DECISION

Dispute Codes **MNRL, MNDL-S, FFL; MNSDS-DR, FFT**

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*.

- 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*.

- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

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

- An order for the landlord to return the security deposit pursuant to section 38.

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The parties acknowledged receipt of the other party's documents. I find service complied with the Act.

Settlement Discussions

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. I informed both parties that I could not provide legal advice to them. I informed them I make my Decision after the hearing and not during the hearing.

Pursuant to section 63 of the *Act,* the Arbitrator may assist the parties to settle their dispute and 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 assisted the parties in efforts to settle the matter. Such efforts were unsuccessful, and the hearing continued to conclusion.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for rent and for damage to the rental unit or common areas?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to reimbursement of the security deposit, doubling of the security deposit, and recovery of the filing fee?

Background and Evidence

The parties submitted substantial contradictory evidence. I do not refer to all the alleged facts and arguments, but only to material, relevant and admissible evidence.

Overview

The landlord seeks compensation in his application in the amount of $ **6,939.40** for costs related to loss of rent ($3,105.90) painting and repairs to damaged walls ($3,433.50), along

with cleaning ($400.00) to the rental unit. The tenant did not leave the rental unit in a clean and undamaged state caused merely by reasonable wear and tear, and the landlord's evidence included photographs of the rental unit and a completed condition inspection report.

The landlord clarified his claim at the hearing as set out below.

The tenant denied most of the landlord's claims, acknowledged responsibility for some expenses, and requested return of double the security deposit.

Tenancy

The parties agreed this tenancy began on October 15, 2020, with a monthly rent of $3,045.00, due on the first of the month with a security deposit in the amount of $1,500.00. The rent was scheduled to increase in starting January 1, 2023.

The landlord holds the deposit without the authorization of the tenant.

This is the second proceeding between the parties. The first proceeding resulted in a settlement agreement dated November 1, 2022, and is referenced on the front page.

Condition inspection report

A condition inspection report was submitted on move in and move out, dated and signed by both parties.

The parties agreed the condition inspection took place on January 1, 2023.

Forwarding address

The parties agreed the tenant provided their forwarding address on January 1, 2023.

The landlord brought this application on January 20, 2023, outside the 15-day period.

Landlord's Claim - Rent

The landlord testified as follows.

The parties agreed the tenant sent the landlord an email on November 29, 2022, giving notice they would be moving out on December 31, 2022. The landlord acknowledged he replied to the email. Copies of the email exchange were submitted.

The landlord immediately started advertising the unit for rent for an increased amount of $3,500.00. The unit was rented effective February 1, 2023, for $3,800.00.

The landlord claimed he is entitled to rent for the month of January 2023 as the tenant sent the notice they were moving out by email, a means of service to which he did not agree.

The tenant said they moved out by the end of December 2022. The landlord said they moved out January 1, 2023.

Landlord's Claim – Cleaning

ITEM	AMOUNT
Cleaning	$400.00
Power wash sun deck	$250.00
Remove oil stain/leak in garage floor	$130.00
TOTAL	**$780.00**

The landlord's evidence included:

- Undated receipt with no details for $400.00
- Condition inspection report on move-out – indicating cleaning needed
- Photographs showing some dirty conditions at end of tenancy

Landlord's Claim – Damages and Repairs

The landlord claimed the following in the amount stated in the estimate.

ITEM	AMOUNT
Repair chipped wall at the entrance	$600.00
Repair patches, repaint the two bedrooms on main floor	$230.00
Repair patches on stairwell and repaint	$300.00
Repair patches in main bathroom and repaint	$200.00
Replace broken hinge in kitchen	$60.00
Replace the damage door frame in the bathroom on main floor	$550.00
Install curtain in master bedroom	$280.00
Install 2 blinds in upper floor2ndbedroom	$350.00
TOTAL	**$2,570.00**

The landlord's evidence included:

- Estimate, no receipts
- Condition inspection report on move-out
- Photographs

The landlord stated as follows.

The landlord is entitled to compensation in the amount of the estimate although he submitted no receipts showing he actually incurred any expenses. The landlord did not provide information of how the estimate was reached by the estimator and whether the estimator viewed the unit.

The landlord relied on the condition inspection report on move-out, signed by the tenant, showing some damages.

The landlord said he only marked down damages done during the tenancy, and not damages existing when the tenant moved in.

In other words, the only damage noted in the condition inspection report on move-out occurred during the tenancy. The landlord claimed certain items were broken or missing, such as curtains, blinds, and a cupboard hinge. None of these items have been replaced.

The landlord submitted an estimate of the cost of the repairs and claimed compensation in the full amount of the estimate.

