



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's Application: OPRM-DR, OPR-DR, FFL, MNDL-S, MNRL-S, MNDCL-S
Tenant's Application: CNR, CNC, OLC, MNDCT, PSF

Introduction

This hearing was scheduled to deal with cross applications. The landlord originally applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. The tenant applied to cancel a One Month Notice to End Tenancy for Cause ("1 Month Notice") and a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"); orders for the landlord to comply with the Act, regulations or tenancy agreement; orders for the landlord to provide services or facilities required by law or the tenancy agreement; and, a Monetary Order for damages or loss under the Act, regulations or tenancy agreement.

The landlord subsequently filed an Amendment to an Application for Dispute Resolution seeking to change the monetary claim to include unpaid and/or loss of rent and utilities; damage and cleaning costs; and, authorization to retain the security deposit and/or pet damage deposit.

At commencement of the hearing both the landlord and the tenant were present.

After I introduced myself, I proceeded to explore service of hearing materials upon each other. The parties began speaking out of turn and arguing with each other. As I was instructing the parties to cease such conduct the tenant stated she was going to hang up and would no longer participate in the hearing and that she was going to go to Small Claims court. I tried to discourage the tenant from hanging up since the Small Claims court does not have jurisdiction over residential tenancy disputes. The tenant proceeded to hang up. I left the teleconference call open in the event the tenant

decided to call back into the hearing; however, during the time I remained on the line with the landlord, which was almost an hour, the tenant did not call back in.

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In this case, the tenant appeared at the hearing but only briefly. The tenant hung up on her own volition and did not call back in. I proceeded with the two applications before me, as scheduled.

With respect to service of the landlord's Application for Dispute Resolution, the landlord testified that the original proceeding package was sent to the tenant, via registered mail on December 14, 2020 and at that time the tenant was residing in the rental unit. A search of the tracking number showed the registered mail was sent on December 16, 2020 and picked up on December 23, 2020. The landlord testified that the Amendment to an Application for Dispute Resolution and additional evidence was given to the tenant, in person, on January 18, 2021 by the landlord's husband. The landlord's husband was called to testify. The landlord's husband testified that he met the tenant at outside a restaurant at a mall, at approximately 5:00 p.m. on January 18, 2021 and served her with the Amendment and additional evidence including printed photographs. The landlord also testified that she observed this service and video recorded it. I was satisfied the landlord served the Amendment and additional evidence upon the tenant and I permitted the landlord's Application for Dispute Resolution to be amended.

The landlord submitted that the tenant gave up possession of the rental unit on January 15, 2021. As such, the landlord confirmed that an Order of Possession is no longer required and the only outstanding matters pertain to the monetary claim and disposition of the security deposit and/or pet damage deposit.

As for service of the tenant's Application for Dispute Resolution, the tenant did not present proof of service upon the landlord. The landlord testified that she was not

served with the tenant's proceeding package. Having heard the tenancy has already ended, I find the majority of the remedies sought by the tenant on her Application for Dispute Resolution are now moot, except for the tenant's monetary claim. I did not proceed to hear the tenant's monetary claim due to lack of service upon the landlord and it is dismissed with leave to reapply.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant, as amended?
2. Is the landlord authorized to retain the tenant's security deposit and/or pet damage deposit?
3. Award of the filing fee.

Background and Evidence

The tenancy started on October 1, 2017 and the tenant paid a security deposit of \$450.00 and a pet damage deposit of \$450.00.

A move-in inspection report was prepared at the start of the tenancy.

The rent was originally set at \$900.00 payable on the first day of every month. The rent was increased to \$920.00 by way of a Notice of Rent Increase issued in September 2019 to be effective starting January 1, 2020. The tenant had paid the increased amount of rent. In addition to rent, the tenant is required to pay 20% of the hydro bill, as provided in the tenancy agreement.

On November 28, 2020 the landlord issued a One Month Notice to End Tenancy for Cause to the tenant with a stated effective date of December 31, 2020.

The landlord submitted that the tenant then withheld rent for December 2020 and on December 2, 2020 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of December 12, 2020.

