



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This decision is in respect of the landlords' application for dispute resolution under the *Residential Tenancy Act* (the "Act") made on November 9, 2018. The landlords seek

1. compensation for various damages to the rental unit, pursuant to section 67 of the Act, and
2. compensation for the cost of the filing fee, pursuant to section 72 of the Act.

A dispute resolution hearing was convened on March 14, 2019 and the tenant and one of the landlords attended. They were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The landlord testified that she served her documentary evidence on the tenant by registered mail on November 16, 2018, and the tenant confirmed having received the evidence, and having reviewed it.

I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, but only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Are the landlords entitled to compensation for various damages to the rental unit?
2. Are the landlords entitled to compensation for the cost of the filing fee?

Background and Evidence

The landlord testified and confirmed that the tenancy commenced on January 1, 2015 and ended on September 30, 2018. Monthly rent was \$800.00 at the start of the tenancy, and later increased to \$830.00. There was a security deposit of \$400.00 and a pet damage deposit of \$200.00; the landlord retains these deposits.

In her application the landlord seeks compensation for various damages that the landlord alleges was caused by the tenant, the tenant's dog, the tenant's cat, and the tenant's former boyfriend. Damage included two broken doors (these were kicked in), a large hole in the wall, a broken window, and water stains from an air conditioner improperly installed.

Costs for the claim were broken down as follows:

\$913.50 comprising (1) "stain seal water stain in living room ceiling & paint ceiling (includes labour and materials)" for \$240.00, (2) "repair hole in wall & match wall paper (estimated as per wallpaper match) (labour & material)" for \$180.00, and (3) "remove & re-install rear entry door frame (estimated as per extent of structural damage) (labour & materials) for \$450.00;

\$174.72 to replace the flooring on the stairwell. The landlord testified that the runner on the stairwell had been "badly damaged by a cat.";

\$97.37 for paint and wallpaper;

\$91.53 for paint;

\$136.66 for the window to be replaced and installed; and,

\$12.32 for paint purchased to repaint in the bedroom due to "multiple nail holes";

The landlord testified that while she completed a Condition Inspection Report at the end of the tenancy (a copy of which was submitted into evidence), she was, back in 2014, unaware of the legal requirement to complete a report at the start of a tenancy. The move out inspection was completed after the tenant had vacated and was done by the landlord herself.

There was, according to her, an unsuccessful back-and-forth communication for the tenant to come and complete the inspection with the landlord. The tenant purportedly told the landlord that she knew there was damage and that the landlord could simply take care of it. Ultimately, the tenant never attended for an inspection and the report was completed without her present.

The tenancy ended after the landlords issued a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit. I asked the landlord whether any of the alleged damages caused by the tenant (or her cat, dog, or boyfriend) would have been undertaken in any event with the planned renovations. She said that the wood floor and “some painting” would have been done regardless.

In her testimony, the tenant submitted that any damage caused by her former boyfriend (“J.”) could have been pursued by the landlords through civil action. She noted that J was charged with destruction of property by the police. Neither party was able to obtain a copy of the police report, though the landlord testified that she and her husband provided a statement to the police.

The tenant testified that the rental unit is a house that is over 110 years old, and that there are issues with the house that might be expected of such age. She further explained that there were “lots of things” that were problematic at the time she moved into the rental unit, and that these would have been exemplified had the Condition Inspection Report been completed at the start of the tenancy. The tenant did not outright dispute the landlord’s testimony regarding the damage or that J. had caused the damage alleged to have occurred.

In addition to the above-noted receipts and documents, the landlord also submitted into evidence photographs of the damage to the rental unit. Not all receipts were submitted for all the amounts claimed, however.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Here, the landlord claims that the tenant, or a person or animals permitted on the residential property, caused damage to the rental unit that ultimately cost the landlord money to repair.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, in order for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

Sections 32(3) and (4) of the Act states that

(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.

Subsection 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, while a Condition Inspection Report completed at the start of the tenancy would have established the state of the rental unit at the start of the tenancy (section 21 of the *Residential Tenancy Regulation*), the tenant did not dispute that her former boyfriend caused the damage to the door, the hole in the wall, or the broken window. As such, the tenant has essentially admitted to damage caused to the rental unit that was caused by the actions of a person (the boyfriend) permitted on the residential property. She is liable for such damage under the Act, regardless of whether the landlords had

recourse against the former boyfriend through civil action. Indeed, the tenant may pursue recovery against the former boyfriend should she so choose.

Given the above, I find that the landlords have proven that the tenant, or a person permitted onto the residential property by the tenant, has breached section 37(2) of the Act. But for the actions of the tenant's former boyfriend the rental unit would not have sustained two broken doors, a hole in the wall, and a broken window.

The landlord has established that the cost for the above-noted repairs to be in the amounts of \$913.50 and \$136.66. While the landlord did not provide second or third estimates, I am satisfied based on the detailed descriptions within the documentary evidence that the amounts claimed are reasonable in the circumstances.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for the aforementioned damage and amounts of \$913.50 and \$136.66.

Regarding the damage to the flooring, the landlord testified that the flooring "would have been done" regardless. As such, I am not inclined to grant compensation for this aspect of the landlords' claim and dismiss this without leave to reapply.

As for the remainder of the damage claimed, such as the multiple nail holes, and other painting costs claimed, the tenant was silent on these allegations. In the absence of a Condition Inspection Report completed at the start of the tenancy, I do not find that the landlords have provided satisfactory evidence as to the condition of the rental unit at the start of the tenancy. As noted, the onus is on the landlord to prove the condition of the rental unit at the start of the tenancy.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have not met the onus of proving their claim for the remainder of the alleged damage and costs. This aspect of their claim is dismissed without leave to reapply.

As the landlords were partly successful in their claim I grant them a monetary award of \$50.00 toward some of the cost of the filing fee.

The landlords may retain the security and pet damage deposits.

A monetary order of \$500.16 for the landlords is therefore calculated as follows:

CLAIM	AMOUNT
Window, doors, and hole repairs	\$1,050.16
Filing fee	\$50.00
<i>LESS</i> security and pet damage deposit	(\$600.00)
Total:	\$500.16

Conclusion

I grant the landlords a monetary order in the amount of \$500.16, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 14, 2019

Residential Tenancy Branch