



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

AC and TC attended for the tenants. The tenant GA joined the hearing 91 minutes after the hearing started. The total hearing time was 110 minutes. All tenants are collectively referred to as “the tenants”. The tenants called the witness KS.

The landlord ES attended for the landlords (“the landlord”).

There was initial disagreement and argument about timely service of the landlord’s materials. After discussion, the tenants acknowledged they had been sufficiently served with the Notice of Hearing and Application for Dispute Resolution and requested that the hearing proceed. In considering the evidence and the testimony, I find that the landlord’s application and evidence was sufficiently served pursuant to section 71(2)(c) of the *Act*.

The parties agreed the landlord had returned the security deposit and pet deposit to the

tenants. This aspect of the landlord's claim was withdrawn and is dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agreed that the tenancy began on January 1, 2018 for a fixed one-year term and ended when the tenants vacated on June 14, 2019. Rent was \$2,500.00 monthly payable on the first of the month. The parties agreed the tenants could pay one-half the monthly rent for the final month. The tenants provided a security deposit and pet deposit which has been returned to the tenants. A copy of the tenancy agreement was submitted which contains the following clause:

Tenants are responsible for maintaining the yard. Yard is in excellent condition as of today, Nov. 12, 2017. Sprinkler system should be utilized for watering and upkeeping the new [illegible] (grass).

The landlord clarified the landlord's claims as follows:

ITEM	AMOUNT
Carpet cleaning	\$226.13
Outstanding rent	\$125.00
Repairs	\$1,100.00
Blinds	\$111.99
Lawn maintenance and seeding	\$862.00
Utilities bill	\$75.07
TOTAL CLAIM	\$2,500.19

Each claim is discussed in turn.

Carpet cleaning

The tenants agreed to a monetary award in favour of the landlord for this aspect of the claim. I accordingly grant the landlord an award in the amount claimed of \$226.13.

Outstanding Rent

The landlord claimed outstanding rent of \$125.00.

The landlord explained that the parties agreed that, if the tenants paid rent on time, the monthly rent was reduced by \$50.00.

The parties agreed that discussion took place about increasing this reduction to \$100.00. The tenants testified that as a result of these discussions, they understood rent was reduced by this amount (\$100.00) beginning April 1, 2019. Accordingly, they paid \$2,400.00 on each of April and May 2019 and \$50.00 less on June 1, 2019 for the half month rent the parties agreed was payable for that month. The tenants pointed out the text from the landlord dated March 6, 2019, in which the landlord said the “bottom line” is the rent is \$2,400.00 if paid on time.

The landlord denied that there was any such agreement. She stated that the \$100.00 amount was a discussion only, pending an agreement between the parties for a continuing rental. She testified that any increase in reduction of rent from \$50.00 to \$100.00 was contingent on a new tenancy agreement being negotiated. As the tenants ended up giving notice to vacate, the landlord asserted that the tenants were not entitled to the \$100.00 reduction monthly; they were only entitled to \$50.00 monthly for April and May 2019 and \$25.00 for June, for a total owing the landlord for rent of \$125.00.

Repairs

The parties agreed on the following:

- There were scratches on the floor caused by the tenants' two dogs;
- There was damage to trim caused by dogs;
- The tenants fixed a hole in the drywall but did not paint over it;
- The tenants affixed hardware to the garage floor which the landlord removed.

The landlord testified that all above items were noted in the condition inspection report on moving out as signed by the parties; a copy of the report was submitted as evidence.

The landlord submitted a receipt in the amount of \$1,100.00 for repair costs for the damage for the above items.

The tenants acknowledged responsibility for all the damage. The witness KS agreed that she observed all the damage on moving out, except for the garage.

The tenants asserted that they believed they did not have to compensate the landlord anything even though they acknowledged responsibility for the damage. The tenants' primary objection to compensating the landlord for any of these expenses was that the landlord failed to provide them with quotes for the work despite the fact they asked for them. The tenants stated they wanted to see how much the repairs would be and whether the cost was reasonable. Without consulting with the tenants, the landlord went ahead on her own, had the work done, and paid the invoices.

The tenants acknowledged that they could have repaired the items but did not do so.

The landlord stated that she did not provide quotes to the tenants before carrying out the work as she found that they "acted hostile". They would "bring a ton of people" to a meeting and the landlord decided to look after the repairs and apply to have the matter arbitrated. As a result, she obtained the best prices she could from sources that to her were reputable and reliable; she proceeded with the work without prior notification to the tenants.

