



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF (Tenants' Application)
 OPC, MNSD, MNDC, MND, O, FF (Landlords' Application)

Introduction

This hearing convened as a result of cross applications. In the Tenants' Application, filed on July 10, 2017, they sought to cancel a 1 Month Notice to End Tenancy for Cause (the "Notice), an Order that the Landlord comply with the *Act*, the *Regulations* or the tenancy agreement as well as recovery of the filing fee. In the Landlords' Application, filed on July 19, 2017, they sought an Order of Possession based on the Notice, monetary compensation from the Tenants, authority to retain the security and pet damage deposit, other unspecified relief and recovery of the filing fee.

Only the Landlord, C.K., called into the hearing. She testified that she served the Landlords' application on the Tenants by registered mail on August 3, 2017. A copy of the registered mail tracking numbers for each Tenant is provided on the cover page of this my Decision.

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 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 August 8, 2017 and I proceeded with the hearing in their absence.

Rule 7 of the *Residential Tenancy Branch Rules of Procedure* provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In the absence of any evidence or submissions from the Tenants and in the absence of the Tenants' participation in this hearing, I dismiss the Tenants' claim without leave to reapply.

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'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

The Landlord testified that by Decision dated August 24, 2017, she obtained an Order of Possession pursuant to section 56(1) of the *Act*. She confirmed that the Tenants failed to move out of the rental unit and on September 16, 2017 they were removed by the Court Bailiff; accordingly, an Order of Possession was no longer required.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. Should the Landlords be authorized to retain the Tenants' security and pet damage deposit?
3. Should the Landlords recover the filing fee?

Background and Evidence

The Landlord testified as to the terms of the tenancy as follows: the tenancy began November 1, 2016; monthly rent was payable in the amount of \$2,100.00; and, the Tenants paid a security deposit in the amount of \$1,050.00 and a pet damage deposit in the amount of \$250.00.

The Landlords filed a Monetary Orders Worksheet wherein they indicated they sought compensation for the following:

insurance deductible	\$1,000.00
restoration costs associated with repairing walls related to the Tenants damaging the walls	\$659.77
repair of lawn damage	\$441.50
TOTAL	\$2,101.27

The Landlord testified that there was a flood in the rental unit on or about June 1, 2017 which was caused by the Tenants. She confirmed the following facts contained in the August 24, 2017 Decision:

...The landlord testified that there was a significant flood in the rental unit on or about June 1, 2017. It occurred as a result of the tenants' locking their dogs in the bathroom while they were away, and the dog's plugging the drain with kibbles and then knocking the water tap on.

The landlord was advised of the flood by neighbours and immediately attended at the rental unit. She said that when she arrived water was flowing off of the balcony of the town home and coming out of the light fixtures. She arranged for a restoration company to attend, and filed a claim with her insurance company.

An emergency water extraction was carried out by the restoration company. Carpets and flooring on the two affected levels were removed and the subfloor was exposed.

Commercial fans were brought in to attempt to dry the unit. Thick plastic was applied to the subfloors and fasted down with small tacks. The bathroom and the kitchen are both on the main floor and were both affected. Many of the tenants' belongings were moved into a garage.

The tenants returned home and apologized for the flood. They revealed that they did not actually have insurance and were unable to afford the costs of temporarily relocating, including the costs of moving and storing their belongings. They do not wish to relocate in order to allow the necessary repairs to be carried out. The landlord understands them to be saying that the repairs can be accomplished while they are residing in the rental space.

However, the landlord stated that the restoration company will not continue the repair work unless the unit is vacant. The basement level drywall and ceilings have to be removed and replaced...

The Landlord testified that she hired a restoration company and filed a claim with her insurance company; as such, she sought monetary compensation for the \$1,000.00 deductible paid to the insurance company.

She further stated that despite the extensive repairs which were necessitated by the flood, the Tenants refused to move out of the rental unit. The Landlord was granted a Writ of Possession in the B.C. Supreme Court enabling the court bailiff to remove the Tenants on September 16, 2017. She confirmed that although she incurred expenses relating to obtaining the Writ of Possession and the court bailiff, she was not able to submit proof of these expenses in time for the hearing before me.

The Landlord stated that upon regaining possession of the rental unit they discovered the Tenants had significantly damaged the wall by installing a television wall bracket. She claimed \$659.77 as the cost for these repairs.

The Landlord also stated that the Tenants extensively damaged the lawn and that she incurred the cost of \$441.50 for related repairs.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

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.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I am satisfied, based on the Landlords' undisputed testimony and evidence that the Tenants damaged the rental unit and that as a result the Landlords incurred the \$2,101.27 in losses claimed; including: the insurance deductible in the amount of \$1,000.00; the \$659.77 to repair the wall; and, the \$441.50 to repair the lawn.

Rule 2.2 of the *Residential Tenancy Rules of Procedure* provides that a claim is limited to what is stated on the application. As the total entitlement of \$2,101.27 exceeds the \$1,400.00 monetary amount set out in the application, I find that the Landlords are only entitled to the sum of **\$1,400.00**. As the Landlords have reached their maximum entitlement I dismiss their claim for recovery of the filing fee.

I grant the Landlords leave to reapply for further monetary compensation over and above the \$1,400.00 awarded, including, but not limited to the costs of the bailiff's services.

Conclusion

The Tenants failed to attend the hearing and their application is dismissed without leave to reapply.

The Landlords are awarded the amounts claimed on their application: **\$1,400.00**. They may retain the Tenants security deposit and pet damage deposit in the total amount of \$1,300.00 as partial satisfaction of the \$1,400.00 awarded and are granted a Monetary Order for the **\$100.00** due. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division). The Landlords are granted leave to reapply for further monetary compensation. This does not extend any time limits imposed by the *Act*.

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: September 26, 2017

Residential Tenancy Branch