



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; FF; O

Introduction

This is the Landlord's application for a Monetary Order for damages; to recover the cost of the filing fee from the Tenants; and for "other" orders.

This matter was scheduled to be heard on June 6, 2014. On June 6, 2014 the matter was adjourned because the Landlord provided late evidence which the Tenants had not yet received. An Interim Decision was provided on June 11, 2014, which should be read in conjunction with this Decision.

In my Interim Decision, I ordered that the Landlord provide a copy of the registered mail receipt for documents mailed to the Tenant on May 27, 2014. The Landlord provided a copy of the receipt which indicates that the documents were ready for pick up on May 29, 2014. A search of the Canada Post tracking system confirms that the Tenants picked up the documents on June 13, 2014.

In my Interim Decision, I also ordered that the Tenants provide their rebuttal, if any, to the Landlord and to the Residential Tenancy Branch within 5 days of receipt of the Landlord's documentary evidence. The Tenants did not provide their evidence to the Residential Tenancy Branch until August 14, 2014. The Tenants stated that they served the Landlord with copies of their evidence by mail sent on August 13, 2014. The Landlord stated that he has not yet received the Tenant's documentary evidence. The Tenants did not have an explanation for not complying with my Order. I did not consider the Tenants' documentary evidence because it was not provided to the Landlord in accordance with my Order.

The parties gave affirmed testimony at the reconvened Hearing.

Issues to be Decided

- Is the Landlord entitled to monetary compensation from the Tenants and if so, in what amount?
- Is the Landlord entitled to an Order that the male Tenant remove the rental unit's address from his website as the contact address for some of his employees and for the Tenant's website administration?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in his evidence package. This tenancy began on March 1, 2012, and ended on January 31, 2014. Rent was \$1,290.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$645.00 on February 18, 2012. There is a clause in the tenancy agreement that provides the following fees for late payment of rent:

“Late payments are subject to a charge against the security deposit as liquidated damages, at the rate of \$4 per day, minimum \$20. In addition, each returned cheque, including NSF, is subject to a service charge of \$20.”

(reproduced as written)

The Landlord gave the following relevant testimony:

The Landlord testified that the Tenants did not attend to complete a condition inspection report at the beginning or the end of the tenancy despite being given more than two opportunities, via e-mail and phone communications, to complete the report. Copies of emails were provided in evidence. The Landlord stated that he completed a Condition Inspection Report at the beginning and the end of the tenancy.

The Landlord testified that he purchased the rental unit approximately 6 years ago and that the rental property was built in the mid 1970s.

The Landlord stated that, without the Landlord's or the strata corporation's permission, the male Tenant ran an international business from the rental unit and published the rental unit on his website as the company's Canadian head office. The Landlord testified that the Tenant has since removed the rental address from his website, but that the address was still used as a contact address for some of the Tenant's employees and remains the listed address for the Tenant's website administration. The Landlord provided copies of internet searches in evidence.

The Landlord stated that the Tenants were late paying rent on 13 occasions. The Landlord provided an accounting, showing the months that the Tenants were late, along with redacted copies of bank statements indicating the dates that rent payments were made to his bank account.

The Landlord testified that the Tenants were away for several weeks in the winter of 2013-14. The Landlord stated that he had the Tenants' permission to hold an open house in January, 2014, to find new tenants. When he arrived at the rental unit, he noticed that the heat was on maximum and the toilet was leaking. The Landlord stated that he had to hire a licensed plumber to make emergency repairs on a Sunday. The Landlord stated that the Tenants did not have contents and liability insurance, contrary to a clause in the tenancy agreement. The Landlord testified that he sent the Tenants an email in January reminding the Tenants that they must have contents and liability insurance and that they must not leave the rental unit for more than 4 days without having someone come and check on the suite in their absence.

The Landlord stated that the Landlord had to pay a strata fine in July, 2012, because the Tenants breached a strata bylaw by keeping a boat in the basement. The Landlord stated that the Tenants had been given a copy of the strata warning letter, which they ignored. The Landlord testified that the Tenants were also given a copy of the bylaws at the beginning of the tenancy and that they signed a Form K acknowledging that they agreed to abide by the strata bylaws. The Landlord provided a copy of the Form K, signed March 4, 2012, in evidence.

The Landlord testified that sometime in 2013, one of the bath taps stopped functioning and the Tenants used a wrench to adjust the tap control. This stripped the metal threads beyond repair and the tap had to be replaced, along with a section of the wall. The Landlord stated that the Tenants did not advise him of the damaged tap in a timely manner. He acknowledged that the damaged tap was not new and therefore, he is asking to recover 50% of the cost to install the new tap. A copy of the repair bill was provided in evidence.

The Landlord seeks a monetary award, calculated as follows:

DESCRIPTION	AMOUNT
Fees for late rent payments	\$208.00
Plumber – emergency toilet and thermostat repairs	\$180.00
Strata plumber call out (50%)	89.51
Replace damaged tap and cartridge (50%)	\$481.85
Replace bathroom tiles (50%)	\$150.00
Reinstall tap after tiling (50%)	\$37.50
Strata fine	<u>\$50.00</u>
TOTAL AMOUNT CLAIMED FOR DAMAGES	\$1,196.86

The Tenants gave the following testimony:

The Tenants acknowledged that they signed the form K and were given a copy of it, but were not given a copy of the strata bylaws or a copy of the tenancy agreement addendum that contained the terms about late payments and insurance requirements.

