



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 575877 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

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

- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing although I left the teleconference hearing connection open until 2:00 p.m. to enable the tenants to call into this teleconference 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 Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he sent the tenant the Notice of Dispute Resolution Proceedings package twice by registered mail on November 29, 2019. The first package was sent to the forwarding address given to him by the tenant and the second was sent to the tenants' parents house. The tracking numbers for the mailings are recorded on the cover page of this decision. The landlord has also provided screenshots of social media posts whereby the tenant asks what would happen if she didn't attend a Residential Tenancy Branch dispute resolution hearing. Based on the evidence before me, I am satisfied the tenant is deemed served with the Notices of Dispute Resolution Proceedings package five days after mailing, on December 4, 2019 in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began on November 1, 2018 as a fixed term tenancy set to expire on October 31, 2019. Rent was set at \$1,600.00 per month payable on the first day of the month. A security deposit of \$800.00 was collected and is still being held by the landlord. No condition inspection report was conducted at the commencement of the tenancy.

The tenancy ended by mutual agreement on October 31, 2019. The tenant provided the landlord with a notice in mid-October advising she would be moving out at the end of the month, which the landlord accepted. The tenant vacated the unit some time before October 24th and sent the landlord a text message advising the landlord to *'doc off what u need to then just give me the remaining \$'*. The tenant advises the landlord in the same string of messages: *'I give u consent to take cleaning & moving money out of my damage'*. The landlord testified he sent an email on October 30, 2019 to the tenant to meet with him to deal with the state of the rental unit but she did not respond. A copy of the email was not provided as evidence.

After the tenant left, the landlord went to the rental unit on October 24 to inspect. He sent his restoration contractor an email saying *'everything ins a mess'* and asked them to clean it and fix damaged items. Noted in the email are: missing door handle on the back door, broken blinds (x3), radiator grill needs to be replaced, bathroom towel rack is pulled loose, bathroom shelf was pulled down, toilet seat is loose. The landlord testified he had a new tenant for the beginning of November and the work had to be done right away. The landlord had an existing relationship in place with this contractor, he was familiar and confident in his work and he knew this contractor was capable of doing the job within the time constraints.

The contractor was called as a witness and gave the following testimony.

He is the foreman and went in for an hour to inspect. He charged the landlord \$75.00 for the assessment. He had two of his employees perform the work of removing the tenant's leftover belongings, repairing the floor, fixing a damaged door handle and a

broken toilet seat. The contractor purchased the supplies required to do the work and charged it back to the landlord, however no receipts for the supplies was provided. The contractor had to take special precautions in removing the tenant's items since there was evidence of drug paraphernalia around, including hypodermic needles and syringes. Also, there were dog feces that needed to be removed and urine stains around the rental unit that needed abatement. The witness testified it took the '*better part of the day*' to remove the tenant's items and drug paraphernalia.

The witness testified that it took 26 or 26.5 hours for his crew of two to bring the rental unit back to liveable condition. The two employees charge \$72.50 and \$64.00 for their labour as they are both 'red seal carpenters'.

On the contractor's invoice is a charge of \$92.80 for a dump fee, \$479.59 for replacement blinds, \$130.08 for new door handles and a toilet seat, \$67.03 for a replacement outside door handle, and \$250.00 for cleaning services. Photos of the rental unit taken the day the landlord took possession of the unit was provided as evidence.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, 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.

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 21 of the Residential Tenancy Regulations state:

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.

The tenant did not attend the hearing to dispute the landlord's claim. Given that the landlord's testimony is undisputed, I find that the tenant did not provide any evidence to contradict the landlord's evidence about damage to the rental unit and the cleaning required to bring it back to rentable condition. While there was no condition inspection report produced for this hearing, I have not been provided with any evidence from the tenant to show that she didn't leave the rental unit reasonably clean and undamaged except for reasonable wear and tear in violation of section 37. (point 2 of the 4 point test).

I have reviewed the photographs provided by the landlord to corroborate his claim and find the damage to the unit by the tenant alleged by him was a result of the tenancy. (point 1). The invoice provided by the contractor and his testimony that it took 26 hours to clean, repair and repaint the rental unit is undisputed. Given the state of the rental unit depicted in the photographs provided, I am satisfied the contractor's employees required a total of 52 hours to clean and repair the rental unit. I find the costs associated with purchasing the materials to perform the repairs are reasonable as the landlord has provided the photographs to corroborate the damages claimed. I am

satisfied with the landlord's reasons for choosing this contractor to perform the work to be reasonable as well, given the short time frame the landlord had to find a competent tradesman to do the work before the next tenancy he had lined up began. The landlord has provided evidence of mitigating his claim. (points 3 and 4). I find the landlord is entitled to compensation as sought in the amount of \$4,909.28 in accordance with section 67 of the *Act*.

Section 38(4) states a landlord may retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. I am satisfied the tenant agreed in writing that the landlord could retain her security deposit and in accordance with the offsetting provisions of section 72, the landlord is entitled to retain the full security deposit of \$800.00.

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.

Item	Amount
Contractor's invoice	\$4,909.28
Filing fee	\$100.00
Less security deposit	(\$800.00)
Total	\$4,209.28

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$4,209.28**.

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: March 30, 2020

Residential Tenancy Branch