



Dispute Resolution Services

Page: 1

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 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.

SG, lawyer, as well as JD, landlord, who provided affirmed testimony, attended for the landlords ("the landlord"). The tenant KK attended for the tenants ("the tenant"). The parties 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 tenant acknowledged receipt of the Notice of Hearing and an evidentiary package. The tenant testified the evidentiary package he received did not include all the landlord's evidence. The landlord acknowledged some documents may not have been included.

I will not consider evidence which has not been provided by the landlord to the tenant in keeping with the Act. I have only considered and referenced in the Decision relevant evidence submitted and served in compliance with the Rules of Procedure to which I was referred.

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 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

This is an application by the landlord for a monetary order for compensation for damages caused by the tenant during a tenancy. The tenant denied any responsibility saying that any damage was normal wear and tear and the landlord failed to establish any credible costs.

The tenancy began on July 15, 2013 and ended on April 15, 2019. Monthly rent was \$1,250.00 payable on the 15th of the month. The tenant provided a security deposit of \$625.00 and a pet deposit of \$300.00 which the landlord holds. The deposits, together \$925.00, are referred to as "the security deposit ". The tenant provided a forwarding address on April 2, 2020 and the landlord filed an application prior to receiving the address. The landlord submitted a copy of the signed tenancy agreement.

A condition inspection was conducted on moving in and signed by both parties. The submitted report indicated the unit was in good condition in all material aspects. No condition inspection was conducted on moving out.

The landlord claimed damages to the unit each of which are addressed in turn.

Blinds

The landlord testified the blinds in the unit were 9 years old at the end of the tenancy. Blinds for the door were bent and damaged during the tenancy requiring replacement at a cost of \$200.00. The landlord did not submit a receipt. The landlord claimed 1/10th of the replacement cost based on a useful life for blinds of 10 years.

The parties agreed the blinds were damaged during the tenancy.

However, the tenant stated that the blinds were “cheap” and the damage was due to normal wear and tear. The tenant also claimed that the cost claimed for the replacement blinds was too much and was out of keeping with the low quality of the item. The tenant said no evidence of payment for a replacement was submitted.

Floor repair

The landlord testified the tenant damaged some of the boards in the kitchen floor which he said was probably caused by water from a pet's bowl. The landlord submitted pictures of the damage and the tenant acknowledged receipt of the pictures.

The photographic evidence shows peeling and swelling of some laminate floor boards in a confined small area of the floor.

The landlord JD testified he fixed the damage and described the work carried out to conduct the repair. The repair is described in an email from the landlord to the tenant, a copy of which was submitted, which stated in part:

The entire area around the kitchen has to be sanded down and then stained with matching stain. According to End of the Roll, cost for this repair is roughly \$400, including labour and materials. According to the floor people, this isn't normal wear and tear. Also, I visited a couple of other units and they don't have this kind of damage.

The landlord requested compensation of time and expenses in a total value of \$400.00. No itemization of time and materials was submitted.

The tenant denied that he should compensate the landlord as requested. He denied receipt of any breakdown of costs and expenses; he questioned whether the time and expenses were actually incurred. Also, the tenant claimed that any damage was due to

normal wear and tear on poor quality flooring. The tenant denied responsibility for the damage.

Wall repairs

The landlord claimed the tenant left a number of stickers on the walls of the unit. When the landlord attempted to remove the stickers, the underlying wall was damaged necessitating repairs and touch-up paint of a value of \$400.00 in labour and out of pocket expenses. The repairs were done by the landlord JD who estimated the costs.

The landlord did not submit photographs or other documentary evidence.

The tenant denied that he should compensate the landlord as requested. While he acknowledged leaving the unit with some stickers on the wall, he questioned the alleged time and expenses for such a small matter and doubted the claim was an accurate reflection of incurred cost. He suggested the landlord was attempting to recoup some of the cost of painting the unit, to which he was not entitled.

In summary, the landlord claimed the following:

ITEM	AMOUNT
Blinds – 1/10 replacement cost	\$20.00
Flooring – repair	\$400.00
Wall repair	\$400.00
TOTAL CLAIM	\$820.00

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

The tenant denied that the landlord was entitled to anything and requested the return of the security deposit.

Analysis

I have only considered and referenced in the Decision relevant evidence submitted and served 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?

The Act sets out the obligation of the tenant at the end of the tenancy:

Leaving the rental unit at the end of a tenancy

37 (1)...

