



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, MNDC-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenant;
- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The landlord's agents and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The tenant confirmed receiving the landlord's evidence; however, the tenant said that he only received black and white photos on a sheet of paper. There was no documentary or digital evidence submitted from the tenant.

Thereafter all parties were provided the opportunity to provide their affirmed testimony and to refer to relevant documentary or digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all 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.

Issue(s) to be Decided

Has the landlord established an entitlement to monetary compensation from the tenant and recovery of the filing fee?

Background and Evidence

The documentary evidence of the landlord showed that this tenancy originally began on or about March 10, 2004, and was renewed on January 1, 2019. The new written tenancy agreement shows monthly rent at \$2,720.

The tenant paid a security deposit of \$950, which the landlord has retained, having made this monetary claim against it.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Repair and cleaning	\$1,200.00
2. BC Supreme Court filing fee	\$120.00
3. Bailiff and movers' fees	\$4,875.64
4. Junk removal company fee	\$838.95
5. Junk removal by the landlord	\$183.90
TOTAL	\$7,218.49

In support of the landlord's application, the landlord's agents provided the following testimony:

Repair and cleaning –

The agent said that after the tenancy ended on February 5, 2020, work needed to be done on the landscaping, and there was damage to cabinet doors and broken ceiling lights. The agent said that the carpets needed shampooing and general cleaning.

The agent said that there was a substantial amount of debris left in the rental unit, which required removal.

The landlord's monetary claim for repair and cleaning was listed at \$100 for trimming an overgrown bush, \$200 for kitchen cabinet door and hinge repair, \$300 for 5 broken ceiling light fixtures, \$300 for carpet cleaning, and \$300 for general cleaning.

The agent said that they did not submit the actual receipt for the cleaning, but that the actual cost was \$2,415. The landlord submitted that the claimed costs was an estimate; however, the actual costs involved two labourers for two days.

The landlord's evidence showed that there was no move-in inspection, as the tenancy began in March 2004, prior to the official Residential Tenancy Branch (RTB) condition inspection report (CIR) coming into existence. The landlord submitted that they conducted a move-out inspection on February 5, 2020, and filled out a CIR, which was filed into evidence. The tenant was not present.

The landlord's additional evidence included photographs in and around the rental unit and invoices.

Tenant's response –

The tenant submitted that there was no original move-in inspection, contrary to the Act. He further said the parties negotiated a new tenancy agreement, which ended the original tenancy on December 31, 2018, and a new tenancy began, again with no move-in or move-out CIR. Therefore, according to the tenant, the landlord is not entitled to his security deposit.

The tenant submitted that the relevant date in this case is January 1, 2019, when the new tenancy began, as the agent inspected the rental unit and there was no change in the condition between the beginning of the tenancy and that date.

The tenant submitted that during the tenancy, the hallway was painted only once, as was the office. The tenant said that the carpet in the rental unit was extremely old when he moved in and estimated the carpet to be about 43 years old.

The tenant said that the day before he moved out, a cleaning lady came by and cleaned the rental unit to a reasonable standard.

The tenant claimed any mess left was by the landlord's agents, going about the rental unit.

The tenant said that the light fixtures were old and that he had complained about the light fixtures for many years. The tenant said it was ludicrous that landlord wanted \$300 for old light fixtures.

Landlord's rebuttal –

The agent agreed that some of the cleanliness issues were caused by the movers; however, they tried to coordinate a move-out date with the tenant and an agreed upon date was January 30, 2020. The agent said the tenant refused to move out on that date, and told the agent to get a writ of possession.

In response to this rebuttal, the tenant denied that he failed to respond about a move-out inspection and that the landlord performed a unilateral inspection.

BC Supreme Court filing fee; bailiff and movers' fee –

The landlord's evidence included a copy of a Decision and order of possession of the rental unit issued by another arbitrator on January 13, 2020.

The tenant had received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice), which he disputed by filing an application for dispute resolution. The other arbitrator dismissed the tenant's application, and granted the landlord an order of possession for an effective date of January 31, 2020.

The agent submitted that the tenant failed to comply with an order of possession of the rental unit issued to the landlord, and it was necessary to take enforcement action in the BC Supreme Court, which included a filing fee and hiring a bailiff.

