



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on October 24, 2017, wherein the Landlord sought an order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 4, 2017 and recovery of the filing fee. By amendment dated, December 19, 2017, the Landlord amended her claim to include monetary compensation in the amount of \$8,149.84 for unpaid rent for November 2017, damage to the rental unit, registered mail costs and recovery of the filing fee.

Originally the Landlord applied for relief by way of a Direct Request proceeding. By Interim Decision dated October 20, 2017, the Landlord's application was adjourned to a participatory hearing.

The hearing was set for a participatory hearing teleconference on January 9, 2018. Only the Landlord called into the hearing. At that hearing, the Landlord was not able to testify how she served the Tenant with Notice of the Hearing, her original Application and the Interim Decision.

This hearing reconvened on March 13, 2018. At that time only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form and to make submissions to me. She testified that she personally served her original application on the Tenant on October 25, 2017 at 9:45 p.m. She stated that she also sent another copy with the Notice of Dispute Resolution Proceeding for the March 13, 2018 hearing, by registered mail on January 17, 2018. The Landlord confirmed that although the Tenants refused to provide a forwarding address when they vacated the rental unit, they did ask her to drop off some of their things when they moved out. It was to this address she sent the registered mail package. A copy of the registered mail tracking number is provided on the unpublished cover page of this my decision.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 January 22, 2018 and I proceeded with the hearing in their absence.

As the Tenant vacated the rental unit the Landlord's request for an Order of Possession was no longer required.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy 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?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the Tenant entered into several fixed term tenancies; the first fixed term tenancy began December 2016 and the last fixed term tenancy began June 1, 2017 to October 31, 2017. Monthly rent was payable in the amount of \$700.00. The Tenant vacated the rental unit on November 6, 2017.

The Landlord confirmed that the rental unit was offered furnished with a bed, sofa, coffee table, stools for the kitchen counter, shelving and lighting.

The Landlord testified that the Tenant failed to pay rent for the month of September and October 2017 such that the sum of \$1,400.00 was outstanding at the time the tenancy ended. The Landlord further testified that due to the condition of the rental unit, she was not able to rent the unit for November 2017 such that the Landlord also sought loss of rent for November 2017.

The Landlord testified that the Tenant left the rental unit unclean and damaged at the end of the tenancy; consequently, the Landlord also sought monetary compensation for cleaning and repairs to the rental unit and associated losses as follows:

Landlord's time to clean and repair rental unit at \$20.00 per hour	\$2,110.00
Cost to replace flooring in living room	\$347.16
Cost of primer, deodorant and flooring	\$157.50
Cleaning supplies	\$14.01
Cost to dispose of garbage	\$10.00
Cleaning and floor underlay	\$237.06
Cleaning supplies	\$22.38
Cleaning supplies	\$5.60
Drywall repair supplies	\$11.58
Floor light replacement	\$56.31
Cleaning spry to remove sticky residue	\$7.82
Used couch	\$200.0
Used bedframe	\$100.00
Light fixture and wood stain	\$56.73
Replacement of baseboards and door trim (due to flooring replacement)	\$147.89
Replacement of stove element	\$35.59
Replacement of sewer pump	\$755.00
Loss of rent due to condition of rental unit (November 2017)	\$700.00
Removal of box spring and repair debris	\$10.00
Repair of sewer pump (1 st time)	\$1,372.30
Registered mail (October)	\$12.55
Filing fee	\$100.00
Registered mail (December)	\$12.55
TOTAL CLAIMED	\$6,749.84

The Landlord provided in evidence copies of receipts for each of the amounts claimed above. She also provided numerous photos showing the condition of the rental unit at the end of the tenancy. In terms of the amount claimed for her time to clean and repair, she also provided a detailed spread sheet of the time spent on each task.

The Landlord stated that she initially tried to clean the carpets; however, the staff member from the carpet cleaning company whom she hired to clean the carpets stated that it was so damaged that it could not be cleaned. She confirmed that the carpets were new when the tenancy began and had to be replaced when the tenancy ended. As noted above, she also claimed related costs for removal and replacement of the flooring.

