



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:18 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's agent (the landlord) testified that she sent a copy of the landlord's written evidence and dispute resolution hearing package to the tenant by registered mail on August 26, 2014. She provided a Canada Post Tracking Number and Customer Receipt as well as a copy of information from Canada Post's Online Tracking System in which it was noted that the tenant's brother who resides with the tenant signed for the receipt of this material on September 2, 2014. Based on the sworn testimony and written evidence of the landlord and in accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the above documents on August 31, 2014, the fifth day after their registered mailing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

On May 12, 2011, the tenant signed a periodic residential tenancy agreement (the agreement) with the landlord for a tenancy commencing on June 1, 2011. According to the terms of that agreement entered into written evidence by the landlord, the monthly rent for this tenancy was set at \$650.00, of which the tenant was responsible for paying \$298.00 by the first of each month. On April 29, 2013, the tenant gave written notice of

her intention to end this tenancy by May 30, 2013 to one of the landlord's representatives.

The landlord entered into written evidence a copy of the joint move-in condition inspection report of May 31, 2011. She testified that the tenant did not participate in the landlord's move-out condition inspection on June 3, 2013, by which time this tenancy had ended. The landlord entered sworn oral testimony and written evidence that the tenant did not move many of her possessions out of the rental unit and signed an agreement allowing the landlord to dispose of the possessions left behind at the end of her tenancy.

The landlord's application for a monetary award of \$577.50 included an application for the recovery of \$288.75 of the costs of disposing of the tenant's possessions and \$288.75 for sewage extraction and cleaning the toilet. The landlord provided copies of receipts supporting the claim for the recovery of these expenses incurred by the landlord. The landlord gave sworn testimony that the sewage extraction and toilet cleaning costs became necessary because the tenant did not report that the toilet was malfunctioning, although continuing to use it, resulting in the above expenses incurred by the landlord. The landlord also entered into evidence photographic evidence showing the condition of the rental unit at the end of this tenancy.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I find that the landlord has demonstrated that the rental unit was in good condition when this tenancy began. Although a copy of a move-out condition inspection report would have been helpful, I am satisfied by the undisputed sworn testimony, written and photographic evidence that damage arose during the course of this tenancy for which the landlord is entitled to a monetary award. In this regard, I note that the tenant signed an agreement allowing the landlord to dispose of the possessions she left behind at the end of this tenancy. Based on the photographs and the landlord's

undisputed testimony, I am satisfied that the amounts claimed by the landlord are reflective of the costs associated with cleaning the rental unit and making it operational for a subsequent tenant.

Under these circumstances, I find that the landlord is entitled to a monetary award of \$288.75 for the disposal of the tenant's possessions and \$288.75 for sewer extraction and toilet cleaning. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee for this application.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover losses arising out of damage to the rental unit and to recover the filing fee:

Item	Amount
Damage – Disposal of Tenant's Possessions Remaining in Rental Unit	\$288.75
Damage- Sewer Extraction and Cleaning of Toilet	288.75
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$627.50

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 20, 2015

Residential Tenancy Branch

