Dispute Resolution Services

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 convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested a monetary order for damage to the rental unit and to recover the filing fee.

The hearing was conducted by teleconference on May 15, 2017. Only the Landlord's representatives, D.O. and S.K. called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord/Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Service

The S.K. testified that they served both Tenants separately by registered mail on November 14, 2016. A copy of the registered mail tracking numbers is provided on the unpublished cover page of this my Decision. S.K. testified that according to the information she received from Canada Post the packages were retrieved and signed for on November 15, 2016. Accordingly, I find the Tenants were duly served the initial application as of November 15, 2016.

D.O. testified that the Amendment to an Application for Dispute Resolution was personally served on the Tenant C.T. on April 24, 2017. The Tenant T.W. was not served the Amendment.

Section 89(1) of the *Residential Tenancy Act* deals with service of an Application for Dispute Resolution for a monetary order and reads as follows.

> **Special rules for certain documents**

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

Rule 4.6 of the *Residential Tenancy Branch Rules of Procedure* provides that an Amendment to an Application for Dispute Resolution must also be served as required by section 89. For greater clarity I reproduce that section as follows:

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the *Residential Tenancy Act* or section 82 of the *Manufactured Home Park Tenancy Act* and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

See also Rule 3 [*Serving the application and submitting and exchanging evidence*].

Therefore, I find both Tenants were served with the initial Application for Dispute Resolution on November 15, 2016 and I find that the Tenant, C.T., was served with the Amended Application on April 24, 2017.

Accordingly, I find that the Landlord gave both the Tenants proper notice of the claim of $844.2 and only gave C.T. proper notice of the additional claim of $221.85.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?

2. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of a Residential Tenancy Agreement: FIXED TERM- Rent Geared to Income. The initial tenancy was from May 1, 2013 and was to end on September 30, 2013. S.K. testified that the Tenants did not come into the office to sign a new agreement and as such it continued on a month to month basis following the expiration of the initial fixed term. S.K. confirmed that both Tenants continue to reside in the rental unit.

S.K. testified that on September 9, 2016 the Tenant, C.T., called the Landlord and informed her that stated that her mother was coming to take care of her fish and her cat and she and the other Tenant were not able to attend the rental unit to let her in. Apparently C.T. asked that the Landlord change the lock and provide C.T.'s mother with a key for the purposes of feeding her pets. S.K. stated that when they attended the rental unit they discovered that the door had been kicked in and as such there was no way to secure the unit.

S.K. stated that the door was replaced, painted and a new lock was installed.

S.K. further stated that when they went in they discovered that the thermostat was broken off the wall. As the Tenants were not able to be at the rental unit, the Landlord attended to replacing the thermostat to ensure the heat could be controlled in the winter months.

S.K. further stated that on February 17, 2017 the Tenants called the building manager and informed her that their child had thrown a ball inside the rental unit and had broken a window pane. She asked the building manager to attend to its repair and confirmed they would pay the related cost. A copy of the "Accident/Critical Event" report was provided in evidence and confirmed the cost of $216.50.

In the within hearing the Landlord sought the following:

Cost to change the lock	$35.00
Cost to replace damaged door	$629.26
Cost to paint the door	$150.00
Cost to replace the thermostat	$30.00
Cost to replace a broken window	$221.85
TOTAL	**$1,066.11**

Analysis

Section 32(3) of the *Residential Tenancy Act,* provides that a tenant must repair damage to the rental unit and reads as follows:

> **Landlord and tenant obligations to repair and maintain**
>
> **32** …(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.

Based on the Landlord's undisputed testimony and evidence, including invoices for the amounts claimed, I find the Tenant damaged the rental unit as alleged.

I accept the Landlord's representatives' evidence that the Tenants asked the Landlord to change the locks to permit C.T.'s mother entry to the rental unit. I further accept that the rental unit door was damaged and required replacement. The Landlord's representatives' wished to preserve the Tenants' privacy and did not want to disclose why the Tenants were unable to attend the rental unit only to state it was not their choice. As the rental unit could not be secured, I find that it was reasonable for the Landlord to attend to replacement of the door. The related costs are therefore recoverable.

I also accept the Landlord's Representatives' evidence that when they entered the rental unit to repair the door they discovered that the thermostat was broken off the wall. Again, based on the fact the Tenants were unable to return to the rental unit, I find it reasonable that the Landlord attended to its repair and award them compensation for the related cost.

I also accept that the Tenants asked the Landlord to attend to repair of the broken window pane and I award the Landlord recovery of the related cost.

Conclusion

In total, I award the Landlords compensation for the total amount claimed. I also find the Landlord is entitled to recover the $100.00 filing fee pursuant to section 72 of the *Residential Tenancy Act.* In total I award the Landlord compensation in the amount of **$1,166.11** for the following:

Cost to change one lock	$35.00
Cost to replace damaged door	$629.26
Cost to replace the door	$150.00
Cost to replace the thermostat	$30.00
Filing fee	$100.00
Cost to replace a broken window	$221.85
TOTAL	**$1,166.11**

As both parties were properly served notice of the Landlord's claim for $844.26 in addition to the $100.00 filing fee, I award the Landlord a Monetary Order pursuant to section 67 and 72 of the *Act* in the amount of $944.26 payable by both Tenants.

Since only one Tenant, C.T., was served notice of the Landlord's Amended claim for a further $221.85, the balance of the $221.85 awarded to the Landlord is payable by the Tenant C.T. Although the Monetary Order provides that this sum is payable by C.T., both tenants are liable for this additional sum pursuant to *Residential Tenancy Policy Guideline 13—Rights and Responsibilities of Co-tenants* which reads as follows:

> Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

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: May 15, 2017

Residential Tenancy Branch