Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 353806 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPC, OPB, MND, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of possession for cause and breach of a material term of the tenancy, compensation for damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that at 4:00 p.m. on February 25, 2016 the maintenance manager, A.B. and the residential manager, E.M. attended at the rental unit. The male tenant opened the door to the unit and refused to accept the hearing documents. The tenant was told the envelope contained hearing documents and the 37 page written evidence submission. After the tenant refused the documents the landlord representatives put the documents on the tenants' door.

The landlord said that on February 29, 2016 a statement issued by the employees who served the tenant was sent to the Residential Tenancy Branch, via facsimile. That statement was not before me. I accepted the landlords' affirmed testimony in relation to the details of service set out in the statement signed by E.M. and A.B that was before the landlord.

The female tenant was not present on February 29, 2016 and was not served with the hearing documents.

Therefore, I find that the hearing documents and evidence are deemed to have been served in accordance with section 89 of the *Act.* Refusal to accept the documents when handed to the tenant does not allow a party to avoid service. The landlords' employees told the male tenant what the envelope contained and it was refused by the tenant. The documents were left on the door for the tenant to retrieve.

As the female tenant was not served with Notice of this hearing I find that the application is amended to remove the female as a respondent.

The tenant did not attend the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $4,092.58 for damage to the rental unit?

May the landlord retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy commenced on August 1, 2012. At the end of the tenancy rent was $538.96. A copy of the tenancy agreement was supplied as evidence.

A security deposit in the sum of $250.00 was paid on July 3, 2012.

The landlord purchased the property just prior to the start of this tenancy.

The tenancy ended on February 29, 2016; the effective date of a one month Notice to end tenancy for cause issued by the landlord. The tenants had disputed the Notice, then withdrew their application and vacated. The tenants have yet to provide a written forwarding address.

The landlord has made the following claim for compensation:

Professional fees	$913.00
Water damage remediation	1,460.20
Plumbing investigation	375.38
Painting	1,344.00
TOTAL	$4,092.58

During the hearing the landlord withdrew the claim for painting.

The landlord supplied verification of expenses incurred as the result of the tenants' failure to properly ventilate the 430 sq. foot unit. In late 2013 the tenants reported a problem with water on the carpeting by the balcony door. On December 13, 2013 a plumber investigated the unit and neighbouring units and could not find any cause of the water ingress. The landlord then hired an engineer who confirmed that the cause of the moisture was caused by the tenants.

The landlord submitted a home inspection report issued on February 6, 2014 which determined that the moisture in the unit seen on December 13, 2013 was occupant-related and not a plumbing issue. Moisture meters were used to assess the conditions. The landlord said that the tenants had put the contents of a two bedroom unit in the

bachelor apartment. The tenants had a number of plants and were hanging clothes to dry in the unit. This all caused the problem with moisture.

As the landlord had been unsure of the cause of the problem they moved the tenants to another rental unit. In January 14, 2014 the landlord painted the unit, cleaned the carpet and dried the flooring. A new high-efficiency bathroom fan was installed, and the window and balcony door were replaced.

The landlord submitted a copy of a February 20, 2014 letter sent to the tenants regarding the significant water damage caused to the walls and carpet around the balcony door. The letter set out the chronology of events related to investigation of the problem. On December 17, 2014 the landlord had reminded the tenants that they had turned off the dehumidifiers that were placed in the unit by the restoration company. The tenants were reminded that they had too many plants, that the unit was cluttered and that the tenants must ventilate the unit. The letter warned the tenants that they had a responsibility under the Act to maintain the unit in an acceptable standard. A copy of the section of the legislation on maintenance and repair was provided to the tenants. The tenants were warned they must ventilate the unit and clear items and keep plants away from window covering. The tenants were told they would be held responsible for the cost of the repairs that had been completed and invoices would be supplied.

On December 23, 2014 the landlord again advised the tenants to run the de-humidifier as long as possible. The tenants were rude, swore at the landlord and said they would not pay for the electricity. The landlord said she offered to pay power costs if the tenants would provide a bill; they did not do so.

The tenants moved back into the unit in March 2014.

The landlord had met with the tenants on multiple occasions and told them they must ventilate the unit by opening windows, as they had too many belongings in the unit.

In December 2015 the tenants reported the same problem with moisture. The landlord completed an inspection on December 30, 2015 and took photos of the unit. Those photos were supplied as evidence to demonstrate the state of the unit.

The landlord supplied copies of the following documents:

- December 31, 2013 - invoice for inspection services ($378.00);
- January 14, 2014 - plumbing invoice, prorated for investigation of leak reported December 6, 2013 ($357.50)
- February 6, 2014 - contract for inspection services ($262.50) and report issued
- December 30, 2015 - inspection contract for the unit ($472.50) and resulting report concluding the tenants needed to control humidity via fans and opening of doors and windows.
- January 12, 2016 - remediation invoice, fan rental water extraction ($1,302.70.)

The total invoiced costs for professional inspection and reports were $1,113.00. The landlord has claimed $913.00.

The plumbing cost has been claimed as the moisture problem was the result of the actions of the tenants and there was no plumbing problem in the unit.

The efforts made by the landlord to address moisture problems did not stop the same issue from reoccurring.

The landlord supplied an invoice issued on January 12, 2016 for the cost of water damage remediation. Equipment was rented required to dry the unit. The invoice notes that the dehumidified was not allowed to run enough as it had only 31 hours showing on the timer and should have operated for 80 hours. This required additional rental time. The landlord said the tenants were unplugging the fans. The invoice totaled $1,302.70.

On January 26, 2016 the landlord wrote the tenants a letter, setting out the damage caused by the condensation the tenants had again allowed to accumulate in the unit. A copy of the inspection report was provided to the tenants. The tenants were given a final warning of a breach of the tenancy and the tenants' duties for repair of the unit. The tenants were given copies of the invoices for the inspections and the remedial work and were told they would be held responsible for the costs. The landlord explained that the tenants had not been cooperative, that they failed to take the advice and properly maintain the suite.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act and proof that the party took all reasonable measures to mitigate their loss.

Section 32 of the Act provides, in part:

Landlord and tenant obligations to repair and maintain

32 *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

> ***(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.***
> *(4) A tenant is not required to make repairs for reasonable wear and tear.*
> *(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*
>
> (Emphasis added)

The tenant was served with notice of this hearing but did not attend to oppose the claim made by the landlord.

From the evidence before me I find that the landlord has established a valid claim that resulted from the tenants' failure to pay for repairs required as the result of the actions and neglect of the tenants. The tenants overcrowded the unit, failed to open windows or take any other steps to mitigate the formation of condensation. From the evidence before me I find, on the balance of probabilities, that it was the tenants' neglect that resulted in the condensation problem in the unit.

Section 67 of the Act provides:

Director's orders: compensation for damage or loss

> ***67*** *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

Therefore I find that the landlord is entitled to compensation as follows:

	Claimed	Accepted
Professional fees	$913.00	$913.00
Water damage remediation	1,460.20	1,302.70
Plumbing investigation	375.38	375.38
Painting	1,344.00	0
TOTAL	$4,092.58	$2,591.08

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the $100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of $250.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of $2441.08**.** In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation as claimed.

The landlord is entitled to retain the tenant's security deposit in the amount of $250.00, in partial satisfaction of the monetary claim.

The landlord is entitled to filing fee costs.

This decision is final and binding and 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: April 14, 2016

Residential Tenancy Branch