



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The parties attended and were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided the following uncontradicted testimony. The tenancy began on October 1, 2019 for monthly rent of \$2,226.60 payable on the first of the month. The tenant provided a security deposit of \$1,100.00 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

The landlord requested a monetary order for compensation and damages for repairs and cleaning necessary when the tenants vacated on March 1, 2020, rent for the month of March 2020, reimbursement of the filing fee, and authorization to apply the security deposit to the monetary award.

The landlord submitted many photographs of the unit taken before the tenants moved in showing a clean unit in good condition. He also submitted a condition inspection report signed by the tenants which indicated that the unit was in good condition in all material respects when they moved in.

The landlord submitted a condition inspection on moving out signed by the tenants which indicated the unit required considerable cleaning and many repairs. The tenants acknowledged they signed the report and that cleaning/repairs were needed when they vacated.

The landlord also submitted many photographs taken after the tenants' vacated in support of the landlord's testimony that the unit required substantial cleaning and multiple repairs.

Each of the landlord's claims and the tenants' responses are considered below.

Compensation for damages to the unit

The landlord claimed the following:

ITEM	AMOUNT
Compensation – landlord's labour – 28.5 hours at \$40.00 hourly	\$1,140.00
Materials – cleaning supplies, paint, keys, etc.	\$292.22
Dump fees	\$168.49
Cleaning (\$20.00 an hour)	\$1,220.00
TOTAL CLAIM	\$2,820.71

The landlord submitted a spread sheet which he testified accurately recorded his time by date to the half-hour. The tenants acknowledged that the landlord spent some time on cleaning/repairs, but that only half the landlord's time was necessary; they denied the landlord spent all the time he claimed.

The landlord submitted receipts in support of his claim for reimbursement of costs of materials. The tenants agreed to reimburse the landlord for these expenses in the amount of \$292.22.

The landlord submitted receipts in support of his claim for reimbursement of dump fees. The tenants agreed to reimburse the landlord for these expenses in the amount of \$168.49.

The landlord submitted receipts and copies of e-transfers in support of his claim for reimbursement of cleaning fees of \$1,220.00. The tenants acknowledged that cleaning was needed but that the amount claimed was excessive.

Claim for rent

The landlord claimed reimbursement of rent for the month of March 2020 in the amount of \$2,226.00. He testified that he had new occupants ready to move in, but the unit was dirty, needed repairs, and was not ready for occupancy until mid-March 2020.

Because of the delay, one new occupant withdrew, and the landlord agreed the remaining new occupant could move in early and begin paying rent on April 1, 2020.

The landlord testified that he mitigated his damages by compromising on the new occupant's rent in order to keep them as a secure tenant.

The tenants denied that the landlord is entitled to compensation for rent for the month of March 2020.

The landlord requested reimbursement of the filing fee and authorization to apply the security deposit to the award.

The landlord's claim is summarized as follows:

ITEM	AMOUNT
Compensation – landlord's labour – 28.5 hours at \$40.00 hourly	\$1,140.00
Materials – cleaning supplies, paint, keys, etc.	\$292.22
Dump fees	\$168.49
Cleaning (\$20.00 an hour)	\$1,220.00
Rent – March 2020	\$2,226.00
Reimbursement of filing fee	\$100.00
(Less Security deposit)	(\$1,100.00)
TOTAL CLAIM	\$4,046.71

Analysis

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the applicant proven the amount or value of their damage or loss?

4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Each of the four tests are considered separately with respect to the landlord's claims.

1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?

I have considered the testimony of both parties. The landlord was well prepared and credible. His testimony was supported in all aspects by his evidence. Where their testimony conflicts, I give greater weight to the landlord's evidence.

Under section 37(2) of the *Act*, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

In hearing the testimony of the landlord, supported by the photographs, invoices and condition inspection reports on moving in and moving out, I find the tenants failed in the tenants' obligation under section 37(2) with respect to cleaning and damage to the unit.

I find the landlord has met the burden of proof that the tenants failed to comply with their obligation under section 37(2) and left the unit unclean and damaged.

2. Did the loss or damage result from non-compliance?

Having found that the tenants failed to comply with the Act and the tenancy agreement, I must next determine whether the landlord's loss resulted from that breach.

This is known as cause-in-fact, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach?

If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage.

If the answer is "yes," indicating that the loss or damage would have occurred whether the respondent was negligent, their negligence is not a cause-in-fact.

Because the tenants left the unit unclean and damaged, I find the landlord incurred the time and expenses claimed to clean and do repairs.

I accept the landlord's evidence that he had new occupants ready to move in to the unit on March 1, 2020. When he discovered the condition of the unit, he had to postpone their occupancy and lost rent for the month. I find this was a direct result of the condition in which the tenants left the unit when they vacated.

In hearing the testimony of the landlord supported by the documentary evidence, I find that the landlord would not have incurred the losses and damage claimed without the breach by the tenants of their obligations.

3. Has applicant proven amount or value of damage or loss?

I find the landlord has established in his testimony supported by documentary evidence including receipts that the landlord has spent the time he claimed and incurred the expenses for which reimbursement is requested. I find these claims are reasonable in the circumstances. I find the landlord had met the burden of proof with respect to the value of the damage and loss claimed.

4. Has applicant done whatever is reasonable to minimize damage or loss?

In considering the landlord's testimony, I find that he took reasonable steps to minimize

the damage or loss by carrying out the repairs and some of the cleaning himself, and by hiring cleaners at a reasonable rate.

I find the landlord acted practically in mitigating his damages by allowing the incoming occupant to live in the unit for two weeks prior to beginning the payment of rent on April 1, 2020. I accept the landlord's testimony that he had to do this to assure he had a future tenant.

I find the landlord made reasonable efforts to have all these matters attended to in a cost and time efficient manner. I find the landlord did what was necessary and reasonable to minimize damage or loss from the tenants' failure to leave the unit clean and undamaged.

Conclusion

Taking into consideration the testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving all four criteria in establishing entitlement to compensation as claimed.

Filing fee and security deposit

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the filing fee of \$100.00.

Further to section 72, the landlord is authorized to apply the security deposit to the award. The landlord is accordingly granted a monetary order as follows:

Summary

My award to the landlord is summarized as follows:

ITEM	AMOUNT
Compensation – landlord's labour – 28.5 hours at \$40.00 hourly	\$1,140.00
Materials – cleaning supplies, paint, keys, etc.	\$292.22
Dump fees	\$168.49
Cleaning (\$20.00 an hour)	\$1,220.00
Rent – March 2020	\$2,226.00

Reimbursement of filing fee	\$100.00
(Less Security deposit)	(\$1,100.00)
TOTAL MONETARY AWARD	\$4,046.71

Conclusion

I hereby grant the landlord a monetary order in the amount of **\$4,046.71** which must be served on the tenants. The order may be filed in, and enforced as an order of, the Courts of British Columbia.

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