



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRESDO CAPITAL LTD (FORMERLY 1176182 BC LTD) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on March 29, 2019, in which the Landlord requested monetary compensation from the Tenants, authority to retain their security deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on June 13, 2019.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

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.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?

3. Should the Landlord recover the filing fee?

Background and Evidence

In support of their claim, the Landlord, M.B., testified as follows. He stated that the tenancy was for a one year fixed term from September 24, 2018 to September 24, 2019. The rental unit is a three bedroom single family dwelling in a residential area. The monthly rent was \$3,350.00 payable on the 24th of each month and the Tenants paid a security deposit of \$1,675.00.

Neither party submitted a copy of the residential tenancy agreement in evidence.

The Landlord stated that the Tenants gave notice to end their tenancy on March 23, 2019, and abandoned the property. The further stated that they told the Landlords that there was an emergency and they had to leave the country and they left the key on the stove.

The Landlord testified that the new tenants moved in on May 21, 2019. He confirmed that they pay rent of \$3,300.00 per month. The Landlord did not provide a copy of the new tenancy agreement in the material.

The Landlord alleged that the Tenants turned the rental property into an illegal gambling den. He stated that he was unaware of this until the tenancy ended. On March 24, 2019 the Landlord's mother and his step father attended the rental property and at that time they informed the Landlord that the house was extremely damaged and that the Tenants had turned the home into a gambling den. The police were called and when the police arrived they found a large amount of gambling paraphernalia. The windows had been completely boarded up from the inside and the walls had been covered in soundproofing. The police instructed the Landlord to call the Joint Illegal Gambling Investigation Team as well as the CRA. The police could not arrest anyone as there was no gambling going on at that time.

The Landlord stated that the Tenants had soundproofed the inside of the home by attaching soundproofing material to the walls; in doing so they had created over 500 holes in the textured walls. He also stated that they were smoking inside to such an extent that it required weeks to remove the smell. Additionally, the carpets were ruined from stains, which he assumed were caused by spilled alcohol, as there were approximately 50 bottles of empty alcohol bottles left in the rental which the Landlord assumed they were selling. He claimed that it took three weeks just to get the smoke smell out of the rental and the carpets required industrial cleaning, which was unsuccessful and as a result the carpets were replaced.

The Landlord stated that they first became suspicious that something was up as they had an insurance adjustor who wanted to come into the property for the purposes of insuring the property and was having difficulty gaining entry. The Landlord gave the insurance agent the Tenants' number to arrange a time. The Insurance adjustor finally stated that he could not get

in touch with the Tenants who kept “blowing them off”. Finally the adjuster said they were coming in no matter what. At that time, the Tenants gave notice to end their tenancy.

When the Landlord found out what was going on, the Landlord gave the Tenant, R.F. a week to try to fix the damage and mitigate their loss.

The Landlord testified that his family’s renovation company (which is owned by his mother and stepfather) was renovating another house and left that property to deal with the subject rental unit.

Although the Landlords initially claimed the sum of \$20,350.00 on their Application, they confirmed that this figure was an estimate. At the hearing they confirmed they sought \$16,173.00 for the following:

Out of pocket expenses	\$9,708.00
57 days loss of rent	\$6,365.00
Filing fee	\$100.00
TOTAL CLAIMED	\$16,173.00

The Landlord stated that the rental unit remained unoccupied for 57 days while the repairs and cleaning occurred

In support of their claim the Landlords provided numerous photos of the rental unit taken both before the tenancy began as well as photos taken at the end of the tenancy. These photos showed significant staining the carpet, holes in the walls, as well as photos of the soundproofing materials.

In response to the Landlord’s testimony, the Tenant, R.F., testified as follows. R.F. denied they operated an illegal gambling den although he admitted they used the rental home for playing games, doing karaoke and hosting parties. The Tenant stated they rented the house for “chilling and entertainment” and they had approximately 4-5 people in the home smoking at a given time. He confirmed that they put up the soundproofing and boarded up the windows so that they would not disturb the neighbours.

The Tenant conceded that they were smoking inside. He noted however that the lease did not indicate it was non-smoking so they believed they could smoke inside.

In terms of the Landlord’s claim for \$9,708.00 in out of pocket expenses, the Tenant stated that this was an exaggerated claim. He stated that the property was not in as bad of condition as claimed by the Landlord as they hired a professional sanitizing company to come in and steam clean and clean the property and hired a construction company to come in on March 29, 2019 to patch and paint the walls. R.F., claimed that they left the house in a “livable” condition. Photos submitted by the Tenants show two individuals repairing holes in the wall. He also stated that

the Landlord took photos *before* the repairs were done by the Tenants, as on March 24, 2019 the Landlord called the Tenants and told them to fix the damage. They did so on March 29, 2019, but as they paid the cleaning company and a construction company in cash, they did not have any receipts.

In terms of the \$9,708 claimed by the Landlord for out of pocket expenses, R.F. further noted that the Landlord claimed to have replaced the carpet, yet there is no such amount claimed on the receipt.

R.F. submitted that the Landlords made racial comments to them and suggested that the Landlords were only trying to get money from them because they are rich.

