



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0777283 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNDL-S MNRL-S**

Introduction

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

- Authorization to recover the filing fees from the tenant pursuant to section 72;
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38; and
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67.

The landlord attended at the date and time set for the hearing of this matter. The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:42 p.m. in order to enable the tenants to call into this hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The landlord testified the tenant RB was personally served with the Application for Dispute Resolution Proceedings Package by her son, KS on June 11, 2019 at the tenant's new residence. The landlord testified she personally witnessed the service herself. The landlord further testified she served the tenant, GB by registered mail on June 12, 2019. She provided the tracking number for the service, listed on the cover page of this decision. With the landlord's consent, I confirmed the landlord's testimony that the Application for Dispute Resolution Proceedings Package was received by the tenant GB on June 21, 2019. I am satisfied the tenants RB and GB were served with the Application for Dispute Resolution Proceedings Packages in accordance with section 89 of the *Act*.

Preliminary Issue

The landlord's Application for Dispute Resolution seeks an order against the child of the tenants named on the tenancy agreement. The child is not a tenant named in the tenancy agreement and his given name did not appear anywhere as a signatory to the agreement. As the child is not named as a tenant, he does not have the rights or obligations under the tenancy agreement as required under section 16 of the *Act* and the claim against the child is dismissed accordingly.

Issue(s) to be Decided

Is the landlord entitled to:

- Authorization to recover the filing fees from the tenant pursuant to section 72;
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38; and
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and text messages and the landlord's testimony; not all of the landlord's submissions and/or arguments are reproduced here. The principal aspect of the landlord's position has been recorded and will be addressed in this decision.

The landlord gave the following undisputed testimony. The rental unit is an entire house, approximately 90 years old however there is no record as to its actual age. Before the tenants moved in back in 2011, full renovations were done to the rental unit including new paint, new tiles in the kitchen, laundry, foyer and both bathrooms. The floors were refinished and a tub surround was installed in the bathroom. New interior doors and entry door were installed.

The tenancy began on August 1, 2011 between the two named tenants, this landlord, and the landlord's spouse at the time. A security deposit in the amount of \$750.00 and a pet damage deposit in the amount of \$250.00 was collected at that time. The landlord testified that there was no official condition inspection report done, nothing written was produced. The landlord has provided a condition inspection report as evidence in these proceedings, however acknowledges the column describing 'condition at beginning of tenancy' was filled in at the end of the tenancy in 2018, based on her recollection of the state of the rental unit from 2011.

The landlord does not have photographs to provide evidence of the condition of the rental unit when the tenants first moved in but testified the photographs of the rental unit after cleaning and re-renovating the unit are a close approximation of the original condition.

In 2014, the landlord and the tenants entered into a new tenancy agreement without the landlord's spouse, provided as evidence in this proceeding. During the tenancy, the landlord performed inspections of the rental unit every year or two. Although the landlord noticed an accumulation of the tenants' belongings, the landlord felt it was 'totally fine' as long as they cleaned. The landlord was more concerned about the fire hazard that could arise from the tenants' accumulations.

The tenancy ended on October 31, 2018 by a Mutual Agreement to End Tenancy. The tenants refused to provide a forwarding address to the landlord or maintain contact with her at the conclusion of the tenancy. The landlord did a condition inspection without the tenants present. When the tenants moved out, the home was filled with garbage, suffered from damage and had a terrible stench of feces and urine from the tenants' dog and the rats who had infested the unit. The landlord provided the following list of damages:

#1 Recycle dump fees	\$87.78
Recycle dump fees	\$113.19
#2 Recycle dump fees	\$80.85
Landfill dump fee to dump toilet	\$14.50
#3 grout and tile repair supplies	\$72.29
grout	\$22.37
#4 wood filler to repair damaged trim	\$29.06
#5 Flooring estimate basic refinish of damaged hardwood floor	\$2,716.87
#6 Flooring final cost \$3,399.37, which included extra varathane invoice and extra labor to install extra 1/4 round trim	
#7 Hardware wood filler	\$10.57
Hardware garbage bags	\$36.95
VIM cleaning bottles	\$30.74
#8 Lock cut new keys for entry doors	\$61.64
#9 Paint primer	\$40.77
#10 used fridge from private seller	\$500.00
#11 Paint kitchen cabinet paint and supplies	\$44.70

#12 heat registers x 4	\$62.54
#13 toilet	\$201.51
#14 paint primer	\$40.77
#15 Aug 18, 2014 receipt for new stove	\$616.12

