Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

The landlord seeks compensation pursuant to section 67 of the *Residential Tenancy Act* ("Act"). They seek to retain the tenants' security and pet damage deposits pursuant to section 38(4)(b) of the Act. And, they seek to recover the cost of the filing fee pursuant to section 72 of the Act.

Arbitration hearings were held on March 11 and June 21, 2021, by teleconference. All parties attended both hearings, and the landlord called several witnesses at the second hearing. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Issue: Claim for Damages to Defamation of Character

I note that there is a $9,000.00 claim for "Defamation of Character." A claim for compensation for alleged defamation – often meaning to include libel and slander – cannot be made within the jurisdiction of the Act. Such a tort claim may only be pursued in the Supreme Court of British Columbia, which has jurisdiction over such matters. As such, this specific aspect of the landlord's claim is dismissed without leave to reapply.

Issues

1. Is the landlord entitled to any or all of the compensation claimed?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

Finally, to ensure a smoother narrative of the issues and events that occurred, I have deliberately addressed the individual issues by topic, versus the order that the parties may have spoken to them during the hearing. For example, the witnesses' testimony (which was heard in the second hearing), will be interwoven with the landlord's and tenants' testimony and submissions as heard during the first hearing.

The tenancy in this dispute began March 1, 2019 and ended October 31, 2020. Monthly rent was $2,450.00 and the tenants paid a $1,225.00 security deposit and a $1,225.00 pet damage deposit. Both deposits are currently held in trust by the landlord pending the outcome of this dispute. A copy of the written tenancy agreement was submitted into evidence.

Landlord's Claim

In this application, the landlord seeks the following amounts: Plumbing $2,081.32; Electrical $569.26; Exterior Damage due to electrical work $252.00; Door handle to bedroom $23.28; Exterior Christmas $268.92; Lighting hooks $9.38; House painting (103 patches in walls; home was painted a few months before renting) $2,415.00; Garden Gazebo netting $344.00; Flowerpot and soil $54.48; Kitchen Drawer - $223.00; Mud room door - $78.74; Cedar Tree – value $800.00 not including labour $200.00; and, Landscaping $4,000.00.

In support of their application the landlord provided into evidence the following two documentary evidence and submission packages:

Quotes_Invoices_Correspondance_Witness_list.pdf – this 23-page PDF included two invoices for plumbing ($2,081.32), an estimate from a restoration company ($3,327.45; the amounts did not all match the claims), a quote from a landscape company ($2,215.50), a quote for a heating system troubleshooting and repair ($569.26), a quote for removing of exterior light installation and wiring ($220.50), three pages of photographs of a text conversation between the landlord and one of the tenants, a two page email dated November 19, 2020 titled "Trespassing and police action. Cease order.", a two-page email dated October 29, 2020 titled "Move Out Checklist - 99% Complete," a three-page email dated May 7, 2019 titled "Rennie Home - Spring Cleanup and repair," a five-page document dated March 27, 2019 titled "Change Tracking," a one-page document on which the tenants' forwarding address, and, last, a witness list.

Milani_and_Design_Roofing.pdf – this two-page PDF included an invoice from a roofing company for repairs and maintenance (total of $1,050.00) and a statement from Milani Plumbing Heating & AC Ltd. for a balance of $2,081.32.

It should be noted that the landlord did not provide a completed Monetary Order Worksheet, nor did they provide a copy of any Condition Inspection Report. The tenants submitted a plethora of documentary, photographic, and video evidence, only of which a few may be referred to, or discussed, in this decision.

The landlord testified that they had to call a plumbing company to respond to a flooding that had occurred. According to a witness, the tenant (M.) was observed pounding something into the ground near the flower beds. A water pipe was allegedly smashed, causing the water leak, or flood. The tenant had placed rocks in various places. The landlord tried to mitigate the damage by calling the plumbing company as soon as possible.

Two witnesses (L.H. and B.H.) for the landlord gave evidence that they observed, between the hours of 5 and 6 PM on October 30, 2020, the tenant outside the living room holding a turn off valve key, and they were “plunging it up and down with all [their] might.” The witness L.H. asked their spouse, B.H., “what could be down there?” that the tenant would be plunging the key. The rock bed was then filled with water. The witness (B.H.) also observed the tenant’s plunging and saw that there was pooling at the location where the tenant was engaged in said plunging. There was “no question” as to what caused the water to bubble up to the surface, the tenant concluded. Ordinarily, drainage issues are not a problem in that municipality, the witness explained. In the forty-eight years that they have lived there, there has been nothing but “wonderful drainage.”

