



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S, OPN

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on August 13, 2019, in which the Landlord sought an Order of Possession, monetary compensation from the Tenants, authority to retain their security deposit and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 9:30 a.m. on October 18, 2019. Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 10:11 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. The Landlord testified that she served the Tenants with the Notice of Hearing and the Application on August 26, 2019 by registered mail. The Landlord testified that she sent the package to the Tenant, M.M., to the address she provided as her forwarding address. A copy of the registered mail tracking number for this package is provided on the unpublished cover page of this my Decision. She confirmed that the package which was sent to T.O. was sent to the rental unit. The Landlord stated that at the hearing on August 27, 2019 the T.O. claimed that he had moved from the rental unit. The Landlord confirmed that although he had left items at the rental unit he instructed the Landlord to dispose of those items such that to her knowledge, he did not return to the rental unit.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant, M.M. was duly served as of August 31, 2019 and I proceeded with the hearing in her absence.

As the Tenant, T.O., had vacated the rental unit as of August 27, 2019, I am unable to find that he was served with notice of the hearing and the Landlord's Application as he was no longer residing at the rental unit when the registered mail package would have been delivered.

As both parties must be served individually with an Application for monetary compensation, and I am unable to find that the Tenant, T.O., was served with notice of this hearing, this Decision and any resulting Order apply to the Tenant M.M. only.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's 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 Landlord confirmed her email addresses during the hearing as well as her understanding that this Decision and Order would be emailed to her.

The parties attended a hearing on August 27, 2019 at which time an Order of Possession was granted; as such, the Landlord's request for an Order of Possession was no longer required.

Similarly, the Landlord filed an amendment in which they increased the monetary claim to include the \$100.00 filing fee awarded on August 27, 2019. As that amount has

already been awarded to the Landlord, I am unable to grant the Landlord's request a second time.

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

The Landlord testified that this tenancy began January 11, 2019. Monthly rent was \$1,872.00 and the Tenants paid a \$900.00 security deposit.

Pursuant to the August 27, 2019 Decision the Landlord was authorized to retain \$100.00 from the Tenants' security deposit such that she continues to hold the sum of \$800.00.

The Landlord stated that the Tenants did not pay rent for the month of August 2019, despite the fact T.O. remained in occupation until at least August 27, 2019.

The Landlord further stated that due to the difficulties arising in this tenancy (which are evidenced in some of the communication provided in evidence), she sold the rental unit on September 13, 2019.

The Landlord filed two Monetary Orders Worksheets in respect of her application. In the first worksheet she estimated some of the costs she incurred. In the second worksheet filed she provided more accurate costs; additionally, as she sold the property she was not able to complete some of the required repairs, such that those items were not included on the second worksheet. During the hearing the Landlord also provided testimony to clarify her monetary claim as follows:

Loss of rent for August 2019	\$1,900.00
Repairs and cleaning	\$2,213.40
Filing fee	\$100.00
TOTAL CLAIMED	\$4,213.40

The Landlord testified that the Tenants left the rental unit damaged and did not clean it as required at the end of the tenancy. She provided in evidence photos of the rental unit which depicted considerable items left in the rental unit, damage to the walls due to numerous hubcaps attached to the inside walls, damage to the siding of the house, and damage to the landscaping. She stated that when cleaning the rental unit, she also suffered 150 flea bites. Additionally, a wasp nest was also found within the Tenants' couch which was disturbed by movers who were in turn repeatedly stung when they were moving it.

The Landlord also provided in evidence the move in and move out condition inspection report confirming the condition in which the rental unit was left at the end of the tenancy.

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 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 considering the Landlord's undisputed testimony and evidence and on a balance of probabilities I find the Landlord is entitled monetary compensation for the amounts claimed.

I find that the Tenant, T.O., overheld this tenancy and did not vacate the rental unit until late August such that the Landlord suffered a loss of rent for August 2019. The Landlord is therefore entitled to monetary compensation for loss of rent.

I also find the Tenants failed to clean and repair the unit as required by section 37 of the *Act*. In making this finding I am persuaded by the information contained in the Move In and Move Out Condition Inspection Report, which according to section 21 of the *Residential Tenancy Regulations*, is to be afforded significant evidentiary weight. I am further persuaded by the photos submitted in evidence by the Landlord that the Tenants left numerous items at the rental unit, and that the rental unit was not cleaned by the Tenants at the end of the tenancy and was left damaged.

I am satisfied, based on the Landlord's testimony and documentary evidence, that she suffered the monetary losses claimed. I find that the Landlord was not able to complete

all the required repairs as she decided to sell the rental unit. This was clearly a difficult decision for her as while she had years of successful tenancies, this tenancy was so difficult she no longer wished to deal with the stress of being a Landlord. Although it is possible the selling price of the home was impacted by its condition, I was not provided sufficient evidence to make such a finding. I therefore award the Landlord compensation pursuant to section 67 of the *Act* for the amounts claimed for *actual* expenses only.

As the Landlord has been successful in her application I award her recovery of the filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of \$4,213.40 calculated as follows:

Loss of rent for August 2019	\$1,900.00
Repairs and cleaning	\$2,213.40
Filing fee	\$100.00
TOTAL CLAIMED	\$4,213.40

I authorize the Landlord, pursuant to sections 38 and 72 of the *Act*, to retain the Tenants' \$800.00 security deposit towards the amounts awarded.

The Landlord is granted a Monetary Order for the balance due in the amount of **\$3,413.40**. This Order must be served on the Tenant, M.M., 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 21, 2019

Residential Tenancy Branch