Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing was scheduled to deal with a landlord's application for compensation for damage to the rental unit and authorization to retain the tenant's security deposit and/or pet damage deposit.

The owners of the property were represented by an agent. Both named tenants appeared at the commencement of the hearing; however, the female tenant stated that she was at work and appointed her co-tenant and husband to represent her. The female tenant then left the hearing. I continued to hear from the landlord's agent and the male tenant for the remainder of the hearing. Both parties were given the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary Issue – Service of landlord's hearing materials and evidence

I confirmed the landlord had served the tenants with the landlord's proceeding package via registered mail sent on September 28, 2020 and the tenants received the proceeding package. A detailed calculation or Monetary Order worksheet did not accompany the proceeding package. Rather, the amount claimed is consistent with the sum of the tenant's security deposit and pet damage deposit.

I confirmed that the landlords did not serve the tenants with any evidence until January 4, 2020 which is only nine clear days before the hearing.

The tenant served his rebuttal package to the landlord's agent on January 5, 2021; however, the tenant testified that he had prepared his rebuttal prior to receiving the landlord's evidence package and had sent it off for printing on January 4, 2021, just

prior to receiving the landlord's evidence so he did not have time to amend his rebuttal and serve it to the landlord by his service deadline.

The Rules of Procedure were developed by the Director to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants.

The Rules of Procedure provide that an applicant must serve all available evidence they intend to rely upon with the proceeding package, to the extent possible. If evidence is not available at the time of serving the proceeding package the evidence must be served as soon as possible and no later than 14 clear days before the hearing. A respondent is required to serve his/her evidence to the applicant no later than 7 clear days before the hearing. Since the hearing was scheduled for January 14, 2021 the landlord's 14 day deadline fell on December 30, 2020 and the tenant's deadline for service upon the landlord was on January 6, 2021.

The Rules of Procedure provide several rules pertaining to service of documentation and evidence upon each other. Below, I have reproduced the rules relevant to the service, with my emphasis underlined.

> **2.5 Documents that must be submitted with an Application for Dispute Resolution**
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> To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:
> • a detailed calculation of any monetary claim being made;
> • a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
> • copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [*Consideration of new and relevant evidence*].
>
> **3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package**
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> The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:
> a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;

b) the Respondent Instructions for Dispute Resolution;
c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*].

3.11 Unreasonable delay

Evidence must be served and submitted as soon as reasonably possible. If the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

3.12 Willful or recurring failure

The arbitrator may refuse to accept evidence if the arbitrator determines that there has been a willful or recurring failure to comply with the Act, Rules of Procedure or an order made through the dispute resolution process, or if, for some other reason, the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice.

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package. The respondent must ensure evidence that the respondent

intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. See also Rules 3.7 and 3.10.

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. Both parties must have the opportunity to be heard on the question of accepting late evidence. If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [*Adjournment after the dispute resolution hearing begins*] and Rule 7.9 [*Criteria for granting an adjournment*].

The landlord's agent was asked to provide the reason for the delay in serving the tenants with the landlord's evidence. The landlord's agent responded that she did not receive the contractor's invoice until recently, even thought the repair work was completed in November 2020. The agent indicated that upon receipt of the contractor's invoice she then compiled a complete evidence package to serve to the tenants.

The tenant submitted that he had prepared his response without the benefit of the landlord's evidence package as he had a deadline he had to meet for serving his rebuttal to the landlord. The tenant testified that he had sent his rebuttal off for printing on January 4, 2021 just before he received the landlord's evidence package and he did not have time to change his package before he had to serve his package.

I accept the tenant's position that he had prepared his rebuttal in response to the proceeding package served upon them in September 2020 and without evidence from the landlords as his rebuttal corresponds to each of the several issues the landlords

raised in the “details of dispute” that is provided on the Application for Dispute Resolution; whereas, in the evidence package served on January 4, 2021 appears to have limited the landlord’s claims to two issues: cleaning and door damage.

I note that the landlord’s evidence package includes many documents and evidence that would have been available at the time of filing including: the tenancy agreement, the notice to end tenancy, text messages exchanged between the parties, the condition inspection reports, and, photographs of the rental unit taken at the end of the tenancy. Only two pieces of evidence were dated after the landlord filed: a cleaning receipt and an invoice for repairs/renovations that took place in November 2020.

I note that the landlord’s agent had prepared a Monetary Order Worksheet on December 16, 2020 and in doing so she provided indicated she had receipts and the amounts recorded on the Monetary Order worksheet correspond to the receipts. Therefore, I find it likely that the landlord’s agent had the receipts for cleaning and repairs no later than December 16, 2020 and she could have met her deadline for service but for some reason she waited to serve the tenants until January 4, 2021.