Under cross-examination, the witness B.H. testified that they did not come over to the property on October 30, but “simply observed” the actions of the tenant.

An employee (or “managing plumber” as they self-title) of the plumbing company which attended to the water leak testified as a witness for the landlord. They remarked that one cannot have an active water leak because it could lead to significant property damage. This is especially so which a ground-level rancher house, such as the rental unit. They continued, explaining that it is the municipality which owns the water shut off, and that you “have to be gentle with a water shut off [. . .] you can easily break it.”

While the witness did not attend to the site, they testified that their company's employees found that the PVC water line pipe was "smashed in pieces."

Under cross-examination, the witness said that they did not have any photographic evidence of the broken pipe.

Another witness (J.F.) for the landlord testified that they were first alerted to the water issue when B.H. and L.H. contacted J.F. They attempted to get in touch with the tenant J.S., who was "reluctant." Apparently J.S. also tried cancelling the plumbing call out. As a result, J.F. contacted the plumbing company and instructed them to not take any further instructions from the tenants. Eventually, the plumbers attended and were able to shut off the water.

The landlord testified that a restoration company was needed to repair and patch up an "inordinate amount of holes" in the walls. In addition, a door handle was broken (apparently, the tenant's child broke it). Moreover, the tenants damaged some netting that went with the gazebo. Other repairs included a kitchen drawer (from IKEA), and damage was caused to the mudroom door by a cat. In addition, the tenants had apparently placed their BBQ next to the house, the heat from which caused the soffit to melt and buckle.

The landlord testified that they had to employ a landscaping company to put the yard back into the shape that it was supposed to be in, as the tenants were, under the tenancy agreement, required to take care of the yard and landscaping. There was, moreover, soil contamination from "cat poop."

Under cross-examination, the landlord's witness L.H. said that they never saw the tenants mowing the lawn, only saw the tenants weeding a couple of times, and that the tenants did not keep up the landscaping.

The landlord's witness J.F. said that landscaping was part of the tenancy agreement, and that there were approximately twenty boxwoods missing.

One part of the landlord's claim was in relation to a "very well-established cedar tree" that was about five years old and about 25 feet high. According to the landlord, the tenants were "dumping dirt and items" and that "something was put there" next to the tree that ended up killing the tree. The tree, dead at the end of the tenancy and posing a fire hazard, had to be cut down. This cost the landlord approximately $800.00.

Landlord's witness L.H. testified that the large cedar tree was a "beautiful tree" and was healthy and "doing well" at the start of the tenancy However, the tree turned brown as the tenancy progressed. They further testified that there was an odor of animal urine near the tree. Under cross-examination, the witness, in answer to the tenant asking whether they ever saw anyone urinating back near the tree, responded that they had no knowledge of that.

The landlord's witness J.F. testified that, "while I'm not an arborist," the timing of the litter box being dumped and the tree dying was more than coincidental.

The landlord called a witness (N.P.) who operates a landscaping company. This witness testified that their company attended to the rental unit twice in a period of eighteen months. The company took down the cedar tree. When asked about the cause of death, the witness commented that it is "pretty unusual" for a tree of this age to just die. "They don't usually just die on their own," they said. The witness' crew smelled urine and saw cat litter by the base of the tree.

As for the landscaping, the landlord asked the witness, "was the property well-tended?" They answered, "it was not well-tended." Under cross-examination, the landscaping witness said that they have no record of soil conditions, or soil samples, taken near the tree.

The landlord testified that there was an issue with the heat pump and the heating system. The tenant had installed some smart devices which affected the wiring.

A witness (K.V.) – an electrician – for the landlord testified at the hearing. They stated that the heating system was not working properly. There was something wrong with the thermostat. The wiring was the problem. They put in a new thermostat and it seemed to work. The landlord then asked the witness, "Does a smart system affect the [wiring] system?" They answered, "Yes, the two systems have to match."