Blinds

The landlord testified that the blinds for a door were removed by the tenants, damaged, and required replacement at a cost of \$111.99 for which the tenant submitted a receipt. On the condition inspection report on moving in, the blinds are noted to be in good condition. The damage was noted in the condition inspection report on moving out.

The tenants acknowledged that they removed the blinds from the door and that they were broken. However, they claimed that the blinds were faulty when they moved in and normal wear and tear caused them to become useless as a result of which the tenants removed the blinds. The tenants claimed that the landlord is not entitled to any compensation.

Lawn maintenance and seeding

The agreement between the parties included a responsibility of the tenants to maintain the lawn. The landlord submitted a photograph of the unit purportedly taken at the beginning of the tenancy showing a well-cared for lawn although the tenants asserted the lawn was not in ideal condition at that time.

In a text of July 26, 2018 to the tenants, a copy of which was submitted, the landlord observed that the yard was “looking really rough. Grass is deader than dead. Weeds 3 ft tall everywhere”. The tenants replied that “we will make sure that we get better with the maintenance” and that they were uncertain “how to use the hose”.

When the tenants vacated, the landlord noted in the condition inspection report that the lawn was “destroyed”. The landlord maintained that the tenants caused damage to the lawn primarily through neglect which required subsequent lawn maintenance and reseeding of \$862.00 for which the landlord submitted receipts.

The tenants denied any responsibility for the poor condition of the lawn at the end of the tenancy. They acknowledged that the landlord expressed concern about the condition of the lawn during the tenancy. However, the tenants stated that there were many factors, all of them beyond their control, that contributed to the poor state of the lawn at the end of the tenancy.

For example, the tenants stated that they did not know how to operate the sprinkler, the landlord failed to attend the unit as promised to assist with sprinkler operation, the lawn was “badly seeded”, “unhealthy” and “crab grass with dirt” to begin with, there were watering restrictions, and they did the best they could to keep the lawn in good condition in difficult conditions. The tenants submitted no documentary evidence in support of their assertions.

The landlord replied that significant financial resources had been invested in the lawn prior to the beginning of the tenancy and it was in perfect shape at the beginning. As a result of the tenants’ neglect, the maintenance and reseeding were required. The landlord submitted photographs of the lawn requiring maintenance at the end of the tenancy.

Utilities bill

The landlord testified that the tenants vacated leaving a water bill owing of \$75.07 for

which the landlord seeks reimbursement.

The tenants denied any responsibility for the outstanding water bill. They testified that they negotiated a reduction in the bill to \$20.07 which was paid.

However, the landlord submitted copies of invoices and correspondence from the utility company stating that this bill “belongs to the previous tenants”, that is, the tenants in this dispute.

Analysis

Both parties submitted considerable evidence in a 110-minute hearing including correspondence, photographs and copies of many texts. I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

During the hearing, the tenants were acrimonious, complaining about their time spent on the proceedings and how the landlord was to blame. They repeatedly stated how they tried to settle the claim and how one-sided the landlord’s testimony was. They insisted that they did not owe anything, despite acknowledging responsibility for the damage, because they should have been consulted before contractors were hired and the work carried out.

The tenants complained about the arbitrator and the conduct of the hearing. They repeated several times that the arbitrator’s conduct of the hearing was “unfair” as they were not given equal time compared to the landlord and the arbitrator had “already decided the case”.

The arbitrator reminded the tenants many times not to repeat testimony, cautions which were ignored. One tenant joined the hearing 90 minutes into the hearing without a clear explanation of why he was late and wanted to argue issues already discussed. The tenants stated they would “go to court” after the hearing and requested confirmation of the arbitrator’s name so they could take the matter further.

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.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement.

Section 7(1) of the *Act* provided 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.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

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

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award. I observed that the landlord was well prepared. Her testimony was calmly and carefully presented and was substantiated throughout by documentary evidence.

I will consider each claim in turn.

Outstanding rent

The landlord claimed compensation for unpaid rent of \$125.00 for a rent reduction taken by the tenants. The tenants assert the parties agreed to this reduction.

The parties agreed to the amount of rent paid. The issue is whether the tenants were required to pay the additional \$50.00 per month.

The landlord agreed that the tenants had almost always paid rent on time. Each party was convinced of the correctness of their understanding.

I find it is likely the tenants believed the parties had an agreement for the additional reduction. I accept the tenants' explanation of why they held back an extra \$50.00 a month (for a total reduction of \$100.00) and find the explanation reasonable. I find the conduct of the parties at the time and the text could be construed as an agreement for the additional reduction.

