



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0821149 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNDCL-S MNDL-S**

Introduction

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

- A monetary order for damages or compensation pursuant to section 67;
- A monetary order for damages to the rental unit pursuant to section 67;
- Authorization to retain a security deposit in partial satisfaction of a monetary order pursuant to section 38; and
- Authorization to recover the filing fee for the application from the tenants pursuant to section 72.

Both the tenants and the landlord attended the hearing. The tenants were represented by the tenant TC ("tenant"), while the landlord was represented by KD ("landlord"). The tenant confirmed she received the landlord's notice of hearing package and evidence; the landlord confirmed receipt of the tenant's evidence; I find the parties properly served pursuant to sections 88 and 89 of the Act.

Although all evidence was taken into consideration for this decision, only that which is relevant to the issues is referenced in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damages to the rental unit by the tenants?
- Can the landlord recover the filing fee from the tenants?
- Can the landlord retain the security deposit in satisfaction of a monetary order?

Preliminary Issue

One of the tenants' names was misspelled in the landlord's application. In accordance with rules 4.2 and 6.1 of the Residential Tenancy Branch Rules of Procedure, I amended the tenant's surname. The tenant's correct name is reflected on the cover page of this decision.

Background and Evidence

A copy of the tenancy agreement was provided by the landlord. The fixed term tenancy began on September 5, 2018 with rent set at \$550.00 per month, turning to month to month on November 30, 2018. The tenancy agreement includes a clause that there be no pets of any kind allowed on the property. A security deposit of \$275.00 and a key deposit of \$100.00 was collected at the commencement and a condition inspection report was completed on September 5th.

There was an incident involving the tenant JT at the building the night of November 13, 2018. The landlord alleges JT damaged the electric door strike at the front of the building, broke the intercom system and broke a window of the rental unit. The landlord testified another building resident witnessed JT breaking the door strike and intercom when trying to access the building; the landlord did not provide a written statement or call the witness to testify.

The landlord testified he served the tenants with a one month notice to end tenancy for cause ("Notice") on November 1, 2018, seeking to end the tenancy on November 30th. The landlord paid \$100.00 to file for dispute resolution but didn't go through with arbitration as the tenants moved out of the rental unit on November 30th, in accordance with the Notice.

The tenants were present for the move out condition inspection, signed it and provided their forwarding address on the report. The report notes the following damage: bedroom carpets are stained and dirty, the window screen is missing; burnt out light bulbs in bathroom, bedroom, kitchen and bathroom. It also notes that no keys were returned. Photographs of the unit upon move out were provided in the landlord's evidence.

The landlord testified he paid \$45.00 cash for a used window screen. The tenants had a cat who caused staining to the carpets, causing the landlord to pay \$58.21 to

purchase carpet cleaner. The door locks and keys were replaced at a cost of \$127.00. A drapery rod was purchased for \$10.00 to replace the one broken in the bedroom. An electrician was called to fix the intercom for \$72.00 and the landlord paid \$201.60 to fix the broken window. The electric door strike to the front door cost \$300.00 and a further \$65.00 in labour to fix it. The landlord buys light bulbs in bulk and provided a 'cash' receipt for four bulbs for \$10.00.

The landlord provided two unsigned handwritten ledgers for the labour required to repair the rental unit and clean it. The first one is for 7 hours at \$20.00 per hour (\$140.00) to and the second one is for 8 hours at \$15.00 per hour (\$120.00). The property managers performed the labour but cleaning is not part of their regular duties.

The landlord testified he was unable to secure a new tenant until December 15, 2018 due to the work needed to repair the rental unit. For the half month in lost rent, the landlord submits he should be compensated a half month's rent in the amount of \$275.00.

The landlord also seeks recovery of the \$100.00 fee he paid to commence his previous dispute resolution to end the tenancy when he served the tenants with the Notice.

The tenant acknowledged the keys to the rental unit were lost and agreed pay the \$127.00 cost to replace them. Also, the window repair in the amount of \$201.60 is their responsibility. The tenant disputes the landlord's allegation they damaged the entry door to the building or the intercom. The tenant testified the intercom has always looked the way it appears in the landlord's photograph with the buttons depressed. The intercom has not been repaired, it still looks the same. The tenants dispute the landlord's claim they should be responsible for paying half a month rent for December when they moved out in November.

Analysis

Policy Guideline PG-3 deals with situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy agreement. 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. The landlord has shown some damages to the rental unit by the tenants making it un-rentable until

December 15th. They mitigated their loss by finding a tenancy right after repairs were made and I award **\$275.00**.

Under section 7 of the Act, a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Under section 67 of the Act, if the director determines damage or loss has resulted from a party not complying with the Act, regulations or a tenancy agreement, the director may determine the amount of compensation that is due; and order that the responsible party pay compensation to the other party.

I find the tenants kept a cat in the rental unit in violation of the tenancy agreement. The damage caused by both the cat and the tenants resulted repairs needing to be done to the rental unit by the landlord.

The landlord has provided compelling evidence to show the screen window went missing during the tenancy (**\$45.00**) and the carpets required cleaning (**\$58.21** for materials). The condition inspection report, signed by the tenant does not dispute the burnt out light bulbs and I accept the landlord's approximate cost of **\$10.00** to replace them. The drapery rod in the bedroom is not noted in the report and I decline to award the replacement cost as sought.

The onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage to the intercom or the door strike. I am not satisfied they were broken by the tenants. No witness statements were provided to corroborate the claim and the damage was not personally witnessed by the landlord. The generic, non-descript receipts provided as evidence of repairs to the intercom done by the electrician is similar to the repair done to the person fixing the door strike, both missing a company name or letterhead. I dismiss the claim for intercom fixing and electric door strike.

The landlord chose to pay for and file for dispute resolution in anticipation of the tenants not abiding by the Notice to End Tenancy. The tenants are not responsible for the fee paid for this and I dismiss this portion of the landlord's claim.

The landlord has provided photographs to show damage done to the rental unit however I am not satisfied the landlord should be compensated the sum of \$260.00 to perform cleaning and repairs. Turning to Policy Guideline PG-3:

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.**

I find the claim for this compensation to be excessive, based on conjecture and not compelling evidence. I award the landlord a nominal amount of **\$100.00** for cleaning and repairs.

The tenants acknowledge the following portions of the landlord's claim for compensation and I award the landlord the following:

Locks and keys: **\$127.00**

Window repair: **\$201.60**

Item	Amount
Half month lost rent	\$275.00
Screen window	\$45.00
Carpet cleaning materials	\$58.21
Light bulbs	\$10.00
Cleaning and repairs	\$100.00
Locks and keys	\$127.00
Window repair	\$201.60
Total	\$816.81

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of \$275.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the entire security deposit in partial satisfaction of the monetary claim.

Item	Amount
Monetary Order	\$816.81
Filing fee	\$100.00

Less security deposit	(\$275.00)
Total	\$641.81

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$641.81**.

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: April 12, 2019

Residential Tenancy Branch