In light of all of the above, I am of the position the landlords unreasonably delayed in serving the tenants with their detailed monetary calculation and evidence, without any compelling reason for doing so, and I find the tenants were prejudiced by the delay as they had already prepared their rebuttal so as to meet their service deadline. Therefore, I refused to admit the landlord’s documentary and photographic evidence.

The landlord’s agent stated she would still like to proceed to present the landlord’s case even if it was based on oral submissions and testimony of the landlord’s agent only. Since the tenant’s evidence was served on time, I admitted their package and considered it in making this decision.

Issue(s) to be Decided

1. Have the landlords established an entitlement to the compensation claimed against the tenants?
2. Are the landlords authorized to retain any or all of the tenant’s security deposit and pet damage deposit?

Background and Evidence

The tenancy started on July 1, 2012 and ended on August 31, 2020. The tenants paid a security deposit of $697.50 and a pet damage deposit of $300.00 that the landlord continues to hold pending the outcome of this proceeding.

The parties were in agreement that the parties participated in a move-in and move-out inspection together and condition inspection reports were prepared.

The tenants did not authorize the landlord to make any deductions from the security deposit or pet damage deposit, in writing, at the end of the tenancy.

The landlord's agent submitted that the landlords seek to retain the sum of the tenant's security deposit and pet damage deposit in satisfaction of cleaning costs and costs to repair and replace five doors in the rental unit.

Below, I have summarized the parties' respective positions concerning the landlord's request.

Cleaning

The landlord's agent testified that the tenants did not leave the rental unit sufficiently clean at the end of the tenancy. The landlord's agent acknowledged that the tenants were informed that they did not have to clean certain things as they were going to be replaced after the tenancy ended, such as the blinds and the carpeting; however, they were still required to clean the kitchen and two bathrooms along with walls, light fixtures, face plates, window tracks, and the like.

The landlord's agent testified that the owners were having the rental unit assessed for repairs/renovations during the month of September 2020 and on September 30, 2020 a cleaner cleaned the unit and charged $228.38 for 7.25 hours of cleaning at $30.00 per hour, and tax.

The landlord's agent testified that cleaning was required on the walls, cabinets, appliances, light fixtures, face places, window tracks, tub and toilet, and kitchen and bathroom floors.

The landlord's agent acknowledged that the repairs/renovations took place after the cleaning of September 30, 2020.

The tenant acknowledged responsibility for some additional cleaning but not the entire amount sought by the landlords. The tenant testified that he had cleaned the cabinets, appliances, and the walls (with the exception of one small area). The tenant acknowledged he did not clean the flooring as he understood the flooring was going to be replaced. The tenant pointed out that some fixtures did not look clean, such an old faucet since it was rusty, and old window screens. The tenant also pointed out that the rental unit underwent a major renovation after the tenancy ended and that would have created a lot of dust and debris.

The tenant was of the view and agreeable to compensating the landlords for three hours of cleaning, or $90.00 as a fair resolution to this claim.

Damaged doors

The landlord's agent submitted that at the end of the tenancy several doors in the rental unit were damaged. As follows:

- two bifold closet doors – one closet door had a hole in it and the other was coming apart at the top of the door. The owners replaced both of these doors.

- Front door and door frame – the front door appeared to have been kicked in, resulting in the door and door frame being cracked. These were repaired after the tenancy ended.

- Master bedroom door – this door had a hole in the door that appears to have been punched in. This door had been patched by the tenant but the patch was not very good and further patching and painting was required after the tenancy ended.

- Smaller bedroom door – this door also had a hole in it. This door was patched and painted after the tenancy ended.

The landlord's agent acknowledged she did not know the age of the doors but estimated that they were at least 10 years old.

The landlord's agent submitted that the invoice from the contractor indicates that the owners where charged $950.00 for labour and $300.00 for materials for "Doors" although the invoice does not provide a breakdown a further breakdown as to how many doors were replaced or repaired or the cost attributable to each of the doors.

The tenant acknowledged there was a hole in one of the closet doors and the top of the other closet door had come apart. The tenant attributed this to the doors being old, the pins coming loose and the doors frequently coming off their tracks. The tenant submitted that the closet doors appeared much older than 10 years. The tenant was of the view the doors required replacement in any event due to wear and tear and their age.

The tenant acknowledged that the front door had been forced open. The tenant explained that there was no weather stripping around the front door and on one occasion, approximately six months before the tenancy ended, the door and door frame had become wet and froze together which resulted in it being stuck so it was forced open to gain entry into the rental unit. The tenant was of the position that the landlords did not perform regular maintenance on the property and were inclined only to make emergency repairs so he had not requested installation of weather-stripping on the front door. The tenant also stated that the door was functional throughout the remainder of the tenancy after he make some repairs to it, although it still wiggled a little bit. The tenant submitted that the door was very old and did not have weather-stripping so the landlords should be responsible for this repair.

The tenant acknowledged he had punched the master bedroom door but he had patched it. The tenant was of the view it only required painting but that he did not paint it as he understood the landlords would be painting as part of their renovation project.

