



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 the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for damage, pursuant to sections 37 and 67;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The landlord and the landlord's agent (the landlord) attended this teleconference hearing and were given a full opportunity to be heard, to present sworn testimony and to make submissions.

The tenants did not attend this hearing. I left the teleconference connection open until 11:50 A.M. in order to enable the tenants to call into this hearing scheduled for 11:00 A.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 hearing.

The landlord testified that subject to a Substituted Service Proceeding decision dated April 17, 2020, the landlord served the Notice of Hearing documents and evidence to the tenants by email. The email addresses are recorded on the cover page of this decision. The landlord provided a copy of the emails he sent dated April 20, 2020 at 1:51 P.M. and at 1:52 P.M. The emails contained the notice of hearing document, the substituted service decision and a monetary order worksheet with his evidence. Pursuant to sections 88, 89 and 71 of the Act, I find the tenants were sufficiently served in accordance with the Act.

Preliminary Issue – Address Amendment

At the hearing the landlord pointed to a typographical error where he mistyped the rental unit's street address by one number. He pointed that his evidence and the Tenancy Agreement contained the correct rental unit and street address.

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the Tenancy Agreement and documentary evidence all contain the rental unit's street address, I find it reasonable to amend the typographical error on the address to the correct one number, in accordance with Rule of Procedure 4.2.

Preliminary Issue – Late Photographic Evidence

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or **may not** be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

During the hearing the landlord realized that his assistant had not filed the pictures of the condition of the property at move – in. The landlord stated that due to the size of numerous pictures the assistant had to upload the evidence in separate bundles. The landlord asked that I allow the upload of the photographs. He stated that the tenant was served with the evidence and this would clearly show in the upload. I allowed the

upload of the photographs with the caveat that I would reserve my judgement regarding their use.

In accordance with Rule of Procedure 3.17, I decline to accept the landlord's late photographic evidence as they are dated March 15, 2020 which is after the tenancy started and could not depict the condition at the start of this tenancy which was in March 2019. Accepting this late evidence would be prejudicial to the tenant as I have no way of verifying that they received it. Consequently, the photographs and documents uploaded on June 2, 2020 are hereby excluded.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to sections 37 and 67;
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
3. Is the landlord authorization to recover the filing fee from the tenant, pursuant to section 72.

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified and submitted evidence that this tenancy started on March 15, 2019 as fixed term agreement ending on May 30, 2020. The rental unit was a fully furnished single-family home. Rent was \$2,990.00 per month. The tenants paid a security deposit in the amount of \$1,495.00 and a pet damage deposit in the amount of \$1,000.00.

The tenancy ended earlier on January 31, 2020 after the tenants served the landlord their notice on January 2, 2020 to end the fixed term agreement on January 31, 2020. The deposits were awarded to the landlord, in partial satisfaction for unpaid rent for the months of December 2019, January 2020, February 2020 and March 1 to 14th, 2020 in a hearing held at the Residential Tenancy Branch on March 8, 2020 (The March hearing). The March hearing awarded the landlord a monetary order in the amount of \$6,745.30 which included \$1,494.00 for liquidated damages for the costs associated

with re-renting the unit. The file number for that case is recorded on the cover page of this decision.

In the March hearing the landlord withdrew his monetary claim for damages against the tenants and was granted leave to re-apply.

In this hearing the landlord provided undisputed testimony and evidence that when the tenants moved out on January 31, 2020, they left without returning the keys and leaving the rental unit in a dirty and damaged condition that required extensive hours of cleaning by two professional cleaners, as well as repairs by trade's people, before the property could be re-rented on March 15, 2020 at \$2,750.20 per month (at a reduced amount).

The landlord testified that the single-family house was built in 2017 and prior to the tenants renting the unit, only the landlord had occupied the property. The rental unit was a fully furnished single family home. The landlord testified and submitted evidence to support his claim that the tenants permanently damaged furniture with cigarette burns, left damaged vanity drawers, scratched furniture, stained linens with bleach, left the rugs dirty and stained with dog urine and red wine marks, left damaged patio furniture and accessories, left heat damaged dining room table, removed and did not replace glasses and plates from the kitchen, dented and damaged the fridge door to the point it required replacement, left damaged walls and damaged wall trim requiring professional repair, as well as leaving garbage that had to be removed; all of which caused the landlord to spend a large amount of time and money bringing the property back to a rentable condition.

The landlord testified that the tenant signed a condition inspection report on move – in, but refused to participate on the condition inspection report on move – out. The tenants did not show to the scheduled inspection at the end of tenancy and then would not provide their address or respond to the landlord's emails requesting their forwarding address, hence the reason they applied for substituted service provisions for the notice of this hearing.

The landlord pointed to the condition inspection report that records that at move – in, the tenants agreed by signing that there were no repairs needed, and that the rental home was furnished. The conditions inspection report stipulates that "the furniture provided will be shown in the photos of the property pal report. These items must be left in the same condition and location as shown in the photos".

In this hearing the landlord also seeks to recover loss of rent from March 15 to May 31, 2020 in the amount of \$600.00 plus late rent fee for the month of January and February 2020 in the amount of \$50.00.