TOTAL LABOR COSTS FOR CLEANING, in the amount of \$3,698.00 as follows:

#16 invoice cleaning fees at \$27 per hour (landlord)	\$2,322.00
#17 invoice cleaning fees at \$27 per hour (daughter)	\$324.00
#18 invoice cleaning fees at \$27 per hour (son)	\$175.50
#19 invoice cleaning fees at \$27 per hour (father)	\$877.50

TOTAL LABOR COSTS FOR REPAIRS COMPLETED, repair of 'BEYOND NORMAL WEAR AND TEAR' damage, in the amount of \$2,635.00 as follows:

#20 invoice labor costs at \$55 per hour (father)	\$1,127.50
#21 invoice labor costs at \$45 per hour (landlord)	\$1,507.50

TOTAL COSTS FOR REPAIRS STILL TO BE DONE, in the amount of \$5,756.58 as follows:

#22 Lumber estimate supply only: 3 interior doors and 2 closet doors	\$1,079.33
#23 Lumber estimate supply only; fingerjoined trim and baseboard:	\$324.71
#24 estimate Replace damaged doors and trim; remove Old, deliver, install, paint new doors and trim	\$1,075.00
#25 Island Floor estimate 2 pages Tenant broke multiple kitchen floor tiles. Same floor tile is no longer available. This is an estimate to replace the broken kitchen tile with 'like kind and quality' tile:	\$3,277.54

I am requesting rent for the month of November 2018 \$1,612.00

The landlord also provided 72 photographs depicting the state of the rental unit at the end of the tenancy. The landlord indicated it took a lot of time to bring the rental unit back to rentable condition, most notably to remove the odor of the rat urine and dog urine. To do so, the landlord had to have the floors refinished and covered with additional varathane. The walls needed refinishing and repainting. Also, the tile in the home was left cracked and chipped, requiring replacement.

The landlord did much of the work herself, at varying rates of either \$27.00 per hour or \$45.00 per hour. The landlord justifies the higher rate, equal to her wages, for labour as

opposed to cleaning rate. Her father likewise charged a premium rate of \$55.00 per hour for labour as opposed to cleaning. Her son and daughter each charged \$27.00 per hour to clean.

The stove, purchased in 2014 was left with a char mark on it and had damage to the cord from rat chewing. The fridge was replaced with a used fridge for \$500.00. The toilet had stains on it that were impossible to remove, so the landlord had it replaced.

Analysis

Sections 23 and 35 of the *Act* require the landlord and tenant to participate in move-in and move-out condition inspections and document them in written reports. The landlord is responsible for scheduling the inspections.

Section 14 of the Residential Tenancy Regulations (“Regs”) state:

the landlord and tenant must complete a condition inspection described in section 23 or 35 of the *Act* [*condition inspections*] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

Sections 17 and 18 of the Regs indicate it is the landlord's responsibility to schedule the inspections and provide a copy to the tenant.

The landlord testified a condition inspection report was not completed, contrary to the *Act* and Regulation. I find the lack of the condition inspection report troubling since section 21 of the Regs states:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Without a condition inspection report signed by the parties acknowledging the pre-existing conditions of the rental unit, the landlord has put herself in a position where she cannot prove, on a balance of probabilities, the existence of the damages caused by the tenant when the tenancy ended. Though her testimony bears some weight, she has not fully met the burden of proof to show me the difference in condition between move-in and move-out. The rental unit is in excess of 90 years old and is likely to suffer from a fair amount of wear and tear. The landlord bears the onus to prove that the tenants damaged the rental unit. While the landlord has provided proof of a damaged rental

unit, the amount of damage attributable to the tenant cannot be fully determined without the condition inspection report done at the beginning of the tenancy.

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.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which states:

the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. ***The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.*** The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation). **(emphasis added)**

[Section 7\(1\) of the Act](#) establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Cleaning

The landlord testified she went to the rental unit several times during the tenancy and performed inspections. It would be reasonable to expect that during these inspections, the landlord would observe that the deteriorating condition of the rental unit. The

landlord did not provide compelling evidence to show that attempts were made to have the tenants clean out their belongings or remove any garbage from the unit during the tenancy.

Further, I find it unlikely the landlord would be unaware that rodents would be attracted to the rental unit in the cluttered, debris filled state she describes or that the odor of the rat waste wouldn't cause her to seek a remedy by giving the tenants written notice to comply with the *Act*. I have not been presented with evidence of the landlord taking any steps to mitigate the damages being caused to the rental unit over the years and must therefore find the landlord failed to mitigate her damages. Although I may find the landlord is entitled to some compensation for damage to the rental unit, her compensation is tempered by the fact that she allowed the damage to continue.

