



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on April 1, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation.

The Tenant, the Tenant's Advocate H.W., and the Landlords appeared at the appointed time of the hearing and provided affirmed testimony.

The Tenant testified that she served the Landlords with the Application package by Registered Mail on April 7, 2021. The Landlords confirmed receipt but indicated that only one of the Landlord's was served with the hearing package rather than both. The Landlord confirmed that both Landlords reside together and that they were able to share the Application with amongst each other. As such, I find this document was sufficiently served to the Landlords.

The Tenant stated that she served her documentary evidence to the Landlords by Registered Mail on August 12, 2021. The Landlords confirmed receipt, however, indicated that they have not had sufficient time to further respond to the Tenants documentary evidence as it was served late.

According to the Residential Tenancy Branch Rules of Procedure 3.14; Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be

received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

I accept that the Tenant's documentary evidence was sent to the Landlords by registered mail on August 12, 2021. As such, in accordance with Section 90 of the Act, I find that the Landlords are deemed to have been served on August 17, 2021 which is 14 days prior to the hearing. As such, I find the Tenant's documentary evidence was sufficiently served to the Landlords in accordance with the Act and Rules of Procedure.

The Landlord served their documentary evidence to the Tenant who confirmed receipt. As such, pursuant to Section 71 of the Act, I find the above-mentioned documents were sufficiently served in accordance with the Act.

The Parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?

Background and Evidence

The parties agreed to the following; the tenancy began on March 1, 2019. Rent in the amount of \$1,280.00 was due to the Landlords by the first day of each month, as well as a security deposit in the amount of \$640.00 was paid to the Landlords. The parties agreed that the Landlords returned the Tenant's security deposit in full. The Tenancy ended on May 1, 2019. A tenancy agreement between the parties was submitted in support.

The Tenant is seeking monetary a monetary order in the amount of \$5,869.50 for damage and loss. The Tenant stated that soon after moving into the rental unit, she noticed evidence of a rodent and ant infestation inside her rental unit. The Tenant stated that she immediately notified the Landlord about the issues. The Tenant stated that in addition to these issues, the rental unit was also left dirty and that there was greenery

growing out of the carpet. The Tenant provided pictures of the rental unit and witness statements in support.

The Tenant acknowledged that the Landlords employed the services of a Pest Control Company who attended on several occasions in an attempt to exterminate the rodent and ant problem. The Tenant stated that despite their efforts, she continued to see evidence of rodent activity which also resulted in damage to her personal belongings. The Tenant made her witness C.B. available who called into the hearing to confirm the Tenant's concerns relating to the condition of the rental unit and pest activity within it. The Tenant stated that the rental unit was not suitable for occupation which prompted her to vacate the rental unit on May 1, 2019, just two months into her tenancy.

The Tenant set out her monetary claims on a monetary worksheet which was been reproduced below;

The Tenant is claiming for a full return of rent for the two months less the subsidies that she received towards her rent during this time in the amount of \$1,530.00. The Tenant stated that the rental unit was not clean, and she had to endure the presence of rodents, ants, and silverfish in the rental unit before she vacated on May 1, 2019.

The Tenant stated that the rodents managed to damage her personal possessions. The Tenant is claiming \$303.59 for a variety of household items that were damaged which required to be disposed of as a result. The Tenant provided a shopping cart list of online items that were lost. The Tenant stated that some of her cake decorating items were also damaged in the amount of \$52.91.

The Tenant stated that she had two hair weaves which were damaged by the rodents. The Tenant provided an estimate of \$108.00 to replace them. Furthermore, the Tenant had two hair extensions which were also damaged, with a replacement cost of \$300.00.

The Tenant is claiming for 3 sarees, and one dress suit, with an estimated value of \$1,575.00 for the loss of these items due to the rodent activity in the rental unit. The Tenant provided a quote for the replacement cost of these items, as well as a picture of the Tenant wearing these items in support.

Lastly, the Tenant stated that her Mother's wedding dress was also damaged by the rodents, which has great sentimental value to the Tenant. The Tenant estimates the value of the dress to be \$2,000.00.

The Landlords responded by stating that they were unaware that there was a rodent and ant issues at the rental unit until it was brought to their attention by the Tenant. The Landlords stated that they immediately contacted the Pest Control Company who attended the rental unit. The Landlords provided a copy of each service report which demonstrate that the Pest Control Company attended the rental unit on 7 occasions within the two month tenancy to assess, treat, and monitor the pest activity.

The Landlords stated that the Pest Control Company recommended that the Landlords secure the garbage and recycling area located on the rental property to reduce the likelihood of rodent activity. Furthermore, it was suggested that the Landlords dig around the perimeter of the rental house and fill in any voids where the rodents may be able to access the interior of the rental home. The Landlords stated that they took immediate action and completed all recommendations.

The Landlords stated that they offered for the Tenant to vacate the rental unit and reimburse her rent should she not feel comfortable staying in the rental unit. Furthermore, the Landlords stated they compensated the Tenant \$280.00 from her April 2019. The Landlords stated that the rental unit was liveable throughout the tenancy and that they took sufficient action to rectify the situation as soon as they became aware of the issues at the rental unit.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlords. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

According to Section 32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that;

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) 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.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

In this case, I accept that the Landlords were unaware of the rodent and ant problem at the rental unit until the Tenant brought it to the Landlords' attention shortly after moving into the rental unit. I find that the Landlords took immediate and sufficient action by hiring a Pest Control Company who attended the rental unit on seven occasions throughout the two month tenancy to exterminate the pests.

I find that one of the service reports indicates that the ants were coming from under the floor, and the rodents entering from a hole down to openings in the foundation. I find that these entry points would not be immediately apparent to the Landlords, making it difficult to have detected the issues prior to the commencement of the tenancy.

In light of the above, I find that the Tenant provided insufficient evidence to demonstrate that the Landlord breached Section 32 of the Act. I further find that the Tenant provided insufficient evidence to demonstrate that she suffered a loss of the material items that she is claiming for. As such, I dismiss the Tenant's monetary claims for her personal property without leave to reapply.

According to the Residential Tenancy Policy Guideline 6 Compensation for Damage or Loss ;

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

In this case, I accept that the Landlords provided compensation to the Tenant toward April 2019 rent in the amount of \$280.00. I find that this amount is a reasonable amount by which the value of the tenancy has been reduced. I find that the Tenant provided insufficient evidence to demonstrate that the rental unit was uninhabitable during the tenancy.

I find that the Tenant is entitled to further compensation in the amount of **\$280.00** for the month of March 2019 as I find that the Tenant's tenancy was impacted by the rodent and ant issues at the rental unit during this time as well.

Conclusion

The Tenant has established an entitlement to monetary compensation and has been provided with a monetary order in the amount of \$280.00. The order should be served to the Landlords as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 1, 2021

Residential Tenancy Branch