



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Luxury Realty
and [tenant name suppressed to protect privacy]

DECISION

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

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.

AA, the agent for the landlord attended (“the landlord”). The landlord had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional thirty minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on November 24, 2019 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on November 29, 2019.

The landlord provided the Canada Post Tracking Number in support of service to which I refer on the cover page as well as a copy of the receipt. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on November 29, 2019.

Issue(s) to be Decided

Is the landlord entitled to 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.

Background and Evidence

The landlord provided uncontradicted affirmed testimony as the tenant did not attend the hearing.

The landlord testified the tenancy began February 1, 2018 and ended when the tenant vacated on October 31, 2019. Rent was \$5,637.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$2,750.00 which the landlord holds.

A condition inspection was conducted on moving in. The landlord submitted a copy of the report which was signed by both parties and indicated the unit was in good condition in all material aspects.

The tenant failed to attend a scheduled condition inspection at the end of the tenancy. The landlord issued a Final Notice to Attend in the RTB form. The Notice was dated November 8, 2019 and scheduled the inspection for November 11, 2019 at 11:00 AM. The landlord sent the Notice to the tenant by email on November 8, 2019 at the email address used by the tenant in correspondence with the landlord. The landlord also

mailed the Notice to the tenant on November 8, 2019. The tenant did not attend. A copy of the Notice was submitted by the landlord which includes the provision that the right of the tenant to the return of the security deposit no longer exists if the tenant fails to attend two opportunities for inspection.

The landlord completed the condition inspection without the tenant present and submitted a copy of the report. The landlord testified that considerable damage was done to the unit by the tenant as detailed in the report. The walls were damaged, the unit needed cleaning, items were left behind by the tenant and required disposal, a lightbulb needed to be replaced, the floor was damaged and required repairs, two doors required repair, and the garage door was damaged.

The landlord corresponded with the tenant and submitted copies of the emails. The tenant agreed in emails of November 7 and 20, 2019 to pay compensation to the landlord for the following expenses:

ITEM	AMOUNT
Wall damage - repairs	\$735.00
Cleaning	\$281.13
Disposal	\$81.05
Lightbulb	\$24.00
Floor repairs	\$500.00
Door repair	\$472.50
Cleaning	\$131.25
TOTAL	\$2,224.93

The landlord also requested compensation for the following expenses:

ITEM	AMOUNT
Door repair	\$588.00
Disposal	\$78.75
Garage Door repair	\$744.45
TOTAL	\$3,736.13

In support of the request for compensation for the expenses in the above table, the landlord submitted testimony supported by copies of the condition inspection report on moving in and moving out, photographs, and receipts.

The landlord requested reimbursement of the \$100.00 filing fee.

In summary, the landlord's claim is as follows:

ITEM	AMOUNT
Wall damage	\$735.00
Cleaning	\$281.13
Disposal	\$81.05
Lightbulb	\$24.00
Floor refinish	\$500.00
Door repair	\$588.00
Door repair	\$472.50
Cleaning	\$131.25
Disposal	\$78.75
Garage Door repair	\$744.45
Reimbursement filing fee	\$100.00
AMOUNT CLAIMED	\$3,736.13

The landlord requested authorization to apply the security deposit of \$2,750.00 to the monetary award as follows:

ITEM	AMOUNT
Monetary award requested	\$3,736.13
(Security deposit)	(\$2,750.00)
TOTAL MONETARY AWARD REQUESTED	\$986.13

Analysis

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.

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 have considered all the evidence submitted by the landlord, including the receipts and the photographs showing the unit needed cleaning and repairs. The landlord was credible, and well organized; the landlord's testimony was well-supported by documentary evidence including receipts, a condition inspection report on moving in and moving out, and copies of emails from the tenant consenting to reimbursement for several of the expenses.

Taking into account the evidence and testimony, I find the landlord has met the burden of proof on a balance of probabilities that the unit needed cleaning and repairs when the tenant vacated as described by the landlord, the tenant is responsible for the lack of cleanliness and the damage, the landlord incurred the amount claimed in expenses, the expenses are reasonable, the landlord spent the amount of time claimed to clean and repair the unit, 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.

As the landlord is successful in the landlord's claim, the landlord is granted a monetary award of \$100.00 for reimbursement of the filing fee.

The landlord is granted authorization to apply the security deposit to the award.

In summary, the award is as follows:

ITEM	AMOUNT
Monetary award under section 67, detailed above	\$3,736.13
(Security deposit)	(\$2,750.00)
TOTAL MONETARY AWARD	\$986.13

Conclusion

The landlord is entitled to a monetary order in the amount of **\$986.13**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) 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: April 06, 2020

Residential Tenancy Branch