



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL, MNDL, MNDCL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on November 20, 2020 seeking a monetary order for unpaid rent, damages, other money owed by the tenant. Additionally, the landlord applied for reimbursement of the \$100 Application filing fee.

The matter proceeded by way of a hearing on March 18, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

Both parties attended the hearing. Each confirmed they received the prepared documentary evidence of the other in advance of the hearing via email. On this basis, the hearing proceeded.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for unpaid rent, damages, or other money owed, pursuant to section 67 of the *Act*?
- Is the landlord entitled to reimbursement of the Application filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to the terms therein. That agreement shows the landlord’s signature on June 17, 2019 and the tenant’s signature on August 14, 2019. This was for the tenancy that started on August 1,

2019 for a fixed term ending on July 31, 2020. The agreement shows the rent amount of \$2,800 payable on the 1st of each month. The tenant paid a security deposit of \$1,000 and a pet damage deposit of \$200.

The landlord described the agreement in the hearing. The tenancy started in 2018, with the rent amount at \$3,000. The tenant wished to renew the agreement one year later, and this is the written tenancy agreement which they provided. The landlord reduced the rent to \$2,800 as shown in the agreement. They stated this was “after negotiation to have [the rent] lowered” and this would continue to July 31, 2020. This arrangement carried over in the amount claimed as past rent owing to the landlord here, further described below.

The tenancy ended when the tenant gave advance notice that they wished to end. This was “about 45 days in advance in mid-September”, as stated by the tenant in the hearing. The tenant moved out from the unit on October 31, 2020. A copy of the tenant’s email to the landlord dated “September 21, 12:12 PM” is in the landlord’s evidence.

A. rent amounts owing

The landlord claims for rent for each month of April, May, and June 2020. They list the rent as “behind \$700” for each month. With rent at \$2,800 per month, the tenant paid only \$2,100 for each of these months. This breaks down into a payment of \$1,600 each month by the tenant, and \$500 with a BC rent supplement. With \$700 for each of these three months owing, the landlord’s claim here is \$2,100.

In the hearing the tenant claims they were forthright with the landlord and told them that they could not pay the \$2,800 full amount each month. They then were establishing other tenants to live in the rental unit to supplement rental amounts. Additionally, the pleaded with the landlord during this time for the landlord to defer the landlord’s mortgage on the rental unit itself – this in order to cover the landlord’s own payments toward ownership of the property.

In their written statement, the tenant stated they applied for BC rental support “when [they] were forced to shut down during a pandemic in March for three months.” This meant the landlord received \$500 per month, and the tenant paid \$1,600 a month for three months. The landlord then “demanded I give her \$2,100 immediately for back rent. . .”

The landlord stated that they repeated their requests to the tenant for payment of these amounts; however, they received no response from the tenant. In their evidence, they presented a string of messages from October 13 through to October 19 – these messages directly concern the rent amounts owing.

B. compensation for damages to the unit

The landlord claims \$3,653.60 for removal of the balcony and replacement of the flooring on the balcony. They stated there was damage to the deck from the unclean barbecue destroying the vinyl; as well, the dogs “cut the vinyl with their nails.” With dogs running uphill, dogs would go running up with dirty feet and damage the deck.

They provided an estimate dated September 21, 2020 that shows removal and replacement of the deck, and replacement of vinyl flooring. This is at \$8.00 per sq ft for 410 sq. ft of flooring, including disposal of old materials. This amount is the \$3,653.60 claimed by the landlord.

The landlord provided photos to show the damage to the balcony. There are three photos that show the vinyl flooring in question. One of them shows an abundance of water present on the surface of the deck itself.

In response to this, the tenant provided that the balcony was never properly built, being situated where an eavestrough overflows and causes deterioration. This deck is worn-out and old. Upon noticing this on their move in, the tenant applied their knowledge of construction and had a family member builder provide an estimate for re-installation of the key elements of the deck. They also added that the landlord at one time had a dog of their own.

On their Application, the landlord described the problems stemming from the tenant’s large dog. There also was a puppy, and both pets damaged a red sofa, the blinds, and the balcony screen door. The dogs also stained the sofa.

Concerning other damages, the landlord provided a copy of the “Condition Inspection Report” they signed on October 31, 2020. This lists miscellaneous details of damage. They also claimed for the barbecue that they state was destroyed within 2 years and believed never to be cleaned by the tenant.

They completed a “Monetary Order Worksheet” that breaks down further portions of their claim here as follows:

| # | Item(s) | \$ amount |
|-------|---|-----------|
| 1 | fix sofa black-white | 200.00 |
| 2 | 2 sets of blinds \$154 each + tax | 348.04 |
| 3 | barbecue \$296 + tax | 334.48 |
| 4 | electrician – change plug on balcony | 100.00 |
| 5 | painter fix holes + painted | 200.00 |
| 6 | carpenter – bedroom set drawer need paint | 200.00 |
| Total | | 1,382.52 |

C. compensation for monetary loss or other money owed

The landlord claims \$2,841 for this portion of their monetary claim. This is the amount they paid to a cleaning firm for “complete sanitation of 3,350 sq ft house”. A receipt from the cleaning firm shows this work completed on November 5, 2020. This includes: complete sanitation; removal of excess hair and stains from dog; clean and disinfected appliances and inside windows; and removal of a platform and cleaning from pets in the yard.