Later in the hearing, the landlord said he did some of the repairs himself, taking eight hours of a value of $400.00 at $50.00 an hour. The landlord did not submit any supporting evidence of having done the work such as a written document showing dates, times, or out of pocket expenses. No receipt or photographs evidencing the work was submitted.

The landlord claimed the cost of the estimate is reasonable as he the unit was damaged because of which he experienced a loss of revenue. The landlord explained this assertion as follows.

The new tenants (who moved in February 1, 2023) are paying $3,800.00 monthly, compared to the tenant's rent of $3,045.00. While this is an increase, the amount is less than the market value of the unit because of the cleaning and repairs that were needed when the tenant moved out. In other words, the landlord has incurred a loss because of the condition in which the tenant left the unit. No supporting documentation for this assertion was submitted.

The landlord relied on the condition inspection report which notes similar deficiencies on both move in and move out, although the landlord claimed they were different, such as:

- Entry:
  - Move in: marks on walls and trim
  - Move out: wall chipped
- Stairwell
  - Move in: marks noted
  - Move out – many patches
- bedrooms #3 and #4
  - move in- wall patches, stains on carpet
  - move out – wall need repainting

In summary, the items have not been repaired professionally or were repaired by the landlord himself at reduced cost. The unit was rented at an increase rent after the tenant moved out, but at less rent than if the unit had been left clean and undamaged. The landlord

did not submit dated receipts for any of the items claimed or evidence of age. New tenants moved in on February 1, 2023, without the repairs being completed.

Tenant's Claims

The tenant denied the landlord is entitled to any compensation except for a broken globe of a ceiling light and lightbulbs.

The tenant testified as follows:

1. They provided proper notice to the landlord they were moving out. The parties always communicated by text and email. The landlord accepted their move-out notice and started advertising the unit for rent. The landlord never complained their notice was inadequate. The landlord substantially increased the rent by over 20% in his efforts to find a new tenant and that is the reason the unit was vacant for one month,, not because they provided insufficient notice. They are not responsible for the unit being vacant for one month.

2. Most of the damages claimed by the landlord were present at the time of move-in. The condition inspection report on move-in shows the unit was in a used and well-worn condition when they moved in. They did little additional damage.

3. They used the unit in an ordinary manner and are not responsible for normal wear and tear.

4. The missing or broken items, such as curtains (which the tenant denied were in the unit) and blinds, were in broken condition on move-in, well past their useful life and of no value, The useful life of these items is 10 years under the Policy Guidelines and any useful life was long exceeded. Also, the landlord submitted no proof of usability, age, or the cost of replacement (as the landlord acknowledged he did not replace them).

5. The landlord is attempting to pass on fictional cost of repairs and replacement of items which are his responsibility and for which the tenants are not accountable.

6. The landlord has not proven he incurred any expense in repairs.

7. The tenant acknowledged responsibility for a broken ceiling light globe and burnt-out lightbulbs for which the landlord did not submit receipts.

8. The tenant claimed they are entitled to a doubling of the security deposit as the landlord did not return the security deposit in 15 days of the provision of the

forwarding address and end of the tenancy.

Analysis

Credibility

In considering the application, I weighed the credibility of the parties.

The landlord has the burden of proving their claim. The landlord submitted an estimate (not invoices) and an undated receipt which the tenant claimed are inflated, unreliable and unrealistic.

Without detailed invoices, the tenant says the landlord's claims are too high and are untrustworthy. The tenant asserts the estimates are not based on an inspection of the work. They are not proof of the landlord's claims. The landlord is seeking to make the tenant pay for items which are the landlord's responsibility. The landlord incurred no expenses.

Considering the lack of supporting evidence, I find the landlord's claims to be unlikely. I do not find the landlord's claims to be credible. I find the landlord is seeking to pass fictional costs onto the tenant for which the tenant is not responsible.

Therefore, I find the landlord's evidence to be of little weight. I find the tenant's version of events to be the most likely to be factual and reliable.

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 each party 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 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 party proven the amount or value of their damage or loss?
4. Has the 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.

Findings

1. *Landlord's Claim for Rent*

I find the landlord is not entitled to payment of any rent as claimed for the following reasons.

This was a month-to-month tenancy. The tenant can end the tenancy by giving one-month notice. This was clearly stated in the earlier RTB decision referenced on the first page.

Under section 52 of the Act, the notice by the tenant to the landlord that they were moving out must be in writing and signed.

The parties agreed they routinely communicated by text and email, copies of which were submitted.

The tenant provided one month's notice by email stating they were moving out December 31, 2022. The landlord acknowledged the email and replied. The landlord did not object to the form of the notice. The tenant was unaware there was anything deficient about their notice and moved out.

