

DECISION

Dispute Codes MNDL, FFL

Introduction

On February 5, 2021, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

Preliminary Matters- Adjournment and Service

The Landlord was represented at the original conference call hearing on June 7, 2021; however, the Tenants did not attend during the 23-minute hearing. Due to a concern that the Tenants were not served the Notice of Dispute Resolution Proceeding in accordance with the *Residential Tenancy Branch Rules of Procedure*, the hearing was adjourned to provide a fair opportunity for all parties to exchange evidence and to be properly heard.

An Interim Decision, dated June 8, 2021, summarized the hearing of June 7, 2021 and instructed the Landlord to provide the Application for Dispute Resolution; the Notice of Reconvened Hearing, the Interim decision, and all other required documents, upon the Tenants within three (3) days of receiving the Interim Decision, in accordance with section 89 of the Act.

The Landlord was granted an order for substituted service in a Decision, dated May 12, 2021, to serve Tenant C.F. with the Application for Dispute Resolution, and with supporting documents and written evidence, via Tenant C.F.’s email address.

The Landlord’s Agent and Counsel (the “Landlord”) both attended the reconvened conference call hearing; however, neither of the Tenants attended at any time during the 57-minute hearing. The Landlord testified that they served Tenant C.F. with the Notice of Dispute Resolution Proceeding and the other required documents, via email, pursuant to the order of May 12, 2021. The Landlord submitted copies of the email and documentation to support that the email had been sent to the correct email address on June 9, 2021. As a result, I find that Tenant C.F. has been deemed served with the Notice of Dispute Resolution Proceeding as of June 14, 2021, in accordance with Sections 89(1) and 90 of the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As noted in the Landlord's Application and on the submitted Tenancy Agreement, there are two tenants in this tenancy. When considering whether to proceed when only one tenant, Tenant C.F., has been served, I refer to *Residential Tenancy Policy Guideline #13*, which states the following:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

In this case, I find that this Application may be heard, as Tenant C.F. has been served the Notice of Dispute Resolution Proceedings and relevant documents, pursuant to the Act. As the Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

Issues to be determined:

Should the Landlord receive a Monetary Order for damages, in accordance with section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord submitted a Tenancy Agreement and stated that the one-year, fixed-term tenancy began on June 1, 2019 and continued as a month-to-month tenancy. The rent was \$2,000.00 and due on the first of each month. The Landlord collected and has since returned a security deposit in the amount of \$1,000.00 and a pet damage deposit in the amount of \$500.00. The Tenant provided vacant possession of the rental unit to the Landlord on October 2, 2020.

The Landlord testified that the rental unit was in good condition at the beginning of the tenancy with new paint and new carpets. The Landlord acknowledged that a written condition inspection report was not completed at the time the Tenants moved into the rental unit. The Landlord did not provide any documentary evidence to support that the

rental unit had been freshly painted or that new carpets were installed just prior to the tenancy.

The Landlord stated that they met with the Tenants on October 2, 2020, to do a move-out inspection. The Landlord testified that although there was some damage to the rental unit, they did not feel comfortable about negotiating a deduction from the Tenants' security deposit and subsequently, returned both deposits to the Tenants.

The Landlord submitted a Move-out Condition Inspection Report, dated October 9, 2020, and noted the damage to the rental unit, including:

- “minor dings” in the entry,
- “wall damage” in upstairs landing,
- “minor dings” in the kitchen,
- “minor damage to baseboards” in living room
- “carpets soiled” in stairwell and hall
- “broken tile” in 2nd bathroom
- “broken light fixtures” 2nd bathroom
- “scuffs” on wall and trim in master bedroom
- “carpet spots” on carpet in master bedroom
- “spots on carpet x2” in bedroom (2)

The Move-Out Condition Inspection Report was not signed by the Landlord or the Tenants.

The Landlord submitted photos to support their testimony that the walls were scuffed, dirty and in some cases damaged, and that the carpet was left in poor condition. The Landlord stated that the most damage to the carpet occurred in the master bedroom and the stairwell. In the photos, the Landlord pointed out threads that had been pulled from the carpet and suggested that the damage was caused by the Tenants' dog.

The Landlord submitted a Monetary Order Worksheet with four items to claim as damages:

	Item	Amount
1.	Cleaning Receipt	\$342.57
2.	New Carpets – Receipt	3,240.00
3.	Junk Removal Receipt	781.20
4.	Home Depot Receipt	202.45
	Total monetary claim	\$4,566.22

The Landlord stated the rental unit was not properly cleaned and presented pictures that showed dirty and damaged walls and soiled and damaged carpets. The Landlord did not provide any documentary evidence that they had attempted to clean the carpets after the tenancy. The Landlord submitted a receipt for cleaning as referred to in Item #1.

The Landlord submitted a receipt for the replacement of all the carpets in the rental unit that included 4 bedrooms, the upstairs common area and stairs.

The Landlord submitted 3 photos that showed a headboard and small cabinet left behind in the garage and a cupboard full of junk to support their claim that junk removal was necessary.

The Landlord submitted a receipt from Home Depot for \$202.45 and stated that they had to purchase a new vanity for \$34.98, a replacement grill for the fan for \$22.35, replacement bulbs for \$89.44 and faucet covers for \$8.38. The Landlord wasn't sure of how the listed cost of \$23.95 related.

