



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAAMCO INTERNATIONAL PROPERTIES CANADIAN LTD
And (tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein they sought a Monetary Order for damage to the rental unit, money owed or compensation for loss under the *Residential Tenancy Act*, the *Regulations*, and the tenancy agreement, authority to retain the security deposit and recovery of the filing fee.

Only the Landlord's representative, N.B., appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

N.B. testified that he served the Tenant on November 16, 2015 by registered mail to the address provided by the Tenants when they requested their security deposit.

Residential Tenancy Policy Guideline, "12. Service Provisions" provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of November 21, 2015.

N.B. also testified that the 22 pages of evidence that he served on the Tenants were also sent to the Residential Tenancy Branch by registered mail on November 16, 2015.

The Landlords' documents were not before me during the hearing. I accepted his testimony that they had been sent in and requested that he fax the documents to my attention. I confirm N.B. provided his evidence on June 7, 2016 by fax and I have reviewed the Landlords' evidence in making this my Decision.

The Tenants did not file any documents in response to the Landlords' claim.

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.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Is the Landlord entitled to retain the security deposit?
3. Is the Landlord entitled to recover of the filing fee?

Background and Evidence

N.B. testified that the tenancy began October 17, 2014. Monthly rent was payable in the amount of \$1,400.00 and the Tenants paid a security deposit of \$700.00.

N.B. testified that he obtained an Order of Possession by Decision dated September 30, 2015. The Landlord then obtained a Writ of Possession in the B.C. Supreme Court on October 18, 2015 which was executed by a Bailiff on October 27, 2015. A copy of the Writ of Possession was introduced in evidence by the Landlord.

N.B. testified that even after eviction the Tenants kept their belongings at the rental unit. On November 10, 2015 the Tenants sent the Landlord correspondence requesting their security deposit and providing a forwarding address. N.B. confirmed this was the address to which the registered mail was sent advising the Tenants of the application.

The Landlord provided a copy of the move in and move out condition inspection report in evidence. The move out condition inspection report confirmed the Landlord's request for compensation for the cost to paint the rental unit as well as for repairs and new locks. The Tenants did not sign the move out condition inspection report confirming their agreement that their deposit could be used towards the Landlord's claims.

N.B. testified that the Tenants installed a washing machine which disconnected and flooded the rental unit below. He testified that the amount to repair the damaged caused by this flooding was \$600.00. He also stated that the Tenants painted all the walls with red and green paint resulting in a need to repaint the entire unit. He also stated that the Tenants left garbage all over the rental unit and the parking lot and underground parking which caused further losses to the Landlord as these items were removed at a cost.

The Landlord provided a Monetary Order Worksheet in evidence which confirmed they claimed the following amounts:

RTB filing fee	\$100.00
Registered mail cost	\$44.10
Supreme Court Fees	\$120.00
Bailiff invoice	\$2,263.80
Repairs to the rental unit (estimate)	\$2,241.75
Garbage disposal	\$150.00
Locksmith (estimate)	\$120.00
Repairs after flood	\$600.00
Outstanding electrical utility as of October 9, 2015	\$67.48
Outstanding electrical utility as of October 10-27, 2015 (estimate)	\$38.00
TOTAL	\$5,745.00
TOTAL CLAIMED	\$5,000.00
Note: on the Monetary Orders Worksheet the Landlord confirmed they wished to reduce their request to \$5,000.00	

During the hearing N.B. confirmed the Landlord wished to reduce their request to \$5,000.00 as noted on the Monetary Orders Worksheet.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the Act provides that if a Landlord or Tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the Act as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case the Tenants failed to submit any evidence or attend the hearing to dispute the Landlord's claims. Accordingly, the hearing proceeded as unopposed.

I accept N.B.'s undisputed testimony that the Landlord incurred the cost of a bailiff to remove the Tenants after obtaining an Order of Possession. The cost of the bailiff and the filing fees in the B.C. Supreme Court are recoverable expenses.

Residential Tenancy Branch Rules of Procedure 1 provides that, "[a]ny changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition." I accept N.B.'s testimony that the Tenants painted the rental unit in colours which required repainting and associated repairs. I accept N.B.'s testimony that the Tenants damaged the rental unit both as a result of the flooding and the condition in which the rental unit was left at the end of the tenancy. I am further satisfied that the amounts claimed by the Landlord in this regard are reasonable. Accordingly, I also award the Landlord compensation for cost to repair and clean the rental unit.

The Landlord has claimed the cost of registered letters; these are not recoverable under the *Residential Tenancy Act* and accordingly I decline their request for compensation for the amount of \$44.10.

The Landlord also claimed the cost of outstanding electrical utilities in the amount of \$67.48 to October 9, 2015 and an estimated cost of \$38.00 for the time period October 10-27, 2015. Notably, I was not provided with any invoices from the electrical company to confirm these amounts however I accept the testimony of N.B. that these amounts remained outstanding and I award the Landlord the amount claimed.

The Monetary Orders Worksheet, and the evidence of the Landlord's representative indicated that the bailiff invoice was for \$2,263.80. A review of the invoice submitted in evidence dated October 29, 2015 confirms that the amount paid was in fact significantly more, as the \$2,263.80 figure did not include the amount of the \$1,500.00 deposit paid. Based on this invoice, it appears the cost of the bailiff was \$3,763.80.

As well, it is notable that the repairs and painting quote in evidence dated November 9, 2015 totalled \$2,135.00 rather than the \$2,241.75 noted in the Landlord's Monetary Orders Worksheet.

The Landlord sought recovery of \$100.00 for the Residential Tenancy Branch filing fee. Section 72 of the *Act*, allows me to make an Order for recovery of such fees. A review of the file confirms that only \$50.00 was paid for the filing fee, as at the time of filing (November 13, 2015) the fees for claims under \$5,000.00 were \$50.00, and for claims over \$5,000.00 were \$100.00.

In consideration of the above, I award the Landlord's the requested \$5,000.00. In doing so, I acknowledge the following adjustments:

- The Landlord's claim for the bailiff was \$1,500.00 more than that which was claimed in the application.
- The painting and repair estimate was \$106.75 less than the amount claimed on the application.
- The claim for registered letters in the amount of \$44.10 is not allowable.
- The filing fee at the Residential Tenancy Branch was \$50.00 less than that which was claimed.

If the above adjustments are taken into consideration, the Landlord's total claim is \$7,044.15 based on the following calculations:

\$5,745.00 (as noted on the Monetary Order Worksheet)
+ \$1,500.00 (bailiff)
- \$106.75 (painting and repairs)
- \$44.10 (unallowable claim for registered mail)
- \$50.00 (filing fee)
= \$7,044.15.

Although I find the Landlord may be entitled to more than the \$5,000.00 claimed, Rule 2.2 of the *Residential Tenancy Rules of Procedure* provides that a claim is limited to what is stated on the application. Accordingly, based on the evidence before me and the limitations imposed by *Rule 2.2.*, I am satisfied the Landlord is entitled to the \$5,000.00 claimed.

The Landlord is authorized to retain the security deposit in the amount of \$700.00 and is granted a Monetary Order for the balance due in the amount of **\$4,300.00**. This Monetary Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlord is authorized to retain the Tenants' \$700.00 security deposit and is entitled to monetary compensation for the balance due in the amount of **\$4,300.00**.

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: June 14, 2016

Residential Tenancy Branch