



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing was adjourned from a previous hearing dated March 6, 2020. An interim decision arising out of the first hearing was issued and this decision should be read in conjunction with the March 6, 2020 interim decision.

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant's agent, landlord S.S. and the landlords' agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords' agent testified that the landlords' application for dispute resolution, amendment and evidence were served on the tenant via registered mail on April 24, 2020. The tenant's agent testified that he received the landlord's package on May 5, 2020. The tenant's agent did not raise any concerns regarding service of the landlords' package.

I find that the tenant was served with the above package in accordance with section 89 of the *Act* and in accordance with my March 6, 2020 interim decision.

Preliminary Issue

The tenant's agent entered into evidence details pertaining to a new application for dispute resolution filed by the tenant against the landlord and set for hearing on August 21, 2020. The file number is located on the cover page of this decision.

At the beginning of the hearing I reminded both parties of the following except from my March 6, 2020 interim decision:

I order that this is not an opportunity for either party to submit an additional Application for Dispute Resolution to be crossed or joined with any of the Applications for Dispute Resolution currently before me.

Pursuant to my March 6, 2020 interim decision quoted above, I informed the parties that I would not be hearing the tenant's new application for dispute resolution.

Preliminary Issue- Amendment

The landlords' agent testified that the landlords discovered new damage to the subject rental property on April 24-25, 2020. The landlords' agent testified that the tenant removed a drainage hose from the washing machine which caused a flood and serious damage. The landlords' agent sought an amendment to include this claim.

I informed the parties that I would not amend the landlords' current application as the tenant would not have a reasonable period of time to review and respond to the new claim. I granted the landlords leave to file a new application for dispute resolution against the tenant which could be crossed with the tenant's future claim, as long as it was filed in the timelines set out in the Residential Tenancy Branch Rules of Procedure.

Issues to be Decided

1. Are the landlords entitled to a Monetary Order for damage or compensation under the Act, pursuant to section 67 of the *Act*?
2. Are the landlords entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 13, 2014 and has ended. Monthly rent in the amount of \$1,910.00 was payable on the first day of each month.

The landlords' agent testified that a move in condition inspection report was completed with the tenant on December 13, 2014. The report was entered into evidence. The document bears an initial under section Y which states: I agree that this report fairly represents the condition of the rental unit. The move in condition inspection report is not signed by the landlord or the tenant in the signature section.

Both parties agreed that a previous hearing between the parties regarding the subject rental property was held on January 3, 2020 and a decision dated January 15, 2020 was rendered. The file number for the previous hearing was provided in evidence and is located on the cover page of this decision. In the previous hearing, the tenant applied to cancel a One Month Notice to End Tenancy for Cause. The arbitrator found as follows:

I find, on a balance of probabilities, the tenant's representative was acting as the landlord to the strata management company in order to sublet the rental unit in August and November of 2019 without the consent of the landlord, breaching a material term of the tenancy. Policy Guideline 19 and section 47 of the Act list subletting as a material breach to the tenancy agreement and this is a reason to end a tenancy.

Thus, I confirm the Notice and dismiss the tenant's Application without leave to reapply.

Section 55 of the Act states:

55 (1)If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order if possession of the rental unit if
(a)the landlord's notice to end tenancy complies with section 52 [form and

*content of notice to end tenancy], and
(b)the director, during the dispute resolution proceeding, dismisses the
tenant's application or upholds the landlord's notice.*

I find that the Notice complies with section 52 of the Act. The effective date of the Notice was December 31, 2019, and the tenant did not vacate the property.

I note that section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a Notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to end tenancy that is compliant with the Act.

Based on my decision to dismiss the tenant's Application for dispute resolution and pursuant to section 55(1) of the Act, I find that this tenancy ended on the effective date of the Notice, December 31, 2019.

Therefore, pursuant to section 55 of the Act, I find the landlord is entitled to an Order of Possession effective two days after service.

Both parties agree that the tenant applied for Review Consideration of the above decision. The tenant's application for Review Consideration was dismissed without liberty to reapply.

