



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on February 6, 2020, wherein the Landlords sought monetary compensation from the Tenant in the amount of \$35,100.00, authority to retain his security deposit and recovery of the filing fee.

The hearing of the Landlords' Application was scheduled for teleconference at 1:30 p.m. on June 29, 2020. Only the Landlords 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 10:08 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 Landlords and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlords' hearing package. The Landlord, J.S., testified that he personally served the Tenant with the Notice of Hearing and the Application on February 9, 2020.

J.S. stated that his wife, S.A. witnessed service of the hearing package, as did the Tenant's spouse. Based on this testimony I find the Tenant was duly served as of February 9, 2020 and I proceeded with the hearing in the Tenant's absence.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. Should the Landlords be permitted to retain the Tenants' security deposit?
3. Should the Landlords recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed the following: this tenancy began September 1, 2016; monthly rent was \$2,400.00 and the Tenant paid a \$500.00 security deposit.

The Landlord testified that at the time the tenancy ended the Tenant owed \$19,600.00 in unpaid rent. The Landlord stated that during the tenancy the Tenant went through a divorce and suffered financial hardship and was therefore not able to pay his rent in full at times. Documentary evidence filed by the Landlord confirmed that the Tenant acknowledged this debt and agreed to pay the Landlords. This evidence shows that at one point in time the Tenant offered to sign over his vehicle to the Landlords to satisfy this debt, although the transfer was never completed.

The Tenant moved from the rental unit November 30, 2019. The Landlord testified that the Tenant left considerable belongings behind and failed to clean the rental unit. In support the Landlords provided photos of the rental unit confirming the condition of the rental unit at the time the tenancy ended.

The Landlords filed a Monetary Orders Worksheet in which they detailed their claim as follows:

Unpaid rent	\$19,600.00
Hot water tank replacement	\$1,000.00
Replace kitchen cabinets and countertops	\$21,500.00
Cleanup of overspray inside house and garage	\$1,300.00
Replacement of doors and garbage removal	\$883.00
Stonework repairs	\$800.00
Blind replacement	\$600.00
Repair and fix staircase spindles	\$200.00
Repairs to basement bathroom	\$1000.00

In terms of the amounts claimed for repair and cleaning of the rental unit, the Landlord confirmed that many of the amounts were estimates as they have not been in a financial position to make the necessary repairs.

In support of the above, the Landlord J.S. testified as follows. The Landlords claimed \$20,000.00 as the estimated cost to replace the kitchen cabinets. The Landlord testified that the kitchen cabinets were six years old when the tenancy began. He further stated that the cabinets were a nice finished maple wood and the Tenant painted them without the Landlords' consent. The Landlord stated that while they are functional, they show poorly now because they have one thin coat of paint on them; as such the Landlords sought the replacement cost for new cabinets.

The Landlords also claimed \$1,500.00 to replace the kitchen counter tops which were significantly damaged by the Tenant cutting on the countertops without a cutting board. The Landlord stated that the countertops were also six years old at the time the tenancy began.

The Landlords also sought the sum of \$1,000.00 representing the amount they had to pay to replace the hot water tank which was damaged by the Tenant. The Landlord testified that on move out day the Tenant picked up a piece of wood under the hot water tank and knocked off the drain-valve. The hot water tank then drained and as it was left on it "blew the hot water tank". The Landlords had to replace the hot water tank the day the new Tenants moved in.

The Landlord stated that the Tenant also pulled the pool house door off of its hinges in such a manner that it could not be reattached; in this respect they sought \$400.00 representing the replacement cost. As well, the Landlords sought the cost to replace an exterior door. In this respect the Landlord testified that the Tenant locked himself out of the house and decided to chop himself a hole through the door. The Tenant then "repaired" the door with a piece of wood screwed to the door. Photos of the door confirm this damage and "repair".

The Landlords also sought the sum of \$900.00 representing the cost to address and remove paint overspray caused by the Tenant. The Landlord stated that the Tenant had a side job where he sprayed doors and cabinets and turned the "toy room" into a spray booth and failed to use drop sheets; photos submitted by the Landlords show the considerable amount of paint overspray in this room.

The Landlords also sought the sum of \$400.00 representing the cost to remove paint overspray and debris from garage. In this respect the Landlord testified that the Tenant also spray painted in the garage and the driveway as well. He stated that some of the thicker paint he was able to chip away, but he could not remove most of the paint.

The Landlord also confirmed that he personally loaded up the Tenant's debris and took it to the dump. In this respect the Landlords claimed \$83.00 for the dump fees (which they described as "transfer fees" on their Application) and provided receipts confirming the expense.

