



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #: MNDCT, FFT

File #: MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order pursuant to s. 67 for compensation or other money owed; and
- return of the filing fee pursuant to s. 72.

The Landlord files his own application in which he seeks the following relief under the *Act*:

- a monetary order pursuant to ss. 38 and 67 seeking compensation for unpaid rent by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 to pay for repairs caused by the tenant during the tenancy by claiming against the deposit;
- a monetary order pursuant to ss. 67 and 38 compensating for loss or other money owed by claiming against the deposit; and
- return of the filing fee pursuant to s. 72.

N.T. appeared as the Tenant. N.T. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Service of Documents

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other's application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to

s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Issues to be Decided

- 1) Is the Tenant entitled to monetary compensation for loss or other money owed?
- 2) Is the Landlord entitled to monetary compensation for unpaid rent?
- 3) Is the Landlord entitled to monetary compensation for damage to the rental unit caused by the Tenant?
- 4) Is the Landlord entitled to monetary compensation for loss or other money owed?
- 5) Is the Landlord entitled to the claim against the security deposit?
- 6) Is either party entitled to the return of their filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on April 1, 2016.
- The Tenant vacated the rental unit on October 31, 2022.
- At the end of the tenancy, rent of \$1,435.00 was due on the first of each month.
- A security deposit of \$650.00 was paid by the Tenant.

A copy of the tenancy agreement and addendum is put into evidence.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.

3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

1) *Is the Tenant entitled to monetary compensation for loss or other money owed?*

The Tenant claims \$1,300.00 which is described as an extra month's rent demanded by the Landlord prior to the beginning of the tenancy. At the hearing, the Tenant says that he paid the security deposit of \$650.00 and that the additional \$1,300.00 was requested by the Landlord as security on missed rent. The Tenant testified that the \$1,300.00 paid was not applied to his first month's rent.

The Tenant directs me to a clause within the tenancy agreement addendum, which states the following:

4. First and half of last month rent (\$1300 + \$650) needs to be paid while tenants are moved in.

The Landlord acknowledges the clause within the addendum but says that the \$1,300.00 was applied to the first month's rent. The Landlord also states that the Tenant did pay the security deposit of \$650.00 and an additional fee of \$650.00.

The *Act* permits landlords to request a security deposit or pet damage deposit, neither of which may exceed half a month's rent. Clause 4 within the addendum, when viewed in the context of the security deposit set out in clause 4.A. of the tenancy agreement, is clearly in breach of the deposits permitted under ss. 17 and 19 of the *Act*.

I find that by making the demand for the additional deposits, regardless of whether the parties signed the addendum, the Landlord is in breach of ss. 17 and 19 of the *Act*, which restricts the types of deposits required by landlords.

The Tenant indicates that he is owed \$1,300.00 for the additional deposit. The Landlord says this was applied to the first month's rent, though acknowledges he still holds the additional \$650.00 deposit. I have no evidence to support the amount paid by the Tenant at the beginning of the tenancy, nor is there evidence to show if the amount was applied to the first month's rent.

I accept that the \$1,300.00 was applied to the first month's rent such that the total owed to the Tenant for the deposit requested in breach of the *Act* is \$650.00. I find that the Tenant is entitled to this amount as mitigation was impossible under these circumstances.

I grant the Tenant \$650.00 for his monetary claim.

2) Is the Landlord entitled to monetary compensation for unpaid rent?

The Landlord testifies that the Tenant failed to pay \$20.00 from rent owed for October 2022. The Landlord tells me that the Tenant said the \$20.00 could be deducted from the security deposit. The Landlord's evidence includes an invoice signed by the parties to that effect.

The Tenant provided no response to the Landlord's \$20.00 claim at the hearing.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent.

In this instance, I accept the undisputed testimony from the Landlord that the Tenant failed to pay \$20.00 for October's rent. I find that this was in breach of the Tenant's obligation under the tenancy agreement and s. 26 of the *Act*. I find that the Landlord is entitled to an order for \$20.00 as mitigation was impossible since the rental unit was still occupied by the Tenant until October 31, 2022.