The landlords' agent testified that this tenancy resulted in the following damages:

Item	Amount
Unpaid rent: December 2019- February 10, 2020	\$4,456.67
Postage	\$35.75
Supreme Court application fee	\$120.00
Bailiff fees	\$1,437.28
Replace bathroom door	\$400.00
Replace window coverings	\$1,002.00
Replace fobs and keys	\$150.00
Repair window handles	\$35.82
Cleaning and carpet cleaning	\$400.00
Filing fee	\$100.00
Total	\$8,134.52

Unpaid Rent/ Court fees/ Bailiff fees/ Keys and fob

The landlords' agent testified that the Order of Possession was posted on the tenant's door on January 16, 2020. The landlord's agent testified that the tenant did not respond to the Order of Possession and did not return the keys and fobs to the landlord, so the landlord filed the Order of Possession with the Supreme Court of British Columbia, at a cost of \$120.00. The landlord then hired a bailiff to attend and remove the tenant from the subject rental property on February 10, 2020. A receipt for same in the amount of \$1,437.28 was entered into evidence.

The landlords' agent testified that the tenant did not pay any rent for December 2019, January 2020 or February 2020. The landlords' agent testified that the landlords are seeking unpaid rent for December 2019 and January 2020 in the amount of \$1,910.00 per month (\$3,820.00) plus pro-rated rent for the first 10 days in February 2020 in the amount of \$636.67.

The tenant's agent testified that the tenant moved out of the subject rental property on December 31, 2019, in accordance with the One Month Notice to End Tenancy for Cause. The tenant's agent testified that this is evidenced by the January 15, 2020 decision in which the arbitrator stated:

I find that this tenancy ended on the effective date of the Notice, December 31, 2019.

The tenant's agent testified that the tenant decided to move out in advance of the January 3, 2020 hearing because if he lost his case, it would not be possible to move out in two days. The tenant's agent testified that the tenant planned on moving back in if he won his case.

The tenant's agent testified that the tenant sent the landlords the keys to the subject rental property via registered mail on December 12, 2019. The tracking number was provided and is located on the cover page of this decision. The landlords' agent testified that the landlords did receive a registered mail package in December 2019 bearing the tracking number provided by the tenant's agent, but that this package contained the tenant's evidence for the January 3, 2020 hearing, not the tenant's keys.

The tenant's agent testified that the concierge confiscated the tenant's fobs because they believed the tenant was illegally subletting the subject rental property. The landlords' agent testified that the concierge did not confiscate the tenant's fob.

The tenant's agent testified that the tenant paid the landlords December 2019 and January 2020's rent via e-mail money transfer. The tenant entered into evidence interac e-transfer details which state that \$1,910.00 was received by the email recipient on November 29, 2019 and \$1,910.00 was receives by the email recipient on December 31, 2019.

The landlords' agent testified that the e-mail address stated on the e-transfer details is not the landlords' e-mail address. Both parties agreed that in September of 2019 both parties agreed to pay rent via e-mail money transfer. The landlords' agent entered into evidence e-mail confirmation of the tenant's e-transfer payment for October and November 2019's rent. The e-mail address of the successful rent payments is stated on the email confirmations. The email address used by the tenant for October and November 2019's rent payments is different than the email used in the December 2019 and January 2020 rent payments.

The tenant's agent testified that the problem was one of communication as the landlord has more than one e-mail address. No proof of correspondence between the parties using a difference e-mail address than the one used in the successful October and November 2019 rent payments was entered into evidence by the tenant. The landlords' agent testified that the tenant was only provided with one email which they have used to communicate for the past five years and it is the email address the October and November rent payments were sent to.

The tenant's agent testified that since the tenant moved out on December 31, 2019 in accordance with the One Month Notice, the tenant does not owe rent for February 2020 and only paid January 2020's rent in the hope that he would be successful in his application to cancel the One Month Notice. The tenant's agent testified that since the tenant moved out in accordance with the One Month Notice, the landlord did not need to hire a bailiff and the tenant is therefore not responsible for the cost of the court filing fee and bailiff.

Postage

The landlords' agent testified that the landlord is seeking to recover registered mail costs of over \$35.75 for documents sent to the tenant for this hearing. Receipts for same were entered into evidence.

Replace bathroom door

The landlords' agent testified that the tenant made a hole in the bathroom door which therefore had to be replaced. A photograph of the door with the hole in it was entered into evidence. The landlords' agent testified that the door was original to the subject rental property built in 2006. The landlords' agent testified that it cost \$410.00 to replace. A receipt was not entered into evidence. The move in condition inspection report states that the bathroom door was in good condition at the beginning of the tenancy.