The tenant's filed her Application for Dispute Resolution on December 10, 2020 to dispute the One Month Notice and the 10 Day Notice but did not submit a copy of the Notices to End Tenancy or serve the landlord with her Application for Dispute Resolution and it appears the tenant's request to cancel the Notices to End Tenancy was filed late. The landlord also filed an Application for Dispute Resolution seeking an

Order of Possession based on the Notices to End Tenancy. A hearing was scheduled for March 5, 2021; however, the tenant vacated the rental unit on January 15, 2021.

The landlord submitted that the tenant expected to move into a new living accommodation on or about the end of December 2020 but on December 31, 2020 the tenant sent a text message to the landlord advising the landlord that she could not take possession of her new rental unit until January 15, 2021. The landlord observed a moving truck outside the rental unit on January 15, 2021. The landlord scheduled a move-out inspection with the tenant for January 18, 2021 and the tenant participated in the move-out inspection.

A move-out inspection report was prepared. The tenant signed it but did not indicate she agreed with the landlord's assessment of the property or authorize the landlord to make any deductions from the security deposit or pet damage deposit.

Below, I have summarized the landlord's monetary claims against the tenant, as amended:

Description	Amount	Reason
Unpaid rent – December 2020	\$920.00	Tenant did not pay rent due under tenancy agreement.
Loss of rent – January 2021	\$920.00	Tenant continued to occupy rental unit in January 2021 without paying for use and occupancy
Unpaid utilities – November 2020	\$76.40	Tenant did not pay 20% of the \$382.00/mo. equal payment plan
Unpaid utilities – December 2020	\$76.40	Tenant did not pay 20% of the \$382.00/mo. equal payment plan
Unpaid utilities – January 2021	\$99.25	BC Hydro bill for period up to January 22, 2021. This bill includes amount to reconcile the equal payment plan payments to actual usage. Landlord is seeking 20% of this bill as tenant occupied unit until January 15, 2021 and the reconciliation payment is for period during tenancy.
Cleaning	\$240.00	Tenant did not leave rental unit reasonably clean. The amount claimed is the amount paid to cleaners who performed some of the cleaning. Landlord performed remainder of

		cleaning and did not claim against tenant for the landlord's time.
Purchase of materials and supplies for specialty primer, new bedroom door, new light fixtures, new smoke alarm	\$450.44	Tenant smoked in rental unit and specialty primer had to be applied to walls to cover smell of smoke. Bedroom door was broken from appeared to be from kicking the door. Light fixtures were sticky and yellowed from nicotine and tar stains and efforts to clean the light fixtures were unsuccessful so light fixtures replaced. Smoke detector taken down by tenant and was not operational at end of tenancy. Landlord did not claim for any labour to apply primer, or remove and install new door, light fixtures and smoke detector.
Purchase used door for bathroom	\$44.80	Bathroom door was cracked at the end of the tenancy and mouldy from what appeared to be the tenant hanging wet towels or items on top of the door. Landlord found a used door to save costs but there was only one used door so new door purchased for bedroom door in claim above. Landlord did not charge for labour to remove or install door.
Purchase drawer supplies	\$43.09	Kitchen drawer was broken during tenancy. It appears tenant tried to repair it with tape but the tenant's repair was insufficient. Landlord purchased supplies to rebuild drawer. Landlord did not claim for labour to rebuild drawer.
Paint purchase	\$96.58	Cost of paint to apply over primer. Rental unit had been painted shortly before tenancy started.
Replace blinds	\$262.06	The blinds were yellowed from tar and nicotine from the tenant smoking in the rental unit. Also, the blinds were broken as they no longer tilted. The blinds were approximately 10 years old but the landlord submitted she has the same blinds in her living unit and they are in still perfectly good. The landlord provided photographs of the new blinds compared to the

		existing blinds to demonstrate the colour difference from the yellow sticky substance left on the blinds. The landlord did not make a claim for labour to remove and install blinds.
Showerhead replacement	\$27.12	The tenant removed the showerhead supplied by the landlord and installed her own detachable showerhead; however, it was stained from pink hair dye and the landlord's showerhead was no where to be found. No charge for labour to remove and install shower head.
Filing fee	\$100.00	Cost to file the landlord's Application for Dispute Resolution.
Total	\$3356.14	

The landlord testified that the rental unit was re-rented on February 18, 2021.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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.

Upon consideration of all the unopposed evidence before me, I provide the following findings and reasons.

