



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on November 8, 2019, wherein the Landlord sought monetary compensation from the Tenants in the amount of \$21,314.00, authority to retain their security deposit and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 9:30 a.m. on January 3, 2020. 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 10:15 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 November 9, 2019 by registered mail. A copy of the registered mail tracking numbers is provided on the unpublished cover page of this my Decision.

The Landlord advised that the package she sent to the Tenant D.A. was returned. She then dropped it off at his home. She further advised that the package to K.C. was not returned. The Landlord testified that D.A. is K.C.'s uncle and was a signatory to the

residential tenancy agreement. The address to which the packages were sent is D.A.'s residential address, and where K.C. lived after the tenancy ended.

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 Tenants duly served as of November 14, 2019 and I proceeded with the hearing in their absence.

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 specifically reference by the Landlord and 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 would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that this one-year fixed term tenancy began June 9, 2019. Monthly rent was \$1,900.00. The Tenants paid a \$950.00 security deposit. A copy of

the residential tenancy agreement was provided in evidence and which confirmed this information.

Although the fixed term was to end June 8, 2019, the Tenants moved out of the rental unit in the fall of 2019. The Landlord stated that, on October 4, 2019, she received a text message from the D.A. who wrote that his niece moved out of the rental unit at the end of September 2019.

The Landlord stated that she has not been able to re-rent the rental unit as of the date of the hearing on January 3, 2020.

The Landlord testified that the condition of the rental unit at the end of the tenancy was such that she had difficulty finding tenants. She also stated that she has not been able to afford to repair the damage caused by the Tenants which has impacted the appeal of the rental unit. The Landlord claimed compensation for unpaid rent as well as the cost to clean and repair the rental unit. In support of her claim she filed a Monetary Orders Worksheet in which the following amounts were claimed:

Carpet cleaner rental	\$64.40
Material/tools fixed up and cleaning	\$98.56
Balcony blind	\$79.56
Material/tools fixed up and cleaning	\$77.78
Junk removal	\$200.00
Travel/gas	\$190.00
Carpet fix (estimate)	\$1,666.98
Laminate floor fixing (estimate)	\$2,196.00
Labour for cleaning at 24 hours	\$720.00
Fob from strata	\$100.00
Replace two doors	\$500.00
8 months unpaid rent	\$15,200.00
Interest from bank at 3%	\$456.00
<u>Paint (wall) expenses</u>	<u>\$1,000.00</u>
TOTAL CLAIMED	<u>\$22,549.28</u>

As noted above, the Landlord claimed 8 months of unpaid rent for the balance of the fixed term. She stated that she is now considering reducing the monthly rent.

The Landlord further claimed that there are a lot of other units available in the community in which the rental unit is located. She stated that she actively marketed the rental unit and showed it to many prospective tenants and in support she provided evidence of her marketing efforts. The Landlord testified that she has had a lot of applications, but the prospective tenants have been giving false references and she is much more cautious after this tenancy.

The Landlord stated that the rental unit was only three years old when the tenancy began such that it was in very good shape. However, the Tenant significantly damaged the rental unit. She stated that she was not able to repair the carpet and the laminate flooring as she has not had the money to do so.

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.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I will first deal with the Landlord's Application for unpaid rent. The evidence confirms the parties entered into a fixed term tenancy. I accept the Landlord's testimony that she was advised the Tenant wished to end her tenancy on October 4, 2019. Pursuant to section 45 of the *Act*, the effective date of the notice is November 30, 2019. I therefore find the Landlord is entitled to monetary compensation for unpaid rent for October and November 2019.

The Landlord claimed she was unable to re-rent the unit as of the date of the hearing in January of 2020. She stated that due to the condition of the rental unit, as well as the Christmas holidays she has had difficulty re-renting. The Landlord stated that she was just now considering lowering the rent.

While a Tenant is potentially liable for all rent due pursuant to a fixed term tenancy, a Landlord has an obligation to mitigate their losses pursuant to section 7(2) of the *Act*.

In the case before me, I find the Landlord has not fulfilled her obligation to minimize her losses. Had she lowered the asking price she may have been able to secure new tenants; in which case she could have requested the difference between what the Tenant was contractually obligated to pay pursuant to the fixed term tenancy agreement the reduced rent paid by her new tenants. Further, there is currently a housing crisis in British Columbia such that rental units seldom stay vacant for any period of time. Even considering the condition the rental unit was left, I find the Landlord could have readied it for occupation in December of 2019. In all the circumstances, I dismiss the Landlord's claim for six further months of unpaid rent.

The Landlord also claimed interest charges from her bank for the interest she claims to have been charged on a loan incurred to cover the missed rent payments. In support she provided a document wherein the following was noted:

**Rent borrow from the bank at
3% interest**

\$ 1900x8x3%=\$456

The above calculation includes unpaid rent for the entire 8 months claimed, which has not been awarded to the Landlord. Further, the Landlord did not provide any specific details of the loan from the bank, such as when the debt was incurred, to support a finding that she borrowed these funds to cover the missed mortgage payments. The Landlord's need to mitigate her losses is further highlighted by her claim for interest charges as had the Landlord incurred debt to cover the mortgage payments, one would have thought she would reduce the asking price for the rent to avoid this additional cost. In all the circumstances, I decline the Landlord's claim for interest charges.

I will now address the Landlord's claim for cleaning and repair costs.

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.

I accept the Landlord's testimony that the rental unit required cleaning at the end of the tenancy. Photos provided by the Landlord support this claim as do the receipts supplied by the Landlord. Although not an exhaustive list, the photos depict the following:

- damage to the walls in several rooms;
- numerous items left in the refrigerator, kitchen bedroom, bathroom and hallway closet

- damage to the exterior electrical outlet cover;
- significant staining in the living room carpet;
- damage to the living room floor;
- damage to the doors; and,
- water damage on the kitchen laminate floor.

The inescapable conclusion, after a review of the photos submitted by the Landlord, is that the Tenants made no effort to clean or repair the rental unit at the end of the tenancy. I therefore award the Landlord the amounts claimed for cleaning, ~~and repairs,~~ and painting of the rental unit, including labour costs, save and except for the amounts claimed for travel expenses as those are not recoverable under the *Act*.

As the Landlord has been substantially successful in her claim, I also award her recovery of the filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$9,603.28** for the following:

2 months unpaid rent	\$3,800.00
Carpet cleaner rental	\$64.40
Material/tools for repairs to the rental unit and cleaning	\$98.56
Balcony blind	\$79.56
Material/tools for repairs to the rental unit and cleaning	\$77.78
Junk removal	\$200.00
Carpet repair	\$1,666.98
Laminate floor repair	\$2,196.00
Labour for cleaning at 24 hours	\$720.00
Replacement Fob	\$100.00
Replace two doors	\$500.00
<u>Painting</u>	<u>\$1,000.00</u>
Filing fee	\$100.00
TOTAL AWARDED	\$9,603.28
	<u>\$10,603.28</u>

I grant the Landlord authority, pursuant to sections 38 and 72 of the *Act*, to retain the Tenants' \$950.00 security deposit towards the amounts awarded and I grant the

Landlord, pursuant to section 67, a Monetary Order for the balance due ~~\$8,653.28~~
\$9,653.28. 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: January 17, 2020

Corrected: February 19, 2020

Residential Tenancy Branch