The Landlord also submitted a \$988.50 invoice for services, dated March 19, 2021, "rendered in attempting to locate and serve" the Tenants notice of this claim. The Landlord acknowledged that this claim for damages was not included in the Monetary Order Worksheet, nor was there an amendment made on their original Application; however, wished to submit this as part of their damages claim.

Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the Landlord has the burden to prove that they suffered a loss as a result of the Tenants violating the Act or the Tenancy Agreement; demonstrate the amount or value of the loss; and prove that they acted reasonably to minimize that loss. The standard of proof is on a balance of probabilities meaning it is more likely than not that the facts occurred as claimed.

Section 21 of the Residential Tenancy Regulations relates to the evidentiary weight of condition inspection reports. In dispute resolution proceedings, a condition inspection report completed in accordance with the Regulations 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. In this case, I accept the Landlord's evidence that a move-in condition inspection report was not completed at the beginning of the tenancy. Based on the testimony presented, I find I only have the Landlord's testimony to weigh when considering the state of repair and condition of the rental unit at the beginning of the tenancy.

The Landlord presented a receipt for cleaning in the amount of \$342.57. The Landlord submitted pictures of dirty walls and stained carpets to support that the rental unit was left in a condition that required cleaning.

Section 37 states that a tenant must vacate the rental unit by 1:00 p.m. on the day the tenancy ends. When the tenant vacates the rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in possession or control of the tenant and that allow access to and within the residential property.

In this case, based on the undisputed testimony and evidence as provided by the Landlord, I find that the Tenants breached section 37 of the Act by not leaving the rental unit in a reasonably clean and undamaged condition. I find that the Landlord did not claim compensation for repainting the rental unit, therefore, should be compensated for, at a minimum, the cleaning of the walls. I grant the Landlord the requested amount of their claim for \$342.57.

The Landlord has submitted that the carpets were left unclean and damaged and as a result, required full replacement. When considering whether the Landlord has established a monetary award for the full amount of their claim, I consider the Landlord's testimony that the worst of the damaged carpets were in the master bedroom and stairwell of the unit (not the other 3 bedrooms); that the Landlord did not provide any documentary evidence to support the condition of the carpets at the beginning of the tenancy; and, that the Landlord did not provide any documentary evidence to support that they attempted to clean the carpets (mitigating the amount of loss) before replacing them. As a result, I find that the Landlord has failed to provide sufficient evidence that they suffered a loss, pursuant to section 67 of the Act. I dismiss this part of the Landlord's claim.

Residential Tenancy Policy Guideline #16 – Compensation for Damage or Loss discusses that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Although I have dismissed the Landlord's claim with regards to the costs for new carpets, based on the undisputed evidence of the Landlord, I find that the Tenants did fail to clean the carpets at the end of their tenancy and that it is reasonable to conclude that some of the carpets were damaged from the Tenants' dog. As such, I award the Landlord nominal damages in the amount of \$500.00.

Item #3; the Landlord has claimed compensation in the amount of \$781.20 for the removal of the Tenant's "junk" from the rental unit. The Landlord presented 3 pictures during the hearing that included a wooden headboard, a small cabinet and a cupboard full of the Tenant's items to support that the Tenants left "junk" behind. Based on this, I find that the Landlord has failed to provide sufficient evidence to prove that they suffered a loss of \$781.20. I find that the Landlord did not provide any supporting testimony or evidence to justify the amount of loss claimed relative to the few items presented as "junk" that needed to be removed. I dismiss this part of the Landlord's claim without leave to reapply.

The Landlord presented a Home Depot receipt in the amount of \$202.45 and claimed a loss in this amount. Based on their testimony, I find the Landlord is claiming a loss for a variety of items of which they failed to elaborate as to how the Tenants were responsible for the damage. Specifically, the Landlord is claiming \$34.98 for a new vanity and failed to provide any context as to how the original vanity was damaged and/or how the Tenants were responsible. Similarly, the Landlord has claimed \$89.44 for replacement light bulbs but has not noted that there were any burnt out bulbs on the move-out inspection report. The Landlord was unsure of what some of the itemized items related to on the Home Depot invoice. As a result, I find that the Landlord has failed to provide sufficient evidence as to how they suffered a loss, pursuant to section 67 of the Act, and I dismiss this part of the Landlord's claim.

The Landlord has also submitted a loss of \$988.50 for the services rendered to locate the Tenants. I find that the Landlord did not include this amount on the Monetary Order Worksheet or on their Application for Dispute Resolution and it would be unfair to consider this claim without a proper amendment to the Landlord's Application. I, therefore, will not decide on the validity of this claim, and dismiss with leave to reapply.

I issue a Monetary Order in the Landlord's favour under the following terms, which also allows the Landlord to recover the filing fee for this Application:

	Item	Amount
1.	Cleaning Receipt	\$342.57
2.	New Carpets – Nominal award	500.00
3.	Junk Removal	00.00
4.	Home Depot	00.00
	Filing Fee	100.00
	Total monetary claim	\$942.57

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$942.57. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 24, 2021

Residential Tenancy Branch