



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNSD, FF (Landlord's Application)
 CNC, FF (Tenant's Application)

Introduction and Preliminary Matter

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution she requested an Order of Possession based on a Notice to End Tenancy for Cause, a Monetary Order for damage to the rental unit, authority to retain the security deposit and to recover the filing fee. The Tenant sought to cancel the Notice and recover the filing fee.

Both parties appeared at the hearing. The Landlord was in attendance and was assisted by her husband D.M. The Tenant was not in attendance, however, her mother, A.Z. appeared as her agent. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the parties advised that the Tenant vacated the rental unit as of September 1, 2015. Accordingly, the Tenant's request for an order canceling the Notice and the Landlord's request for an Order of Possession were withdrawn.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Is the Landlord entitled to retain the security deposit?
3. Should either party recover the fee paid to file their application?

Background and Evidence

The tenancy began July 22, 2014. Monthly rent was payable in the amount of \$750.00. The Landlord received a security deposit in the amount of \$375.00.

The Landlord issued a 1 Month Notice to End Tenancy for Cause on July 24, 2015 which indicated an effective date of August 31, 2015. The parties agreed the Tenant vacated the rental unit on September 1, 2015 and that the Tenant provided her forwarding address in writing on that same day. The Landlord applied for dispute resolution on August 28, 2015.

The Landlord sought the sum of \$1,758.00 for the cost of pest control as a result of cockroaches in the rental unit which spread to other areas of the rental building.

Introduced in evidence was an email from the Tenant to the Branch wherein she confirmed that the cockroaches originated from a second hand guitar she had recently purchased. Also introduced in evidence was an email from the Tenant wherein she wrote as follows:

“...So a little while ago I had brought an old guitar into my rented apartment and I didn't know at the time there were cockroaches in it. The cockroaches infested in my apartment and they spread to a few other units in my building...”

Also introduced in evidence was a letter dated August 24, 2015 written by the Landlord and which provided a timeline with respect to the cockroach infestation. In this letter the Landlord writes:

- The Landlord was informed on May 14, 2015 that the building was infested with cockroaches and the rental unit was identified as the source.
- On May 16, 2015 the Landlord and her spouse attended the rental unit and found dead cockroaches as well as spilled food.

- On May 17, 2015 the Landlord attended again to help the Tenant clean up the spilled food and put the dry goods in sealed plastic containers.
- The Tenant told the Landlord she had purchased an old guitar and when she saw it had cockroaches in it she put it on the balcony.

Also introduced in evidence was a letter dated June 18, 2015 from the building manager, C.P., to the Tenant requesting payment of the invoices related to the cockroach infestation. As well, the Landlord provided copies of four invoices for pest control which totalled \$1,758.00. In the invoice identified as No. 34180, the writer indicates that the rental unit had a multitude of dead cockroaches.

The Landlord confirmed she did not have property insurance for the rental unit.

The Tenant's mother, A.Z., testified on her behalf. She stated that the Tenant was not available as she was in school at the time of the hearing. Initially A.Z. testified that the Tenant did not sign the tenancy agreement as she was only 17 years old and was under the care of the Ministry of Children and Family Development by way of a youth agreement. The tenancy agreement was not in evidence.

The Landlord confirmed the agreement was in fact between the Tenant and the Landlord and that the Tenant signed on her own behalf.

A.Z. then stated that it was possible the Tenant had signed on her own behalf.

I requested that the Landlord send a copy of the tenancy agreement, which he did immediately following the conclusion of the hearing and which confirmed the Tenant signed on her own behalf.

In response to the Landlord's claim that the Tenant caused the cockroach infestation, A.Z. submitted as follows:

- The Tenant did not know what cockroaches looked like; as such, when she sent the email to the Landlord admitting she had brought them in, she was simply young and naïve and assumed the insects which were in her guitar were cockroaches.
- The Tenant did not *purposely* bring cockroaches into the rental unit.

- There was no evidence that the infestation *originated* from the rental unit and that as many other units were also affected, they could have come from other units in the building.
- A.Z. warned the Tenant that she had to deal with the insects, however, the Tenant felt bad about killing the insects and as a result they proliferated because she did not deal with them promptly.

A.Z. confirmed she was not at the rental unit at the time the guitar was brought home by the Tenant and as such did not see the insects in the guitar.

In reply the Landlord stated that the cockroaches the Tenant saw in her guitar were juvenile and as such smaller than expected but that in any case as the Tenant did not destroy them immediately they multiplied causing significant infestation and related costs for their extermination.

Analysis

A minor may enter into a tenancy agreement pursuant to section 3 of the *Residential Tenancy Act* which provides as follows:

Act applies to tenancy agreement with a minor

- 3** A person who has not reached 19 years of age may enter into a tenancy agreement or a service agreement, and the agreement and this Act and the regulations are enforceable by and against the person despite section 19 of the *Infants Act*.

Accordingly, I find that the Tenant, although only 17 years old, entered into the tenancy agreement and that agreement, the *Residential Tenancy Act*, and the regulations are enforceable against her.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, 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 as a result of the violation;
3. the value of the loss; and,
4. that the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

I find that the Landlord suffered a loss of \$1,758.00 representing the cost of pest control necessitated by the Tenant introducing cockroaches to the rental building. The Tenant admitted that the second hand guitar had cockroaches in it. The Tenant's mother conceded that the Tenant was initially reluctant to do anything about the insects as she did not want to kill them. The Tenant's mother, A.Z., warned the Tenant that by not dealing with them, they would proliferate. It appears as though that is what happened. I accept A.Z.'s submissions that this was accidental.

The evidence introduced by the Landlord supports a finding that the cockroach infestation originated in the rental unit. Unfortunately, insects and pests do not respect rental unit boundaries, and given their size freely move between rooms and units.

In this case, I find that the cockroach infestation began in the rental unit and as such the Landlord's losses were directly caused by the Tenant bringing the infested guitar to the rental unit. While I accept this was accidental, the Landlord is entitled to be compensated for the losses incurred due to the infestation caused by the Tenant. I find that the Landlord, in providing copies of the invoices for pest control, established the value of her loss. Finally, I find that the Landlord responded in a timely manner thereby minimizing any potential loss.

The Landlord, having been substantially successful is entitled to recovery of the \$50.00 filing fee. The Tenant's request for recovery of the fee paid to file her application is dismissed.

In all the circumstances I award the Landlord the amount claimed, namely \$1,808.00 representing compensation for the pest control invoices of \$1,758.00 and recovery of the \$50.00 filing fee.

I order that the Landlord retain the deposit in the amount of **\$375.00** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$1,433.00**. This Landlord may file and enforce the Order in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Landlord is entitled to a monetary Order in the amount of **\$1,433.00**.

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: October 19, 2015

Residential Tenancy Branch