The Tenants testified that they had a boat, but that they moved it as soon as the Landlord told us they had to. The Tenants denied receiving a copy of the strata's warning letter.

The Tenants submitted that they were not responsible for the leaky toilet and that the broken thermostat was not an emergency repair. They stated that in hindsight they should have turned the heat and water off because they were away.

The Tenants stated that they first raised the issue with the Landlord about the broken tap on December 20, 2012, and that they reminded him on May 22. The Tenants stated that the

Landlord attempted to fix the tap but could not. The Tenants testified that the plumber told them that the tap was old and that it failed through wear and tear.

The Tenants testified that they offered to provide the Landlord with post-dated cheques for rent, but the Landlord preferred that the Tenants pay the rent directly to his bank account. The Tenants submitted that no late fees were enforced or mentioned until the tenancy went sour as it was ending.

The Tenants agreed that they did not clean the oven.

Analysis

Section 5 of the Act provides that parties may not avoid or contract out of this Act or the regulations and that any attempt to do so is of no effect. Section 7 of the regulations provides that a landlord may charge an administration fee of a specified amount (not more than \$25.00) for late payment of rent, but that the landlord must not charge this fee unless the tenancy agreement provides for that fee. In this case, the tenancy agreement provides a per diem fee, which is contrary to the regulations and therefore I find that the portion of the Landlord's claim which seeks the daily \$4.00 charge is of no effect.

The Landlord did not attempt to collect late fees from April, 2012 and to and including January, 2013, until the end of the tenancy. Therefore, I dismiss the Landlord's application for late fees for those months. I allow the Landlord's claim for the months of October, 2013 and January, 2014, at the amount provided for in the tenancy agreement (\$20.00 x 2 months = **\$40.00**).

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed Section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Residential Tenancy Policy Guideline 1 sets out who is responsible for maintaining, cleaning and repairing rental units. A tenant is not required to make repairs for reasonable wear and tear. The Residential Tenancy Policy Guidelines provide a useful life for plumbing of 15 years. The rental property is approximately 40 years old and the Landlord was not able to provide evidence that the tap was replaced within the last 15 years. With respect to the repairs to the bath tap, plumbing and surrounding wall, I find that the Tenants advised the Landlord of the

need for repairs in December, 2012, by e-mail which the Landlord replied to. Therefore, I find that the Landlord did not meet parts 2 or 4 of the test for damages and the portion of his claim with respect to repairs to the tap and surrounding walls is dismissed.

The Landlord did not provide sufficient evidence that he provided the Tenants with the warning letter from the Strata. The Tenants testified that they removed the boat in a timely fashion when the Landlord asked them to do so. Therefore, I dismiss this portion of the Landlord's claim

I allow the Landlord's claim for the emergency toilet and thermostat repair in the total amount of **\$269.51**. The Landlord provided evidence that he had reminded the Tenants on January 11, 2013, that the tenancy agreement required them to have insurance for liability. The Landlord also advised that they must have someone checking the rental unit on a regular basis if they were going to be absent for more than 4 days at a time.

I allow the Landlord's reasonable request for an Order that the male Tenant remove the rental unit's address from his website as the contact address for some of his employees and for the Tenant's website administration.

The Landlord's application had some merit and therefore I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

The Landlord has established a total monetary award of **\$359.41**. The Landlord is holding the Tenants' security deposit in the amount of \$645.00.

With respect to the security deposit, the onus is on a landlord to arrange for condition inspections to take place at the beginning and the end of a tenancy. Part 3 of the regulation requires a landlord to provide a tenant with two opportunities to complete the inspection. If the tenant does not agree to a date and time for the inspection, the landlord must serve the tenant with a Notice of Final Inspection Opportunity and must complete the Report in the absence of the tenant and provide a copy to the tenant.

Section 36 of the Act provides that a tenant who does not attend a condition inspection extinguishes his right to return of the security deposit. A landlord extinguishes his right to claim against a security deposit for damages if he does not comply with the requirements of the Act with respect to condition inspections; however, the landlord retains the right to claim for damages under Section 67 of the Act. In this case, the Landlord provided insufficient evidence that the Tenant was provided with the Notice of Final Inspection Opportunity and therefore I find that the Tenants have not extinguished their right to return of any or all of the security deposit.

Interest on security deposits is calculated in accordance with the provisions of the regulation. No interest has accrued on the security deposit since the beginning of this tenancy. Pursuant to the provisions of Section 72 of the Act, I hereby set off the Landlord's monetary award against the security deposit and ORDER that the Landlord return the balance of the deposit to the Tenants forthwith, calculated as follows:

Security deposit	\$645.00
Less Landlord's award	<u>-\$359.41</u>
Refund to Tenants	\$285.59

Conclusion

I hereby provide the Tenants with Monetary Order in the amount of **\$285.59** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

I ORDER that the male Tenant immediately remove the rental unit's address from his website as the contact address for some of his employees and for the Tenant's website administration.

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: September 19, 2014

Residential Tenancy Branch