The tenant acknowledged that there was a hole in the smaller bedroom door; however, the tenant described this hole and being on the backside of the door (inside the bedroom) and attributed this hole to be from the lack of a door stop.

The tenant stated that the landlords were undertaking a sizable renovation project (of approximately $30,000) after the tenancy ended so he did not give much consideration to the doors as the doors were old and in need of replacement, repair and/or paint in any event. The tenant was of the view the owners are merely trying to retain the deposits to offset some of their renovation costs. As such, the tenant was not agreeable to compensating the landlords anything for the doors.

The landlord's agent argued that despite the age of the doors, the tenants must not damage the property and had the doors not been damaged the owners would have spent less money on the repair/renovation project.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. In this case, the landlords have the burden of proof. It is important to note that where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

Section 37 of the Act provides that a tenant is required to leave a rental unit "reasonably clean" at the end of the tenancy.

The tenant conceded that some additional cleaning was required and was agreeable to compensating the landlords for 3 hours or $90.00. I was provided opposing oral testimony as to the tenant's failure to clean other areas of the rental unit. Without further evidence before me to support the landlord's position, I find the refuted oral testimony to be insufficient. Therefore, I award the landlords the amount the tenant agreed to during the hearing, which is $90.00.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

It is important to note that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged that it requires replacement, an award will generally take into account depreciation of the original item. To award the landlord full replacement value of certain building elements that were several years old already would result in a betterment for the landlord. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* provides that the average useful life of a door is 20 years.

In this case, the tenant was of the position the doors were very old and at or near the end of their life; whereas, the landlord's agent was uncertain as to their age but estimated them to be at least 10 years old.

Having heard the bi-fold doors were older, had loose pins and were coming off their tracks, I am inclined to accept that the bi-fold closet doors were likely at the end of their life and due for replacement due to wear and tear, age and natural deterioration. Therefore, I make no award to the landlords for replacement of the closet doors.

As for the master bedroom door, I heard that the tenant damaged the door by punching a hole in it but that the tenant patched the hole. The invoice the landlord's agent described during the hearing does not provide sufficient detail as to the charge for patching the master bedroom door, if any. As such, I find there is insufficient evidence to establish the landlord's loss with respect to the master bedroom door, if any.

As for the smaller bedroom door, I heard there was a hole in the door but the tenant attributed this to a lack of a door stop. The landlord's agent did not refute that there was not a door stop in place. I find it have insufficient evidence before me to determine where the hole was located on the door and if the lack of a doorstop resulted in the damage and it was upon the landlords to provide sufficient evidence to show where the hole was located. Further, as stated previously, the lack of detail on the contractor's invoice leaves to me at a loss to determine what the cost to repair the door was. Therefore, I find there to be a lack of evidence to determine the landlord's entitlement to compensation for this door.

With respect to the front door and door frame, the tenant acknowledged the door and door frame became cracked when it was forced open by the tenant. The tenant attributes the lack of weather-stripping and the door and frame becoming frozen shut in the winter as being the reason it was forced open. However, the tenant did not explain

why another door could not have been used to gain entry to the home. Nor, did he make any submissions that he made any attempt to contact the landlord for a remedy. I also find the tenant's explanation that the door and frame were frozen together as an explanation for both of them to become cracked to be not very plausible as this would suggest the ice is stronger than the door and its frame. More commonly, a door and door frame become cracked when the lock is engaged and the door is forced open. The tenant also stated he made some attempts to repair the door so that it would be functional, but that it still had some wiggle. I find the tenant's attempts to make some repair to the door indicative of the tenant being responsible for the damage, just as he did with patching the master bedroom door. Therefore, I find, on a balance of probabilities, that the tenants are responsible for damaging the front door and door frame and I hold the tenants responsible for their repair.

Since I am unable to determine the cost to repair the front door and frame from the total charged by the contractor for all of the doors, but in recognition of the tenant's liability, I find it appropriate to award the landlord a nominal award. Therefore, I award the landlords $100.00 for the repair to the front door and door frame.

The landlords had limited success in this Application for Dispute Resolution and I award the landlords recovery of one-half of the filing fee, or $50.00.

Considering all of the above, I authorize the landlords to deduct a sum of $240.00 [$90.00 + $100.00 + $50.00] from the tenants' security deposit and I order the landlords to return the balance of the security deposit and the pet damage deposit, in the amount of $757.50, to the tenants without delay.

In keeping with Residential Tenancy Branch Policy Guideline 17, with this decision, I provide the tenants with a Monetary Order in the amount of $757.50 to ensure payment is made by the landlords.

Conclusion

The landlords are authorized to deduct $240.00 from the tenants' security deposit and the landlords are ordered to return the balance of the tenants' deposits, in the net amount of $757.50 without delay.

Provided to the tenants with this decision is a Monetary Order in the amount of $757.50.

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