



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

In this dispute, the landlords seek compensation under sections 67 and 72 of the *Residential Tenancy Act* (the “Act”), which includes a claim against a security deposit.

The landlords applied for dispute resolution on March 1, 2019 and an arbitration hearing was held on Monday, June 17, 2019. The landlords attended the hearing and were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenants did not attend the hearing.

I reviewed evidence submitted that met the *Rules of Procedure*, under the Act, and to which I was referred, but have only considered evidence relevant to the preliminary issue, and the issues, of this application.

Preliminary Issue: Service of the Notice of Dispute Resolution Proceeding

The landlords confirmed that they served the tenants with the Notice of Dispute Resolution Proceeding (the “NDR”) by way of Canada Post Registered Mail on March 1, 2019. A copy of the Registered Mail receipt, tracking number, and tracking status information was submitted into evidence. The address on the NDR matched the tenants’ forwarding address as listed on the Condition Inspection Report that was also submitted into evidence. The NDR was “refused by recipient” on March 6, 2019, as indicated by Canada Post tracking information.

Given the above, I find that the tenants were served the NDR in compliance with section 89 of the Act. Pursuant to section 90(a) of the Act the tenants were deemed to have received the NDR on the fifth day after it was mailed.

Finally, I note that where a document is served by registered mail, the refusal of the party to accept or pick up the registered mail does not override the deeming provision of section 90 of the Act. If the registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Issues

1. Are the landlords entitled to compensation under section 67 of the Act?
2. Are the landlords entitled to recovery of the filing fee under section 72 of the Act?

Background and Evidence

The landlord (R.L.) testified that the tenancy began on April 15, 2018 and ended on February 15, 2019. Monthly rent was \$1,300.00 and the tenants paid a security deposit of \$650.00, of which \$550.00 is currently held in trust by the landlords. copy of a written tenancy agreement was submitted into evidence.

At the start, and at the end of the tenancy the landlords completed a Condition Inspection Report ("CIR"); a copy of the CIR was submitted into evidence. The CIR was signed by the parties and indicated that the landlord could retain a portion of the security deposit. While the CIR indicated an amount of retention to be \$650.00, the landlord clarified that the tenants agreed to the landlords retaining \$100.00 of the security deposit to compensate the landlords for a damaged door. As such, the landlords claim against the balance of the security deposit in the amount of \$550.00.

In this dispute, the landlords claim compensation of \$2,000.00 to pay for removing and disposing of a large boat and trailer left behind on the property by the tenants. The landlord testified that he spoke with three different individuals in the boating and marina business who provided approximate removal costs of \$2,000.00. This amount, while only an approximation, covers towing (a distance of approximately 30 km/h by my estimate), labour, fluid and fuel extraction and final disposal. It was noted that the fuel and fluids (such as oil) need to be extracted from the boat before it is crushed in a landfill. Neither the boat or trailer are insured. Finally, the landlord explained that, based on his conversations with the boating people, the boat holds very little resale value.

The landlord testified that the tenants have not responded to any communication regarding the boat. They have made no effort to retrieve the boat and trailer. They have, by all accounts, appeared to have abandoned the boat and trailer.

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.

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. Further, 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, they must prove on a balance of probabilities all four of the following criteria to be awarded compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the 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 the damage or loss?

In this case, the tenants left the boat and trailer on the rental property after the tenancy ended. Section 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.” Here, the tenants left a large boat and trailer on the property, which I find is not leaving the rental unit “reasonably clean” for the purposes of the Act.

But for the tenants’ abandonment of the boat and trailer the landlords would not incur a loss resulting from this non-compliance.

Next, while the landlords were unable to provide documentary evidence of the exact cost of towing, processing, and disposal of the large boat and trailer, the approximate estimates provided orally by three different individuals in the boating industry are, I find, reasonable estimates to dispose of such an object.

Finally, I find that the landlords have, by obtaining three different estimates of boat removal costs, done what was reasonable in minimizing their loss. The landlords have also, I find, acted reasonably in trying to minimize their loss by letting the boat and trailer remain on the property for the past four months—the tenants could have, but failed to, come and retrieve the boat. The landlords would not be incurring any costs had the tenants come and removed the boat and trailer.

For these reasons and 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 compensation in the amount of \$2,000.00. I therefore grant the landlords a monetary award in this amount.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlords were successful I grant their claim for recovery of the filing fee of \$100.00.

The tenancy ended on February 15, 2019, which is also the date on which the landlords received the tenants' forwarding address. As the landlords applied for dispute resolution against the security deposit within 15 days of February 15, I find that they are entitled to claim against the remaining \$550.00 of the security deposit held in trust.

A total monetary order of \$1,550.00 for the landlords is thus calculated as follows:

CLAIM	AMOUNT
Cost of removing the boat and trailer	\$2,000.00
Filing fee	\$100.00
<i>LESS</i> security deposit (retained amount)	(\$550.00)
Total:	\$1,550.00

Finally, regarding the actual removal of the boat and trailer, I note that section 25(2) of the *Residential Tenancy Regulation* states that

Despite paragraph (1)(a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- (c) the storage of the property would be unsanitary or unsafe.

The landlord confirmed that the boat may have a total market value of less than \$500.00, but more importantly, the cost of removing, storing and selling the boat and trailer would be more than the proceeds of a sale of the boat and trailer.

Given the above, I order that the landlords may dispose of the boat and trailer pursuant to section 25(2) of the Act.

Conclusion

I grant the landlords a monetary order in the amount of \$1,550.00, which must be served on the tenants. 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: June 17, 2019

Residential Tenancy Branch