I am satisfied, based on the landlord's testimony and documentary evidence that the condition of the rental unit at the end of the tenancy did not meet the "reasonable health, cleanliness and sanitary standards" as set out in section 32 of the *Act*. Section 37 of the *Act* requires that the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. Photographs of the piles of garbage left behind and the rat feces are all indicative of the rental unit being left in an unreasonably unclean and unsanitary condition. Based on this, I am satisfied the landlord is entitled to compensation for cleaning the rental unit. I award the landlord the dump fees of **\$87.78, \$113.19, \$80.85 and \$14.50**. The garbage bags, and VIM cleaner is also awarded, **\$36.95 and \$30.74**.

The landlord provided undisputed testimony that she, the landlord, her son, daughter, and father each performed the work of cleaning. The landlord seeks \$3,698.00 for this work. At \$27.00 per hour for each member, the landlord seeks 137 hours of cleaning labour. The average rate of pay for a house cleaner in British Columbia is less than \$20.00 per hour.

Furthermore, I find that, despite the logs kept by the people doing the cleaning, 137 hours is excessive. I am not satisfied it would take more than 100 hours to bring this 90 year old house back to it's condition at the commencement of the tenancy. I award the landlord 100 hours at \$20.00 per hour for this work for a total of **\$2,000.00**. (#16 - #19).

Additional Labour

The landlord has further provided invoices from her father and herself seeking \$45.00 and \$55.00 per hour respectively for doing repairs beyond normal wear and tear. While the landlord places a premium on some work being performed by the same people

doing the work as cleaning, I find it unreasonable to do so. I am not satisfied that during the course of getting the rental unit ready to re-rent, the parties would re-calculate and time their labour.

Further, I am not satisfied the landlord has justified a premium rate for the nature of the work. The landlord has not succeeded in proving the value of the loss, point 3 of the 4 point test, above. Having said that, given the invoices provided, I am satisfied some work was done. As stated previously, the compensation being awarded is tempered by the landlord's failure to take steps to mitigate the damage. I award the landlord a further 20 hours at \$20.00 per hour for a total of **\$400.00**. (#20, 21, 24)

Heating Registers

The photographs of the heat registers provided, together with the landlord's testimony that they were new at the commencement of the tenancy satisfies me they were damaged during the tenancy. I award the landlord **\$62.54** to replace them. (#12)

Toilet

The landlord provided photographs of the toilet she testified were too soiled to successfully clean. I am satisfied, based on the photographs that the toilet needed replacement. The landlord has provided an invoice to corroborate the cost. I award the landlord **\$201.59**. (#13)

New Keys

Section 25 of the *Act* require a landlord to rekey the locks upon the beginning of a new tenancy. As this is a requirement under the *Act*, it cannot be considered damages and the landlord is not entitled to compensation for rekeying the rental unit. (#8).

Painting

Residential Tenancy Policy Guideline 1 (PG-1) provides guidance for the landlord and tenants' responsibilities. The guidelines for painting is reproduced below:

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

Residential Tenancy Policy Guideline 40 (PG-40) states the useful life of a paint job is 4 years. This tenancy lasted for a period of seven years. I find the landlord has not proven on the balance of probabilities that the tenant caused extraordinary damage to

the walls nor am I satisfied that the tenant caused damage to the paint beyond normal wear and tear that would likely be expected following a seven year tenancy. For this reason, and because I have no reference before me to show the condition of the walls at the beginning of the tenancy, I dismiss the landlord's claim for wall repairs and painting (#8, 11, 14 of the landlord's claim).

Replacement of Range

Residential Tenancy Branch Policy Guideline PG-40 provides guidance to landlords and tenants regarding the useful life of building elements. The landlord provided photos and testified she replaced the entire kitchen range because the cord required replacement and the face suffered from char marks. I accept the landlord's evidence that there was damage, but she has not provided sufficient evidence to establish that the damage affected the useful life of the range, 15 years in accordance with PG-40.

