so the Landlord was not willing to invest in repairs. According to the Tenant, the situation deteriorated and became more hazardous. The Tenant submitted pictures of the rental unit that she had taken into evidence.

The Tenant also requested $10,500.00 representing a reduction in rent from $2,700.00 to $2,000.00 over 15 months. According to the Tenant, the bathroom tiles began falling off at the end of July 2020 and could not be put back because the wall was rotting and crumbling with debris. The Tenant stated that despite her requests, nothing was done until she moved. The Tenant submitted copies of correspondence with the Landlord into evidence.

According to TC, she also lived in the property for several months. TC denied that the Landlord had installed a dishwasher or performed repairs.

SS submitted that the Landlord did make repairs including plumbing work, carpet cleaning, and service calls for appliances. SS submitted that the Landlord installed new carpet, a new dishwasher, and completed interior finishing work. The Landlord submitted various invoices into evidence, including plumbing invoices dated 2020 and May 2021.

SS acknowledged that the tiles installation was completed after the Tenant had already moved out. SS stated that the rental unit is still tenanted currently and there are no issues with the new tenant.

SS argued that the Tenant did not provide any report from a mould expert or builder about mould on the bathroom tiles. SS argued that the Tenant did not provide any evidence of the impact of mould on her family. SS argued that rent can only be reduced under limited circumstances under the Act, which include:

1. the tenant has an arbitrator's decision allowing the deduction
2. the landlord illegally increases the rent
3. the landlord overcharged for a security or pet damage deposit
4. the landlord refuses the tenant's written request for reimbursement of emergency repairs
5. the tenant has the landlord's written permission allowing a rent reduction

The Tenant requested compensation of $4,446.00 for pain and suffering. The Tenant stated that because of the rainfall, she was homeless and is still currently homeless. The Tenant stated that she had to move out and had nowhere to go. The Tenant stated that she was in a homeless shelter and is staying with family. The Tenant stated that it was challenging not being able to use the Landlord as a reference and trying to find accommodations as a single parent with three children. The Tenant acknowledged that the Landlord had tried to offer her another house but she was reluctant to rent from him again.

SS argued that the Tenant did not provide any medical evidence of pain and suffering, such as a note from a doctor or a counsellor. SS submitted that the Landlord was never asked to provide a reference letter. According to KS, if the Tenant had asked for a reference, the Landlord would have given it.

Analysis

1. Is the Tenant entitled to compensation for monetary loss?

Section 67 of the Act states:

> **Director's orders: compensation for damage or loss**
> 67 Without limiting the general authority in section 62(3) [*director's authority respecting dispute resolution proceedings*], 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.

In addition, Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss states:

> **C. COMPENSATION**
> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Aside from the return of double the security deposit which will be dealt with in the next section, the Tenant claims compensation for (a) yard clean-up, (b) repairs maintenance and rent reduction, and (d) pain and suffering from homelessness. I will address each of these items in turn.

a. Yard Clean-Up

Based on clause 2 of the tenancy agreement addendum, I find the Tenant was responsible for yard maintenance during the tenancy. I find the Tenant's pictures and receipts for yard maintenance were from October 2020, which was over a year after the Tenant had moved in. I find there is insufficient evidence to prove that the yard debris had been left by the previous owner of the property. Under these circumstances, I am unable to conclude that the Landlord was responsible for the costs of yard maintenance incurred by the Tenant.

The Tenant's claim under this part is dismissed without leave to re-apply.

b. Repairs Maintenance and Rent Reduction

The Landlord argues that the Tenant can only reduce the rent in the limited circumstances listed by the Landlord. However, I find the Landlord has confused the

concepts of deductions and reductions in rent. The circumstances described by the Landlord are reasons which may entitle a tenant to deduct from or withhold rent payable to the landlord. I find there is no evidence before me to suggest that the Tenant had unilaterally deducted or withheld rent payable to the Landlord during the tenancy.

I find the Tenant is seeking a retroactive rent reduction due to an alleged failure by the Landlord to adequately repair and maintain the rental unit during the tenancy.

Under section 65(1)(f) of the Act, if the director finds that a landlord has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Section 32(1) of the Act requires a landlord to provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the pictures and video submitted by the Tenant, I find that sections of bathroom tiles above the bathtub in one of the bathrooms had fallen off. I accept that this damage occurred because the house is very old. I find that areas of the exposed drywall appear dirty and blackened. I find that parts of the wall appear soft with water damage or rot. I find the pictures and video show that the damage was more than cosmetic and would have interfered with the Tenant’s reasonable enjoyment or use of the bathtub as it was unsanitary.