In reply the Landlord conceded that the tenancy agreement made no mention of smoking.

On the date the hearing reconvened I summarized the R.F.'s testimony to him, although he asked for more time to complete his submissions at the end of the last hearing, he stated he no longer required more time to testify. He then stated that he did not live at the rental unit during the tenancy but others did spend the night there on occasion.

Although I offered the Tenant, C.T., an opportunity, he did not testify.

In reply the Landlord M.B. testified as follows. In terms of the Tenants' allegation that they had the property professionally sanitized and repaired and the photos submitted by the Landlord were taken *before* they had this work done, the Landlord stated that no such work was done by the Tenants or persons hired by the Tenants. He confirmed that on March 28, 2019 he received a photo from the Tenant, R.F. via WhatsApp which showed the house looking in good condition; in such good condition that he scheduled a showing of the rental unit to prospective renters on April 1, 2019. He was overseas at the time and as such he hired his parent's contracting company to look at the house. He then received a call from his step father who stated that the showing had to be cancelled because of the holes in the walls, the mouldy carpeting, etc. M.B. submitted that the photos they received from the Tenants were strategically taken and simply did not depict the condition of the walls and flooring.

M.B. further stated that the boarding of the windows and then smoking of the rental unit was not reasonable and was why the bulk of the claim relates to the walls and carpet as the smoke damage was so extensive. He noted that only \$600.00 was for the cleaning, but the carpets were mouldy because of all the alcohol spilled on the carpet and the repair of the hundreds of holes in the wall.

The Landlord stated that this was a brand-new house when they moved in and was bought from “flippers” such that it was in new condition.

The Landlord stated that the Tenants did not pay their hydro and water sewer and garbage utility bills such that there was \$417.00 outstanding at the time the tenancy ended. He noted that at the time he filed for dispute resolution he was unaware these invoices remained outstanding.

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 Landlords have 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 that the Tenants caused substantial damage to the rental unit.

The evidence confirms that the Tenants boarded up the windows of the rental unit and attached soundproofing to the walls so that they could use the rental unit for gambling, karaoke and partying. While people may have stayed at the rental unit on occasion it is clear the Tenants did not regularly stay at the rental unit, rather they used it for “chilling and hanging out”.

The Tenants admit they and their guests smoked in the rental unit. The parties agreed that the tenancy agreement did not prohibit smoking. While smoking may have been permitted, I agree with the Landlord that numerous people smoking in a building at the same time, with the windows boarded up thereby eliminating any possibility of fresh, is not reasonable. I accept the Landlord’s evidence that by smoking in the rental unit in this manner the smell of smoke permeated the rental unit, such that the Landlords incurred additional cost to remove the odour from the rental unit.

The Landlords submitted that the most problematic damage was the 500+ holes in the walls where the Tenants attached soundproofing, as well as the destruction of the carpet due to mold caused by the spilling of alcohol.

Based on the evidence before me, I find that the Tenants caused significant damage to the walls by attaching soundproofing materials to the textured walls. The photos submitted in evidence show extensive staining of the carpets as well. I also accept the Landlords' evidence that they tried to minimize their losses by first attempting to clean the carpet and when that was unsuccessful the carpet was replaced. I have reviewed the photos submitted by the Landlord, as well as the detailed receipts provided in evidence, and find that the amounts claimed by the Landlords to repair and clean the rental unit to be reasonable when considering the extent of the damage caused by the Tenants. I therefore find the Landlords are entitled to recover these costs from the Tenants.

The Tenants claim that they hired professionals to clean and repair the rental unit to a "liveable standard". They also claim that the Landlords took photos before they were able to complete the cleaning and repair. They further claimed that as they paid cash they were not able to provide receipts in evidence. While the Tenants may have done some cleaning and repairs at the end of the tenancy, I find they have submitted insufficient evidence to support their claim that they hired professionals to clean and repair the unit. Further, while the unit may have been "livable" to their standards, I find that it was not left reasonably clean and undamaged as required by section 37 of the *Act*. I find that further cleaning and repairs were necessary to ensure the unit could be re-rented. As noted previously, I find the amounts claimed by the Landlords to be reasonable considering the condition in which the rental unit was left by the Tenants.

I also accept the Landlords' evidence that due to the condition in which the Tenants left the rental unit the Landlords were not able to re-rent the rental unit and suffered a loss of 47 days rental income. I therefore find they are entitled to recover these sums from the Tenants.

Having been substantially successful the Landlords are also entitled to recover the \$100.00 filing fee.

Conclusion

The Landlords claim for monetary compensation for the cost to repair and clean the rental unit, loss of rental income and recovery of the filing fee is granted. The Landlords are entitled to the sum of **\$16,173.00** calculated as follows:

Out of pocket expenses	\$9,708.00
57 days loss of rent	\$6,365.00
Filing fee	\$100.00
TOTAL CLAIMED	\$16,173.00

I authorize the Landlords to retain the Tenants \$1,675.00 security deposit and I grant the Landlords a Monetary Order for the balance due in the amount of **\$14,498.00**. This Order must

be served on the Tenants and may be filed and enforced 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: October 15, 2019

Residential Tenancy Branch