



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-S, MND-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed;
- compensation for alleged damage to the rental unit by the tenant; and
- recovery of the filing fee.

The landlords attended the hearing; however, the tenant did not attend.

The landlord stated they served the tenant with their application for dispute resolution and Notice of Hearing by registered mail on November 20, 2020. The landlord provided the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. That number is listed on the style of cause page in this Decision.

I accept the landlord's evidence that the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence. The Canada Post website shows the registered mail was delivered on November 22, 2020.

The landlords were provided the opportunity to present their evidence orally and make submissions to me.

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

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and to recover the cost of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of March 1, 2018, a fixed term through February 28, 2019, monthly rent of \$1,150, due on the 1st day of the month, and a security deposit of \$575 being paid by the tenant to the landlord.

The landlord indicated in their application made on November 20, 2020, the tenancy ended on August 31, 2020.

The landlord indicated that they retained the tenant's security deposit to make this claim against it.

The landlord submitted a monetary order worksheet showing a monetary claim as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cabinet replacement	\$1,554.47
2. Sink, floor, sub-floor, etc.	\$1,475.88
3. Plumbing	\$282.92
4. Countertop	\$976.50
5. Back splash	\$72.80
6. Floor, wall, cabinet	\$204.52
7. Disposal	\$153.00
8. Labor	\$3,976.00
9. Rent	\$1,178.00
10. Filing fee	\$100.00

I note that although the landlord's total on their worksheet listed a total of \$5,626, the landlord said they were seeking half the costs. Further, half of the above costs total \$9,974.09 is actually \$4,987.05, rather than \$5,626 on their worksheet.

To support their claim for damages, the landlord submitted a copy of a previous Decision by another arbitrator.

The Decision of October 23, 2020, was entered after a hearing on the cross applications of the landlord and the tenant, for various issues.

In that other Decision, the arbitrator found that the tenant is responsible for half the reasonable cost of repairing the water damage in the kitchen. The arbitrator also said that the costs of damages were to be assessed on further application by the landlords. This was that application by the landlords.

As to the claims for damages, the landlords stated that there was a major leak under the kitchen sink, and that the tenant failed to notify the landlords for at least a year. The long delay in notifying the landlords caused excessive damage to the entire kitchen.

The water damage was so extensive, the entire kitchen had to be replaced, as the cabinets would not match otherwise. This required the backsplash, floors and countertops to be replaced.

The landlord submitted that her husband, LZD, performed the renovation work, and totaled his hours, which took 142 hours at \$28 per hour.

The landlords referred to their evidence, which showed receipts for materials.

Monthly rent –

In support of their claim for rent, the landlord submitted that the tenant owed monthly rent of \$1,178. When questioned, the landlord first said this was monthly rent for August 2020, then changed her testimony, not specifying for what month the rent was not paid.

I find it noteworthy that the landlord's claim for rent for August 2020, was dismissed by the other arbitrator in the Decision of October 23, 2020.

Also, in the previous Decision of October 23, 2020, the arbitrator allowed the landlord to retain \$225 from the tenants security deposit for their monetary award in that Decision and granted the tenant a monetary award of \$250 for the remainder of her security deposit.

Analysis

In this case, another arbitrator pre-determined that the tenant would be responsible for the reasonable cost of repairing the water damage in the kitchen. I am bound by that earlier Decision, on the legal principle of *res judicata*. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

Here, I find the landlords submitted sufficient and uncontested evidence to support that the costs of repairing the water damage by way of their photographs, receipts and estimates as claimed were reasonable.

I therefore find the landlord has submitted sufficient evidence to support their claim for half of the reasonable costs of repairing the water damage in the kitchen.

In reviewing that amount, I look to their monetary order worksheet. The landlord listed costs of \$1,554.47 for cabinets, \$1,475.88 for sink, floor, subfloor, etc., \$282.92 for plumbing parts, \$976.50 for a countertop, \$72.80 for a backsplash, \$204.52 for building material, \$153.00 for disposal, and \$3,976.00 for the landlord's labor. This amount equals to \$8,696.09, for which the tenant is responsible for half the costs.

I therefore find the landlord has established a monetary claim of \$4,348.05.

As to the landlord's claim for the monthly rent for August, I find the other arbitrator in the Decision of October 23, 2020, dismissed that claim.

I therefore find I cannot re-decide that issue and the landlord's claim here is dismissed.

As to the landlord's authority to keep the tenants' security deposit to use against a monetary award, I find that matter has been decided in the October 23, 2020, Decision of the other arbitrator. The other arbitrator dealt with the tenant's security deposit and as a result, I make no findings in my decision. The landlord is reminded she must still follow the terms of that previous Decision.

As the landlord has had success with their application, I grant the landlord recovery of their filing fee of \$100.

Due to the above, I find the landlord has established a total monetary claim of \$4,448.05, which is half the reasonable costs of repairing the water damage in the kitchen for \$4,348.05 and the filing fee of \$100.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$4,448.05.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is cautioned that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlord's application for monetary compensation is granted, in part, and they have been awarded a monetary order in the amount of \$4,448.05.

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: March 15, 2021

Residential Tenancy Branch