



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 634245 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and compensation for damage pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the tenant's security and/or pet deposit in partial satisfaction of the monetary order requested pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The tenant did not attend this 1:30 p.m hearing, although I left the teleconference hearing connection open until 2:28 p.m. The landlord's agent (herein referred to as "the landlord") attended the hearing on behalf of the corporate landlord and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord provided sworn testimony that the tenant was served a copy of the Notice of Dispute Resolution Proceeding package and evidence by Canada Post expedited parcel mail, with the requirement for signature, on December 20, 2017. The landlord submitted a Canada Post tracking number and tracking report as proof of service.

Therefore, I find that the tenant was served with the notice of this dispute resolution proceeding in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to a monetary award for damage or compensation?

Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of their claim?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

The landlord provided the following undisputed information about the tenancy agreement, supported by a signed copy of the written tenancy agreement submitted into documentary evidence. This month to month tenancy began on October 26, 2016. Monthly rent was \$675.00 due on the first of the month. The tenant paid a security deposit of \$337.50 and a pet damage deposit of \$337.50, which continue to be held by the landlord.

The landlord testified that the rental unit is a three-bedroom, two-bathroom, 1300 square foot unit in a strata complex. The landlord believes the property was built in the 1980s or 1990s, and they have owned the property for approximately 10 years.

The landlord previously obtained an Order of Possession (dated June 14, 2017) and a Monetary Order for unpaid rent (for the months of March, April and May 2017) through a Residential Tenancy Branch decision in relation to this tenancy (file number noted on the cover sheet of this decision).

The tenant has vacated the unit. The landlord is claiming the following damages and losses flowing from the tenancy, as identified on the Monetary Order Worksheet submitted into evidence:

Item	Amount Claimed
Rent (Jun., Jul. and Aug. 2017 – 3 x \$675.00/month)	\$2,025.00
Loss of rental revenue during repair (Sep., Oct., Nov. and Dec. 2017 – 4 x \$675.00/month)	\$2,700.00
Contractor Invoice for repair of damage	\$15,942.20
Total	<u>= \$20,667.20</u>

The landlord initially stated that the tenant moved out of the rental unit on August 15, 2107 and therefore he sought rent owed for June, July and August 2017. However, I noted that the condition inspection report submitted by the landlord stated July 14, 2017 as the move out date. The landlord advised that he had been mistaken and requested to amend his sworn testimony to state that the tenant had moved out of the rental unit on July 14, 2017 as per the date provided on the condition inspection report.

The landlord testified that the condition inspection report was prepared by the property manager when she conducted a walk-through of the rental unit after the tenant had vacated the premises. The landlord stated that their contractor attended the walk-through with the property manager, and provided a quote of approximately \$15,000.00 for repair costs based on that walk-through. The landlord acknowledged that he has never been to the rental unit, and therefore his claim is based on the information provided to him by the property manager and contractor.

The landlord stated that the tenant's pets caused damage to the rental unit due to urine and feces. The landlord submitted a contractor invoice for "labour and materials" in the amount of \$15,942.20 dated December 11, 2017. The invoice lists approximately 40 work items, but does not provide any details or breakdown of the actual cost of materials or the cost of labour in relation to the items listed. I noted that some of the items listed appeared to be for work that was an improvement or renovation as opposed to a repair of damage, such as:

- *built up sub floor in living room to bring all flooring downstairs to same level*

I asked the landlord to distinguish the items on the list which were repairs and those which were renovations. The landlord stated that to his knowledge, all items listed were necessary to return the unit back to "rental ready" condition.

I explained to the landlord that it is the responsibility of the party making the claim for damages to provide “compelling evidence” of the value of the damage or loss, and that the purpose is to provide compensation for the cost of the replacement of the damaged building element, not the cost of an improvement.

The landlord maintained that their contractor is a professional contractor and was directed to “do no more than repair what is damaged”.

The landlord testified that the flooring in the rental unit had to be replaced due to the damage caused by pet urine and feces from the tenant’s pets. The landlord claimed that the floors in the rental unit had been renovated with laminate flooring in the past two to three years. The landlord did not submit any receipts into evidence to prove the date or cost for the original renovation. The landlord estimated that out of the contractor’s invoice, the cost to repair the floors comprise \$5,000.00, or \$6,000.00 to \$7,000.00 of the total cost. The landlord could not provide a breakdown of the cost of the flooring per square foot, other than to estimate it could be approximately \$5.00/square foot.

The landlord submitted photographic evidence of the rental unit which primarily showed the tenant’s personal items and furniture left behind, as well as what appeared to be debris and pet waste on the floors. It was not clear from the photographs the extent of damage to the bathroom, kitchen or laundry room. Some of the walls appeared dirty and scratched. There was a picture showing the inside of the refrigerator, which appeared dirty with food left inside.

