



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVANCE REALTY LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL, MNDL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on November 23, 2018, wherein the Landlord sought monetary compensation from the Tenant for damages and loss of rental income as well as recovery of the filing fee.

The hearing was scheduled for teleconference on March 21, 2019. Only the Landlord's representative S.G., called into the hearing. He 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.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 2:02 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. S.G. testified that he served the Tenant with the Notice of Hearing and the Application on November 30, 2018 by registered mail. The Landlord provided documentary evidence (including a credit card statement and internal accounting documents) confirming the package was sent on that date.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

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 the above, and 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 December 5, 2018 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 *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's representative testified that the tenancy began March 15, 2017. Monthly rent was payable in the amount of \$1,000.00. The Tenant paid a \$500.00 security deposit.

The Landlord sought compensation for water damage which was caused by the Tenant. The Landlord's representative stated that the Tenant stuffed an upstairs closet so full of things that he hit a tap which was there for a washer and dryer and it caused it to leak for months and months. The Tenant did not report the water stain in the ceiling. The water damage was remediated as soon as it was identified in December of 2017.

The Landlord also sought monetary compensation for losses incurred as a result of damage caused by a fire started by the Tenant while he was cooking December 31, 2018.

Introduced in evidence by the Landlord was a copy of the move out condition inspection report detailing the damage, photos of the rental unit and invoices for the remediation costs for both the flood and the fire.

The Landlord filed a Monetary Orders worksheet in which the following was claimed:

Flood damage repairs	\$1,940.47
Fire damage repairs	\$7,792.09
Loss of rental income for January and February 2018	\$2,000.00
Filing fee	\$100.00
TOTAL CLAIMED	\$11,832.56

The Landlord stated that the Tenant agreed the Landlord could retain the \$500.00 security deposit towards the amounts noted above. The Tenant indicated his agreement on the move out condition inspection report on January 18, 2018.

The Landlord also stated that the owner received \$2,000.00 from the insurance company, such that the amount sought by the Landlord was reduced to \$9,832.56.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

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.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

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 accept the Landlord's undisputed testimony that the Tenant's actions, in packing the closet with items and thereby turning the water tap on, caused water damage to the rental unit.

I further accept the Landlord's evidence that the Tenant caused a fire in the rental unit. The photos submitted in evidence, and the detailed invoice provided by the Landlord, confirm the damage was extensive. I also accept that the extent of the damage as well as the remediation efforts resulted in the rental unit not being habitable for a period of time such that the Landlord suffered a loss of two months' rent.

I therefore find the Landlord is entitled to the amounts claimed for the remediation after the fire as well as the two months of lost rental income.

The Landlord, having been successful in their application is entitled to recover the filing fee pursuant to section 72 of the *Act*.

Conclusion

I find the Landlord is entitled to monetary compensation in the amount of **\$9,832.56** for the following:

Flood damage repairs	\$1,940.47
Fire damage repairs	\$7,792.09
Loss of rental income for January and February 2018	\$2,000.00
Filing fee	\$100.00
<i>Less insurance payment</i>	<i>\$2,000.00</i>
TOTAL AWARDED	\$9,832.56

I authorize the Landlord to retain the Tenant's **\$500.00** security deposit towards the amounts awarded and I grant the Landlord a Monetary Order in the amount of **\$9,332.56**. This Order must be served on the Tenants 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: March 22, 2019

Residential Tenancy Branch