The landlord testified that he started advertising the rental unit on January 6, 2020 at \$2990.00 per month with the unit available as of February 1, 2020, however the landlord could not re-rent the property until March 15, 2020 at a reduced amount of \$2,750.00 per month – incurring a loss of \$240.00 per month.

The landlord submitted a Monetary order worksheet summarizing the loss and damages resulting from this tenancy as:

Document number	Description	Amount
1	Rent loss Mar 15 to May 31, 2020	\$120 - March \$240 - April \$240 - May
2	Late rent fee Dec and Jan	\$50.00
3	Cleaning Invoice	\$750.00
4	Cleaning Invoice	\$60.00
5	Shampoo rugs and furniture	\$537.60
6	Property Damage-repairs	\$504.00
7	Re-key lock	\$82.01
8	Crossed-out	\$0.00
9	Replace bleach stained linens	\$115.31
10	Damaged pots and pans	\$100.00
11	Damaged Fridge door	\$1,395.85
12	Utility Charges while vacant	\$225.74
13	Broken outdoor plant pots	\$100.00
14	Heat damage to dining table - Devaluation	\$250.00
15	Furniture puncture - devaluation	\$50.00
16	Patio Cushion devaluation - burn holes	\$50.00
17	Floors - large scratches -devaluation	\$250.00
18	Dresser door damage - devaluation	\$50.00
19	Crossed-out	\$0.00
20	Desk scratches - devaluation	\$50.00
21	Vanity drawer - chipped front devaluation	\$392.66
22	Carpet damaged-urine and wine devaluation	\$250.00
23	Missing kitchen plates	\$25.00
24	Missing kitchen glasses	\$24.63
	Total=	\$5,912.80*
	*Corrected total=	\$5,378.20

Analysis

Principle of *Res Judicata*:

Res judicata is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the involvement of the same parties.

In the March hearing the Arbitrator heard the landlord's application for unpaid rent and utilities and found that the landlord was entitled to a monetary order in the amount of \$6,745.30 for owed rent up-to-and including March 14, 2020 as well as liquidated damages associated with the costs of re-renting the rental unit. The landlord requested to have his claims for damages adjourned and his claims for lost rent and utilities were adjudicated in the March hearing.

In this hearing the parties are identical to the March hearing which resulted in a decision granting the same landlord losses of unpaid rent and utilities from the same tenants. The loss of rent from March 15 to May 31, 2020 and late rent fee for December 2019 and January 2020, as well as for utility charges while the property was vacant ought to have been part of that claim. Requesting the same claim in this hearing is re-arguing an issue that was already adjudicated. I find the claim for loss of any and all rent, late rent fees and utilities are *res-judicata*, meaning the matter has already been conclusively decided and can not be adjudicated again.

Damages and Compensation

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; in this case the landlord bears the burden of proof.

Section 21 of the Residential Tenancy Regulation states:

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.

I find that the landlords have proved, on a balance of probabilities, that tenants signed and agreed to the condition inspection report at move-in which documents the condition of the property. I also find that the landlord provided a preponderance of photographic evidence depicting the condition of the property at the end of this tenancy to supports the landlord's claim of that the tenants damaged and left the rental unit dirty and that the furnishings were damaged and left in disrepair.

Section 37 of the Act states a tenant must leave the rental unit in reasonably condition:

Leaving the rental unit at the end of a tenancy

- 37** (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.

Based on the above, I find the tenants contravened the Act and the Tenancy Agreement and failed to leave the property in a reasonable clean condition.

I also find that the landlord suffered a loss as a result of the tenants' breach of the Act and the Tenancy Agreement; consequently, I must now decide on the amount of the loss.

I find that the landlord has proved the following losses on the balance of probabilities with a preponderance of evidence in the form of photographs, invoices and with uncontradicted testimony. I also find the landlord's cost to be reasonable and grant the following:

3	Cleaning Invoice 2 people -12.5 hrs	\$750.00
4	Cleaning Invoice 2 people -1 hr.	\$60.00
5	Shampoo rugs and furniture	\$537.60
6	Property Damage-repairs	\$504.00
7	Re-key lock	\$82.01
11	Damaged Fridge door	\$1,395.85
13	Broken outdoor plant pots	100
14	Heat damage to dining table - Devaluation	\$250.00
15	Furniture puncture	\$50.00
16	Patio Cushion - burn holes	\$50.00
17	Floors - large scratches - devaluation	\$250.00
18	Dresser door damage	\$50.00
20	Desk scratches	\$50.00
21	Vanity drawer - chipped front	\$392.66
22	Carpet damaged-urine and wine	\$250.00
	Total Granted	\$4,234.52

The landlord's claims for the following items are dismissed without leave to reapply as he has failed to establish the evidence required to quantify what was originally provided (itemization list) with the rental Unit.

9	Replace bleach stained linens	\$115.31
23	Missing kitchen plates	\$25.00
24	Missing kitchen glasses	\$24.63

As the landlord was partly successful in this application, I find he is entitled to recover part of the filing fee in the amount of \$50.00, from the tenant pursuant to section 72 of the Act.

Conclusion

I issue a monetary Order to the landlord in the amount of **\$ 4,284.52** under the terms described above. The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with the 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: June 26, 2020

Residential Tenancy Branch