Unpaid and/or loss of rent

Under section 26 of the Act, a tenant is required to pay rent when due under their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold or otherwise not pay the rent due to the landlord.

It was unopposed the tenant was required to pay rent of \$920.00 per month. After the One Month Notice was served the tenancy was set to end December 31, 2020 and the tenant was obligated to pay rent for December 2020. The tenant did not pay rent for December 2020 and I was not presented any evidence to suggest the tenant had a legal right to withhold rent for December 2020. Therefore, I award the landlord unpaid rent of \$920.00 for the month of December 2020.

It was unopposed that the tenant did not vacate the rental unit pursuant to either of the Notices to End Tenancy served upon her and remained in possession of the rental unit until January 15, 2021 without paying any monies for her continued use and occupancy of the rental unit. Therefore, I find the tenant's actions resulted in the landlord's loss of rent for the month of January 2021 and I award the landlord loss of rent for January 2021 in the amount of \$920.00.

Unpaid utilities

The tenancy agreement provides that the tenant would pay 20% of the hydro bills. The landlord provided copies of the BC Hydro bills for the months of November 2020, December 2020 and January 2021. The landlord submitted unopposed evidence that the tenant did not pay the utilities for November 2020, December 2020 in accordance with her tenancy agreement. The tenant also continued to use the rental unit until January 15, 2021 and the January 2021 hydro bill included the reconciliation for the equal payment plan for the preceding months. Therefore, I find the landlord entitled to recovery of the utilities as claimed against the tenant.

Cleaning

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 landlord provided several photographs and the move-out inspection report that showed the rental unit was left very dirty. The landlord provided a cleaning invoice in the amount claimed of \$240.00. I find the landlord satisfied me that the tenant failed to leave the rental unit reasonably clean and I grant the landlord's request to recover \$240.00 from the tenant for cleaning.

Damage

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.

The move-in inspection report shows the rental unit was in good condition for the most part at the start of the tenancy. The landlord's numerous photographs and move-out inspection report depicted many areas that were damaged at the end of the tenancy and form the landlord's damage claim.

The landlord provided unopposed submissions that the tenant was smoking in the rental unit and the rental unit was left smelling of smoke and surfaces were stained with tar and nicotine. The landlord provided receipts to show the cost to purchase supplies (specialty primer and paint, light fixtures, blinds) to rectify the nicotine stains and smell.

The landlord provided unopposed submissions that the tenant broke two doors during the tenancy and a kitchen drawer. The landlord provided receipts to demonstrate the cost of supplies to replace or repair these broken items.

The landlord provided unopposed submissions that the tenant removed the landlord's showerhead and replaced it with her own that was left stained. The landlord provided a receipt to show the purchase of a new showerhead.

The landlord provided unopposed submissions that the smoke alarm had been detached by the tenant and was no longer working at the end of the tenancy. The landlord provided a receipt to show the purchase of a new smoke alarm.

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. In this case, the landlord did not include a charge for labour

to prime and paint the rental unit; remove and replace the stained light fixtures, showerhead, smoke detector; or, labour to rebuild the broken kitchen drawer. All things considered, I find the landlord's request to recover the cost of materials and supplies in the absence of any labour charges is a reasonable reflection of the losses for which the tenant is responsible and I do not depreciate the cost of materials.

In light of the above, I award the landlord the cost of materials only, as claimed against the tenant, for damage to the rental unit.

Filing fee

The landlord's claim had merit and I award the landlord recovery of the \$100.00 filing fee paid for the landlord's application.

Security Deposit and pet damage deposit

I authorize the landlord to retain the tenant's security deposit and pet damage deposit in the sum of \$900.00 in partial satisfaction of the amounts awarded to the landlord with this decision.

Monetary Order

In keeping with all of my findings and awards above, I provide the landlord with a Monetary Order in the net amount of \$2456.14 (\$3356.14 – \$900.00) to serve and enforce upon the tenant.

Conclusion

The landlord is authorized to retain the tenant's security deposit and pet damage deposit in partial satisfaction of the amounts awarded to the landlord and the landlord is provided a Monetary Order for the balance owing of \$2456.14.

The tenant is given leave to reapply with respect to her monetary claim against the landlord.

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 09, 2021

Residential Tenancy Branch