



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDL, FFL

Introduction

The landlord seeks compensation against her former tenant pursuant to section 67 of the *Residential Tenancy Act* ("Act"). In addition, she seeks recovery of the application filing fee under section 72 of the Act.

The landlord filed an application for dispute resolution on August 6, 2020 and a hearing was held on December 1, 2020. The tenant and the landlord attended the hearing and they were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses.

Preliminary Issue: Service of Evidence and Submissions

While each party appeared to have served their evidence within the timelines required by the *Rules of Procedure*, the tenant explained that he received the landlord's evidence only about ten days before the hearing. There appeared to be a rather lengthy delivery from where the landlord was sending the evidence to where the tenant received the evidence. I told the tenant that I had the discretion to adjourn the hearing if the tenant required additional time to review the landlord's evidence, and I asked him "are you prepared to proceed?"

The tenant considered the question and then told me that he was prepared to proceed with the hearing. (I note that the tenant's "evidence" was primarily written submissions, which may be submitted closer to a hearing.)

Issues

1. Is the landlord entitled to any or all of the compensation claimed?
2. Is the landlord entitled to recovery of the application filing fee?

Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The landlord's application described her claim as follows:

Cleaning, door knob & french door replacement due to tenant damage, lawn mowing, appliance services required due to tenant claiming drier was broken, electrician services to correct non certified work done by tenant without landlords knowledge or consent.

In this dispute, the tenancy began on February 15, 2017 and ended on July 15, 2020. Monthly rent was \$1,640.00, and the tenant paid a security deposit of \$800.00 and a pet damage deposit of \$800.00. The tenant's security and pet damage deposits were returned by the landlord and are not in issue in this dispute.

At the outset, it was acknowledged by the landlord that no Condition Inspection Report was completed either at the start or end of the tenancy. The landlord submitted a total of 4 photographs depicting the interior of some of the rental unit before the tenancy commenced (for an advertisement listing the property for rent) and 1 photograph taken from the back deck with a view of the backyard. The remainder of the several dozen photographs submitted depicted various aspects of the rental unit after the tenancy ended.

The landlord's claims are outlined below:

1. the landlord testified that the tenant left the rental property in such a state of disrepair and uncleanliness that she needed to do "a lot" of cleaning for several hours on a few days. However, she did not keep a log or record of the hours spent cleaning, though she indicated a "low estimate" of \$1,500.00;
2. there is a claim for utilities. The landlord testified that this was the tenant's responsibility under the tenancy agreement, and he owes \$33.48 for BC Hydro and \$22.04 for FortisBC. Copies of the bills were submitted into evidence;
3. the landlord seeks \$1,114.05 for three ferry trips and fuel costs for three trips totalling 822 km. She testified that a total of three trips were required to go

between her place of residence and the rental unit, and that because she has a special needs son was not able to simply take one trip to take care of everything. Receipts for the ferry trips were submitted into evidence;

4. there is a yard maintenance bill for \$496.13. The landlord explained that the tenant was required to maintain the yard, and that he neglected it;
5. a claim of \$210.00 is made for electrical work related to a clothes dryer. The landlord testified that while this amount is what she paid to the electrician, the electrician did “not want to get involved [in this dispute]” so he did not provide an invoice to the landlord;
6. in reference to the French doors, the landlord said that the doors were damaged and needed to be replaced at a cost of \$2,364.00. A copy of an online Home Depot advertisement for a French door was submitted into evidence;
7. the landlord claims for “tags and bags” which was for removing trash and garbage left by the tenant. This claim is for \$16.69, and the tenant did not dispute this particular claim;
8. the landlord claims \$1,900.00 for lost rental revenue “due to damage and filth” which prevented her from renting out the rental unit in a timely manner immediately after the tenancy ended. A new tenant did not take occupancy until August 21, 2020, and the house sat empty from July 16 until August 21;
9. there is a claim for a replacement doorknob allegedly damaged by the tenant for a cost of \$43.54; a receipt for this item was submitted into evidence;
10. there is a claim for a smoke alarm in the amount of \$35.97 that the tenant allegedly damaged or made inoperable; a receipt was submitted into evidence; and,
11. there is a claim for “heavy duty cleaner for upstairs toilet” in the amount of \$23.59, for which a receipt was submitted into evidence.

The tenant testified that he is “not making a counterclaim” and was not going to address each of the landlord’s claims. Rather, he remarked that he was simply going to “say my peace.” He spoke about various matters unrelated to the landlord’s claims, including

crumbling stairs and fences. He did, at one point in his testimony, admitting that he was partly or somewhat responsible for the French doors, but that he would only accept a fraction of the amount claim: “maybe a \$100 for the doors.” He added that there were no tenants lined up for the last day of the tenancy.

The tenant unexpectedly disconnected from the hearing at 2:27 PM, and then reconnected a few minutes later, at which point we continued. He then testified about the electrician doing certified work and then he spoke about the back deck.

