



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNRL-S MNDL-S MNDCL-S

Introduction

The landlord seeks compensation against their former tenants pursuant to sections 26, 67, and 72 of the *Residential Tenancy Act* ("Act").

Both parties, along with legal counsel, attended the hearing on this date. Also in partial attendance was a witness for the tenant. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Matter: Amount of Monetary Claim

In reviewing the application, I note that the total amount sought was \$68,296.55. At the start of the hearing, it was explained to landlord's counsel that a dispute cannot be determined under the Act if the amount claimed is more than the \$35,000 monetary limit for claims under the *Small Claims Act* (see [section 58](#) of the Act).

Landlord's counsel's options were to either pursue the entire claim at the Supreme Court of British Columbia, or, to have the claim heard under the jurisdiction of the Act and abandon the part of the claim that exceeds \$35,000 so that the balance of the claim may be heard by the arbitrator (see Rule 2.8, [Rules of Procedure](#), under the Act).

Landlord's counsel indicated that they chose to pursue the latter of the two options.

Issue

Is the landlord entitled to compensation?

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 issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on February 18, 2018 and ended on March 10, 2021, when the tenants abandoned the rental unit. Rent was, during the later part of the tenancy, \$2,650.00 per month. The tenants paid a security deposit in the amount of \$1,300.00 which the landlord currently holds in trust pending the outcome of this dispute. A copy of a written tenancy agreement was in evidence. (It should be noted that the one tenant is an individual, while the second tenant is a corporate entity.)

The landlord's claims fall into five categories: (1) \$16,783.3 in unpaid rent, (2) \$403.25 in garbage disposal costs, (3) \$400.00 in municipal bylaw fines, (4) \$50,610.00 in estimated renovation costs, and (5) the \$100.00 application filing fee. A completed Monetary Order Worksheet was in evidence, itemizing the dollars amounts.

Landlord's counsel submitted that the rent arrears comprise unpaid rent for the months of September 2020 to March 10, 2021, inclusive. A few 10 Day Notices to End Tenancy for Unpaid Rent had been issued; none of these were disputed by the tenants. The two garbage disposal fees were incurred in October 2020 and February 2021, before the tenancy purportedly ended. Invoices for those amounts were in evidence. A municipal bylaw fine notice was in evidence. This was issued because the tenants were allegedly operating an unlicensed boarding facility. Last, an estimate for the \$50,610.00 renovation and repair was in evidence.

In respect of the renovation and repair claim, landlord's counsel referred to a Condition Inspection Report that was completed on March 10, 2021. There is in evidence no copy of any inspection report that was completed at the beginning of the tenancy. (This fact was pointed out by tenant's counsel.) In support of this aspect of the landlord's claim numerous photographs of the exterior and interior of the property were submitted into evidence. The condition of the property, both inside the rental unit and out, is less than ideal. Apparently, copper wire was stolen and much of the exterior and interior was severely damaged.

Tenant's counsel briefly described the tenancy as the landlord running some sort of assisted living operation. And, he apparently sublet to others through the tenants. There are five houses under his management, this rental unit being one of those.

Counsel called a witness, N.D., who testified that many of the photographs submitted of the rental unit were not even of the property in question, and that some of the photographs were simply duplicates, made to look like additional photographs.

The tenant briefly testified about previous disputes, and it must be admitted that I found his testimony rather circuitous and difficult to follow. There were references to a new property manager taking over at some point, and putting the tenant in harm's way, including him trying to have the tenant arrested and making physical threats. The tenant apparently rented multiple properties from the landlord, and he was "confused" as to why this particular property was the subject of this dispute.

After the tenant testified, the witness resumed giving evidence. He explained that nearer to the time that he (the witness was a sublet tenant) moved out of the property near the end of September 2020, the landlord "continued to bring people into" the rental unit. Purportedly, the landlord twice did so in a threatening manner.

In rebuttal, landlord's counsel reiterated that the landlord had a tenancy agreement with the tenants. As of March 8, 2021, there was another tenant subletting in the rental unit with the consent of the tenant. On March 10, 2021, the rental unit was considered abandoned. Counsel emphasized that there is no evidence that the tenant left before March 10, 2021 or otherwise brought the tenancy to an end before that date.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Claim for Unpaid Rent

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

There is, I find, no evidence that the tenancy ended at any point before March 10, 2021. There is no evidence before me to find that the tenants attempted to end the tenancy before the property was determined to be abandoned. Numerous notices to end tenancy for unpaid rent were issued but none were disputed. What is more, I heard no argument from tenant's counsel or any testimony from the tenant that they had any right under the Act, the regulations, or the tenancy agreement not to pay rent.