The electrician also testified about the lights that had been installed by the tenants outside and said that there was a wiring problem. They were the wrong type of wiring for external wiring. The electrician also spoke of additional repairs they made to switches.

Under cross-examination, the tenant J.S. asked a few questions of the witness. However, the questions were, with the utmost respect, rather convoluted, lengthy, and difficult for me to follow. The electrician was unable to provide any meaningful answers to some of the tenant's questions about the electrical issues.

The landlord testified that the tenants had somehow managed to make a “perfectly cut circular hole” in the roof. One of the tenants or a family member of the tenants had allegedly remarked, “they’ll never notice that.” The landlord explained that the hole did not exist when the tenancy began. No photographs of the hole were submitted into evidence.

Landlord’s witness B.H. testified that there was “something going on with the roof” and overheard either the tenant or a family member of the tenant says, “don’t worry, they won’t see it or find it.” Under cross-examination, the witness stated that this conversation was not intended for their ears, and that they “can’t say who [made the comment] but I heard it.”

There was also an unorthodox electrical conduit running on the outside of the rental unit. The landlord’s witness B.H. testified that they were “horrified” when they saw the electrical conduit on the side of the home, in plain view, and remarked that it was an eyesore.

There was Christmas lights that had gone missing, and the landlord testified that the tenants must have taken them.

Tenants’ Rebuttal

The tenants disputed that they were banging anything that caused the pipe to break. And, while they laid gravel or rocks, this was not deep or heavy enough to affect the drainpipes. There was no direct contact.

The tenants wholly disputed any of the landlord’s claims regarding damage to the rental unit. They also took issue with the various invoices, as they “don’t feel that they are valid because there’s things on there that weren’t present.” And, they argued that there were assumptions made by the landlord.

Regarding the holes in the walls, the tenants testified that the holes in the walls were there when they moved into the rental unit. They further remarked that they did not do any interior painting of the rental unit. The tenants referenced a hand-written “inspection form” that was in evidence. It was unclear who authored this skeletal, hand-printed document, but it was not the comprehensive Condition Inspection Report usually used (https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/starting-a-tenancy/moving-in).

Regarding the door handle, the tenants did not deny that they caused this damage. (They took issue with what was initially a much higher amount being claimed by the landlord.)

Regarding the gazebo netting, the tenants remarked that “our dog ran through it.” As for the kitchen drawer damage, the tenants testified “we’re not sure what drawer she’s [the landlord] referring to.” As for the mudroom door, the tenants put in a cat door, but that this was done with the written permission of the landlord. Last, the tenants denied that their BBQ caused any damage to the soffit.

The tenants testified that there was nothing wrong with the landscaping, and that they took care of it. All the landlord did was apparently mow the lawn, and that the landlord did nothing else of a substantial nature. As for the tree, the tenants had no explanation for the tree’s demise. However, they adamantly rejected the landlord’s claim that they had dumped cat litter or anything else near the tree that would cause it to die.

As for the smart device, the tenant (J.) testified that they reinstalled the thermostat just as it had been originally. They suggested that any electrical issues had not been caused by the tenants. Moreover, they made no changes to the wiring. As for the outside light issues, the tenant was unable to remove light switches. Further, as for the exterior wiring issue, the tenant testified that some wiring was already in place when they moved in. And, as to the Christmas lights, the tenants bought their own Christmas lights and they never touched the landlord’s lights. They remarked that they were “100% confident that the landlord’s Christmas lights were not our responsibility.”

Regarding the hole in the roof, the tenant testified, “I have no idea what the hole is about.” And, that they “never saw a photo of this hole.”

Analysis

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. A party claiming compensation must do whatever is reasonable to minimize the damage or loss.

As a starting point, a breach of section 37(2)(a) of the Act, by the tenants, must be proven by the landlord in order for a claim to be considered. The onus falls on the landlord to prove their case on a balance of probabilities that the tenants breached, either through negligence or wilful conduct, section 37(2)(a) of the Act.

Section 37(2)(a) of the Act states that “When a tenant vacates a rental unit, the tenant must [. . .] leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.”

For the purposes of this dispute, the “rental unit” encompasses the house and the property surrounding the home, as these were what the tenants rented under the terms of the tenancy agreement.

