



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought the following relief: monetary compensation from the Tenant for unpaid rent and damage to the rental unit; authority to retain the Tenant's security deposit; and, recovery of the filing fee.

The hearing was conducted by teleconference on November 16, 2017. Only the Landlord called into 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.

The Landlord testified that he served the Tenant with the Notice of Hearing and the Application on July 4, 2017 by registered mail to the address provided to the Landlord by the Tenant as her forwarding address. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 9, 2017 and I proceeded with the hearing in her 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'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 for unpaid rent and damage to the rental unit?
2. Should the Landlord be entitled to retain the security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began approximately three years ago. Monthly rent was payable in the amount of \$700.00 and the Tenant paid a security deposit in the amount of \$350.00 as well a pet damage deposit in the amount of \$100.00.

The Landlord further testified that the tenancy ended in March of 2017.

The Landlord stated that the Tenant provided him with her forwarding address in June of 2017 and again in August of 2017. He confirmed this was the address to which he sent his application materials.

In the within hearing, the Landlord sought the sum of \$2,000.00. He stated that the Tenant damaged three doors from “fighting” such that three of the doors needed to be replaced. He also claimed that the Tenant damaged the walls, again from what he suspected were holes made from punching the walls. He stated that he had receipts for the wall repair and painting although he did not submit them in evidence.

He also claimed the Tenant damaged the exterior wall by drilling a hole through the concreted to permit access to the Landlord’s cable box. He claimed the cost of \$200.00 for his time and the concrete he purchased to repair the wall. He stated that the cost of the concrete repair materials was \$15.00.

The Landlord also stated that the Tenant left garbage at the rental unit and did not clean the unit as required such that he sought compensation for the cost to attend to these tasks.

The Landlord also sought the sum of \$40.00 for the cost of his time to prepare the paperwork in relation to this hearing. In total the Landlord sought the sum of \$2,000.00 calculated as follows:

Change of three locks	\$560.00
repair and repainting of walls	\$700.00

repair of exterior wall	\$200.00
removal of garbage and cleaning of the rental unit	\$500.00
Landlord's time preparing notices and other related paperwork	\$40.00
TOTAL CLAIMED	\$2,000.00

The Tenant did not attend the hearing and as such the Landlord's testimony was undisputed.

The Landlord testified that he submitted nine pages of evidence to the Branch at the time he filed his application. He further confirmed that the evidence was served on the Tenant when he provided her with notice of the hearing. That evidence was not before me during the hearing. I granted the Landlord permission to submit that evidence by fax and confirm it was received and considered by me in making my Decision.

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 and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

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.

I find the Tenant did not clean and repair the rental unit as required such that the Landlord incurred the cost to attend to these tasks.

I find the Landlord is entitled to the amounts claimed save and except for the following. I find the Landlord provided insufficient evidence to support his claim for the \$200.00 claimed to repair the concrete wall where he says the Tenant drilled a hole to permit access to the cable box. The Landlord claimed \$160.00 for his time, yet did not provide a breakdown of this amount such that I am unable to determine his hourly rate. I am therefore unable to find this as a reasonable amount.

Further, the time spent by the Landlord preparing documents is not recoverable under the *Act*. I therefore dismiss that portion of the Landlord's claim.

The Landlord, having been substantially successful, is entitled to recovery of the filing fee.

Conclusion

The Landlord is entitled to compensation in the amount of \$1,900.00 calculated as follows.

Change of three locks	\$560.00
repair and repainting of walls	\$700.00
repair of exterior wall	\$40.00
removal of garbage and cleaning of the rental unit	\$500.00
filing fee	\$100.00
TOTAL AWARDED	\$1,900.00

The Landlord may retain the tenant's \$350.00 security deposit and \$100.00 pet damage deposit towards the amounts awarded and is granted a Monetary Order in the amount of **\$1,450.00**.

This Order must be served on the Tenant and may be filed and enforce 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 1, 2017

Residential Tenancy Branch