

DECISION

Dispute Codes Landlord: MNRL-S, MNDL, FFL
Tenant: MNDCT, MNSD-DR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the Act).

The Landlord's Application was made on April 11, 2023. The Landlord applied for the following relief pursuant to the Act:

- a monetary order for unpaid rent and/or utilities;
- a monetary order for damage caused during the tenancy;
- an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenant's Application was made on April 22, 2023. The Tenant applied for the following relief pursuant to the Act:

- a monetary order for money owed or compensation for damage or loss; and
- an order that the Landlords return all or part of the security deposit.

The Landlord was represented at the hearing by CM, KD, and MT, agents. The Tenant attended the hearing on her own behalf and was accompanied by CK, her mother. All in attendance provided an affirmation at the beginning of the hearing.

On behalf of the Landlord, CM testified that the Notice of Dispute Resolution Proceeding package related to the Landlord's application was served on the Tenant by registered mail. The Tenant acknowledged receipt of these documents.

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Neither party raised any issues with respect to service or receipt of the above documents and evidence during the hearing. The parties were in attendance or were represented and were prepared to proceed. Pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter is described in this decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent and/or utilities?
2. Is the Landlord entitled to a monetary order for damage caused during the tenancy?
3. Is the Landlord entitled to retain all or part of the security deposit?
4. Is the Landlord entitled to recover the filing fee?
5. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
6. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit?

Background and Evidence

The parties agreed the month-to-month tenancy began on July 1, 2022, and that the Tenant moved out on March 31, 2023. During the tenancy, rent of \$1,280.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$640.00, which the Landlord holds. A copy of the signed tenancy agreement was submitted into evidence.

The Landlord's Claim

The Landlord's monetary claim was set out on a Monetary Order Worksheet dated April 25, 2023.

First, the Landlord claimed \$152.31 for the cost to replace curtains missing or damaged during the tenancy. CM testified that the living room curtains were damaged and that the bedroom curtains were missing. The Landlord submitted photographic evidence of damage to the living room curtains, and a receipt in the amount claimed for the purchase of curtains.

In reply, the Tenant acknowledged the curtains in the living room were damaged during the tenancy. With respect to the curtains in the bedroom, the Tenant testified that the curtains provided were replaced with blackout curtains, which were left behind. CM testified the blackout curtains did not match and needed to be replaced.

Second, the Landlord claimed \$50.00 for cleaning. CM testified that a film of cat hair could be seen on the rental unit floor, and that hair could also be seen on the walls. CM testified that the Condition Inspection Report was completed with a representative for the Tenant while the Tenant waited outside. The move-out Condition Inspection Report includes the following statement: "floors need clean in all rooms." An invoice dated April 3, 2023, was submitted in support.

In reply, the Tenant testified that she does not agree the rental unit needed to be cleaned. The Tenant stated that she and her partner personally cleaned the rental unit and that they did a good job. The Tenant also complained that she did not receive a copy of the Condition Inspection Report within 15 days after it was completed. CM responded by testifying that the Condition Inspection Report was sent to the Tenant by registered mail on April 12, 2023, and recited a tracking number.

Third, the Landlord claimed \$325.00 for the cost to paint the rental unit. CM testified that when the Landlord entered the rental unit to do some electrical work after the Tenant vacated, it smelled like cannabis. CM testified that smoking was not permitted in the rental unit. The Landlord submitted copies of statements made on the Tenant's Twitter account, including:

- "so blazed I almost put my bong in the fridge"
- "freedom is getting stoned in a candlelit bath at 10am and am thankful for this privelege (sic)"

- “blazed n watching random mr bean episodes this shit is fire”
- “perks of being an adult: Hawaiian hotboxing your own bathroom”

CM testified that the walls were washed with TSP, a cleaning agent, and one coat of paint was applied. An invoice for \$325.00 was submitted into evidence.

In reply, the Tenant denied smoking in the rental unit. She also testified that she lived in the rental unit for a vert short time which was insufficient to do any damage. The Tenant referred to photographs which indirectly show the walls and suggested they were in “fine condition.” The Tenant testified that the Landlord did not provide photographs of the walls in support.

Fourth, the Landlord claimed \$640.00 for unpaid rent. On behalf of the Landlord, CM testified the Tenant did not give proper notice in accordance with the Act. The Landlord testified that the Tenant provided written notice to end the tenancy by attaching a copy to the Landlord’s office door on March 2, 2023. CM testified that it was not received until March 3, 2023. Served on the door of the Landlord’s office on March 2, 2023, at 8:23 a.m. CM testified that only \$640.00 is being claimed because the Landlord was able to re-rent the unit effective April 15, 2023.

In reply, the Tenant testified she gave a full month’s notice, and that CM acknowledged this. The Tenant testified the Landlord did not make any efforts to re-rent the unit during the month of March 2023.

In response, CM testified she has no recollection of saying they received a full month’s notice and submitted that the dates speak for themselves. With respect to the Tenant’s claims about efforts to re-rent the unit, CM testified that the Landlord decided to wait for the Tenant to move out in light of aggression previously directed at CM.

Finally ,the Landlord sought to recover the \$100.00 filing fee paid to make the application and requested to retain the security deposit held in partial satisfaction of the Landlord’s claim.

The Tenant’s Claim

The Tenant’s claim for \$1,346.61 is set out in the application.

First, the Tenant claimed \$79.30 for the cost to replace an air conditioner that was not returned to the Tenant at the end of the tenancy. The Tenant testified that she forgot the air conditioner (and a few other items) at the rental unit. However, when she went back

to collect the unit it was no longer there. The Tenant referred to a photograph showing two air conditioners in her car but stated that an LG brand air conditioner was missing. The Tenant also testified that she was not permitted to go to her storage unit.