As part of this claim, the Landlord also seeks \$100.00 for the filing fee ordered on another file, which is noted on the cover page of this decision. Strictly speaking, the filing fee ordered is not rent. Further, the Landlord already has a monetary order for the \$100.00 and his recourse is to seek its enforcement at the Provincial Court, not filing additional claims for the same amount. I make no order for the \$100.00 filing fee previously granted as the Landlord has an order in hand for that amount.

3) Is the Landlord entitled to monetary compensation for damage to the rental unit caused by the Tenant?

Section 37(2) of the *Act* imposes an obligation on tenants at the end of the tenancy to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the

rental unit or the residential property. Policy Guideline 1 defines reasonable wear and tear as the “natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.”

The Landlord’s application claims \$926.22 in compensation set out as follows:

- Garbage/Junk Removal \$300.00
- Cleaning/Mould Removal \$310.00
- 50% Cost of Bathtub Repair \$121.52
- 40% Cost of Drain Repair \$140.70
- Labour for Dryer Cleaning \$40.00
- Labour for Exhaust Fan Cleaning \$10.00

As explained by the Landlord at the hearing, the Tenant left a great deal of garbage at the residential property and on the neighbouring lot. The Landlord directs me to photographs in his evidence, which show items left in the back alley. The Landlord says that he hired a junk removal company at a cost of \$210.00 and directs me to an invoice dated November 3, 2022 for that amount.

The TT denies the items in the Landlord’s photographs are his.

Upon review of the photographs, I accept that the Tenant did leave garbage behind at the property. It seems unlikely that the garbage happened to find its way to the back alley of the property at the very time the Tenant was vacating the rental unit. It is far more likely that the items were left there by the Tenant. I find that by doing so, the Tenant breached his obligation under s. 37 of the *Act*.

I have little difficulty granting the Landlord \$210.00 for this portion of his claim, which is supported by a receipt in evidence. I find that mitigation is not relevant given the amount paid by the Landlord.

Throughout the Landlord’s claim, he seeks compensation for his personal labour. For the garbage removal, the Landlord claims \$90.00 for two hours of his work. For cleaning the rental unit, he seeks \$170.00 for eight hours of his time. For cleaning the dryer and exhaust fan, the Landlord seeks \$50.00 for what I am told was an hour of his time. I note that the Landlord’s hourly rate for the different claims, all of which generally pertain to cleaning, are \$45.00/hr, \$21.25/hr, and \$50.00/hr.

Irrespective of the claim in which the Landlord claims compensation for his labour, I find that the amounts sought are arbitrary in nature and the hourly rate sought differ without

reason or explanation. The Landlord, as the claimant on his monetary claim, must quantify the claim, which requires more than mere estimates of time spent and arbitrary assignment of hourly rates. I find that the Landlord failed to quantify the claim for compensating for his time and do not allow any of them.

The Landlord says that the rental unit was left in an unclean state by the Tenant, that mould was present, and that he hired a cleaner at a cost of \$140.00. The Landlord's evidence includes an invoice dated November 11, 2022 listing an amount paid of \$140.00 as a cleaning fee. The Tenant says that he left the rental unit clean and referred to water ingress into the rental unit which precipitated mould growth.

Irrespective of whether the Tenant is responsible for the mould within the rental unit, which is unclear based on the evidence provided to me, the photographs clearly shows the rental unit was unclean at the end of the tenancy, with dirty blinds, substances stuck onto doors, and exhaust fans and the dryer vent caked with dust. I find that the rental unit was not left in a reasonably clean state at the end of the tenancy, which constitutes a breach of the Tenant's obligation under s. 37 of the *Act*.

I accept the Landlord paid \$140.00 to a cleaner to address the cleanliness of the rental unit. I find that mitigation is not an issue here given the amount paid and the work completed. I find that the Landlord is entitled to the \$140.00 cleaning cost.

The Landlord also seeks partial costs for plumbing repairs, which I am told are for cleaning a drain and repairing a shower surround that had failed but gone unreported by the Tenant. At the hearing, the Landlord explained the partial costs were claimed on the basis that the costs were partially attributable to wear and tear. To be clear, the Tenant is only responsible for damage that is not wear and tear. If the costs for the repairs were incurred on the basis of wear and tear, then the Tenants are not responsible.

I find that by admitting the repairs were attributable to wear and tear, the Landlord has failed to demonstrate the Tenant is responsible for the plumbing repairs. These two portions of the Landlord's claim are dismissed without leave to reapply.

