



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-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 apply the security deposit to the monetary award and to recover the filing fee for this application pursuant to section 72.

The landlord's agent KH attended ("the landlord"). The landlord had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 22 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on March 26, 2020 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on March 31, 2020.

The landlord provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on March 31, 2020.

Issue(s) to be Decided

Is the landlord entitled to:

- 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 apply the security deposit to the monetary award and 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 December 28, 2018 for monthly rent of \$1,650.00 payable on the first of the month. The tenant provided a security deposit of \$825.00 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

A condition inspection on moving in took place which indicated the unit was in good condition in all material respects. The landlord testified that the tenant left the province before an inspection could take place. The agent carried out the condition inspection on his own and submitted a copy of the report signed only by the landlord which supported the landlord's claim for damages and repairs.

The landlord stated that when the tenant vacated, the unit required cleaning, the shower required repairs and tiling, the kitchen cupboards required repairs and the walls were damaged requiring repairs. The landlord submitted photographs in support of all aspects of the claim.

The landlord submitted supporting receipts for all expenses claimed and requested reimbursement of the following:

ITEM	AMOUNT
Shower repairs	\$1,162.00
Cleaning	\$150.00
Wall repair	\$200.00
Shower wall and tile repair	\$495.00
Repairs kitchen cabinets	\$165.00
TOTAL CLAIM	\$2,172.00

The landlord testified that the tenant provided his forwarding address on March 18, 2020 and the landlord filed this application within fifteen days, on March 20, 2020.

The landlord requested a monetary award of **\$2,172.00**, reimbursement of the filing fee and authorization to apply the security deposit to the award.

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 is considered.

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

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

I have considered the evidence submitted by the landlord and I find the landlord has met the burden of proof on a balance of probabilities that the tenant failed to comply with their obligation under section 37(2).

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

Having found that the tenant 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.

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 invoice and the photographs, I find the tenant failed in the tenant's obligation under section 37(2) and the Guideline with respect to cleaning.

I find that the landlord would not have incurred the expenses claimed but for the tenant's breach of their obligations.

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

I have viewed the photographs and accept the landlord's testimony that the expenses are reasonable in the circumstances and the landlord incurred the expenses claimed.

Considering the above reasonable estimation and the invoices submitted, I find the landlord has met the burden of proof with respect to the amount of value of the damage or loss claimed.

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

In considering the landlord's testimony, I find that they took reasonable steps to minimize the damage or loss by carrying out the cleaning and repairs.

I find the landlord made reasonable efforts to have these matters attended to in a professional, cost and time efficient manner.

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 in the amount claimed.

My award to the landlord is summarized as follows:

ITEM	AMOUNT
Shower repairs	\$1,162.00
Cleaning	\$150.00
Wall repair	\$200.00
Shower wall and tile repair	\$495.00
Repairs kitchen cabinets	\$165.00
TOTAL AWARD	\$2,172.00

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 the 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:

ITEM	AMOUNT
Award	\$2,172.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$825.00)
Monetary Order	\$1,447.00

Conclusion

I hereby grant the landlord a monetary order in the amount of **\$1,447.00**, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court 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 27, 2020

Residential Tenancy Branch