(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) ...

The tenant acknowledged some damage to the blinds, floor and walls, but asserted that the damage was in keeping with normal wear and tear based upon the low quality of the items and age.

Normal wear and tear means the declining condition of the rental premises that occurs over time, even though the tenant has been regularly cleaning and maintaining the premises. A tenant is not responsible for reasonable wear and tear to a rental unit from normal usage over time. They are responsible for repairing substantial damage that they, their guests or pets cause. The tenant must also maintain a reasonable standard of health and cleanliness throughout the rental unit, common areas or manufactured home site (mobile home).

Residential Tenancy Policy Guideline #1 explains that the damage must be more than reasonable wear and tear:

“The tenant is...generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site...reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion...an arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear...or neglect by the tenant.”

In consideration of the testimony, the Act and Guideline, I find the landlord has met the burden of proof under the first factor with respect to each of the claimed damaged items.

I find the damage to the blinds, floor and walls, not to be normal wear and tear. With respect to the floor, the pictures submitted by the landlord are more in keeping with the landlord's testimony that water damage is the cause.

I therefore find the landlord has met the first test on a balance of probabilities that the tenant failed to comply with the Act and tenancy agreement.

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.

I accept the landlord's evidence that time and expenses were necessary to repair the unit as damaged by the tenant.

I find that the landlord would not have incurred the losses and damage claimed without the breach by the tenant of their obligations. I therefore find the landlord has met the burden of proof with respect to all items claimed under the second heading.

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

Having found the landlord has met the burden of proof with respect to the first and second headings, I now turn to whether the landlord has proven the amount or value of the damage or loss.

With respect to the blinds, the landlord has not submitted any documentary evidence such as a receipt in support of the claim for compensation. I therefore find the landlord has failed to meet the burden of proof with respect to cost under this heading.

I find the landlord has met the burden of proof on a balance of probabilities that the landlord has incurred expenses in repairing the floor and the walls for which the tenant is responsible. However, the landlord has not provided proof of the claim through documentary evidence, such as an itemized list of time/expenses. Instead, the landlord is claiming \$400.00 for each item as an "estimate".

I considered *Policy Guideline 16: Compensation for Damage or Loss* which states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- *“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.*

I find the tenants caused the floor and wall damage. I find this is an appropriate situation for the award of a nominal amount.

Considering the testimony, the evidence and this Policy Guideline, I find a reasonable nominal amount for the floor repair expense is \$300.00 and for the wall expense of \$200.00.

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

I cannot determine if the landlord acted practically in mitigating his damages by conducting the repairs of the blinds as the landlord claimed to have done and purchasing blinds for which no receipt was submitted. I find the landlord has not submitted sufficient documentary evidence to reach the level of proof required with respect to the blinds.

In considering the landlord's testimony, I determine the landlord took reasonable steps to minimize the damage or loss with respect to the floor and walls by carrying out the repairs himself. The landlord JD provided credible, matter-of-fact testimony about the work he did. I give weight to his testimony and find it believable.

Taking into consideration the testimony and evidence, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving all the four criteria as required with respect to the floor and walls and has not met the criteria with respect to the blinds.

Summary

As outlined above, I find the landlord has met the burden of proof on a balance of probabilities with respect to the following:

ITEM	AMOUNT
Flooring – repair	\$300.00
Wall repair	\$200.00
TOTAL	\$500.00

Filing Fee

As the landlord has been substantially successful in the landlord's claim, the landlord is granted an award of \$100.00 for reimbursement of the filing fee.

The award is as follows:

ITEM	AMOUNT
Flooring – repair	\$300.00
Wall repair	\$200.00
Reimbursement of filing fee	\$100.00
TOTAL AWARD	\$600.00

Security deposit

The landlord is authorized to apply the award to the security deposit. The landlord is directed to return the balance of the security deposit of \$325.00 to the tenant. My conclusion is as follows:

ITEM	AMOUNT
TOTAL AWARD	\$600.00
(Less Security deposit)	(\$925.00)
BALANCE OF SECURITY DEPOSIT	(\$325.00)

Conclusion

The landlord is granted a monetary award as outlined in this Decision and is authorized to satisfy the award from the security deposit. The landlord is directed to return the balance of the security deposit of \$325.00 to the tenant. A monetary order in the amount of \$325.00 is granted to the tenant; this order may be filed and enforced in 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 31, 2020

Residential Tenancy Branch