The landlord submitted a copy of the bailiff's invoice, which incorporated the mover's fees.

Tenant's response –

The tenant asserted that the bailiff costs involved a writ of possession by the BC Supreme Court, these costs are a Supreme Court matter, not an RTB matter.

Removal of tenant's belongings by a junk removal company –

The agent said that the tenant told the junk removal company that he wanted some of his personal property left, which included large pieces of furniture. The items were never collected.

The items left were shown in the pictures filed by the landlord.

Tenant's response –

The tenant said that the disposal of his personal property was an illegal act by the landlord and agents. They were required to hold onto the property for 60 days and there was no legal notification of the intent to dispose of the items. Some of the items, according to the tenant, were quite expensive.

Junk removal by the landlord –

The agent said that to clean the remaining items left behind, it took two people half a day to fully remove the tenant's personal property.

The agent testified that the cost was \$100.

Tenant's response –

The tenant said the removal was an unlawful act.

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlords did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Repair and cleaning –

As to the costs claimed by the landlord associated with cleaning and repairing, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

As such, the tenant is required to remove all belongings including garbage and to clean the rental unit to a reasonable standard.

I have reviewed the claim of the landlord on these matters and considered that the original tenancy began in March 2004.

While I find the photographs submitted by the landlord shows some damage, I was not convinced on the balance of probabilities that the damage to the cabinet doors and light fixtures exceeded reasonable wear and tear, considering the length of the tenancy.

As to the claim for an overgrown bush, vacuuming and cleaning the carpet, I find the landlord submitted insufficient evidence to support these claims. There was no documentary evidence of the actual costs or that these costs were incurred, I find the landlord has not established the value of the loss.

The claim of \$1,200 is dismissed.

BC Supreme Court filing fee; bailiff and movers' fee –

When tenants fail to vacate based on an Order of Possession issued under section 55 of the Act, as is the case here, the Act allows for landlords to claim for the filing costs and bailiff costs paid to apply for a Writ of Possession and to have the Writ of Possession from the Supreme Court enforced by a court-approved bailiff. Therefore, by overholding the rental unit, I find the tenant is liable for the BC Supreme Court filing fee of \$120 and for the full amount of \$4,875.64 claimed for the bailiff fees and I award the landlord the full amount as claimed as a result.

I note that in the Decision of January 13, 2020, by another arbitrator granting the landlord an order of possession of the rental unit, the tenant was cautioned that costs of enforcement of the order of possession are recoverable from the tenant.

Junk removal company costs; landlord junk removal –

I accept the undisputed testimony of the landlord's agent that the tenant requested the movers hired by the bailiff to leave some of the bigger items. I also accept that the tenant failed to return to the rental unit to collect his personal property, such as the furniture shown in the landlord's photographs.

I therefore find the landlord submitted sufficient evidence to support this claim and award them the amount of \$838.95, as shown by the landlord's receipt.

As to the landlord's claim for further and final junk removal, I have reviewed the landlord's photographs and find that they support that a final junk removal was required.

While the landlord failed to submit a receipt for these costs, I find the claim of \$100 to be reasonable. I therefore award the landlord \$100.

I also grant the landlord recovery of the filing fee paid for this application, in the amount of \$100.

For the above reasons, I find the landlord has established a monetary claim of \$6,034.59, comprised of the BC Supreme Court filing fee of \$120, the full amount of \$4,875.64 for the bailiff and mover fees, \$838.95 for the junk removal company's fee, \$100 in general junk removal, and the filing fee for this application in the amount of \$100.

At the time of the Decision, the tenant's original security deposit of \$950 has accumulated interest in the amount of \$33.63. Therefore, the tenant's total security deposit is now \$983.63.

At the landlord's request, pursuant to section 72(2)(b) of the Act, I allow them to retain the tenant's security deposit of \$983.63 in partial satisfaction of their monetary award of \$6,034.59.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of **\$5,050.96**.

Should the tenant 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 tenant is cautioned that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlord's application for monetary compensation is granted in large part, they have been authorized to retain the tenant's security deposit, with interest, of \$983.63 and they have been awarded a monetary order for the balance due, in the amount of \$5,050.96.

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 15, 2020

Residential Tenancy Branch