The condition inspection report noted damage to the flooring in the entry, living room, dining room and bathroom due to pet urine/feces. The flooring in the kitchen and two bedrooms was also noted as damaged but no cause of the damage is provided. The walls throughout the rental unit were noted as either dirty, scratched or damaged. The bathroom fixtures and kitchen appliances were noted as dirty. The refrigerator was noted as dirty with the comment “had to replace”. The kitchen countertop was noted as scratched and the cabinets as dirty. Not all items noted on the condition inspection report are referenced here.

I noted that the condition inspection report indicated that the refrigerator had to be replaced, but this is not indicated on the contractor’s invoice. I asked the landlord to explain the discrepancy between these two documents. The landlord stated that if it was not listed on the contractor’s invoice, then it was not replaced.

I questioned the landlord as to why the repair work was not started on the rental unit until September 2017 as the landlord is claiming lost revenue for the period between July 14, 2017 and September 2017 even though the rental unit was vacant. The landlord explained that his contractor was not available to start the repair work until September 2017.

The landlord stated that the rental unit was under repair until December 2017 and was re-rented as of January 2018. I asked why the repair took four months to complete. The landlord advised that they have one contractor who is responsible for the repair work for all their rental units.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

In this case, the landlord has claimed for compensation due to damages, unpaid rent and loss of rental revenue. I have addressed my findings on each of these claims below.

Claim for Damages

Section D of Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss provides direction in determining an amount for compensation when damages have been claimed, as follows:

D. AMOUNT OF COMPENSATION

*In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. **The amount arrived at must be for compensation only**, and must not include any punitive*

element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

[My emphasis added]

The landlord submitted a contractor's invoice in the amount of \$15,942.20, with no breakdown of the costs for labour or itemization of the material/supplies.

The actual cost of the repairs was unclear due to the lack of any detail provided on the invoice regarding the quantity of items replaced. Some items were listed as "where needed" as follows:

- *repair plumbing where needed*
- *replace doors where needed*
- *install new drywall where needed*
- *install new lights where needed*

It was unclear if some of the work items were renovations or improvements, instead of repair of damage, such as:

- *install new vanity, sink, supply lines and faucet*
- *install new tub surround*
- *install new toilets x 2*
- *built up sub floor in living room to bring all flooring downstairs to same level*
- *built new access hatch*

It was unclear if some of the work items were a result of normal wear and tear from the tenancy, or a result of equipment failure, which would not be a result of damage from the actions of the tenant, such as:

- *took out bulk head in kitchen and repaired plumbing leaks*
- *reinstall bulk head and kitchen cupboards*
- *repair 4" plumbing*
- *removed rotten sheathing under old washer/dryer and replaced*

Regarding the contractor's invoice, I find that the landlord failed to provide sufficient evidence to distinguish the actual repair costs for compensation due to damage caused by the tenant's actions, from other costs that may be related to normal wear and tear,

equipment malfunction, or renovation/improvements, for which the tenant would not be responsible.

As such, I have referred to the photographic evidence and the condition inspection report submitted by the landlord to make a determination on compensation for damages.

The sixteen photographs clearly depict debris, furniture and personal items, and pet waste. I allocate \$600.00 in disposal costs. The condition of the kitchen and bathrooms was not able to be fully assessed from the angle and lack of light in the pictures, although from what was visible it appeared extensive cleaning was required in these rooms. Based on 30 hours of cleaning at a rate of \$20.00 per hour, I allocate \$600.00 in cleaning costs for the rental unit.

In determining damages related to repair and replacement costs for building elements, I must base my assessments in accordance with Residential Tenancy Policy Guideline 40. Useful Life of Building Elements. This Guideline notes:

Useful life is the expected lifetime, or acceptable period of use, of an item under normal circumstances...if the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

The condition inspection report noted damage to the flooring in the entry, living room, dining room and bathroom due to pet urine/feces. Estimating that these rooms comprise half of the 1,300 square feet of the unit, it would be approximately 650 square feet of flooring to be replaced. At the hearing, the landlord advised that the rental unit flooring had been replaced in the past two to three years with laminate flooring. As the landlord failed to provide any receipts or evidence to prove the cost of the laminate flooring previously installed, or support his cost estimate of \$5.00 per square for the replacement flooring, I allow a cost of \$2.00 per square foot, which is in line with the typical value of laminate flooring for a rental unit. Policy Guideline 40 does not specifically reference laminate flooring. However, as laminate is less durable than hardwood flooring with a useful life of 20 years, but more durable than carpet with a useful life of 10 years; I find that an appropriate estimate for laminate is a useful life of 15 years. As at most 13 of the 15 years, or 87% of useful life was left on the flooring, the landlord is only entitled to a return equivalent to this percentage. Therefore, I allocate 87% of \$1,300.00, which is \$1,131.00 for the cost of flooring damage.

