



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0752401 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL, MNDL, OL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on February 10, 2020, in which the Landlord requested monetary compensation from the Tenants for costs incurred to enforce an Order of Possession as well as the cost to replace the rental unit flooring.

The hearing of the Landlord's Application was scheduled for teleconference at 1:30 p.m. on June 30, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

The Landlord's representative testified that the tenancy began January 1, 2020. Monthly rent was \$1,600.00. The Tenants failed to pay rent and the Landlord obtained

an Order of Possession on January 24, 2020. A copy of the file number for that matter is included on the unpublished cover page of this my Decision.

The Landlord provided an affidavit in evidence which indicated that the Order of Possession was posted to the rental unit door on January 28, 2020.

The Landlord's representative testified that he paid a bailiff \$1,957.35 to have the Tenants removed from the rental unit as they failed to vacate when served the Order of Possession. The Landlord also had to pay the \$120.00 filing fee in the B.C. Supreme Court. In the hearing before me the Landlord sought recovery of those amounts.

The Landlord's representative also stated that the carpets were in good condition when the tenancy began as evidenced by the move in condition report. The Landlord's representative was not able to provide testimony as to the age of the carpet and guessed that they "probably" installed new carpet in January 2019.

He further stated that when the tenancy ended the carpets were significantly water damaged and stained. The Landlord's representative stated that the carpets could not be cleaned, and had to be replaced. The Landlord provided photos of the carpets in evidence before me, however the carpets had already been removed and were rolled up. He also testified that the odour of the carpets was overwhelming.

The Tenant, B.K., testified as follows. He stated that they moved from the rental property on February 4, 2020. He confirmed that they moved with the assistance of the Court bailiff. He claimed that when the bailiff came that was the first time they knew the Landlord had obtained an Order of Possession.

The Tenant stated that the carpets were not new and were in fact very old. He further claimed that the carpets were stained when they moved in.

The Tenant E.R. also testified. She stated that she did not see the Order of Possession and did not know the Landlord had filed for Dispute Resolution until the bailiff came and removed them in February 2020.

E.R. stated that in terms of the carpets, she stated that the carpets were stained when they moved in. She also stated that the carpets were over ten years old and had a lot of wear and tear on them. She also noted that they moved into the rental unit within half an hour of the previous tenants moving out such that it was not even possible for the carpets to be cleaned.

E.R. confirmed that she signed the residential tenancy agreement filed in evidence. She denied signing the move in inspection. Notably the signature on the tenancy agreement does not look like the Tenant's signature on the move in inspection, which the Tenant stated was not her signature.

In reply, the Landlord's representative stated that he received the move in condition inspection from his "building manager". He confirmed that he was not present when the Tenant purportedly signed the report.

The Landlord also confirmed that he sought an Order that he be permitted to retain the Tenant's \$800.00 security deposit towards any amounts awarded.

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.

I accept the Landlord's evidence that he obtained a Writ of Possession in the B.C. Supreme Court in furtherance of the Order of Possession he obtained at the Residential Tenancy Branch. The Arbitrator considering his Application for the Order of Possession found the Tenants were served with his Application for Dispute Resolution. There is no authority for me to disrupt such a finding.

I accept the Landlord's evidence that the Order of Possession was posted to the rental unit door on January 28, 2020. I do not accept the Tenants' testimony that they were unaware of the Order. Section 90 of the Act provides that documents posted to the rental unit door are deemed served 3 days later. The Tenants provided no evidence, aside from their testimony, to support a finding that would disrupt this deeming provision.

I further accept the Landlord's evidence that the Tenants failed to move from the rental unit when served with the Order of Possession. I find the amounts incurred by the Landlord to enforce the Order of Possession, namely the bailiff costs of **\$1,957.35** and the B.C. Supreme Court filing fee of **\$120.00** to be recoverable from the Tenants.

Conversely, I dismiss the Landlord's claim for the cost to replace the carpet. Based on the testimony before me, I am not satisfied the move in condition inspection report accurately reflects the condition of the carpets on move in. As well, the photo of the carpet which was provided in evidence, was taken after the carpet was removed and already rolled up. I was not able to see the alleged stains which might have supported a finding that the carpet needed to be replaced.

Finally, without any documentary evidence to support the Landlord's guess as to the age of the carpet, I am not able to make a finding as to the relative lifespan remaining for the carpet. Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the

original item. In order to estimate depreciation of the replaced item, Arbitrators refer to the normal useful life of the item as provided in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* which provides in part as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 also provides a table setting out the useful life of most building elements; according to this table carpets have a 10 year life span. The Tenants allege the carpet was very old and stained when the tenancy began. Without corroborating evidence I am unable to prefer the Landlord's estimate of the carpets age over that of the Tenants. As it is possible the carpet had already reached its useful life span, I dismiss this portion of the Landlord's claim.

Conclusion

The Landlord's Application is granted in part. The Landlord is entitled to monetary compensation in the amount of **\$2,077.35** including \$1,957.35 for the court bailiff costs and \$120.00 for the B.C. Supreme Court filing fee.

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain the **\$800.00** security deposit towards the \$2,077.35 awarded and I grant the Landlord a monetary Order for the balance due in the amount of **\$1,277.35**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: July 17, 2020

Residential Tenancy Branch