



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on June 14, 2019, in which the Landlords sought monetary compensation from the Tenant in the amount of \$2,333.27, authority to retain the Tenant's security and pet damage deposit and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on September 27, 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.

During her testimony the Tenant claimed she submitted evidence of electronic communication with the Landlord to the Residential Tenancy Branch on August 22, 2019. That evidence was not before me. The Landlord also denied receiving this evidence. The Tenant stated that she brought this evidence to the Residential Tenancy Branch in Burnaby on August 22, 2019, and the person with whom she spoke stated that the Branch would scan and send this information to the Landlord. Branch records make no mention of the Tenant's attendance at the Branch on this date nor is there any record of this evidence submission. As parties to a dispute are responsible for service of their documents on the other party, and it is not the practice of the Branch to attend to service of documents, on balance I find it unlikely the Tenant submitted this evidence to the Branch on August 22, 2019 as claimed by the Tenant. In any event, I accept the Landlord's testimony that he did not receive this evidence.

No other issues with respect to service or delivery of documents or evidence were raised by either party.

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 as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for the cost of repairs to the rental unit?
2. What should happen with the Tenant's security deposit and pet damage deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

In support of his claim the Landlord testified as follows. He stated that originally the tenancy began with the Tenant's mother. The Landlord bought the property in 2011, and the Tenant's mother had been living there for some time. The Landlord entered into a tenancy agreement with the Tenant in 2016. The Tenant paid a security deposit of \$600.00 and a pet damage deposit of \$300.00 which the Landlord continues to hold.

The Landlord alleged that the Tenant set fire to the fire escape twice during the tenancy, first in the summer of 2017 and the second time in the summer of 2018. The Landlord claimed that the first time he was able to repair it himself, however, the second time he needed to hire others. The fire department attended during both fires and during their second visit determined that the damage was so severe that the fire escape needed to be repaired. The cost to remove the old fire escape and rebuild new was \$2,333.27 as evidenced by the receipt submitted by the Landlord.

The Landlord stated that it was the Tenant's guest who was smoking on the fire escape and caused the fire. The Landlord confirmed that he was not present when the fire occurred. He stated that the fire alarm went off and he got a call from the fire

department to attend. He further stated that the Tenant denies responsibility for both fires and noted that the first time she was home and the second time she wasn't.

The Landlord stated that although the Tenant wasn't present during the second fire, when he attended the rental unit at the time, he met the person who acknowledged responsibility for the fire. This person stated that he was looking after the place for the Tenant and started the fire while smoking on the fire escape. The Landlord then spoke to the Tenant about the fire and her guest's responsibility; he says the Tenant initially apologized for her guest's actions and then denied responsibility.

The amount claimed by the Landlord in terms of the second fire are detailed in an invoice submitted in evidence as follows:

Fire escape stair replacement	\$1,250.00
Disposal	\$72.80
Materials	\$867.97
Shop supplies	\$80.00
Tax	\$62.50
TOTAL	\$2,333.27

The Landlord stated that the Tenant's pet also caused damage to the rental unit. The Landlord claimed that he had to replace the carpet due to her smoking and her pets at a cost of \$6,469.65. Although a receipt for this cost was provided in evidence this amount was not claimed on the Landlord's Application and was therefore not properly before me.

In response to the Landlord's claims, the Tenant acknowledged that it was her house sitter who had burned the fire escape on the second occasion. She denied that she caused the fire the first time.

The Tenant claimed that the fire escape had been declared unsafe before the second fire such that it required replacement in any event. She stated that she was not able to obtain confirmation of this from the fire chief who she claimed was away since January 2019.

As noted in the Introduction section of this my Decision, the Tenant stated that she had text messages and email communication with the Landlord wherein she informed him that the fire escape was not safe. That evidence was not before me. The Tenant

further stated that she stepped out on the escape in March and her foot went right through.

The Tenant confirmed that it was her position that the fire escape needed to be replaced, no matter what. She said that it was delayed for so long and then couldn't be delayed any further.

In reply to the Tenant's testimony and submissions the Landlord confirmed that he was not aware of when the fire escape was built. He stated that the rental building was built in 1910, however he believed that the fire escape was likely 20 years old.

