



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Advent Real Estate Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain all or a portion of the tenants' security and pet damage deposit (the deposits) in satisfaction of the monetary order requested, under section 72;
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 2:06 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord, represented by agent JW, attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenants were served with the application and evidence (the materials) by registered mail on September 25, 2020, in accordance with section 89(1)(d) of the Act (the tracking numbers are recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on September 30, 2020, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Jurisdiction

The landlord's application is for a monetary compensation in the amount of \$35,000.00. The landlord also applied to for an authorization to recover the filing fee. Thus, the total amount of the landlord's application is \$35,100.00.

Residential Tenancy Branch Policy Guideline 18 states:

Section 58(2) of the RTA and 51(2) of the MHPTA provide that the director can decline to resolve disputes for monetary claims that exceed the limit set out in the Small Claims Act. The limit is currently \$35,000. If a claim for damage or loss exceeds the small claims limit, the director's policy is to decline jurisdiction. This ensures that more substantial claims are resolved in the BC Supreme Court, where more rigorous and formal procedures like document discovery are available. If an applicant abandons part of a claim to come within the small claims limit, the RTB will accept jurisdiction.

The landlord was advised at the hearing that the claim exceeds \$35,000.00 and is therefore outside of the jurisdiction of the Residential Tenancy Branch.

The landlord amended his application to reduce the amount of the monetary application to \$34,900.00.

Pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's application for a monetary claim to \$34,900.00. Thus, the total amount of the landlord's application is \$35,000.00 (34,900.00+100.00) and I have jurisdiction to hear this matter.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss under the Act, the regulation or tenancy agreement?
2. an authorization to retain the tenants' deposits in satisfaction of the monetary order requested?
3. an authorization to recover the filing fee for this application?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained to the attending party it is his obligation to present the evidence produced.

The periodic-term tenancy started on December 01, 2014 and ended on August 31, 2020. Monthly rent was \$2,548.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of \$1,175.00 and a pet damage deposit in the same amount. The landlord holds in trust the total amount of \$2,350.00 for the deposits. The tenancy agreement was submitted into evidence.

The rental unit is located in a rental building containing 440 units in 26 floors connected to another rental building containing 459 units in 36 floors.

The landlord affirmed on August 01, 2020 tenant CH damaged the rental unit's walls with a hard object and hit the sprinkler head in the living room. This caused the sprinkler system to set off in the rental unit and in numerous other rental units in the two attached rental buildings. The landlord submitted into evidence photographs of the rental unit showing significant damages to the drywall and carpet floor.

The rental unit's strata agent sent the landlord a letter on August 20, 2020 stating on August 01, 2020 the tenants damaged the sprinkler head system, resulting in water damage to numerous floors: "This letter will serve as Strata's official notice to you that all associated repairing costs will be charged back to your account."

The move-out inspection form (the inspection form), signed by tenant AH and the landlord on September 04, 2020, states: "at move out tenant hit sprinkler head in living room causing damage in condo."

The rental building insurance policy was submitted into evidence. It indicates the deductible for water damage is \$50,000.00. The landlord explained he is claiming for \$35,000.00 because this is the limit set in the Act.

On August 25, 2020 the strata emailed the landlord: "I was asked by strata council to follow up with you on the payment status for the \$50,000 water damage deductible."

A monetary order worksheet was submitted into evidence indicating \$35,000.00 for strata deductible.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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 32(2) and (3) of the Act states:

(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.

Based on the convincing, coherent and undisputed landlord's testimony, inspection form, photographs showing extensive damage in the rental unit, strata letters and emails referring to the damage and the insurance deductible, and insurance policy, I

find, on a balance of probabilities, that tenant CH damaged the sprinkler in the rental unit and set off the sprinkler system.

The damage caused by tenant CH to the sprinkler system caused water damage to numerous rental units in the two connected rental buildings. The strata is charging the landlord the insurance deductible in the amount of \$50,000.00 as a consequence of the water damage to numerous rental units in the two connected rental buildings.

Thus, I award the landlord the amount of \$34,900.00 for this loss.

Filing fee and summary

As the landlord was successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. Thus, I order the landlord to retain the tenants' security deposit of \$2,350.00 in partial satisfaction of the monetary award granted.

In summary:

Insurance deductible	\$34,900.00
Filing fee	\$100.00
Minus deposits	\$2,350.00 (subtract)
Total monetary award	\$32,650.00

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$2,350.00 deposits and grant the landlord a monetary order in the amount of \$32,650.00.

The landlord is provided with this order in the above terms and the tenants must be served with this order in accordance with the Act. Should the tenants fail to comply with

this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that 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 *Residential Tenancy Act*.

Dated: January 15, 2021

Residential Tenancy Branch