Taking into careful 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 met the onus of proving their claim for compensation for unpaid rent in the amount of \$16,783.30. Pursuant to section 67 of the Act I hereby award the landlord this amount.

2. Claim for Garbage Disposal Costs

Section 32(2) of the Act states that a "tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access." The landlord has made a claim for costs related to removing garbage and junk. What is missing, however, is any evidence that this garbage and junk did not already exist at the time the tenancy began. What is more, there is no evidence before me to find, on a balance of probabilities, that the landlord attempted to work with the tenants in addressing whatever issues arose that led to the garbage disposal.

Given the above and 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 garbage disposal costs. Therefore, this aspect of the landlord's claim is dismissed without leave to reapply.

3. Claim for Bylaw Fine

The landlord seeks \$400.00 in compensation for a bylaw violation notice (issued February 12, 2021). A copy of this notice was in evidence. And, as noted above, it was issued due to an offence described as "Operation of a boarding, lodging, or rooming house in a residential district (R5) on a lot with an area less than 7200 sq.ft." Additional correspondence from the municipality, sent to the landlord's address (and not the address of the rental unit), are in evidence.

What is unclear is whether this bylaw violation was caused by the landlord (who, according to tenant's counsel operated some sort of assisted living operation involving many tenants), or, whether it was caused by the tenant subletting without the landlord's permission. There is, I find, insufficient evidence to persuade me either way. In the absence of any such evidence, I am unable to find that the tenants breached the Act, the tenancy agreement, or the regulations such that a claim may be made for losses arising from such a breach. Accordingly, I must dismiss this aspect of the landlord's claim, without leave to reapply.

4. Claim for Renovation and Repair Costs

At \$50,610, this is largest of the landlord's claims. To be successful in this claim, the applicant must prove, on a balance of probabilities, that the tenants breached section 37(2) of the Act. Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, when they vacate.

The landlord argues that the tenants extensively damaged both the interior and exterior of the property. They submitted numerous photographs of the damage, which included the theft of copper wiring. A Condition Inspection Report was submitted into evidence; only an inspection at the end of the tenancy appeared to have occurred. And, while the Report refers to a "walk through" having occurred at the start of the tenancy, there is no information recorded as to the state and condition of the rental unit at the tenancy start. In his argument and submissions, tenant's counsel pointed out the absence of any evidence as to the state and condition of the property at the start of the tenancy.

It should be noted that section 21 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003, states the following:

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

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 of the state of repair and condition of the rental unit and property on February 18, 2018. Without such

a crucial fact being proven, I cannot find that the state of repair and condition at the end of the tenancy (as reflected in the Condition Inspection Report) is evidence that the tenants breached section 37(2) of the Act. Thus, in the absence of a proven breach no damages may follow.

In summary, 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 any portion of the claim for renovations and repairs. This aspect of the landlord's claim is therefore dismissed without leave to reapply.

5. 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 in at least one aspect of their application (for the rent arrears), I grant them \$100.00 in compensation to cover the cost of the application for dispute resolution filing fee.

Summary of Award, Retention of Security Deposit, and Monetary Order

In total, pursuant to sections 67 and 72 of the Act, the landlord is awarded a total of \$16,883.30.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount." As such, I order that the landlord may retain the tenants' security deposit of \$1,300.00 in partial satisfaction of the above-noted award.

The balance of the award will be granted to the landlord by way of a monetary order in the amount of \$15,583.30. This order, which must be served by the landlord on the tenants, is issued in conjunction with this decision to the landlord.

Conclusion

The landlord's application is granted, in part, as outlined above.

The landlord is ordered to retain the tenants' security deposit pursuant to section 38(4)(b) of the Act.

A monetary order in the amount of \$15,583.30 is granted to the landlord and a copy of this order must be served on the tenants. If the tenants fail to pay the landlord the amount owed, then the landlord may file and enforce the order in the Provincial Court of British Columbia.

This decision is final and binding, except as permitted under the Act, and it is made on authority delegated to me under section 9.1(1) of the Act. Should either party disagree with this decision their remedy is to file an application under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: August 30, 2021

Residential Tenancy Branch