The Landlord stated that the first fire was minimal, and only two boards had to be replaced.

In terms of the Tenant's claim that the fire escape had already been deemed unsafe the Landlord stated that he was not made aware of this. He also stated that when the fire department attended the first time they never said this to him.

In terms of the extent of the second fire the Landlord noted that the fire escape was four flights of stairs. He stated that the top flight of stairs needed to be replaced in its entirety. The rental unit was actually two stories, such that the unit was on the second and third floor. He noted that the stringers and some of the boards/planks were severely burned and needed to be replaced.

The Landlord confirmed that he received messages from the Tenant about the condition of the fire escape. He also saw where her foot left an impression in some cedar wood which was "punky".

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.

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. *Residential Tenancy Policy Guideline 1* provides that a tenant is 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.

After consideration of the testimony and evidence of the parties, and on a balance of probabilities, I find that the Tenant is responsible for the second fire which damaged the fire escape. Although it was her house sitter/guest who caused the fire, the Tenant is responsible for the actions and negligence of her guests.

Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item.

In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* which provides in part as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

...

Policy Guideline 40 also provides a table setting out the useful life of most building elements. Wooden fire escapes are not included on this table. In such case, *Guideline 40* provides as follows:

Items that do not appear in the table

If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer.

I find that the wooden fire escape most closely resembles the table items: decks and porches which have a useful life of 20 years respectively. That said, presumably a fire escape would be constructed to a more significant standard given the purpose of the structure such that I find a wooden fire escape has a useful life of more than 20 years.

The Landlord testified that he was unaware of the age of the fire escape, estimating that it was likely 20 years old.

Although not articulated in terms of the *Guidelines* the Tenant submitted that the fire escape was due to be replaced in any event of the fire, suggesting it was no longer safe, and that it had in essence reached its useful building life.

I accept the Landlord's testimony that the fire department attended on the occasion of the first fire and did not instruct the Landlord to replace the wooden fire escape.

Presumably, had the stairs been in the condition as claimed by the Tenant, such direction would have been given to the Landlord.

In all the circumstances I find that the amounts claimed by the Landlord to replace and rebuild the fire escape should be discounted by 60% as to award the Landlord full compensation would put him in a better position than he would have been had the fire not occurred. This 60% deduction is to be applied to the cost of materials, shop supplies and tax. Conversely, I find he is entitled to the full cost of disposal for the burned fire escape as that expense only arose due to the damage caused by the Tenant's guest.

As the Landlord has been substantially successful in his application, I also find he should recover the \$100.00 filing fee.

Although the Landlord submitted a receipt for the cost to replace the carpets, he did not make a related claim on his Application for Dispute Resolution. I informed the Landlord that as that claim was not properly before me I would give him leave to reapply for monetary compensation for these losses.

Conclusion

The Landlord is entitled to monetary compensation from the Tenant in the amount of **\$1,076.99** for the following:

Item	Claim	Discount	Awarded
Fire escape stair replacement	\$1,250.00	\$750.00	\$500.00
Disposal	\$72.80	0.00	\$72.80
Materials	\$867.97	\$520.78	\$347.19
Shop supplies	\$80.00	\$48.00	\$32.00
Tax	\$62.50	\$37.50	25.00
TOTAL CLAIMED	\$2,333.27		
Recovery of filing fee pursuant to section 72 of the Act	\$100.00	0.00	\$100.00
TOTAL AWARDED			\$1,076.99

I grant the Landlord authority to retain the Tenant's security deposit of \$600.00 and the Tenant's pet damage deposit of \$300.00 towards the amounts awarded and I grant the Landlord a Monetary Order for the **\$176.99** balance outstanding. This Monetary Order

must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

The Landlord is at liberty to apply for further monetary compensation for the cost to replace the carpets in the rental unit. The Landlord is reminded to consider the useful life of carpet as set out in the tables in *Residential Tenancy Policy Guideline 40*. Further, the parties are reminded of the strict 2 year time limit imposed by section 60 of the *Residential Tenancy Act*.

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 23, 2019

Residential Tenancy Branch