The Landlord also testified that when she did move out condition inspection, she noticed that the sewer pump was disconnected at the back of the toilet. It did not work and when the plumber investigated he found lighters and other such debris in the pump. She stated that they tried to fix it but then it had to be replaced.

The Landlord stated that this was the second time during the tenancy that the Tenant damaged the sewer pump. In the table above she also claimed \$1,372.30 for the cost to repair the sewer pump on February 20, 2017. She introduced in evidence a letter dated February 20, 2017 wherein the circumstances giving rise to this first damage are detailed. In this letter the Landlord also offers to pay half of the cost, provided that the Tenant pays her half in a timely fashion. The Landlord stated that the Tenant paid \$300.00 towards the total cost of \$1,673.30. The letter clearly indicates the Landlord will seek the full cost of the repair should the Tenant not pay the agreed upon 50%.

The Landlord also stated that the Tenant left a box spring and tons of full garbage bags such that the place was a “total disaster”.

In addition to the \$6,749.84 claimed above, the Landlord also sought compensation for the \$1,400.00 in outstanding rent such that her total claim was for \$8,149.84.

The Landlord also confirmed that she holds a security deposit in the amount of \$325.00. The Tenant agreed the Landlord could retain this amount towards the amounts claimed.

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.

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:

- 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 accept the Landlord's undisputed evidence that the Tenant failed to pay rent for the months of September and October 2017. I also accept her evidence that due to the condition the rental unit was left in by the Tenant she was not able to rent it for the month of November 2017. I therefore find that the Landlord is entitled the amounts claimed for unpaid rent.

I also accept the Landlord's evidence as to the condition of the rental unit and find that the Tenant breached their obligations under the *Act*, by failing to clean and repair the unit at the end of the tenancy. The amounts claimed by the Landlord are supported by the extensive documentation she provided in evidence. I find those amounts to be reasonable and recoverable. I accept that the Tenant also damaged the sewer pump during the tenancy and did not compensate the Landlord for the amounts incurred by the Landlord to attend to the repair. I therefore award the Landlord compensation for the amounts claimed to clean and repair the rental unit.

The Landlord is entitled to recover the filing fee paid pursuant to section 72 of the *Act*.

Section 72 of the *Act* allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in Supreme Court Proceedings, they are specifically not included in the *Act*. I conclude that this exclusion is intentional and includes disbursement costs such as registered mailing costs. Therefore, the Landlord's registered mail costs are not recoverable under the *Residential Tenancy Act*.

Conclusion

The Tenant vacated the rental unit such that an Order of Possession was not required.

The Landlord is entitled to monetary compensation from the Tenant in the amount of \$8,124.74 calculated as follows:

Unpaid rent for September 2017	\$700.00
Unpaid rent for October 2017	\$700.00
Loss of rent for November 2017	\$700.00
Landlord's time to clean and repair rental unit at \$20.00 per hour	\$2,110.00
Cost to replace flooring in living room	\$347.16
Cost of primer, deodorant and flooring	\$157.50
Cleaning supplies	\$14.01
Cost to dispose of garbage	\$10.00
Cleaning and floor underlay	\$237.06
Cleaning supplies	\$22.38
Cleaning supplies	\$5.60
Drywall repair supplies	\$11.58
Floor light replacement	\$56.31
Cleaning spray to remove sticky residue	\$7.82
Used couch	\$200.00
Used bedframe	\$100.00
Light fixture and wood stain	\$56.73
Replacement of baseboards and door trim (due to flooring replacement)	\$147.89
Replacement of stove element	\$35.59
Replacement of sewer pump	\$755.00
Unpaid rent for November 2017	\$700.00
Removal of box spring and repair debris	\$10.00
Repair of sewer pump (1 st time)	\$1,372.30
Filing fee	\$100.00
TOTAL AWARDED	\$8,124.74

The Landlord may retain the Tenant's \$350.00 security deposit towards the amounts awarded and is granted a Monetary Order for the balance due in the amount of \$7,774.74. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

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: March 16, 2018

Residential Tenancy Branch