



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FFL MNDCL MNDL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An order of possession pursuant to section 55;
- Authorization to recover the filing fee from the tenant pursuant to section 72;
- A monetary award for unpaid rent, damages and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials and did not serve any materials of their own. Based on their testimonies I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties stated that this tenancy has ended and an Order of Possession was no longer necessary. The landlord withdrew the portion of their application pertaining to an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began in May 2020. The rental unit is a furnished suite in a multi-unit high-rise building managed by a strata corporation. The monthly rent was \$3,000.00 payable on the first of each month. A security deposit of \$1,500.00 was collected and is still held by the landlord. The parties prepared a move-in condition inspection report which states that the suite and its furnishings were in good condition. The tenant vacated the rental unit sometime in January 2021. No move-out condition inspection report was prepared.

The tenant submits that a date and time was agreed to by the parties for a move-out inspection but the landlord attended when the tenant was not available at a different time. The landlord submits that the tenant did not agree to a time for a move-out inspection despite multiple opportunities being provided.

The landlord submits that the rental unit was in a state of disaster after the tenancy ended. The landlord submitted a condition inspection report prepared in the absence of the tenant, numerous photographs of the suite and gave testimony on its condition. The landlord says that most of the furniture, decorative items and fixtures in the rental suite were destroyed, damaged or made unusable due to the tenant. Some of the damage cited by the landlord include holes in the walls, flooring and carpeting stained and scratched up, doors to rooms punched in, appliances dented, cracked and furniture ripped up, stained, burned and cracked. The landlord provided multiple photographs of the suite showing a condition of general untidiness with litter strewn about and items such as beer caps and used prophylactics found hanging on the ceiling light fixtures.

The landlord testified that the most significant damage to the suite stemmed from the plumbing fixtures which were broken by the tenant and their guests causing floors and walls to suffer water damage. The landlord submitted reports from plumbers who attended as well as photographs showing the damage to the suite. The landlord says that the damage caused by the tenants required major restoration work including replacement of toilet and bathtub fixtures, removing tiles and flooring to repair the underlay and drywalls, retiling, resealing and replacing cabinetry and fixtures.

The landlord says that the tenant incurred multiple fines from the strata corporation for hosting large gatherings and parties throughout the pandemic in violation of both the

provincial health guidelines as well as strata bylaws against noise and unreasonable disturbances.

The landlord submitted into documentary evidence a large volume of materials including correspondence from the strata corporation, third party plumbing companies who attended the rental unit, photographs, invoices, receipts and written submissions detailing their losses and how it stems from the tenant's conduct and breaches.

The landlord seeks a total monetary award in the amount of \$30,056.40. The landlord provides that the amount includes costs to perform necessary repairs, maintenance and restoration of the rental unit, replace furniture, appliances, fixtures and items damaged, destroyed or disposed of by the tenant, and for outstanding strata fines incurred by the tenant for their various breaches during the tenancy. The landlord provided a detailed breakdown of the costs and provided some testimonial explanation of how they stem from the tenant's violations.

The tenant disputed the landlord's submissions in its entirety. The tenant did not submit any documentary materials. During the hearing the tenant alluded to correspondence and other evidence but said they did not submit them as they had limited economic means. The tenant was unable to explain how their finances prevented them from submitted documentary materials when the dispute resolution system charges no fee for exchanging and uploading evidence whether through the dispute resolution site or by attending a Services BC location. The tenant testified that they have made no effort to submit documentary evidence prior to the hearing in accordance with the Residential Tenancy Rules of Procedure.

The tenant gave lengthy testimony stating that they disagree that there was any damage to the rental unit and that any issues would have been identified and noted prior to the end of the tenancy when the landlord would make periodic inspections of the suite. The tenant believes that the restoration work undertaken by the landlord was unnecessary and was renovation to place the unit on the market for other occupants.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The parties disagree on the circumstances that prevented a move-out inspection report from being prepared and the cause and assessment of damage to the rental unit. Where the accounts differ, I find the landlord to be a more credible witness. The landlord's submissions are generally supported in documentary evidence including written accounts provided by third parties. The landlord's testimony was consistent, cogent and did not exceed the bounds of their memory or knowledge. The landlord was forthright about issues or events for which they had no first-hand knowledge and relied upon the information provided them by the strata corporation, plumbers or other professionals. The tenant's testimony was not supported in the documentary materials and had little air of reality. Much of their submissions were for issues which were irrelevant to the matter at hand.

I note that the tenant's explanation of why they chose not to submit any documentary evidence is not reasonable and has no basis in the Residential Tenancy Rules of Procedure or dispute resolution system. The financial means of the tenant, even if their submissions were true which I have not found, is no barrier to submission of evidence. I find the tenant's failure to submit materials or adequately prepare for the hearing to be borne out of their own neglect and lack of diligence. I accept the undisputed testimony of the tenant that they chose to make no effort to submit any documentary materials or attempt to do so prior to the hearing. I find no breaches of procedural fairness or natural justice to continue with the hearing.

I accept the landlord's evidence that the tenant was uncooperative and failed to agree to a time and date for a move-out inspection despite numerous attempts. I accept that the landlord inspected the rental unit in the absence of the tenant at the end of the tenancy and found it to require significant work to restore. Based on the preponderance of evidence including the third party witness statements, photographs and testimony of the landlord I find that the damages are reasonably attributable to the tenancy and the tenant's misuse of the facilities.

I find that the landlord has met their evidentiary onus on a balance of probabilities to show that they have suffered losses due to the tenant and the amount of these losses as claimed. Based on the totality of the evidence I am satisfied that significant work was required. I find that the nature of the damage shown and the amounts claimed by the landlord for addressing the issues to be proportional and reasonably necessary to

restore the rental unit to its pre-tenancy condition. I find that the nature and extent of the damage shown in the landlord's materials requires significantly more than merely fixing some areas of the suite. It is evident that furniture and appliances require replacement, that the floors and walls of the suite are so deteriorated that they must be replaced and that the nature of water ingress requires fixtures to be removed, underlying damage to be rectified and replacement fixtures installed.

I further accept that the landlord incurred significant costs to travel to the rental unit, to stores and professionals to replace items and address the issues in the suite. I find that the cost of fuel, parking and travel to be costs that were incurred by the landlord as a direct result of the tenant's violation.

I find that the tenant incurred fines from the strata corporation for their unauthorized gatherings, noise violations and disregard for the rules as outlined in the signed tenancy agreement. I am satisfied with the evidence of the landlord including the correspondence from the strata corporation and ledger that the cost of the unpaid fines is \$200.00.

I am satisfied that the total costs incurred by the landlord are as claimed of \$30,056.40. The landlord submitted numerous receipts and invoices which support the figure and where original documentary evidence such as receipts for replacement for some items are not available, I find the landlord's estimate to be reasonable and proportional to the damage shown in the evidence. I find that the nature of the damage caused by the tenant to be significant and that the work undertaken is not an instance of the landlord upgrading or renovating the rental suite but merely addressing the issues identified by themselves, their plumbers and other professionals as necessary to restore the suite.

Accordingly, as the landlord has established on a balance of probabilities that they have incurred losses as a result of the tenant's breaches, and the amount I issue a monetary award in the landlord's favour in the amount of \$30,056.40.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$28,656.40. The tenant must be served with this Order as soon as possible. Should the tenant 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: March 25, 2021

Residential Tenancy Branch