



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, MNDL, MNDCL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on December 15, 2020, wherein she sought monetary compensation from the Tenants, authority to retain their security deposit and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 1:30 p.m. on April 27, 2021. Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 1:45 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. The Landlord testified that she served the Tenants with the Notice of Hearing and the Application on December 23, 2020 by registered mail. A copy of the registered mail tracking number for both packages sent to each of the Tenants is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of December 28, 2020 and I proceeded with the hearing in their absence.

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

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee from the Tenants?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence. The Landlord also testified that this tenancy began August 15, 2020. Monthly rent was \$1,380.00 and the Tenants paid as security deposit of \$690.00.

The Landlord stated that the Tenants did not give any notice to end their tenancy and vacated the rental unit approximately December 6, 2020. They also failed to pay the December 2020 rent, nor did they pay the electrical and gas utility. Copies of the utility accounts were provided in evidence by the landlord.

The Landlord filed a Monetary Orders worksheet in which the following amounts were claimed:

| | |
|-----------------------------|-------------------|
| Disposal fee | \$800.00 |
| Cleaning fee | \$600.00 |
| Bathroom handle replacement | \$35.82 |
| Screen door | \$199.00 |
| Blinds and lock | \$129.73 |
| Mattress and box spring | \$700.00 |
| Unpaid rent and utilities | \$162.12 |
| Rent/physiotherapy | \$1620.00 |
| Repainting | \$2,100.00 |
| TOTAL CLAIMED | \$6,332.77 |
| ACTUAL TOTAL | \$6,346.67 |

In support of the above amounts the Landlord provided photos of the rental unit, receipts for the amounts incurred to clean and repair the unit, as well as related invoices.

The Landlord testified that the rental unit required extensive cleaning at the end of the tenancy. She also stated the Tenants left considerable garbage and items requiring disposal. Several fixtures were also broken by the Tenants requiring replacement. Additionally, the Landlord stated that the Tenants put the beds outside in the rain which resulted in them being destroyed and requiring replacement. The Landlord stated that the Tenants put more than 800 holes in the wall which required extensive repair and full repainting.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the Landlord's undisputed testimony and evidence and on a balance of probabilities I find as follows.

Based on the photos submitted in evidence, as well as the testimony of the Landlord, I find the Tenant failed to clean and repair the rental unit as required by the residential tenancy agreement and section 37 of the *Act*. In doing so I find the Landlord incurred the cost of cleaning and repair. I am satisfied the Landlord suffered the losses claimed based on the documentary evidence filed in support.

The Landlord did not provide any submissions with respect to the \$240.00 claimed for physiotherapy sessions. As such, I find she has failed to meet the burden of proving those sessions are recoverable from the Tenant under the *Act* and I discount her award accordingly.

A tenant must pay rent when rent is due. A tenant who is obligated to pay utilities must also do so. In this case I find the Tenant failed to pay the rent and utilities as required by the tenancy agreement. I therefore award the Landlord the claimed amounts.

As the Landlord has been successful in her Application, I award her recovery of the \$100.00 filing.

Conclusion

The Landlord's claim for monetary compensation from the Tenant is granted. The Landlord is entitled to the sum of **\$6,204.67** calculated as follows:

| | |
|-----------------------------|-------------------|
| Disposal fee | \$800.00 |
| Cleaning fee | \$600.00 |
| Bathroom handle replacement | \$35.82 |
| Screen door | \$199.00 |
| Blinds and lock | \$129.73 |
| Mattress and box spring | \$700.00 |
| Unpaid rent and utilities | \$162.12 |
| Rent/physiotherapy | \$1,380.00 |
| Repainting | \$2,100.00 |
| Filing fee | \$100.00 |
| TOTAL AWARDED | \$6,204.67 |

I authorize the Landlord to retain the Tenant's \$750.00 security deposit towards the amounts awarded and I grant the landlord a Monetary Order for the balance due in the amount of **\$5,454.67**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: May 13, 2021

Residential Tenancy Branch