The Landlords also claimed \$800.00 representing the cost to repair the rock work on the main living room fireplace. The Landlord stated that the Tenant told the Landlords that he smashed the side of the hearth by chopping firewood inside the house.

The Landlords also sought the sum of \$1,000.00 representing the amount they paid their new tenant to repair the Tenant's incomplete renovation to the basement bathroom. The Landlord stated that they had a fully functioning bathroom that was presentable, although dated. The Tenant didn't like the cabinet and the shower and asked to replace them. The Landlord stated that when the Tenant asked to do this, they were unsure, as this was the first place they had ever rented out, but they agreed and let him do the work. Unfortunately, the cabinet he put in was a foot too short and the shower stall that he put in was improperly installed as the drywall was missing, and there were no seals. The Landlord testified that they paid their new tenant \$1,000.00 to repair the bathroom. The new tenant sealed the shower and built another cabinet to cover the space that was left open when the Tenant put in a smaller cabinet.

The Landlords also sought the \$600.00 cost to replace the broken blinds. The Landlord stated that the blinds are six years old. He stated that they are damaged but are still hanging as the Landlords have not had the financial means to replace them. He stated that they are hoping that they can match and replace the blinds as they are large louvered blinds. He further stated that the \$600.00 is an estimate of what they paid per window and they hope this will be sufficient to cover the cost of repair and replacement.

The Landlords also sought \$200.00 as the amount they paid the new tenant to repair and replace 6-7 stairway spindles broken by the Tenant when he was performing unnecessary renovations to the rental unit.

In total, the Landlords estimate the cost to properly repair the rental home as \$29,283. The Landlord confirmed that as they were limited to \$35,000.00 in claims at the

Residential Tenancy Branch, they reduced their claim to \$15,400.00 for damages. The Landlord also stated they haven't had the money to repair the unit as the \$20,000.00 they had saved for such repairs ended up being used to cover their mortgage when the Tenant failed to pay his rent.

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 Landlords have 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.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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.

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

I accept the Landlords' evidence that at the time the tenancy ended the Tenant owed \$19,600.00 in unpaid rent. Documentary evidence submitted by the Landlords confirms the Tenant acknowledged this debt and agreed to pay it. I therefore find the Landlords are entitled to the amount claimed for unpaid rent.

I further accept the Landlords' evidence that the Tenant failed to clean and repair the rental unit as required by the *Act*. The photos submitted by the Landlords confirm the Tenants left a considerable amount of debris at the rental unit. These photos also show the extensive damage done by the Tenant both in terms of overspray and incomplete renovations.

While it is preferable to have evidence of the actual cost to complete repairs, in the form of receipts, I accept the Landlord's testimony that they are not in a financial position to complete all the repairs required; this is not an uncommon situation when the rental unit is significantly damaged as a result of a tenancy, particularly when a Tenant leaves the rental unit damaged and fails to honour their obligation to pay rent.

As noted, the Landlords reduced their claim for damages to fall within the monetary jurisdiction of the Residential Tenancy Branch. They confirmed their understanding that they could have filed in the B.C. Supreme Court and pursued the full amount of their loss.

I am satisfied the Landlords are entitled to the \$15,400.00 sought in their claim for the cost to repair the rental unit. It is clear, based on the evidence before me that the Landlords will expend considerably more than \$15,400.00 to repair the damage caused by the Tenant and it is possible the amount will exceed even these estimates.

In making this award, I note that awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Had the Landlords sought the full estimated cost of the repairs, I would have reduced their claim (in some cases, such as the cabinets and counters) by the depreciation of the original item as provided for in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements*. I am satisfied that the reduced award of \$15,400.00 adequately compensates the Landlords based on their loss as well as taking into consideration the useful life of the building elements damaged by the Tenant.

I therefore award the Landlords the **\$15,400.00** claimed for damage to the rental unit.

As the Landlords claim totals \$35,000.00, I decline their request for recovery of the \$100.00 filing fee as to do so would result in an award over and above the limit imposed by section 58(2)(a) of the *Act*.

Conclusion

The Landlords' claim for compensation for unpaid rent and the cost of repairs to the rental unit is granted. The Landlords' request to recover the filing fee is denied.

The Landlords may retain the Tenant's \$500.00 security deposit and are granted a Monetary Order for the balance due in the amount of **\$34,500.00**. This Order must be served on the Tenant 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 8, 2020

Residential Tenancy Branch