



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIA BRITISH COLUMBIA
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on April 17, 2020, in which the Landlord sought monetary compensation from the Tenant in the amount of \$2,624.95 for loss of rent, cleaning and repairs, and recovery of the filing fee. The Landlord also sought an Order that they be permitted to retain the Tenant's security deposit towards any amounts awarded.

The hearing of the Landlord's Application was scheduled for teleconference at 1:30 p.m. on August 25, 2020. Only the Landlord's Property Manager, A.G., and Site Manager, V.B., called into the hearing. A.G. gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 1:42 p.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 Landlord's representatives and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. A.G. testified that they served the Tenants with the Notice of Hearing and the Application on April 21, 2020 by registered mail. A copy of the registered mail tracking number for both packages is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of April 24, 2020 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's representatives' submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord's representatives' and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent and cleaning/repairs to the rental unit?
2. Should the Landlord be authorized to retain the Tenant's security deposit towards any amounts awarded?
3. Should the Landlord recover the filing fee paid for this Application?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed as follows: this tenancy began February 1, 2012; monthly rent was \$1,159.00 and the Tenant paid a \$565.00 security deposit. A.G. testified that at the time the tenancy ended rent was \$1,130.00 per month. She also stated that the Tenant vacated the rental unit on May 4, 2020.

The Landlord filed a Monetary Orders Worksheet setting out their claim as follows:

Appliance repair	\$73.50
Locksmith for storage space	\$161.70
Junk removal	\$309.75
May 2020 rent	\$1,130.00
Cleaning	\$400.00
Carpet cleaning (estimate)	\$150.00
Wall repair and painting	\$300.00
Filing fee	\$100.00
TOTAL CLAIMED	\$2,624.95

The Landlord provided photos of the condition of the rental unit at the time the tenancy ended and the numerous items left by the Tenant as well as invoices for expense incurred by the Landlord to clean and repair the unit.

A.G. testified that the Tenant was the former site manager and as such had keys to the storage space. When the tenancy ended, he failed to return some of the keys such that the Landlord had to pay a locksmith to replace the locks.

The Tenant also vacated the rental unit on May 4, 2020 and did not pay rent for the month of May. As such the Landlord sought monetary compensation for unpaid rent for May 2020.

A.G. testified that the carpets were not cleaned but were instead replaced. She did not provide any testimony as to the age of the carpets.

A.G. also testified that the rental unit was painted prior to the tenancy beginning in February of 2012, but had not been painted since. She confirmed that the \$300.00 claim for “wall repair” related to repairing and painting the walls after the tenancy ended.

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 Landlord has 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.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

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

I am satisfied the Landlord is entitled to recover the cost for the locksmith. As section 32 provides, a tenant must return keys to the Landlord when the tenancy ends. I accept A.G. testimony that the Tenant failed to return the keys to the storage space and I therefore award the Landlord the **\$161.70** claimed.

I find that the Tenant failed to clean and repair the rental unit as required by sections 32 and 37. I am persuaded by the photos and invoices submitted in evidence, and accept that the Landlord paid **\$400.00** to have the unit cleaned and paid a further **\$309.75** for junk removal; these amounts are therefore recoverable from the Tenant.

By vacating the rental unit on May 4, 2020, the Tenant prevented the Landlord from re-renting the unit for the month of May. I therefore grant the Landlord's request for **\$1,130.00** for unpaid rent for May 2020.

The Landlord claimed the cost of \$73.50 for appliance repairs. The invoice provided in evidence before me, was for \$313.96 and related to a dishwasher and refrigerator in different rental units of the rental building; further, the invoice was associated to work done in October of 2019, some seven months before the tenancy ended. I am unable to reconcile this invoice with the \$73.50 claimed by the Landlord and I therefore dismiss this portion of the Landlord's claim.

This was a tenancy of over eight years. During the hearing A.G. confirmed the rental unit had not been painted during the tenancy. *Residential Tenancy Branch Policy Guideline 40* provides that interior paint has a useful building life of four years; accordingly, I find that the rental unit would have required repainting in any event of the tenancy and I therefore dismiss the Landlord's claim for \$300.00 for the cost to repair and paint the walls.

A.G. stated that the carpets were not cleaned but were replaced. As I was not provided any evidence of their age, I decline the Landlord's request for cleaning costs.

Having been successful in this Application, the Landlord is entitled to recover the **\$100.00** filing fee pursuant to section 72 of the *Act*.

Conclusion

Locksmith for storage space	\$161.70
Junk removal	\$309.75
May 2020 rent	\$1,130.00
Cleaning	\$400.00
Filing fee	\$100.00
TOTAL AWARDED	\$2,101.45

I grant the Landlord authority, pursuant to sections 38 and 72 of the *Act*, to retain the Tenants \$565.00 security deposit towards the \$2,101.45 awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$1,536.45**. This Order must be served on the Tenants 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: August 26, 2020

Residential Tenancy Branch