1. Claim for Plumbing

The landlord claims that the tenants’ actions in plunging a water turnoff key into the ground, and presumably onto the PVC water pipe, resulted in a major water leak.

Two witnesses for the landlord observed the tenant M.S. repeatedly and forcibly plunge the key up and down. The witness for the plumbing company testified that the PVC was smashed into many bits.

I found both witnesses reliable and credible, and their evidence, taken together, leads me to find on a balance of probabilities that the tenant was responsible for damaging the water pipe in such a manner that a plumbing company was required to come in and make repairs. Moreover, the evidence about the tenant J.S. being “reluctant” to engage with the landlord about this issue supports, and is consistent with, a finding that the tenants caused the damage and that they perhaps hoped to hide, or at least stave off, the landlord from discovering the issue. (It remains a mystery as to *why* the tenant was plunging the key into the ground. Neither party provided any explanation for this.)

But for the tenants causing this damage to the water pipe, which was ultimately of breach of section 37(2)(a) of the Act, the landlord would not have suffered a monetary loss of $2,081.32. The landlord acted promptly, I find, in calling the plumbing company and having them come during off-hours to deal with the issue.

Taking into consideration all the oral testimony, including that of the witnesses, and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for $2,081.32.

2. Claims for Electrical Issues, Exterior Damage Due to Electrical Work and BBQ, Hole in Roof, and Lighting Hooks

The landlord made claims regarding these three sub-issues. The tenants disputed these claims. In such cases, when two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In this case, I find that the landlord has failed to provide any evidence that the tenants in fact caused any of this damage. There is the notable absence of a properly completed Condition Inspection Report, and zero photographs of any of the alleged damages. And, while the electrician witness was relatively clear about the issues that they worked on, their evidence does not provide sufficient evidence that the tenants in fact breached section 37(2)(a) of the Act in respect of these matters.

As for the hole in the roof, the landlord testified that there was no hole in the roof before, or at the start of the tenancy. However, the tenants (or someone) caused a hole to come into existence during the tenancy. According to the witness B.H., they overheard "someone" mention something about hiding something. Presumably, damage that was done to the roof. However, no one actually saw anyone do anything to cause the hole, and, again, the landlord provided no documentary evidence – not a single photograph – to support a claim that the tenants may have caused the alleged hole. The tenants denied having caused any hole in the roof.

In the absence of any such evidence (the witness' testimony is hearsay regarding a conversation "not meant for my ears" and is circumstantial at best) I am unable to find that the tenants caused a hole. If they had caused a hole by damaging the roof, then I would still be left with no evidence as to the size or type of hole, and, any evidence as to the age of the roof.

Certainly, while I fully recognize that something may have likely happened, I cannot say on a balance of probabilities that the tenants in fact caused the hole.

Thus, taking into consideration the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving a claim for compensation for these matters.

3. Claim for Door Handle to Bedroom

The tenants did not dispute this claim, though they took issue with the original claim of a door handle costing more than two hundred dollars. However, the landlord only seeks $23.28 in compensation, which is, I find, a reasonable amount. Accordingly, the landlord is awarded this amount.

4. Claim for Christmas Lights

This is one aspect of the dispute which the tenants deny, and which the landlord failed to provide any evidence of Christmas lights going missing. Again, there was no Condition Inspection Report or any before-and-after photographs which might have established that the Christmas lights existed, and thus which might have led to a likelihood of the tenants being responsible for its loss.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for compensation related to the Christmas lights. This aspect of the landlord's claim is dismissed.

5. Claim for House Painting

As noted above, when two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Here, I find that the landlord has failed to provide any evidence that the tenants damaged the interior of the rental unit such that it required house painting. There was no Condition Inspection Report which might have provided the necessary evidence proving that the rental unit was freshly painted before the tenancy, nor any evidence that the tenants caused the 103 holes. Nor was there any photographic evidence submitted to support such a finding of fact.

Accordingly, after taking into consideration all the oral evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for compensation for house painting.

6. Claim for Garden Gazebo Netting

The tenants remarked that “our dog ran through [the gazebo netting].” Thus, based on this admission, I find that the tenants breached the Act and are therefore liable to pay the landlord $387.45 for the netting (as referenced in the invoice, plus GST of 5%).

