



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL, MNDL, OPC

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on April 30, 2019, wherein the Landlord requested an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on March 11, 2020 (the "Notice"), monetary compensation from the Tenant for unpaid rent and the cost to clean and repair the rental unit, as well as recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 11:00 a.m. on June 8, 2020. Only the Landlord and his spouse, G.D., called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:15 a.m. Additionally, 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, G.D., and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that he served the Tenant by email, and WhatsApp on April 30, 2019.

By Director's Order dated March 30, 2020 Notice of a hearing may be served by e-mail if the sender and recipient e-mail addresses have been routinely used for tenancy matters.

The Landlord confirmed that they communicated by email with the Tenant; as such, I find that the Tenant was deemed served with Notice of this participatory hearing May 3, 2020, three days after the email was sent.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Issues to be Decided

The Landlord confirmed the Tenant vacated the rental unit on May 5, 2020 such that an Order of Possession was no longer required.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which provided that this tenancy began September 7, 2019. Monthly rent was payable in the amount of \$1,350.00 on the 30th of the month preceding the month for which the rent was payable.

The Landlord issued the Notice on March 11, 2020. He stated that his wife personally served the Tenant on March 11, 2020.

The Notice informed the Tenant they had 10 days in which to apply to dispute the Notice. The Landlord stated that the Tenant failed to make such an Application.

The Landlord testified that the Tenant failed to pay rent for April and May 2020. He also stated that although the Tenant vacated the rental unit on May 5, 2020, he has not been able to re-rent the unit due to the condition in which it was left by the Tenant.

The Landlord filed a Monetary Orders Worksheet in which the following was claimed:

| | |
|--|-------------------|
| Damage to Landlord's car caused by rats | \$318.00 |
| Minimum cost to repair parking area damage | \$2,500.00 |
| April rent | \$1,350.00 |
| May rent | \$1,350.00 |
| Application fee | \$100.00 |
| Cost to repair damage to suite | \$1,500.00 |
| TOTAL CLAIMED | \$8,468.00 |

In terms of the damage to the Landlord's car, he provided a receipt for the cost to replace the wires which had been chewed by rats. The Landlord claimed the Tenant attracted rats at the rental unit and these rats in turn chewed wires in the Landlord's vehicle. In support the Landlord also provided photos of an unsealed garbage bag on the property, as well as electronic messages he sent to the Tenant reminding them that unsealed garbage attracts rodents.

In terms of the cost to repair the damaged parking area the Landlord testified that the Tenant's vehicle leaked oil on the gravel parking area. He testified that the cost to remediate the area is between \$2,500.00 and \$10,000.00; he claimed \$2,500.00 as the estimated cost to make this repair.

The Landlord also claimed \$1,500.00 as the estimated cost to clean and repair damage to the rental unit.

Analysis

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.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

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

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

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

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I accept the Landlord's testimony that the Tenant vacated the rental unit on May 5, 2020. I also accept his evidence that the Tenant failed to pay rent for April and May 2020. I therefore award the Landlord **\$2,700.00**. The Landlord failed to submit any evidence to support a finding that the rental unit could not be rented for June 2020, as such I dismiss his claim for compensation for unpaid rent for June 2020.

The Landlord claimed \$318.00 as the cost to replace wires in his car which were chewed by rats. The Landlord alleges the rats were attracted to the rental property due to garbage left outside by the Tenant. Documentary evidence provided by the Landlord indicates the Tenant's improper containment of garbage was an issue during this tenancy. I accept the Landlord's evidence that the garbage left outside the residence attracted rats which in turn chewed the wires in the Landlord's vehicle. I find it

reasonably foreseeable that improper containment of garbage would result in the presence of rodents and I therefore find the Tenant is liable for this loss. The receipt provided by the Landlord confirms he paid **\$318.00** to repair this damage; accordingly, I award the Landlord the requested compensation.

The Landlord claimed the sum of \$2,500.00 for the estimated cost to remediate the parking area where the Tenant's car leaked automobile fluids. During the hearing the Landlord testified that this was an estimated cost as he was informed it could cost as much as \$10,000.00. Although this may be the case, the Landlord failed to submit any documentary evidence, such as a quote from a remediation company, to support the amount claimed. As noted, a party claiming monetary compensation from the other must prove the actual amount required to compensate for the claimed loss or to repair the damage. In this case, and without any supporting evidence, I am unable to find the Landlord is entitled to the sum of \$2,500.00. Should the Landlord obtain an *accurate* quote or complete this remediation and have proof of the *actual* cost, he may reapply for dispute resolution. I therefore dismiss this portion of the Landlord's claim with leave to reapply.

Similarly, the Landlord provided an estimate of the amounts he expects to pay to clean and repair damage the suite caused by the Tenant. I was not provided with an accurate quote or proof the \$1,500.00 claimed represents the actual amount required to compensate the Landlord for this claimed loss or to repair the damage. Again, should the Landlord obtain an accurate quote or complete this work and provided a receipt for the amounts he paid he may reapply for dispute resolution. The Landlord's claim for the estimated cost to clean and repair damage to the suite is dismissed with leave to reapply.

As the Landlord has enjoyed some success in his Application, I award him recovery of the **\$100.00** filing fee.

Conclusion

The Tenant vacated the rental unit such that the Landlord's request for an Order of Possession was no longer required. I therefore dismiss this portion of the Landlord's claim without leave to reapply.

The Landlord's request for monetary compensation from the Tenant is granted in part.

The Landlord is entitled to monetary compensation in the amount of **\$3,118.00** for the following:

| | |
|---|-------------------|
| Damage to Landlord's car caused by rats | \$318.00 |
| April rent | \$1,350.00 |
| May rent | \$1,350.00 |
| Application fee | \$100.00 |
| TOTAL AWARDED | \$3,118.00 |

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 11, 2020

Residential Tenancy Branch