



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 its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1121 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent confirmed she had authority to act on the landlord's behalf.

The agent testified that the landlord served the tenant with the dispute resolution package on 31 July 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the package was signed for by the tenant. The agent testified that service was completed to an address at which the tenant resides. The landlord received this address by way of an information sharing agreement with the Ministry of Social Development and Social Innovation. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package pursuant to section 89 of the Act.

Preliminary Issue – Evidence Ordered After Hearing

The landlord accidentally sent two copies of the condition move out inspection report and no copies of the condition move in inspection report to this Branch. The landlord also informed me that she could provide evidence as to the age of the doors that were alleged to be damaged.

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that I may direct that evidence be submitted after the commencement of a hearing. In considering whether to allow additional evidence, I must consider the potential prejudice to the parties.

In this case, there is limited prejudice to the tenant in my acceptance of this evidence after the hearing. The tenant has signed the condition move in inspection report as she was in attendance during its creation. The tenant has knowledge of the contents of the condition move in inspection. As well, the age of the doors goes to calculating the depreciated capital cost of the doors, which assists the tenant in minimizing the allowable compensation.

I ordered the agent to send the documents by fax before the end of the day. She did.

Issue(s) to be Decided

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

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 15 January 2011. The parties entered into a written tenancy agreement on 15 December 2010. Rent was determined by reference to the tenant's income. The tenancy ended 7 October 2014. The landlord does not hold a security deposit in respect of this tenancy.

The landlord provided condition move in inspection report and a condition move out inspection report. There is nothing remarkable about the condition move in inspection report. The condition move in inspection report sets out that the doors were new at the beginning of the tenancy. The condition move out inspection report notes the deficiencies for which the landlord seeks compensation.

The landlord claims for the cost of cleaning the rental unit. The landlord provided an invoice dated 15 February 2015 in the amount of \$411.60. The receipt indicates that the cost was for extra cleaning of the rental unit. The agent testified that it appeared

that the tenant did not make much of an effort to clean the rental unit at the end of the tenancy. The landlord provided photographs that confirm this testimony.

The landlord claims for the cost of removing and disposing of debris left in the rental unit. The landlord provided an invoice dated 15 February 2015 in the amount of \$360.15. The receipt indicates that it was for labour and dump fees. The agent testified that the tenant left many items behind. The landlord provided photographs that confirmed this testimony.

The landlord claims for the cost of replacing four interior doors and repairing a large hole in the wall. The landlord provided an invoice dated 1 March 2015 in the amount of \$5,890.50. The invoice is itemized and sets out that the door replacement cost \$835.00 and the wall repair cost \$45.00. The invoice contains a handwritten total that sets out that the total combined cost is \$924.00, including GST. The agent testified that four doors were damaged by the tenant or persons she permitted in the rental unit. The doors have large holes or are badly bent at the bottom edge. The landlord provided photographs that confirm that the doors were badly abused. The agent testified that there was one large hole in the wall for which the landlord seeks compensation. The landlord provided a photograph that confirms this testimony.

The landlord provided an invoice dated 11 December 2010 that sets out that the interior doors were replaced.

The landlord claims for the cost of replacing the exterior door and jam. The landlord provided an invoice dated 28 March 2015 in the amount of \$472.50. The agent testified that the paint on the exterior of the door and jam was scratched off. The agent believes that this may have been the result of a dog. The agent testified that the screen mechanism on the storm door was also broken by the tenant. The landlord provided photographs that confirm this testimony.

The landlord provided a written statement that sets out that the exterior door was new in 2003.

The landlord claims for \$2,168.25:

Item	Amount
Cleaning Costs	\$411.60
Removing Debris	360.15
Repairs to Four Interior Doors and Wall	924.00
Repair to Exterior Door	472.50

Total Monetary Order Sought	\$2,168.25
------------------------------------	-------------------

Analysis

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline, 1. Landlord & Tenant – Responsibility for Residential Premises” (Guideline 1) sets out the tenant's responsibilities:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*...

[footnote removed]

On the basis of the agent's sworn and uncontested testimony that is corroborated by photographic evidence, I find that the tenant has failed to clean the rental unit in a manner that satisfied her obligations pursuant to 37 of the Act and Guideline 1. I find that by breaching section 37 of the Act, the tenant caused the landlord to incur costs in the amount of \$411.60. I accept that these costs represent the landlord's reasonably incurred expense to bring the rental unit into compliance with section 37 of the Act.

Guideline 1 sets out the responsibility for garbage removal from a rental unit:
Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

On the basis of the agent's sworn and uncontested testimony that is corroborated by photographic evidence, I find that the tenant has failed to remove all her belongings from the rental unit in a manner that satisfied her obligations pursuant to 37 of the Act and Guideline 1. I find that by breaching section 37 of the Act, the tenant caused the landlord to incur costs in the amount of \$360.15. I accept that these costs represent the landlord's reasonably incurred expense to bring the rental unit into compliance with section 37 of the Act.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenant or his visitor logically led to the damage of which the landlord complains.

The landlord provided photographs of the extensive damage done to the rental unit. There were large holes in walls and doors. The jam of the front door was split. The interior doors were split. This damage is far beyond damage that could possibly be attributable to wear and tear. I find that this damage was caused by the tenant or persons she permitted to be in the rental unit. On the basis of the agent's testimony corroborated by photographic evidence, I find that the tenant breached subsection 32(3) and section 37 of the Act by leaving the rental unit in a damaged condition that was beyond normal wear and tear.

Residential Tenancy Policy Guideline "40. Useful Life of Building Elements" provides me with guidance in determining damage to capital property. The useful life of a door is twenty years. The landlord provided evidence that the interior doors were approximately four years old. The purpose of damage is to return the claimant to its original position. As the value of the interior doors had depreciated by 25%, the tenant is responsible for 75% of the cost of repair, that is, \$657.56. The landlord provided evidence that the exterior door was approximately eleven years old. The purpose of damage is to return the claimant to its original position. As the value of the exterior door had depreciated by 55%, the tenant is responsible for 45% of the cost of repair, that is, \$212.63.

The landlord did not replace the wall, but rather repaired the hole in the wall. I find that by selecting this less costly method, the landlord mitigated its damages. I find that allowing the landlord to recover for the entire amount of the repair would not unduly

enrich the landlord as the repair places the landlord in substantially the same condition in which it would have been had the tenant not placed a hole in the wall. I find that the landlord is entitled to recover for the full cost of the repair to the drywall in the amount of \$47.25

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,739.19 under the following terms:

Item	Amount
Cleaning Costs	\$411.60
Removing Debris	360.15
Repairs to Four Interior	657.56
Repair to Exterior Door	212.63
Repair Drywall	47.25
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,739.19

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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

Dated: October 13, 2015

Residential Tenancy Branch