The tenant's agent testified that the tenant did not damage the bathroom door.

Replace window coverings

The landlords' agent testified that the tenant damaged two window coverings in the living room at the subject rental property which required replacement. A photograph of a damaged window covering was entered into evidence. A receipt for the replacement of one window covering in the amount of \$501.00 was entered into evidence. The landlords' agent testified that the landlords could not afford to replace both window coverings, so they only replaced one but are seeking \$1,002.00 for the cost of replacing both. The move in condition inspection report states that the window coverings in the subject rental property were in good condition. The landlords' agent testified that the window coverings were original to the subject rental property built in 2006.

The tenant's agent testified that the tenant did not damage the blinds

Repair window handles

The landlords' agent testified that the tenant damaged the two handles used to open and close a window. The handles required replacement. A photograph of a damaged window handle was entered into evidence. The landlords' agent testified that the handles cost \$17.91 each to replace. No receipts were entered into evidence. The move in condition inspection report states that the windows in the subject rental property were in good condition. The landlords' agent testified that the windows were original to the subject rental property built in 2006.

The tenant's agent testified that the tenant did not damage the window handles.

Cleaning and carpet cleaning

The landlords' agent testified that the tenant did not clean the subject rental property after moving out and did not clean the carpets. The landlords' agent testified that the landlord is seeking \$400.00 for the cost of cleaning the subject rental property and the cost of cleaning the carpets. Photographs of a dirty apartment and carpets were entered into evidence.

The tenant's agent did not dispute that the subject rental property was left dirty and the carpets were not shampooed. The tenant's agent testified that concierge would not let the tenant's cleaning person attend at the subject rental property because they believed she was an illegal sub-tenant. The tenant's agent testified that the property was left dirty because the tenant's cleaning person was not allowed to enter.

The landlords' agent testified that the tenant could have gone to the lobby and let the cleaning person in as a guest.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The landlords' agent testified that the move in condition inspection and report was completed with the tenant. The tenant's agent testified that the tenant and the landlords did not complete a move in condition inspection report. The report entered into evidence is not signed by the tenant or the landlord but does contain an initial. I find that it is not possible to determine whose initial is on the move in condition inspection report. I find that the landlords have not proved, on a balance of probabilities, that the report was conducted with the tenant. I therefore attribute little to no weight to the move in condition inspection report entered into evidence.

Unpaid Rent/ Court fees/ Bailiff fees/ Keys and fob

The previous decision stated:

I find that the Notice complies with section 52 of the Act. The effective date of the Notice was December 31, 2019, and the tenant did not vacate the property.

I note that section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a Notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to end tenancy that is compliant with the Act.

Based on my decision to dismiss the tenant's Application for dispute resolution and pursuant to section 55(1) of the Act, I find that this tenancy ended on the effective date of the Notice, December 31, 2019.

Therefore, pursuant to section 55 of the Act, I find the landlord is entitled to an Order of Possession effective two days after service.

The tenant's agent quoted the third paragraph in the above quotation in his assertion that the tenancy ended on December 31, 2019. I find that this paragraph was taken out of context of the larger quote shown above. The previous arbitrator found that "*The effective date of the Notice was December 31, 2019, and the tenant did not vacate the property.*" The third paragraph quoted above refers to when the tenancy should have ended, not when the tenant actually moved out. Had the tenant actually moved out on December 31, 2019, and Order of Possession would not have been necessary. I find that the tenant did not move out of the subject rental property on December 31, 2019 and overheld the property.

The tenant's agent testified that the tenant mailed the landlords his keys on December 12, 2019, nearly three weeks before the tenant's agent testified the tenant moved out. The landlords' agent testified that the package mailed on December 12, 2019 did not contain keys. I find that the tenant's agent's testimony does not accord with common sense and is not credible. I find it highly unlikely that the tenant would mail the landlord his keys prior to moving out, as this would make entering and exiting the subject rental property problematic. I prefer the testimony of the landlords' agent over that of the tenant's agent. Based on the landlords' agent's testimony, I find that the tenant did not return the keys or fobs to the landlords.