It appeared that the walls and trim required cleaning and repair/repainting in some areas. This was confirmed by the condition inspection report which noted six rooms with walls that were scratched or damaged. At a cost of \$250.00 per room, the wall and trim repair would cost \$1,500.00 in total. Policy Guideline 40 states that interior painting has a useful life of four years. As the rental unit was last renovated at least two years ago, only 50% of the useful life of the paint was left. Therefore, I allocate 50% of \$1,500.00, which is \$750.00 for the cost of wall/trim damage.

Other items noted on the condition inspection report include missing or damaged electrical outlets and a light fixture. I allocate \$100.00 as a minimal award for these other nominal damages.

A summary of compensation allocated for the damages is provided as follows:

Item	Amount Claimed
Disposal costs	\$600.00
Cleaning costs	\$600.00
Flooring damage	\$1,131.00
Wall/trim damage	\$750.00
Nominal damages	\$100.00
Total	<u>= \$3,181.00</u>

I find that the landlord is entitled to a monetary award in the amount of \$3,181.00 for the above-noted damages.

Claim for Unpaid Rent

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

Based on the unchallenged testimony of the landlord regarding the terms of the tenancy agreement, I find that the tenant was obligated to pay monthly rent in the amount of \$675.00, as established in their agreed upon tenancy agreement. Further to this, I find that there is no evidence before me to conclude that the tenant had any other right to withhold rent for June and July 2017 while she continued to reside in the rental unit. Therefore, the tenant remained obligated to pay rent for these months when due.

In light of the above, I find that the landlord is entitled to a monetary award in the amount of \$1,350.00 for unpaid rent owed for the months of June and July 2017.

Claim for Loss Rental Revenue Due to Required Repairs

Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent provides the following guidance regarding claims for loss of rent:

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

In this case, the landlord is claiming for five months (August to December 2017) of loss of rental revenue due to repairs. However, the landlord did not commence repairs for over one month after the tenant had vacated the premises as his contractor was not available. As I have already found that the landlord failed to provide sufficient evidence to distinguish between repairs and renovation improvements to the rental unit, I find that following from this, the landlord has failed to provide sufficient evidence to distinguish how much time was required for repair work versus the time spent for renovation improvement. Further to this, I find that the landlord's choice to use a contractor who was not available to start work for over one month, and whose time was not solely allocated to this project, has resulted in an extended period of time that the rental unit could not be rented, resulting in lost rental revenue for which the tenants should not be responsible. As explained above, the landlord is required to mitigate the loss by completing the repairs in a timely manner, and I find that in this case the landlord has made choices that have exacerbated the claim for loss of rental revenue. Therefore, I find that the landlord is entitled to a loss of rental revenue due to repairs based on the extent of damages shown in the photographic evidence and condition inspection report, and based on an average and reasonable time frame for repair work. I find that two months is a reasonable time frame within which the repairs for the damage could have been completed. I find that the landlord is entitled to a monetary award in the amount of \$1,350.00 for loss of rental revenue due to repairs for damage.

Set-off of Landlord's Claim Against Security and Pet Damage Deposits

The landlord continues to retain the tenant's security and pet damage deposits totalling \$675.00, and has requested to retain these deposits in partial satisfaction of the claims

for unpaid rent and damages. No interest is payable on the deposit during the period of this tenancy.

Section 38(3) of the *Act* sets out the conditions for the landlord to return or retain the security or pet damage deposit, as follows, in part:

- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
 - (a) the director has previously ordered the tenant to pay to the landlord, and
 - (b) at the end of the tenancy remains unpaid.

In this case, I find that the landlord previously obtained a Monetary Order against the tenant which remained unpaid at the end of the tenancy.

In accordance with section 38 and the offsetting provisions of section 72 of the *Act*, I order that the landlord retain the tenant's entire security and pet damage deposits totalling \$675.00 in partial satisfaction of the total monetary award, and I issue a Monetary Order in the landlord's favour for the remaining amount of the monetary award owing.

Further to this, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant. A summary of the monetary award is provided as follows:

Item	Amount
Unpaid rent owing to the landlord for the months of June and July 2017 (2 months x \$675.00)	\$1,350.00
Loss of rental revenue due to repairs (2 months x \$675.00)	\$1,350.00
Compensation for damages to rental unit	\$3,181.00
Recovery of filing fee for this Application	+ \$100.00
Monetary award in favour of landlord	= \$5,981.00
LESS: Landlord to retain security deposit in partial satisfaction of monetary award	(\$675.00)
Total Monetary Order in Favour of Landlord	\$5,306.00

Conclusion

I order the landlord to retain the \$675.00 security and pet damage deposits for this tenancy in partial satisfaction of my finding that the landlord is entitled to a monetary award of \$5,981.00 for losses and damages flowing from the tenancy.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$5,306.00 in satisfaction of the remaining amount of loss owing, and to recover the landlord's filing fee for this application.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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: June 26, 2018

Residential Tenancy Branch