In total, I grant the Landlord \$350.00 (\$210.00 + \$140.00) for this portion of his claim.

4) *Is the Landlord entitled to monetary compensation for loss or other money owed?*

The Landlord also seeks \$300.00 in compensation. The Landlord explains that his current tenants were upset at the condition of the rental unit when they took possession of it and that he agreed to compensate them for the shortcomings. The Landlord says the \$300.00 is 50% of the total amount of compensation he gave to his current tenants.

The Landlord is not entitled to general compensation absent proof of a breach of the *Act* and a causal link between the breach and the cost incurred. In this case, the Landlord may claim for the cost of repairing damage to the rental unit caused by the Tenant. Further, the Landlord has an obligation under s. 32 of the *Act* to his current tenants to provide a rental unit that is in a state of repair and decoration that complies with health and safety standards. The Landlord may not seek additional compensation on the basis that he had to pay his current tenant due to his failure to comply with his obligations under s. 32 of the *Act*. To find otherwise would amount to awarding double compensation to the Landlord, which is not permitted.

I dismiss this portion of the Landlord's claim without leave to reapply.

5) *Is the Landlord entitled to the claim against the security deposit?*

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38.

Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

Policy Guideline #17 states the following with respect to the retention or the return of the security deposit through dispute resolution:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on:
 - a landlord's application to retain all or part of the security deposit; or
 - a tenant's application for the return of the deposit.

Unless the tenant's right to the return of the deposit has been extinguished under the *Act*. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

The Tenant advises that he provided his forwarding address to the Landlord in a letter he sent to the Landlord on November 2, 2022. The Landlord acknowledges receipt of that letter, though says that he was told by the Tenant prior to his vacating that he was moving to one municipality and that the address in the letter was in a different municipality. The Landlord argued that he had reason to disbelieve the address in the letter was accurate.

The Landlord testified that he replied to the Tenant's letter and that he did not receive a response from the Tenant, which caused him to further doubt the address in the Tenant's letter. I am provided with a copy of the letters sent by the Tenant and Landlord.

Section 38(1) of the *Act* merely requires a tenant provide their forwarding address in writing. The Tenant's letter, which the Landlord's reply letter says was received on November 8, 2022, clearly states the Tenant's new address. I find that the Tenant provided his forwarding address to the Landlord on November 8, 2022.

I appreciate that the Landlord may have doubted the Tenant's address, though it seems inconsistent to then send a letter to that same address. Further, there is no additional requirement that a tenant confirm or reconfirm their forwarding address to the landlord. It is sufficient to provide the forwarding address in writing, which the Tenant did in this case.

Upon review of the Landlord's application and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlord failed to claim against the security deposit on May 24, 2023, well after receiving the forwarding address on November 8, 2022.

I am advised that the Landlord failed to complete a move-in condition inspection report as required under s. 23 of the *Act*. There was no argument that the Tenant somehow failed to participate in the move-in inspection such that the Tenant's right to the security deposit has not been extinguished prior to the Landlord's claim being extinguished by application of s. 24(2) of the *Act*.

I find that s. 38(6) of the *Act* has been triggered such that the Tenant is entitled to double the return of the security deposit, which in this case is \$1,300.00 (\$650.00 x 2).

6) Is either party entitled to the return of their filing fee?

I find that the parties had mixed success on their respective applications. As such, I grant neither their filing fee. Both claims made under s. 72 of the *Act* are hereby dismissed without leave to reapply.

Conclusion

I grant a net monetary award in the Tenant's favour taking the following into account:

Item	Amount
Tenant's Claim for Compensation	\$650.00
Landlord's Claim for Unpaid Rent	(\$20.00)
Landlord's Claim Compensating for Damage to the rental unit	(\$350.00)
Double return of the security deposit	\$1,300.00
TOTAL OWED TO THE TENANT	\$1,580.00

All other aspects of the parties' respective applications are dismissed without leave to reapply.

I order under ss. 38 and 67 that the Landlord pay **\$1,580.00** to the Tenant.

It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord fails to comply with the monetary order, it may be enforced by the Tenant at the BC Provincial 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: October 23, 2023

Residential Tenancy Branch