In reply, CM referred to a document submitted into evidence by the Landlord. CM testified that it was relied upon by the Tenant during a previous arbitration hearing. CM noted that it indicates there were only two air conditioners in the rental unit and that the Tenant took them with her when the tenancy ended.

Second, the Tenant seeks the return of double the amount of the security deposit. The Tenant testified that she provided the Landlord with her forwarding address in her notice dated March 1, 2023. On behalf of the Landlord, CM acknowledged receipt of the Tenant's notice on March 3, 2023.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 67 of the Act empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden of proving their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the Act. 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 because of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

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

The Landlord's Claim

With respect to the Landlord's claim for \$152.31 for the cost to replace curtains missing or damaged during the tenancy, I find the Landlord has provided sufficient evidence to establish the claim. I note the Tenant acknowledged that the living room curtains were damaged, and that the bedroom curtains that came with the rental unit were removed and replaced with her own during the tenancy. The Landlord's claim was supported by a receipt in the amount claimed and has thereby established the actual amount of the loss. The Landlord is granted a monetary award of \$152.31.

With respect to the Landlord's claim for \$50.00 for cleaning, section 37(2) of the Act confirms that a tenant must leave a rental unit reasonably clean at the end of a tenancy. I find there is sufficient evidence before me to grant the relief sought. The affirmed testimony of CM was supported by the Condition Inspection Report, which I accept was completed by a representative of the Tenant. It was also corroborated by photographic evidence of a cat in the rental unit, which was submitted by the Tenant. I also note that this aspect of the Landlord's claim was supported by an invoice, and I find that the amount claimed is reasonable in the circumstances. The Landlord is granted a monetary award of \$50.00.

With respect to the Landlord's claim for \$325.00 for the cost to paint the rental unit, I find there is sufficient evidence before me to grant the relief sought. I accept that the tenancy agreement stated that smoking was not permitted in the rental unit but that it smelled of cannabis at the end of the tenancy. In light of the statements made on the Tenant's Twitter account, I specifically reject the Tenant's claim that she did not smoke in the rental unit. This aspect of the Landlord's claim was also supported by an invoice for the amount claimed, establishing the actual amount of the loss. The Landlord is granted a monetary award of \$325.00.

With respect to the Landlord's claim for \$640.00 for unpaid rent, section 45 of the Act confirms that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. In other words, a tenant may end a periodic tenancy by giving the landlord notice. However, when rent is due on the first day of the month, a tenant's notice given in one month is effective to end the tenancy on the last day of the following month. In this case, I find the Tenant's notice was received by the Landlord on March 3, 2023. Despite the Tenant's stated desire to end the tenancy on April 1, 2023, the notice given

by the Tenant was effective to end the tenancy on April 30, 2023. As a result, rent became due on April 1, 2023.

However, section 7 of the Act confirms that a party making a claim must take reasonable steps to minimize the damage or loss. In this case, the Tenant testified, and CM acknowledged, that the Landlord took few steps to re-rent the unit during the month of March 2023. Although I accept that this approach was taken to avoid conflict with the Tenant, I find that any potential conflict could have been avoided by showing the rental unit to potential renters while the Tenant was out, or with another representative of the Landlord in attendance. As a result, I find that the Landlord did not take sufficient steps to minimize its losses. This aspect of the Landlord's claim is dismissed.

As the Landlord has been partially successful, I find the Landlord is entitled to recover the filing fee paid to make the application. Accordingly, I find the Landlord has demonstrated an entitlement to a total monetary award of \$627.31, which has been calculated as follows:

Claim	Allowed
Curtains:	\$152.31
Cleaning:	\$50.00
Painting:	\$325.00
Filing fee:	\$100.00
Total:	\$627.31

The Tenant's Claim

With respect to the Tenants' claim for \$79.30 for the cost to replace an air conditioner, I find there is insufficient evidence before me to grant the relief sought. The Tenant's claim was met with a denial by CM and MT. I find I am not satisfied that the air conditioner was left in the rental unit, or that the Landlord stole it, as alleged by the Tenant. This aspect of the Tenant's application is dismissed.

With respect to the Tenant's claim for the return of double the amount of the security deposit, section 38(1) of the Act confirms that a landlord must repay deposits or make an application to keep them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the Act confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, I have found that the Tenant's notice was effective to end the tenancy on April 30, 2023. The Landlord's application was made on April 11, 2023, before the end of the tenancy. As a result, I find the Tenant is not entitled to double the amount of the security deposit. Even if the Tenant's notice was effective to end the tenancy on April 1, 2023, the Landlord made an application to retain the security deposit in time to avoid the doubling provision in section 38(6) of the Act. This aspect of the Tenant's application is dismissed.

Summary of Claims

The Landlord has demonstrated an entitlement to a monetary award in the amount of \$627.31.

The Tenant's claims have been dismissed.

I find it appropriate in the circumstances to permit the Landlord to retain a portion of the security deposit held in satisfaction of the Landlord's claim.

Policy Guideline #17 confirms that an arbitrator must order the return of any balance remaining on a landlord's application to retain a security deposit or a tenant's application for the return of a security deposit. Accordingly, I order the Landlord to return \$12.69 to the Tenant, which has been calculated as follows:

Landlord's monetary award:	\$627.31
Security deposit applied:	\$640.00
Balance:	(\$12.69)

In support of the order above, I grant the Tenant a monetary order for \$12.69.

Conclusion

The Tenant is granted a monetary order in the amount of \$12.69. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 1, 2023

Residential Tenancy Branch