The landlord started advertising the unit for $3,500.00 upon receipt of the notice, an amount greater than the tenant paid, showing acceptance of the notice. He rented the unit to new tenants for a greater amount again, $3,800.00 a month, starting February 1, 2023. I find it most likely the unit was vacant for one month because of the substantial increase in advertised rent.

Although the parties did not provide their email addresses for the purpose of service as required under s. 43 of the Regulations, I find that email was a proper method of service under s. 71(2) of the Act in the circumstances.

S. 71(2) states that I may direct that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act. I make this finding because communicating by email was the customary method of contact between the parties. The landlord received the notice, acted on it, and did not complain about the method of notice.

I find that the legal principle of estoppel applies to this situation.

Estoppel is a legal doctrine which holds that one party may be prevented from strictly enforcing a legal right to the detriment of the other party. The principle can apply if the first party (in this case, the landlord) has established a pattern of failing to enforce this right, and the second party (the tenant) has relied on this conduct and has acted accordingly.

To return to a strict enforcement of their right, the first party (the landlord) must give the second party notice (in writing) that they are changing their conduct and are not going to strictly enforce the right previously waived or not enforced.

As the landlord accepted the notice, the method of communication was the commonly used one, the landlord acted on the notice, and found a replacement tenant, I find the landlord cannot now complain that he was given improper notice by the tenant that they were moving out.

I therefore find the landlord is not entitled to compensation under this heading.

I dismiss this aspect of the landlord's claim without leave to reapply.

2. *Landlord's Claim – Cleaning*

The parties disputed how much, if any, cleaning was needed at the end of the tenancy. Landlord submitted an undated, unspecified generic receipt which I find is of no evidentiary weight as well as some photos. Tenant submitted photos showing the unit in good condition on move- out.

The condition inspection report on move-out notes the unit was dirty in many areas.

The tenant signed the report and acknowledged unit required some cleaning.

While I am unable to determine what the landlord spent on cleaning, if anything, I find this is an appropriate situation for a nominal award which I set at $100.00.

3. *Landlord's Claim – Damages and Repairs*

The landlord has submitted a bare request for compensation without any of the normal supporting documents, such as proof of the age of the items, receipts, or a reliable estimate proven to be based on personal observation or adequate information.

I find the tenant's testimony to be the most believable for the reasons already stated, including that the unit was in damaged condition when the tenancy started. I find the unit was in used and worn condition upon moving in.

I am unable to determine what damage the tenant is responsible for because some of the deficiencies noted on the condition inspection report on move-out are the same or like the deficiencies on moving in. I refer to the examples provided earlier. I do not give any weight to the landlord's assertion that only damage that occurred during the tenancy is noted on the condition inspection report on move-out. I find the landlord has not met the burden of proving what damages the tenant caused.

Nevertheless, the tenant signed the condition inspection report on move-out and acknowledged responsibility for some deficiencies. The tenant agrees that they caused some damage, namely the broken ceiling lighting fixture and expired lightbulbs.

Because of the paucity of the landlord's evidence, I am unable to precisely determine the quantum of damages. I find this is a situation which calls for nominal damages.

Considering all the circumstances, I find this is an appropriate situation for nominal damages for

which I award $200.00.

4. Tenant's Claim - Security deposit

Section 38(4) allows a landlord to retain from a security and/or pet damage deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security and/or pet damage deposit, section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Section 38(6) of the Act states that if the landlord does not return the deposit(s) or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

Based on the evidence before me, I find the landlord was deemed served with the tenant's forwarding address on January 1, 2023, as it is stated in the signed condition inspection report on move-out of that date.

I further find that the landlord was obligated to obtain the tenant's written consent to keep the security and/or pet damage deposit or to file an application on or before January 15, 2023, 15 days after receiving the tenant's forwarding address or the tenancy ending.

There is no evidence that the landlord had the tenant's agreement in writing to keep the security and/or pet damage deposit or that the landlord applied for dispute resolution within 15 days of receiving the tenant's forwarding address to retain a portion of the security and/or pet damage deposit as required under section 38(1).

Under section 38(6) of the Act, I find that the landlord must pay the tenant double the security deposit as they have not complied with section 38(1) of the Act.

Therefore, I find the tenant is entitled to a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit under sections 38 and 67 of

the Act, in the amount of $3,000.00.

Filing fee

As the tenant has been primarily successful, I award the tenant reimbursement of the filing fee of $100.00.

Award

The tenant is entitled to a Monetary Order of $2,800.00:

ITEM	AMOUNT
Security deposit	$1,500.00
Security deposit – double	$1,500.00
Filing fee	$100.00
(Less awards to landlord: $100.00 + $200.00)	($300.00)
TOTAL	**$2,800.00**

Conclusion

I grant the tenant a Monetary Order of $2,800.00. This Monetary Order must be served on the landlord.

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: December 07, 2023

Residential Tenancy Branch