



Dispute Resolution Services

Page: 1

Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, OPL, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenant authority to retain the security deposit and to recover the filing fee. Although the Landlord indicated that they sought an Order of Possession based on a 2 Month Notice to End tenancy for Landlord's Use, the Landlord's representative confirmed the tenancy ended such that such an Order was not required.

The hearing was conducted by teleconference on December 27, 2017. Only the Landlord's representative, M.F., called into the hearing. She gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

M.F. testified that they served the Tenant with the Notice of Hearing and the Application on July 10, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 Tenant was duly served as of July 15, 2017 and I proceeded with the hearing in their absence.

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.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

M.F. testified as to the background of this tenancy as follows: the tenancy began October 1, 2015; monthly rent was payable in the amount \$1,395.00; and, the Tenant paid a security and pet damage deposit in the total amount \$1,395.00.

The Tenant vacated the property on March 31, 2017. The Landlord claimed they incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenant.

M.F. testified that the Tenant did not dispute the amounts charged and that in fact the Landlord was in communication with the Tenant and the Tenant's father regarding these agreed upon costs. M.F. confirmed that the Tenant's father also paid a cash deposit in the amount of \$1,400.00 to help contribute to the cost of repairs and cleaning of the rental unit; those funds continue to be held by the Landlord. In the within hearing the Landlord sought authority to retain the \$1,400.00 provided by the Tenant's father as well as the security and pet damage deposit. The Landlord also requested a Monetary Order in the amount of \$830.05 for the balance of the costs to repair the unit after consideration of the deposits.

The Landlord submitted that the Tenant failed to provide access to the rental unit in the event of an emergency and that on November 14, 2016 the fire department was forced to break into the rental unit to investigate a potential fire. Pursuant to the strata bylaws (which the Tenant acknowledged receiving on the Form K) the Tenant was required to provide such access. The Landlord sought compensation for the cost to replace the door, the insurance deductible and the increased insurance premiums.

In support of the claim, the Landlord submitted a copy of the move out inspection report which clearly identified the condition of the rental unit as well as the amounts sought to repair damage, photos of the rental unit, as well as receipts for cleaning and repair.

The Landlord also submitted a document titled "Security Deposit Statement" which set out in detail the Landlord's claims as follows:

repairs to plumbing	\$334.43
carpet cleaning	\$131.25
cleaning	\$271.95
door replacement cost and insurance deductible	\$900.00
garage remote replacement	\$70.00
replacement of light bulbs	\$104.91
utilities	\$311.22
move out fee	\$300.00

repairs	\$1,187.29
premium increase for insurance claim	\$14.00
Total claimed	\$3,625.05

Analysis

After consideration of the undisputed 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.

Section 32 of the *Act* mandates the Tenant's obligations in respect of repairs to the rental unit and provides in part as follows:

32 ... (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.

I accept the Landlord's undisputed evidence that the Tenant failed to clean and repair the rental unit as required by sections 32 and 37. I am persuaded by the Landlord's representative's testimony as well as the condition inspection report and photos of the rental unit which confirm the rental unit was left in an unacceptable condition. I find the Landlord is therefore entitled to related compensation.

I also accept the Landlord's claim that the Tenant agreed to compensate the Landlord for the related costs and that his father provided \$1,400.00 towards these amounts.

I therefore award the Landlord compensation for the \$3,625.05 claimed in addition to recovery of the \$100.00 filing fee for a total award of **\$3,725.05** calculated as follows:

repairs to plumbing	\$334.43
carpet cleaning	\$131.25
cleaning	\$271.95
door replacement cost and insurance deductible	\$900.00
garage remote replacement	\$70.00
replacement of light bulbs	\$104.91
utilities	\$311.22
move out fee	\$300.00
repairs	\$1,187.29
premium increase for insurance claim	\$14.00
filing fee	\$100.00
Total claimed	\$3,725.05

Conclusion

The Landlord's claim for monetary compensation in the amount of **\$3,725.05** is granted.

Pursuant to section 38 and 72 of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$697.50 and the pet damage deposit of \$697.50 in partial satisfaction of the amount awarded.

As the Landlord also holds the sum of \$1,400.00 (which was provided by the Tenant's father to the Landlord as contribution towards the cleaning and repair costs) the Landlord is entitled to a Monetary Order for the balance due in the amount of **\$930.05**. The Monetary Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division)

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: December 28, 2017

Residential Tenancy Branch