



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COQUITLAM KINSMEN HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDL FFL

Introduction

On June 14, 2019, a hearing was held to address the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage or loss pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing. The housing society landlord was represented by its agent D.B. who attended with an assistant S.D.

In this case, the landlord did not serve the tenant with their evidence for this matter until May 23, 2019, at least 3 months after serving the tenant with the Notice of the hearing. Therefore, I found that the landlord failed to serve their evidence to the tenant with the Notice of Dispute Resolution Proceeding package as required by Rule 3.1 of the Residential Tenancy Branch Rules of Procedure, and further failed to comply with Rules 3.11 and 3.13. The landlord's only explanation was that they had been busy with other building projects, which was not a sufficient reason for failing to serve evidence with the Notice.

As a result of the landlord's unreasonable delay in serving their evidence to the tenant, I found the tenant was prejudiced in preparing her evidence to submit in dispute of the landlord's claims.

Therefore, an adjournment of the hearing was granted to allow the tenant an opportunity to serve her evidence to the landlord and submit it to the Residential Tenancy Branch. The tenant testified that she served the landlord with nine pages of evidence, which was confirmed received by the landlord. However, I advised the tenant that only three pages of her evidence were successfully uploaded to the Residential Tenancy Branch dispute website. It was noted that several pages of letters that the tenant included in her evidence had previously been submitted into evidence by the landlord and therefore, I was able to refer to those documents.

The tenant was advised that she could verbally explain in her testimony the information contained in any of the documents not before me, but served to the landlord.

The landlord did not submit any further evidence during the adjournment period.

The reconvened hearing, attended by the tenant and the housing society landlord's agent D.B., who assisted by S.D. and T.W., was held on August 15, 2019 resulting in this Decision. This Decision is to be read in conjunction with the Interim Decision dated June 18, 2019.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for damage or loss due to the tenant's contravention of the Act, regulations or tenancy agreement?

Is the landlord entitled to recover the cost of the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The parties confirmed the following details pertaining to this tenancy:

- This month-to-month tenancy began August 2008.
- Current monthly rent of \$536.00 is payable on the first of the month.
- At the beginning of the tenancy, the tenant paid a security deposit of \$400.00, which continues to be held by the landlord.

Both parties confirmed that a fire occurred on June 24, 2017 in the tenant's rental unit kitchen. The tenant confirmed that it was accidental as a result of the tenant turning on the wrong stove element.

The landlord testified that they received the invoice for the fire repair costs on July 24, 2017.

The landlord testified that the tenant was informed in writing September 7, 2017 that she was required to pay \$866.25 for the repair costs resulting from the fire.

The tenant contacted the landlord to discuss this request for payment and was told by the landlord that the amount was incorrect.

The landlord confirmed that she had made a mistake on the September 7, 2017 letter and testified that she re-issued a request to the tenant to make payment of \$1,286.25 for repair

costs on November 21, 2017 and included the invoice for the fire repair costs in the letter sent to the tenant. A copy of the November 21, 2017 letter was not included in the evidence of either party, however a copy of the invoice was provided by both parties.

The tenant disputed the landlord's entitlement to claim for the damages on the grounds that the invoice provided by the landlord does not provide a breakdown of the costs of the work, therefore the tenant is unable to confirm if the costs being requested are reasonable, and further, the tenant was not provided with an opportunity to either carry out some of the work herself, such as the painting, to reduce the costs, or to hire a repair person to carry out the work at a reduced cost.

The tenant also testified that at the time the kitchen fire repair was being done, it was discovered that there was an issue with mold in the rental unit. The tenant claimed that the mold remediation work was done at the same time and by the same company, and that it is not clear whether some of the work charged for the fire repair may also have been necessary for the mold remediation work, and therefore any of these costs are not the responsibility of the tenant.

I note that the invoice did not provide a breakdown of the labour costs or material costs, rather it provided a flat rate of \$1,225.00 (before tax) and stated under the first column for "Activity" the notation of "Labour" and under the second column for "Activity" as follows:

- [Rental Unit #] *test electrical and make safe for inspection after stove fire damage , removal of all contaminated drywall and other materials clean up , install new duct work , drywall, tape mud and paint finish , install upper cabinetry ,supply and install new hood fan .*
- *Supply and install LED light fixture in kitchen by electrician*

The landlord testified that the repair person charges \$75.00 per hour, however no breakdown of hours or even total number of hours of labour was provided.

The landlord testified that their policy is to have any work done professionally, and they felt, from their experience, that the cost charged was reasonable.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary

amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

Section 32(3) of the *Act* requires that 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.

In this matter, I find that there is no dispute that the tenant accidentally caused the fire that damaged the rental unit kitchen, and that the tenant has failed to make any payment towards the cost of these damages as required by section 32(3) of the *Act*. Further, I find that the landlord has established the monetary amount of the damage or loss claimed as \$1,225.00, and that per the invoice submitted into evidence it clearly indicated that the work was related to the stove fire damage, not mold remediation.

However, I do not find that the landlord has provided sufficient evidence to demonstrate that they have done "whatever is reasonable to minimize the damage or loss" in accordance with section 7(2) of the *Act*. In this case, it would be reasonable for the landlord to have sought more than one quote for the cost of the work prior to undertaking the work, or have provided into evidence, quotes for labour costs to show that the rate of \$75.00 per hour is a reasonable rate for the type of work that was done. This would not diminish or in any other way impede on the landlord's policy to have work done "professionally", as in a large urban centre there would be more than one professional to choose from. It appears that some of the work may have required the skilled qualifications of an electrician, but some of the work was "drywall, tape mud and paint finish" which may have been able to be sourced at a rate lower than \$75.00. The tenant was never provided with an opportunity to seek quotes to potentially have sourced some of the labour work to have the painting done professionally but at a lower cost, thereby mitigating the costs that the landlord is seeking to recover at her expense.

Therefore, I refer to Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss which provides that an arbitrator may award "nominal damages" as compensation in situations where an infraction of a legal right has been proven but establishing the value of the damage or loss is not "straightforward".

The landlord's claim represents approximately 16 hours of labour at a rate of \$75.00 per hour. As only some of the work described seemed to require higher-skilled labour and some required only basic labour (drywall, mud, paint), I have attributed 8 hours to a \$75.00 per hour rate (\$600.00) and 8 hours to a \$25.00 per hour rate (\$200.00).

As such, I find that a reasonable nominal damages award in this matter to be \$800.00.

As the landlord was successful in obtaining a monetary award in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

Therefore, I issue a Monetary Order in favour of the landlord for \$900.00 in satisfaction of the landlord's claim for damages and recovery of the filing fee.

Conclusion

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$900.00 in satisfaction of the claimed damages and to recover the landlord's filing fee for this application.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: August 27, 2019

Residential Tenancy Branch