I therefore find the landlord has failed to meet the burden of proof on a balance of probabilities with respect to this aspect of the landlord's claim. I dismiss this claim without leave to reapply.

Repairs

The landlord claimed compensation for repairs in the amount of \$1,100.00. Both parties agreed the repairs were needed and the tenants were responsible. The tenants' main rationale for denying compensation is that the landlord did not discuss the cost of repairs before carrying them out.

I have considered all the evidence submitted by the landlord, including the receipts, the photographs showing the unit needed repairs, and the condition inspection report on moving in and moving out in which the tenant agreed the unit needed repairs. There is no requirement on the landlord to have estimates of repairs prepared and submitted to the tenants for approval. The landlord testified she made efforts to hire trustworthy, competent workers. The tenants acknowledge they could have repaired the items themselves at their own cost and on their own terms but choose not to do so.

I found the landlord credible and well prepared. The landlord was sincere in her testimony and provided well documented claims. For these reasons, I give the landlord's testimony, supported by written evidence, the greatest weight.

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the repairs were needed, as indeed the tenants acknowledged, the tenants are responsible for the items, the landlord incurred \$1,100.00 in expenses, the expenses are reasonable, and the landlord took all reasonable steps to mitigate expenses. I find the landlord is entitled to a monetary award in the amount requested for this aspect of the claim.

Blinds

The landlord claimed compensation for replacement of one set of blinds in the amount of \$111.99. Both parties agreed the blinds were damaged. The tenants' said the blinds were faulty, and they required replacement through no fault of theirs.

I have considered all the evidence submitted by the landlord, including the receipt, the photographs, and the condition inspection report on moving in which the blinds are noted as being in good condition.

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the blinds were damaged, as indeed the tenants acknowledged, the tenants are responsible for the damage, the landlord incurred \$111.99 in expenses, and the landlord took all reasonable steps to mitigate expenses. I find the landlord is entitled to a monetary award in the amount requested for this aspect of the claim.

Lawn maintenance and seeding

The parties acknowledged that the tenant had a responsibility to take care of the lawn. The landlord asserts the tenants did not meet this obligation, resulting in landscaping costs to the landlord of \$862.00.

The tenants maintained that the lawn was in poor condition when the tenancy began and that a variety of factors, such as water restrictions, were beyond their control, resulting in the poor state at the end of the tenancy.

I accept the landlord's evidence as credible that the lawn was in good condition when the tenancy began and was in poor condition when the tenancy ended. I accept the landlord's testimony, supported by invoices, that the landlord incurred the expenses claimed. I commented earlier on the veracity of the landlord's evidence. I find the landlord's testimony to be believable and straight forward as it was supported by photographs and receipts.

I find the tenants' evidence to be unpersuasive, self-serving and not credible. Their testimony is not supported by written or photographic evidence. The tenants acknowledged during the tenancy in submitted texts to the landlord that the yard was in very poor shape and said that they would do better. I find the tenants acknowledged a dereliction in their duty and a promise to the landlord to correct their behavior, which

they did not do.

I find the tenants were not hampered in caring for the lawn by conditions beyond their control. I find the tenants willfully neglected this obligation and must reimburse the landlord for the expenses claimed.

I find the landlord has met the burden of proof on a balance of probabilities with respect to this aspect of the claim.

I therefore grant the landlord a monetary order in the amount claimed of \$862.00.

Utilities bill

I accept the landlord's testimony, supported by documentary evidence, that the landlord paid a water account of \$75.07 which was billed to the tenants and payable by them under the terms of the agreement.

I find that the tenants were surprised at the amount of the bill and I accept the testimony that an effort was made to have the provider reduce the amount. However, I find the landlord paid the balance on the bill and that payment of the invoice was the responsibility of the tenants.

I therefore grant the landlord a monetary award in the amount requested under this heading.

Filing fee

As the landlord has been successful, I grant the landlord a monetary award of \$100.00 for reimbursement of the filing fee.

Summary

In summary, I grant the landlord a monetary award as follows:

ITEM	AMOUNT
Carpet cleaning (agreed by tenants)	\$226.13
Repairs	\$1,100.00
Blinds replacement cost	\$111.99
Utilities bill	\$75.07

Lawn maintenance and seeding	\$862.00
Reimbursement of filing fee	\$100.00
TOTAL AWARD	\$2,475.19

Conclusion

The landlord is granted a monetary order in the amount of **\$2,475.19**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Supreme Court (Small Claims Division) to be enforced as an Order of that Court.

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 20, 2020

Residential Tenancy Branch