I find the Tenant wrote to the Landlord on May 9, 2021 about mould in the rental unit, which the Tenant said was caused a flood, as well as issues relating to a leaking roof in the downstairs bedroom, a leaking kitchen sink, a leaking toilet, and again about the bathroom tiles.

I have reviewed the pictures submitted by the Tenant and accept that there was black mould in the main kitchen near the faucet, on the walls of the master bedroom, and near window and door frames. Although the Tenant did not submit a professional report, I find the pictures show visible signs of mould growth in the rental unit. I find the Landlord does not dispute that there was a flood in the rental unit or allege that the Tenant had failed to adequately clean the rental unit.

However, I find the Tenant did not provide sufficient evidence to explain what caused the leaking kitchen sink or leaking toilet, or how long these leaks persisted. I find the Landlord submitted plumbing invoices for 2020 and May 2021 to show that the sinks were either repaired or unplugged.

Based on the foregoing, I find the Tenant suffered a reduction in value of the tenancy due to the bathroom tile and mould issues, which I accept persisted for some time. I find the Landlord was obligated to repair the bathroom tiles and remediate the mould issue in the rental unit under section 32(1) of the Act. I find that even considering the age and character of the rental unit, the Landlord should have made efforts to address these two issues as part of his obligation to ensure that the rental unit was suitable for occupation by a tenant.

I find the Landlord was notified of the bathroom tile issue in August 2020. I find the Landlord sent repairmen investigate but did not repair the bathroom tiles until after the Tenant moved out. However, I note there is insufficient evidence to suggest that the damaged bathroom tiles affected the Tenant's use of other parts in the bathroom. I also find the Tenant had access to a second bathroom in the rental unit.

I find the Landlord was notified of mould in the rental unit in May 2021. I find there is insufficient evidence that the Landlord had made any efforts to address the mould issue during the tenancy. While I find the Tenant did not provide evidence of any adverse health impacts that she or her family members suffered due to mould, I find the pictures showed that the mould was unsanitary and would have devalued the tenancy.

Under these circumstances, I do not find the Tenant's claim for six whole months' of rent plus a $700.00 rent reduction for 16 months to be appropriate. Based on the evidence presented, I fix a reduction in the value of the tenancy at $50.00 per month from August 2020 to November 2021 (16 months) due to the unrepaired bathroom tiles. I fix a further reduction in the value of the tenancy due to mould from flooding at another $50.00 per month from May 2021 to November 2021 (7 months).

Pursuant to sections 65(1)(f) and 67 of the Act, I order the Landlord to pay the Tenant compensation of $1,150.00 ($50.00 × 16 months + $50.00 × 7 months).

c. Pain and Suffering

Policy Guideline 16 states:

> "Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

According to the British Columbia Court of Appeal in *Huff v. Price* (1990), 1990 CanLII 5402 (BC CA), as cited in *Sahota v. Director of the Residential Tenancy Branch*, 2010 BCSC 750 (para. 49):

> […] aggravated damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. They are designed to compensate the plaintiff, and they are measured by the plaintiff's suffering. Such intangible elements as pain, anguish, grief, humiliation, wounded pride, damaged self-confidence or self-esteem, loss of faith in friends or colleagues, and similar matters that are caused by the conduct of the defendant; that are of the type that the defendant should reasonably have foreseen in tort cases or had in contemplation in contract cases; that cannot be said to be fully compensated for in an award for pecuniary losses; and that are sufficiently significant in depth, or duration, or both, that they represent a significant influence on the plaintiff's life, can properly be the basis for the making of an award for non-pecuniary losses or for the augmentation of such an award. An award of that kind is frequently referred to as aggravated damages. It is, of course, not the damages that are aggravated but the injury. The damage award is for aggravation of the injury by the defendant's highhanded conduct.

In this case, I am not satisfied that an award of aggravated damages for pain and suffering is appropriate.

I do not find the Landlord to have been responsible for the Tenant becoming "homeless". I find the Tenant moved out of the rental unit after giving written notice to the Landlord. I accept that the Tenant was dissatisfied with the conditions of the rental

unit. However, I do not find this to mean that the Landlord was responsible for the Tenant's subsequent difficulties with finding alternative accommodations. I find the Tenant acknowledged that the Landlord had offered her an alternative rental which she turned down.

