Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNDCL, FFL

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by one of the landlords and one unidentified person.

The landlord testified the tenants were served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on July 19, 2021 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the testimony of the landlord, I find that the tenants have been sufficiently served with the documents pursuant to the *Act*.

I note, at the start of the hearing, someone other than the landlord called into the hearing. However, when asked if a tenant was online the person responded "ex-tenant". After I explained that for the purposes of this hearing the person would be referred to as the "tenant", the person repeatedly refused to accept this and continued to refer to himself as the "ex-tenant".

I advised the person on the call that in order for this hearing to proceed he would need to not be so confrontational and accept that I was conducting the hearing without any disruptive behaviour or I would expel him from the hearing.

Then, I asked the person's name and he called himself Mr. Szuminski. I asked for his first name – he responded by saying I could call him Mr. Szuminski. I advised that I was not looking for a name I could call him but rather I needed to know his first name. He repeatedly told me I could call him Mr. Szuminski. In an attempt to help the person

understand that I was looking to identify him before I could proceed, I asked him to spell his first name and again he refused to co-operate and he told me I could call him Mr. Szuminski.

Residential Tenancy Branch Rule of Procedure 6.1 states the role of an Arbitrator during a hearing is to conduct the process in accordance with the *Act*, the Rules of Procedure and principles of fairness.

Rule 6.10 also states that disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

I found the person who identified themself as Mr. Szuminski's behaviour was disruptive; rude; hostile and in complete defiance of the authourity delegated to me to conduct this hearing. I found that the person's behaviour would have not allowed for the hearing to proceed in any meaningful way and that the person on the call may not have even been involved in the tenancy itself, as a result I expelled the person from the hearing.

I also note that in the decision dated March 31, 2021 (file number noted on the coversheet of this decision) the Arbitrator recorded that the tenant who did attend that hearing indicated that he did not believe the Residential Tenancy Branch had any ability to adjudicate that claim and that it should rightly be before the BC Supreme Court. In that hearing the tenant left the call after making that pronouncement.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation; for damage to the rental unit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 45, 67, and 72 of the *Act.*

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on August 6, 2018 for a two-year fixed term tenancy beginning on August 15, 2018 for a monthly rent of $3,800.00 due on the first of each month with a security deposit of $1,900.00 paid.

The landlord submitted the tenancy ended when the landlord determined the residential property had been abandoned on or about February 17, 2021. The landlord also

testified that he obtained on order of possession for the property in a decision dated March 31, 2021 (file number noted on cover page of this decision) based on a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord also testified that he had obtained a monetary order for unpaid rent in that same hearing. After reviewing that decision, I note the landlord was provided with a monetary order for rent for the months of August and December of 2020 and for the months of January and February 2021.

In regard to the landlord's claim for March 2021 rent, in that March 31, 2021 decision the presiding Arbitrator wrote:

> "I note the tenants vacated the property in mid-February 2021, I find the landlords are not entitled to collect rent for March 2021 as the tenants were expected to have vacated the property pursuant to the 10 Day Notice issued in December 2020 and the landlords did not mitigate their loss."

The landlord now seeks, in this new Application for Dispute Resolution, rent for the month of March 2021 in the amount of $3,800.00.

The landlord submits that the tenants had forged government documents in relation to farming activities on the residential property; had cut down many trees resulting in municipal fines to the landlord; alleged the landlords physically assaulted the tenant; and threatened multi-million-dollar lawsuits against the landlord. As a result, the landlord's sought advice from legal counsel.

The landlord originally sought compensation in the amount of $6,240.00. However, the landlord later submitted a monetary order reducing the amount of this portion of their claim to $5,040.00. The landlord did not submit an Amendment to an Application for Dispute Resolution form.

The landlord also originally sought $3,712.10 in compensation for damage to and cleaning of the residential property. However, the landlord submitted a monetary order worksheet that indicated a claim of $4,025.00, prior to the hearing. The landlord did not submit an Amendment to an Application for Dispute Resolution form.