Analysis

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.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 21 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 states the following regarding condition inspection reports:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The landlord submitted 5 photographs of the property taken at the start of, or immediately before the tenancy began. Thus, because the tenant disputes the landlord's entire claim (except in regard to a few small matter), the onus lies squarely on the landlord to prove each claim beyond oral testimony.

To reiterate, when two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Although the before and after photographs depict some damaged and dirtiness caused by the tenant, there is no definitive photographs that persuade me to find that the rental unit was in such a state of uncleanliness and disrepair that would incur a cleaning bill of \$1,500.00. Moreover, in the absence of any log or record of the time spent cleaning, I cannot find that the landlord has proven either (1) the breadth of the cleaning or (2) the actual time spent. It would be inappropriate to simply accept a “low estimate” without documentary evidence, especially when the amount claimed is \$1,500. A thoroughly completed Condition Inspection Report would, had it been completed at the start and at the end of the tenancy, have provided a minimal amount of documentary evidence to support such a claim.

Given the above, I dismiss the landlord’s claim for cleaning costs. Further, as I have not been satisfied that “a lot” of cleaning was necessary (given the lack of any supporting evidence), I cannot find that three round trips and six ferry sailings are a claim that may be considered. The claims for travel (that is, gas) costs and ferry fares are dependent upon my being satisfied that the cleaning claim has any basis in fact, which I cannot. Certainly, while there was some uncleanliness, such as the fan over the stove, the photographs do not support a massive claim as is being made related to cleaning. Likewise, in the absence of any documentary evidence regarding the toilet before the tenancy, I dismiss the landlord’s claim for the heavy-duty cleaner.

That having been said, I do find that, based on a careful consideration of the before-and-after photographs, that the tenant did breach section 37(2) of the Act. However, because the landlord was unable to prove the extensiveness of the damage and uncleanliness, while I do not consider the amount claimed, I may award nominal damages. In this case, I award the landlord \$150.00 in nominal damages.

Regarding the claim for loss rent revenue, given that I was not persuaded that the cleaning was as extensive as claimed – due to the lack of persuasive evidence – I cannot as a result find that the property, in fact, needed to sit vacant for over a month. As such, I dismiss the landlord’s claim for loss of revenue.

There is no documentary evidence of the state and condition of the smoke alarm or the doorknob at the start of the tenancy. As such, I cannot consider the landlord’s claims for these two items.

The tenant did not dispute that he owed the utilities bills being claimed. As this was undisputed (and indeed was not even mentioned by the tenant) I find that the landlord is entitled to her claims for a BC Hydro bill of \$33.48 and the FortisBC bill of \$22.04, for a total of \$55.52.

The parties disputed the \$210.00 claim for electrical work. The landlord has not provided sufficient evidence that there was something untoward being done by the tenant in regard to the dryer. But, even if something unauthorized occurred, the landlord did not present the electrician's invoice for his work. As there is no documentation proving that this amount was paid, I cannot consider this particular claim, which is dismissed.

Regarding the claim for yard maintenance, the before-and-after photograph are definitive: the tenant clearly did not fulfill his responsibility under the tenancy agreement to maintain the grounds. Based on the persuasive oral and photographic evidence presented to me by the landlord, I find that she has met the onus of proving her claim for yard maintenance in the amount of \$496.13.

Regarding the claim for the French doors, the landlord's testimony and the before-and-after photographs of the door clearly show damage to the French door. Indeed, the tenant admitted responsibility (to what extent was unclear) and conceded to compensation in the amount of \$100.00.

Taking into consideration all the oral 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 her claim for compensation for the damaged doors. From this amount, however, a certain amount of depreciation must be applied to the building element being claimed.

Residential Tenancy Policy Guideline 40 sets out the useful life in years for various building elements. Doors have a useful life of 20 years.

In this dispute, while the landlord did not provide any evidence as to how old the French doors were at the start of the tenancy, they were nevertheless in relatively good condition. The tenancy lasted almost three and a half years, and thus a minimum amount of depreciation would be no less than 17.5%. As such, the landlord's claim for the French door must be reduced by 17.5% to \$1,950.30.

Summary

To summarize, the claims for which I find the landlord to have proven on a balance of probabilities, and the amounts awarded, are as follows:

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|-------------------------------|-----------|
| 1. Cleaning (nominal damages) | \$ 150.00 |
| 2. Utilities (undisputed) | 55.52 |
| 3. Yard maintenance | 496.13 |
| 4. Tags and bags (undisputed) | 16.69 |
| 5. French doors (depreciated) | 1,950.30 |

As for the landlord's claim for the filing fee, section 72(1) of the Act permits an arbitrator to order payment of a fee by one party to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful with much of her application, I grant her claim for reimbursement of the \$100.00 filing fee.

A total of \$2,768.64 in compensation is awarded to the landlord.

Conclusion

The landlord's application is granted, in part.

I hereby grant the landlord a monetary order in the amount of \$2,768.64, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed within 15 days of receiving the order, the landlord may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 1, 2020

Residential Tenancy Branch