The range cord could have been replaced and I am not convinced the face was irreplaceable as well. In replacing the range, I find the landlord has not mitigated her damages. As one third of the life of the range was used during the tenancy, I find it is appropriate that I grant the landlord an amount representing a devaluation of the range. I find the damage represents a 30% devaluation of the \$612.12 range and I award her **\$204.04**. (#15)

Replacement of Fridge

Turning once again to the condition inspection report, I am once again unable to determine the condition of the fridge in the rental unit at the commencement of the tenancy. While the landlord has provided photographs of a unwashed and dirty fridge at the end, it's impossible to compare it to the fridge when the tenants first moved in. I am inclined to award the landlord partial compensation for purchasing the used fridge to replace the one she testified was no longer useable. Since fridges have a useful life of 15 years in accordance with PG-40, and I determine the original fridge was approximately 10 years old based solely on the photographs, I award the landlord 30% of the replacement cost of \$500.00. ($\$500.00 / 30\% = \166.66). **\$166.66** (#10)

Tiling

The landlord provided undisputed evidence that the rental unit had all new tile at the commencement of the tenancy. She has provided several photographs to show the tile was cracked in multiple areas throughout the home at the end of the tenancy. I am satisfied the landlord had to replace the tile, however given the useful life of tile flooring is 10 years, according to PG-40, I determine that the majority of the useful life of the tile was gone by the end of the tenancy which lasted 8 years. As such, I award a nominal

amount for the landlord replacing the tile. I award **\$1000.00** for the labour and materials. (#3, 25)

Hardwood Flooring

Although the landlord has provided substantial evidence and testimony to corroborate her claim for the refinishing of the hardwoods, I am obligated to reduce the landlord's compensation due to her failure to mitigate the damages by allowing the tenants to let the rental unit deteriorate while she did regular inspections. Turning again to PG-40, the useful life of a hardwood floor finish is 20 years. Almost half the useful life of the flooring finish was gone by the end of the tenancy. Given these factors, I find an appropriate amount of compensation for refinishing the floors is approximately half the costs she paid in labour and materials to have it fixed. I award the landlord **\$1,400.00** (#4, 5, 6, 7).

Lumber Estimates

The landlord has provided photographic evidence to show the trim work on the home was left damaged at the end of the tenancy. I find it reasonable to conclude that much of the damage was caused by the rats who were living in the unit during the tenancy. Given that, I find the landlord has proven she is entitled to compensation, however I am reducing the total amount awarded for the landlord's failure to mitigate the damage by not issuing warnings to the tenants and allowing the deterioration of the home to continue while she made regular inspections over the years. I award the landlord a total of **\$500.00** of the materials requested. (#22, 23)

One month rent

PG-3 provides guidance in claims for Rent and Damages for Loss of Rent. In it, the guideline indicates:

Even 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

I am satisfied by the landlord's abundant evidence that the premises were unrentable due to damage caused by the tenant. I find one month compensation to be reasonable, as the landlord has satisfied me it took at least one month to bring the rental unit back to rentable conditions. I award the landlord **\$1,612.00** in compensation.

Security Deposit

At the commencement of the tenancy, the landlord did not pursue a condition inspection of the suite with the tenant, as required by section 23 of the *Act*. Pursuant to section 24, the landlord's right to claim against the security deposit is extinguished if the landlord does not offer the tenant at least two opportunities for inspection.

Section 38(5) and (6) of the *Act* state that when the landlord's right to claim against the security deposit is extinguished, the landlord may not make a claim against it and must pay the tenant double the amount of the security deposit or pet damage deposit, or both, as applicable. This is further clarified in Residential Tenancy Branch Policy Guideline PG-17 which says, in part C-3:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*,

In this case, section 38(6) requires that the tenant's security deposit of \$750.00 and pet damage deposit of \$250.00 be doubled to \$2,000.00. The offsetting provisions of section 72 of the *Act* allows the landlord to draw on the security deposit if an arbitrator orders the tenant to pay any amount to the landlord. Pursuant to section 72 of the *Act*, the landlord is to deduct \$2,000.00 in partial satisfaction of the monetary order.

Item	Amount
Dump fees	\$295.68
Garbage bags, VIM cleaner	\$67.69
Cleaning labour	\$2,000.00
Additional labour	\$400.00
Heating registers	\$62.54
Toilet	\$201.59
Range	\$204.04
Fridge	\$166.66
Tiling	\$1000.00
Hardwood flooring	\$1,400.00
Lumber	\$500.00
One month rent	\$1,612.00
Subtotal:	\$7,910.20
Less security deposit	(\$2000.00)
Total:	\$5,910.20

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.

Conclusion

I issue a monetary order in the landlord's favour in the sum of **\$6,010.20**. The tenants must be served with this Order as soon as possible. Should the tenants 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: September 26, 2019

Residential Tenancy Branch