The landlord seeks compensation for:

Description	Amount
Damage to the septic system due to overuse resulting from unreasonable number of occupants on the property	$1,064.60

Flushing of the driveway to remove sharp fragments including glass and ceramic debris	$252.00
Insurance deductible for repairs to one bathroom resulting from flooding caused by the tenants	$1,000.00
Floor repairs not covered through insurance claim	$792.78
Lawn mower damage	$235.09
Broken gate light – landlord had provided funds to tenants to repair the light, but the tenants did not complete the repair	$67.19
Broken door handle	$46.17
Broken vent covers	$52.98
Gravel path restoration	$514.50
Total	$4,025.31

In support of their claim, the landlord has submitted Condition Inspection Reports from the start and end of the tenancy and multiple photographs confirming the condition at the end of the tenancy. In addition, the landlords have submitted into evidence multiple estimates, receipts and invoices confirming the costs of the above noted repairs, cleaning costs, and insurance deductible.

Analysis

Residential Tenancy Branch Rule of Procedure 4 outlines the requirements for considering amendments to an Application for Dispute Resolution.

Rule 4.1 states that an applicant may amend a claim by completing an Amendment to an Application for Dispute Resolution form and filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch or through a Service BC Office. It goes on to say an amendment may add to, alter or remove claims made in the original application.

Rule 4.2 stipulates that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In the case before me, the landlord has sought to make two amendments to amounts noted in their original application at the hearing and did not submit an Amendment to an Application for Dispute Resolution form.

First the landlord sought to increase the amount of their claim for damage to the rental unit and residential property from $3,712.10 to $4,025.31. I note the landlord did submit a Monetary Order Worksheet detailing the amount of $4,025.31 but did not submit the

amendment form. While the Monetary Order Worksheet was provided in the landlord's evidence, I find the landlord failed to request an amendment pursuant to Rule of Procedure 4.1.

As a result, I have considered the request to increase claim under Rule 4.2. However, in this instance, I find the tenants would not have been informed of the landlords' intention to increase claim in accordance with the Rules of Procedure and that it could not be reasonably anticipated by the tenants that the landlord might increase their claim. Therefore, I do not allow this amendment.

In addition, the landlord sought to amend their application to reduce the claim for legal counsel fees from $6,240.00 to $5,040.00. While the landlord did not submit an Amendment form for this change, I will allow this amendment, pursuant to Rule 4.2, as it is to reduce the amount of the claim and is not prejudicial against the tenant.

Res judicata is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the involvement of the same parties.

In regard to the landlord's claim for March 2021 I find that the matter had been dealt with in the March 31, 2021 decision and all three elements of the doctrine are present. As such, I dismiss this portion of the landlord's claim as the matter is *res judicata*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As to the landlord's claim for legal counsel fees, normally such requests are not considered as resulting from the actions of a party to a tenancy but rather choices made by a party wishing to seek legal counsel to pursue how to deal with tenancy issues.

In this case, however, I have considered the behaviour of the tenants and issues raised by the landlord for which they were seeking legal counsel to include other issues not necessarily specifically resulting from the tenancy. Such issues as the landlord's assertion that the tenants made fraudulent documents; breached local bylaws in cutting trees; allegations of assault and threats of multi-million-dollar lawsuits.

As these issues noted above are outside of the jurisdiction of the *Act*, I have no authourity to award these costs to the landlord. Therefore, I dismiss this portion of the landlord's claim.

Section 37 of the *Act* stipulates that 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.

I have considered the landlords oral and documentary, including photographic, evidence and I am satisfied that the landlord has provided sufficient evidence that the tenants failed to leave the rental unit reasonably clean and undamaged as required under Section 37. I am satisfied that the damage goes beyond reasonable wear and tear and in some situations the damage was deliberately caused by the tenants.

I am also satisfied by the landlord's undisputed evidence and testimony that as result of the tenant's failure to comply with their obligations under Section 37 the landlord has suffered a loss for the costs associated with clean up and repair, in the amount of $4,025.31.

However, as noted above, I have not allowed the landlord's request for amendment to increase their claim to that amount. Therefore, I limit this award to the originally claimed amount of $3,712.10.

Finally, I find the landlord has provided sufficient evidence to establish the costs associated with the loss and that the landlord has taken reasonably steps to mitigate the losses by accessing insurance to recovery a portion of the costs.

As the landlord was at least partially successful, I grant the landlord may recover the filing fee for this application from the tenants.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **$3,812.10** comprised of $3,712.10 rent owed and the $100.00 fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 03, 2021

Residential Tenancy Branch