I find that the tenant was still residing at the subject rental property on January 16, 2020 when the Order of Possession was posted on the door. I find that the tenant was deemed served with the Order of Possession on January 19, 2020, three days after it's posting. I find that the tenant did not vacate the subject rental property in accordance with the Order of Possession.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,910.00 on the first day of each month and failed to do so.

I find that the tenant sent the December and January rent payment to the wrong e-mail address; therefore, the tenant did not pay the landlord rent. I find that incorrect e-mail address was at best a mistake of the tenant and at worst, a fraudulent attempt to avoid paying rent. I find that in either scenario, the tenant failed to pay rent to the landlord and is required under sections 26 and 67 to pay rent for December 2019 to February 10, 2020 in the amount of \$4,456.67.

I find that since the tenant did not return the keys or fobs to the landlords, and did not otherwise inform the landlords that he vacated the subject rental property, it was reasonable for the landlords to believe that the tenant still resided in the subject rental property and that a bailiff would be required to legally regain occupation of the subject rental property.

Section 37(2)(b) of the *Act* states that when a tenant vacates a rental unit, the tenant must 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.

Based on the landlords' agent's testimony I find that the tenant did not return the keys to the subject rental property thereby breached section 37(2)(b) of the *Act*. I find that the failure of the tenant to return the keys after the tenant was served the Order of Possession led to a bailiff being retained. I find that the tenant is there responsible for the cost of the court filing fee in the amount of \$120.00 and the bailiff fee in the amount of \$1,437.28. While the court filing fee receipt was not entered into evidence, I take judicial notice that the filing fee is \$120.00 and that it would not have been possible to retain the bailiff without paying the \$120.00 fee. I find that the tenant is responsible for the cost of new keys and fobs. No receipt for keys and fobs were entered into evidence so the landlords have not established the value of their loss.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that the landlords are entitled to nominal damages for the replacement of the keys and fobs in the amount of \$150.00.

Postage

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the *Act*. With the exception of compensation for filing the application, the *Act* does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the landlords' claim for postage.

Replace bathroom door/ replace broken window handle

The testimony of the parties regarding damage to the bathroom door and window handles differs. I find that the landlords have failed to establish the move in condition of the subject rental property and have therefore failed to prove that the damage claimed

was caused by the tenant. I therefore dismiss the landlords' claim for the cost of replacing the bathroom door and window handles.

Replace window coverings

The testimony of the parties regarding damage to the window coverings differs. I find that the landlords have failed to establish the move in condition of the subject rental property and have therefore failed to prove that the damage claimed was caused by the tenant. I therefore dismiss the landlords' claim for the cost of replacing the window coverings.

Residential Tenancy Branch Policy Guideline #40 is a general guide for determining the useful life of building elements for determining damages which the director has the authority to determine under the Residential Tenancy Act. Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

If the useful life of a particular item has expired, the landlord will not be entitled to the cost of repairing or replacing the item.

Residential Tenancy Branch Policy Guideline #40 states that the useful life of drapes and venetian blinds is 10 years. The landlord's agent testified that the blinds were original to the property building 2006, making them approximately 13 years old, past the expected life of the blinds. I therefore dismiss the landlords' claim for blinds on this ground as well.

Cleaning and carpet cleaning

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline #1 states that at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Based on the testimony of both parties, I find that the tenant did not leave the subject rental property reasonably clean. I accept the landlord's agent's testimony that the

tenant could have invited the cleaning person in as a guest and could have had the subject rental property cleaned. I find that the tenant breached section 37(2)(a) of the *Act* and that the landlords suffered a loss as a result. I find that the landlords have not established the value of that loss as no receipts or estimates were entered into evidence; however, the landlords have established that the tenant breached the *Act*. I therefore find that the landlords are entitled to nominal damages for cleaning in the amount of \$200.00 and nominal damages for carpet cleaning in the amount of \$200.00.

As the landlords were successful in their monetary claim, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
Unpaid rent: December 2019- February 10, 2020	\$4,456.67
Supreme Court application fee	\$120.00
Bailiff fees	\$1,437.28
Replace fobs and keys	\$150.00
Cleaning and carpet cleaning	\$400.00
Filing fee	\$100.00
Total	\$6,663.95

The landlords are provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: May 13, 2020

Residential Tenancy Branch