



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL, MNDL, MNRL

Introduction

This hearing convened as a Landlord's Application for Dispute Resolution, filed on January 14, 2019, wherein the Landlord requested monetary compensation from the Tenant and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on May 7, 2019. The hearing did not complete on that date and was adjourned to 11:00 a.m. on June 24, 2019. Both parties called into the hearing on May 7, 2019. When the hearing reconvened on June 24, 2019, only the Landlord called into the hearing. The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:12 a.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.

At the original hearing the parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective 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 Tenant?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the parties did not enter into a written tenancy agreement. He stated that the tenancy began September 1, 2017. Monthly rent was payable in the amount of \$1,000.00 for a single family dwelling. The Landlord claimed that the Tenant did not pay a security deposit. At the time the tenancy began, the Tenant's son, N. lived in the rental unit.

The Landlord testified that the utilities were in the Tenant's name and the Tenant was responsible for their payment. He also stated that during the tenancy the Tenant paid the utilities, however at the end of the tenancy amounts were owed for the municipal utilities. Copies of communication from the municipality with respect to the utilities were provided in evidence.

The Landlord stated that the tenancy ended sometime on or about April 1, 2018.

The Landlord served a 1 Month Notice to End Tenancy and a 10 Day Notice to End Tenancy on the Tenant. Those documents were not initially before me. As noted in my Interim Decision I ordered the Landlord to file those documents at the residential tenancy branch and serve them on the Tenant. I confirm both Notices were uploaded by the Landlord and were considered when making this my Decision.

In the within hearing the Landlord sought monetary compensation in the amount \$1,000.00 for unpaid rent for April 2018. The Landlord provided in evidence a screen shot of the transfers he received from the Tenant which confirmed no payment was received for April 2018.

The Landlord also claimed compensation for the cost to repair and clean the rental unit. Introduced in evidence by the Landlord were photos of the rental unit. He testified that he took the photos which were provided in evidence on or about April 13, 2018 as well as photos taken during the repairs; those photos depict the following:

- #1: stains on the basement carpet which were not able to be removed;
- #2: stained floor in the basement;
- #3: stained flooring;

- #4: scuffs, marks and dents in stairway walls;
- #5: broken laminate flooring at the entrance way (the Landlord said that he had extra flooring but he had to remove and replace the trim work to put the replacement pieces down);
- #6: piece of flooring;
- #7: a fist sized hole in the living room wall;
- #8: a pushed in electrical plug;
- #9: a cracked light switch cover;
- #10: a broken basement thermostat which was also ripped off the wall and only held on by one screw. (The Landlord stated that the screw was sheared off and the wall was damaged behind it);
- #11: additional photo of the thermostat;
- #12: towel rack removed from the wall;
- #13: door lock was jarred and damaged and would not move;
- #14: living room “during the repair” nine dents and chips on the wall;
- #15: drywall damage repairs, which the Landlord saw as being likely from moving furniture as they were all waist height;
- #16: stair way entrance walls during repair;
- # 7: repair to stair well;
- #18: mudding and sanding and work done downstairs;
- #19: carpet fiber pulled up. The Landlord testified that he cut the pieces but it impacted the zig zag pattern.

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

Outstanding municipal utilities	\$669.45
Outstanding municipal utilities	\$114.67
Paint (bathroom/kitchen)	\$64.07
Paint (cupboards/shelves)	\$65.11
Paint coveralls	\$11.94
Cleaning supplies and glue	\$40.47
Caulking for baseboards	\$4.18
Painting products	\$56.22
Replace wood shelf	\$6.70
Wall repairs	\$4.47
Waste disposal	\$6.40
Lock set and dryer parts	\$70.17

Cleaning supplies	\$14.01
Fuel and travel costs	\$132.30
D.M. Cleaning and labour	\$120.00
D.P. repair, painting and cleaning	\$270.00
Unpaid rent for April 2018	\$1,000.00
TOTAL CLAIMED	\$2,676.52

In terms of paint, the Landlord stated that prior to the tenancy beginning, in April of 2017, the rental unit was completely repainted as at that time he intended to sell the rental unit.

The Landlord stated that the above “shelf” was in the pantry was replaced at a cost of \$6.70.

The Landlord testified that the lock going onto the deck was not functioning; he stated that it looked like it had been slammed shut with the lock engaged

The Landlord testified that he paid the next door tenant \$120.00 to start cleaning and repairing the rental unit as he lives out of town and was hoping to get a head start on the repairs and cleaning to ensure he could rent it out as soon as possible after the tenancy ended.

The Landlord also claimed \$270.00 for his own time repairing and cleaning the rental unit. He testified that he spent considerably more time on the rental unit, but claimed only \$270.00.

The Landlord stated that he advertised the rental unit on the internet and re-rented the rental unit as of May 1, 2018 for \$1,050.00 per month.

As noted, the Tenant did not call into the hearing on June 24, 2019 to respond to the Landlord’s submissions.

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.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I accept the Landlord's undisputed evidence that the Tenant was responsible for paying all utilities related to the rental unit. I also accept his testimony that the Tenant failed to pay the municipal utility at the end of the tenancy such that I find the Landlord is entitled to recover payment for the outstanding amounts.

The Landlord testified that the rental unit was repainted shortly before the tenancy began. I accept his testimony that as he intended to sell the rental unit at that time, it had been cleaned and repaired to high standard. Photos submitted by the Landlord taken at the end of the tenancy show damage to the walls (as well as other damage) such that I accept his testimony that the unit required repainting and repair. I therefore award the Landlord the amounts claimed for paint as well as associated labour and supplies.

I find the Landlord mitigated his losses by hiring the next door tenant to begin cleaning and repair of the unit, as well as personally completing most of the work. In doing so the Landlord was able to re-rent the rental unit shortly after the tenancy ended. I therefore find the Landlord should recover the amounts he paid to the neighbour, as well as the amounts claimed for his own time cleaning and repairing the unit.

The Landlord lives in a different community than that which the rental unit is located. This is a business choice, the cost of which should not be borne by the Tenant; I therefore find that his transportation and fuel costs are not recoverable from the Tenant.

I find the Tenant is responsible for paying the April 2018 rent. Although the Tenant vacated the rental unit in early April 2018, the Landlord was not guaranteed vacant possession until such time as the tenancy actually ended such that I find he was not able to re-rent the unit until May 1, 2018.

Having been successful in his application I find the Landlord is entitled to recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

The Landlord's application for monetary compensation from the Tenant is granted in the amount of **\$2,564.22** for the following:

Outstanding municipal utilities	\$669.45
Outstanding municipal utilities	\$114.67
Paint (bathroom/kitchen)	\$64.07
Paint (cupboards/shelves)	\$65.11
Paint coveralls	\$11.94
Cleaning supplies and glue	\$40.47
Caulking for baseboards	\$4.18
Painting products	\$56.22
Replace wood shelf	\$6.70
Wall repairs	\$4.47
Waste disposal	\$6.40
Lock set and dryer parts	\$70.17
Cleaning supplies	\$14.01
D.M. Cleaning and labour	\$120.00
D.P. repair, painting and cleaning	\$270.00
Unpaid rent for April 2018	\$1,000.00
Filing fee	\$100.00
TOTAL AWARDED	\$2,564.22

The Landlord is granted a Monetary Order for this amount and must serve the Order on the Tenant. Should the Tenant not pay, the Landlord may file and enforce the Monetary Order 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: June 24, 2019

Residential Tenancy Branch