The landlord presented that the “government said you can’t rent if it’s not completely disinfected.” They provided 32 photos showing damage to blinds, remnants of dog hair at miscellaneous spots, the need for yard clean up, holes in the walls, and sofa stains. Additionally, there is a tear on the underside of the sofa with the notation “bite by dogs”. In response to what they heard from the tenant in the hearing, the landlord stated that the tenant “kept the unit very clean”; however, their only issue was with the dogs.

The tenant presented that they are not responsible for the extra level of cleaning involved with a pandemic involving a higher level of sanitation. They maintained that the dogs did not chew on items and were not able to fit under the sofa as alleged by the landlord.

The tenant also provided a set of 23 pictures from the final move-out day. These are from each room in the rental unit and areas of the back deck. Additionally, four statements from tenant contacts. One letter provides that “The house was so orderly the day of the move, that in my opinion, not much cleaning needed to be done.” Another letter of support gives an account of the landlord’s terse manner on the move-out day which required this other party’s assistance in cleaning the kitchen for about 4 hours.

Analysis

From the testimony of the landlord I am satisfied that a tenancy agreement was in place. They provided the specific term of the rental amount. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise.

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 sections 7 and 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

With respect to damage or cleanliness in the rental unit, the *Act* s. 37 applies. When a tenant vacates a rental unit, they must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

A. rent amounts owing

The *Act* s. 26 sets out the duty of a tenant to pay rent:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

I accept the landlord's evidence and testimony that the tenant owed past amounts for rent; this balance remained at the end of the tenancy. There was no communication initiated by the tenant to present options for repayment. There is no evidence to show a different agreement was in place regarding rent during this time and the tenant did not present submissions to show definitely that the full amount of rent owing was not to be paid. They explained the difficulty had through spring and early summer 2020.

I so award the landlord this compensation for the amount of \$2,100.

B. compensation for damages to the unit

I find the tenant credible that the deck was in need of repair at the start of the tenancy. Their written account gives sufficient detail that the landlord consulted with them and inquired about an estimate from a builder known to the tenant. The tenant provides detail on pieces of work needed to the deck; this includes removal, adjusting draining, replacing vinyl and railings.

The majority of the pictures of the deck submitted by the landlord are labelled "dirty". One photo has a circled area labelled "damage"; however, the image is not clear. This is not sufficient evidence to support the landlord's claim for damage. I dismiss this claim for \$3,653.60, without leave to re-apply. There is no evidence that damage to the deck exists, and I conclude any work to the balcony is not needed as a result of a breach by the tenant.

The landlord provided a list of 6 other items; these add up to \$1,382.52. The landlord did not provide evidence to establish the value as an expense which they actually paid for. There are no receipts to show that the landlord paid for the work listed. This portion of the landlord's claim for reimbursement of these amounts is dismissed without leave to re-apply.

The need for a replacement barbecue is not established in the evidence, with nothing to specify it was in pristine or a new condition at the start of the tenancy. Alternatively, there is nothing to show that any damage to the barbecue resulted from a breach by the tenant. The landlord's claim for reimbursement for this item is dismissed, without leave to re-apply.

I find damage to the blinds did not occur from the dogs biting them. This is speculation by the landlord, and I accept the tenant's evidence on a balance of probabilities. However, there is evidence of damage to the blinds that I find more likely than not occurred during the tenancy. This is damage that is beyond reasonable wear and tear. Though not attributable to damage from the dogs, I find \$50 is a reasonable amount for any repair or replacement for individual blinds that were damaged.

C. compensation for monetary loss or other money owed

To reiterate, the *Act* s. 37 provides that when a tenant vacates a rental unit, they must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The landlord claims \$2,841 for this portion of their monetary claim. This is the amount they paid for cleaning throughout the unit. This is at a deeper level, written as "sanitation" on the receipt they provided.

From the tenant's pictures, I find they left the rental unit reasonably clean. The landlord did not establish the need for a deeper level of sanitation, and this essentially nullifies this portion of their claim here. The tenant is not responsible for a deeper level of sanitation. The landlord stated that this is a government-mandated initiative; however, they provided no proof of that.

More incidentally, I find the tenant is responsible for the platform found in the backyard, minus any explanation in the evidence for its presence. I find a reasonable amount for its removal is \$100.

Because the landlord established a moderate portion of their claim for compensation, I award \$50 of the Application filing fee to them.

Conclusion

Pursuant to section 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,300.00. The landlord is provided with this Order in the above terms and 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 s. 9.1(1) of the *Act*.

Dated: April 15, 2021

Residential Tenancy Branch