Furthermore, I find the Tenant can be fully compensated by an award for damage or loss with respect to property, money or services, such that an award for aggravated damages would not be necessary. I have already granted the Tenant a retroactive rent reduction due to inadequate repairs and maintenance. Moreover, I find the Tenant did not provide any medical evidence in support of her claim for pain and suffering. Therefore, I do not find the circumstances to warrant a further award of aggravated damages for pain and suffering.

The Tenant's claim under this part is dismissed without leave to re-apply.

2. Is the Tenant entitled to return of double the security deposit?

Section 38(1) of the Act states:

> **Return of security deposit and pet damage deposit**
> 38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find the tenancy ended on November 30, 2021. I accept the Tenant's testimony that she gave a forwarding address (referenced on the cover page of this decision) to the Landlord in person on December 4, 2021, which was witnessed by TJ. I accept TJ's testimony that she had agreed for the Tenant to use her address as the Tenant's forwarding address and had witnessed the Tenant giving the forwarding address document to the Landlord. As such, I find the Landlord was served with the Tenant's

forwarding address in writing on December 4, 2021, in accordance with section 88(a) of the Act.

Pursuant to section 38(1) of the Act, I find the Landlord had until December 19, 2021, or fifteen days after receiving the Tenant's forwarding address in writing, to return the security deposit to the Tenant or make an application for dispute resolution to claim against the security deposit. I find the Landlord did not return the Tenant's security deposit or make an application to claim against the deposit by December 19, 2021.

Section 38(6) of the Act states that if a landlord does not comply with section 38(1) of the Act, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

According to Residential Tenancy Policy Guideline 17. Security Deposit and Set Off ("Policy Guideline 17"), the arbitrator will order a return of a security deposit unless the tenant's right to the return of the security deposit has been extinguished under the Act. I find the Tenant was not given two opportunities for a move-in inspection in accordance with the Act and the regulations. I find the Landlord's right to the security deposit was extinguished first under section 24(2)(c) of the Act, since there was no move-in inspection report. I conclude the Tenant's right to the return of the security deposit was not extinguished under any of sections 24(1), 36(1), or 38(2) of the Act.

Therefore, I find the Tenant is entitled to a return of double the security deposit with interest under sections 38(1) and 38(6) of the Act.

The interest rate on deposits from 2019 to 2022 has been 0% per annum, and 1.95% per annum in 2023. According to Policy Guideline 17, interest is calculated on the original security amount, before any deductions are made, and is not doubled. Therefore, using the Residential Tenancy Branch Deposit Interest Calculator online tool, I conclude the Tenant is entitled to $5.91 of interest on the security deposit from the start of the tenancy to the date of this decision, calculated as follows:

2019 $1350.00: $0.00 interest owing (0% rate for 48.49% of year)
2020 $1350.00: $0.00 interest owing (0% rate for 100.00% of year)
2021 $1350.00: $0.00 interest owing (0% rate for 100.00% of year)
2022 $1350.00: $0.00 interest owing (0% rate for 100.00% of year)
2023 $1350.00: $5.91 interest owing (1.95% rate for 22.46% of year)

Pursuant to sections 38(1) and (6) of the Act, I order the Landlord to pay the Tenant $2,705.91 for the return of double the security deposit plus interest.

3. Is the Tenant entitled to reimbursement of the filing fee?

The Tenant has been partially successful in this application. I grant the Tenant reimbursement of the filing fee under section 72(1) of the Act.

The total Monetary Order granted to the Tenant is calculated as follows:

Item	**Amount**
Retroactive Rent Reduction ($50.00 × 16 months for unrepaired bathroom tile damage and $50.00 × 7 months for unaddressed mould issue)	$1,150.00
Return of Double the Security Deposit	$2,700.00
Interest on Security Deposit	$5.91
Filing Fee	$100.00
Total Monetary Order for Tenant	**$3,955.91**

Conclusion

The Tenant's claim for return of double the security deposit is granted with interest. The Tenant's claim for compensation and rent reduction due to inadequate repairs and maintenance is granted in part. The Tenant's claims for yard maintenance and compensation for pain and suffering are dismissed without leave to re-apply.

Pursuant to sections 38, 67 and 72 of the Act, I grant the Tenant a Monetary Order in the amount of **$3,955.91**. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Provincial Court of British Columbia 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: March 23, 2023

Residential Tenancy Branch