



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, MNDC-S, MNR-S, FF

Introduction

This hearing was convened to deal with the landlords' application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenants;
- compensation for a monetary loss or other money owed;
- a monetary order for unpaid rent;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlords and the tenants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all the considerable amount of oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). 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.

Preliminary and Procedural Matters-

The landlords' monetary claim also included a separate request for unpaid rent for June 2020; however, that claim was not discussed or considered at the hearing.

I find that monetary claim was premature when the landlords filed their application on May 20, 2020.

The landlords are granted leave to reapply for loss of rent for June 2020, if the matter has not been dealt with. I acknowledge, however, the tenants' evidence that they have paid the rent for June 2020.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation from the tenants due to alleged damage caused by the tenants and/or for costs that have been or will be incurred by the landlords?

Are the landlords entitled to recovery of their filing fee?

Background and Evidence

The evidence showed this tenancy began on February 1, 2018, ended on June 6, 2020, monthly rent was \$2,600 and the tenants paid a security deposit and pet damage deposit of \$1,300, each.

The landlords said they have retained the tenants' security deposit and pet damage deposit, having made this claim against them.

The landlords' original monetary claim was \$7,829.50, including unpaid rent for June 2020. The unpaid rent issue was not considered at the hearing.

The landlords' application showed that their monetary claim for alleged damage was \$4,700.60; however, the monetary order worksheet submitted by the landlords listed an amount of \$4,929.50.

After discussion, the landlords removed item 5 on their monetary order worksheet, which is the amount of the invoice from a plumbing company, to determine the fault of the water damage, in the amount of \$228.90.

The landlords' monetary claim remaining on their monetary order worksheet is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Rebuild costs from water damage	\$2071.22
2. Emergency repairs from water damage	\$1917.12
3. Estimate to have new garburator installed	\$228.90
4. Garburator replacement	\$483.36
TOTAL	\$4700.60

Rebuild costs from water damage, emergency repairs from water damage –

The landlords' monetary claim in this instance relates to an issue with water leaking into the downstairs bedrooms. The landlords said that when the tenants reported a leak in the downstairs bedrooms, they contacted their insurance company to handle the claim and assessment.

The total claim for the water leak is \$2,071.22 for a property damage services company for the cost to rebuild from water damage in the rental unit caused by the tenants and \$1917.12 for the costs of emergency repairs.

The landlords testified that the tenants' actions were the source of the water leak in the bathroom, due to them not properly closing the shower curtain.

The landlords pointed to the plumber's invoice to show that there was no mechanical failure, and that the tenants obviously have had water splashing out of the shower for the two years of the tenancy. The landlords testified that water went down the register to the ceiling below, into two bedrooms.

The landlords submitted that the plumber's report shows the only source of a water leak appeared to be from water splashing from the one piece tub unit.

The landlords said that they have made an insurance claim for all the damage to the residential property; however, that claim has not been processed pending the outcome of their application.

The landlords testified that the tenant PB agreed to pay for all damages, that they were going to do the right thing, and not run away from their responsibilities. The landlords

referred to documentary evidence filed into evidence to document the tenants' promise to pay, which was numerous text messages and a signed, written letter from tenant PB.

The landlords also testified that the tenants did not have their renter's insurance policy in place on the day of the leak, contrary to their obligation under the written tenancy agreement.

Garburator labour and replacement costs –

The landlords' also claim the tenants are responsible for the costs to install and replace the garburator, as the plumber found plastic pieces and eggshells in the appliance. The landlords submitted that the tenant PB told the landlords to take the costs out of their security deposit.

The landlords referred to documentary evidence filed into evidence to substantiate the tenants' promise to pay for the garburator costs, one of which was a text message promising to pay and telling the landlord to take the costs from their security deposit.

Tenants' response –

Flood claim –

Tenant PB said there is no proof of what caused the leak and the subsequent damage. PB said all the damage was in the hallway. According to PB, the baseboard was removed, but the moisture was still there.

PB said they notified the landlords that there had been water dripping on their son's head. The tenants testified that there had been a leak with the previous tenants, who said they did not know what had happened to cause the flood.

PB said that the landlords had nothing fixed.

Tenant KB said her husband panicked when the landlords told him of all the damages, but he only agreed to any costs actually caused by the tenants.

The tenants testified that when they asked the landlords for proof of their responsibility, the landlords served them a One Month Notice to End Tenancy for Cause.

The tenants said they have never been told what caused the flood.

Garburator costs –

The tenants pointed out the landlords said the garburator was broken in March; however, they texted the landlord on January 29, 2020, that the garburator was not working.

The tenants said the garburator had not been working for 6 months.

The tenants submitted that the plumber's report indicated there was no obstruction.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlords here, has the burden of proof to substantiate their claim on a balance of probabilities.

Subsection 32(3) of the Act requires a tenant to repair damage to the rental unit or common areas that was caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Caused means that the actions of the tenants logically led to the damage of which the landlords complain.

In the case before me, after having reviewed the parties' submissions, I prefer the evidence of the landlords over the tenants.

I find support for the landlords' documentary evidentiary submissions in the many instances of the tenant PB telling the landlords they would be responsible for both the costs of the water leak/damage and the garburator costs. A signed letter of February 28, 2020, states that the tenants would pay for the costs of the landlords' insurance deductible, the increased costs of their insurance, and the plumber's bill. This

document was reiterated in several text messages. One text message from the tenant states that he knew they were responsible for the amount of the landlords' monetary claim, or \$4,700.

One text message from PB told the landlord to take the costs of the garburator from the tenants' security deposit.

I do not find it reasonable that the tenant would make repeated promises to pay if they doubted they were responsible.

I also relied on the independent expert reports submitted by the landlords. The plumber's report states that there was no leak found, but there were signs of a water trail from the tub edges in the one piece tub, and that the leak was most likely from water splashing. I also find this report supports that there was no issue with the plumbing for which the landlords would be responsible, but rather, the actions of the tenants and family.

As the landlords' evidence clearly shows that the tenants promised to pay for the costs, I find the landlords had the right to rely on their statements.

Although the garburator has yet to be replaced, I find the landlords submitted sufficient evidence of the anticipated costs and that those costs are reasonable.

Due to the above, I find that the landlords have met their burden of proof on a balance of probabilities and find they are entitled to the claimed costs of \$4700.60, comprised of \$2,071.22 for rebuild costs from water damage, \$1,917.12 for emergency repairs for water damage, \$228.90 for installation of a new garburator, and \$483.36 for a replacement garburator.

I grant the landlords recovery of their filing fee of \$100, due to their successful application and pursuant to section 72(1) of the Act.

Due to the above, I grant the landlord's application and find they are entitled to a total monetary award of \$4,800.60.

At the landlords' request, I allow them to retain the tenants' security deposit of \$1,300 and their pet damage deposit of \$1,300 in partial satisfaction of their monetary award of \$4,800.60.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$2,200.06.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The tenants are cautioned that costs of such enforcement are subject to recovery from the tenants.

Conclusion

The landlord's application for monetary compensation is granted, they have been authorized to retain the tenants' security deposit and pet damage deposit of \$1,300, each, and they have been awarded a monetary order for the balance due, in the amount of \$2,200.06.

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 13, 2020

Residential Tenancy Branch