7. Claim for Flowerpots, Soil, and Landscaping

Regarding these claims, the landlord provided no Condition Inspection Report and no other evidence to support any finding that the tenants breached the Act, or the tenancy agreement, such that they are now to be found liable. The opinions of the respective parties regarding what constituted sufficient or acceptable landscaping was, not surprisingly, highly subjective. This includes claims regarding whether and how many planters and pots allegedly went missing.

The evidence is simply not here for me to make a finding that the tenants should be held liable for a breach that, quite simply, has not been proven. And, while the landscaping company’s witness testified that the property was not sufficiently landscaped (or, that the tenants had done substandard landscaping work), in the absence of any documentary evidence, I am not persuaded that the tenants breached the Act. The landscaper did not provide even a basic explanation of what they meant by suggesting that the landscaping was substandard. This claim is dismissed.

8. Claim for Kitchen Drawer

The landlord claims that the tenants damaged a kitchen drawer. The tenants did not know what drawer the landlord was talking about. No documentary evidence was submitted by the landlord to establish this claim. Therefore, on a balance of probabilities, the landlord has not met the onus of proving their claim for compensation for a damaged kitchen drawer.

9. Claim for Mud Room Door

The tenants did not outright deny that they (through their cat) caused damaged to the mud room door. But they explained that the landlord permitted them to install a cat door in the mudroom door. Based on this brief explanation, and (once again) a lack of any documentary evidence of the extent or extant of such damage, I am unable to find that the tenants somehow breached the Act that would result in compensation being awarded. Therefore, this aspect of the landlord’s claim is dismissed.

10. Claim for Cedar Tree

In respect of this claim, the landlord claims that the tenants put something – most likely cat litter, which contained urine – around the base of the tree that caused it to die. The tenants denied having done this.

I found the landlord's witness L.H.'s testimony regarding their smelling animal urine by the tree. The landscaping company's witness testified that the employees smelled urine and observed cat litter dumped near the tree. The landlord's witness J.F. testified about the timing of the litter box being dumped and the death of the tree. Witnesses L.H.'s and J.F.'s testimony, along with the landlord's testimony, all establish, beyond a doubt, that the cedar tree was healthy at the start of the tenancy. Yet, as the tenancy continued, and as the dumping of cat litter was observed (including at the end of the tenancy when the tree was felled), it is more than a coincidence that it was the tenants' actions which led to the tree's death. Indeed, as the landscape company's witness stated, "it's pretty unusual" for a tree of this age to just die. "They don't usually just die on their own."

While the tenants denied having dumped cat litter around the tree, they provided no alternative explanation whatsoever as to how the tree ended up dead.

Taking into careful consideration all of the oral evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation related to the removal of the cedar tree. I am persuaded that the tenants' actions caused, or significantly contributed to, the death of the tree. And, while the tenants may have been unaware that the tree was slowly being killed by the dumping of their cat litter around the tree, their negligence nevertheless resulted in the damage (that is, the death of the tree) to the property.

I award the landlord $840.00 ($800.00 as indicated on the landscaping company invoice plus GST) as compensation for the necessary removal of the dead cedar tree.

11. Claim for Application Filing Fee

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded, for the most part, in their application, I grant them $100.00 in compensation to cover the cost of the filing fee.

Summary of Award, Retention of Deposits, and Monetary Order

In total, the landlord is granted $3,432.05 in compensation for the claims that were proven. Those claims not been proven are dismissed, without leave to reapply.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if order by an arbitrator. I order and authorize the landlord to retain the tenants' security and pet damage deposits in partial satisfaction of the award.

A monetary order in the amount of $982.50 is issued, in conjunction with this decision, to the landlord. The landlord must serve a copy of the monetary order on the tenants.

Conclusion

The landlord's application is granted, in part, and they are awarded $3,432.05.

The landlord is authorized to retain the tenants' security and pet damage deposits, pursuant to section 38(4)(b) of the Act.

The landlord is granted a $982.50 monetary order which must be served on the tenants. If the tenants fail to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

Should either party disagree with this decision their remedy is to file an application for judicial review under the *Judicial Review Procedure Act,* RSBC 1996, c. 241.

This decision is final and binding, except where otherwise permitted under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch pursuant to section 9.1(1) of the Act.

Dated: June 24, 2021

Residential Tenancy Branch