



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on June 3, 2021, wherein the Landlord sought monetary compensation from the Tenants in the amount of \$33,963.00 for unpaid rent, damage to the rental unit and other losses arising from the tenancy including recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 1:30 p.m. on December 3, 2021. Only the Landlord and his agent, J.M. called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 2:00 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord, his agent, and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. The Landlord testified that the Tenants were personally served. He confirmed he witnessed a third party, N.R., personally served both Tenants with the Notice of Hearing and the Application on June 19, 2021. A copy of the Proof of Service was provided in evidence before me and which supported the Landlord's testimony. I accept the Landlord's testimony and evidence in this respect and find the Tenants were duly served on June 19, 2021 and I proceeded with the hearing in their absence.

The Landlord and his agent were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. The Landlord and his agent confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and his agent and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Security and Pet Damage Deposit

At the outset of the hearing the Landlord advised that he was previously authorized to retain the Tenants security deposit and pet damage deposit such that this relief was no longer applicable. I therefore dismiss the Landlord's claim for authorization to retain the Tenants' deposits.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord recover the filing fee paid for this Application?

Background and Evidence

This tenancy began January 15, 2021 and ended on April 15, 2021. The Landlord stated that although the Tenants were to pay \$1,750.00 per month in rent, they only paid just over \$2,000.00 such that the sum of \$4,969.28 was owing when the tenancy ended.

The Landlord also testified that the Tenants significantly damaged the rental unit and appeared to do so in retaliation for the Landlord issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. He submitted that the extent of the damage to the rental unit in such a short time suggests they purposely damaged the unit. Photos of the rental unit were submitted in evidence before me and showed the extensive damage to the unit caused by the Tenants.

The Landlord filed a Monetary Orders worksheet in which the following were claimed:

Outstanding rent/utilities	\$4,969.28
Flooring repair	\$5,850.00
Carpeting	\$1,030.68
Ceiling repair	\$2,199.00
Painting unit	\$10,342.50
2 queen beds	\$1,152.90
2 queen mattresses	\$627.90
2 sofas	\$2,097.90
2 baseboard heaters	\$338.08
Labour for cleanup and install	\$540.00
TOTAL CLAIMED	\$29,148.24

The Landlord stated that the Tenants smoked excessively in the rental unit causing substantial damage to the interior paint on the walls and ceiling as well as significant damage to the floors. The extent of the smoke damage was such that the rental unit required total repainting; the Landlord also sought compensation to repair the ceiling. He further testified that the floors were an epoxy coated concrete which was damaged by the Tenants putting their cigarettes out on the floors and melting the flooring. The Landlord stated that the carpet was new when the tenancy began and had to be replaced after the tenancy ended due to the extensive damage intentionally caused by the Tenants.

The Landlord also testified that the unit was furnished and the Tenants caused such damage to the beds and sofa that they needed to be replaced when the tenancy ended.

The Landlord also sought the cost to replace two baseboard heaters which were damaged by the Tenants.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Pursuant to section 26 of the *Act* a tenant must pay rent when rent is due. I accept the Landlord's testimony that the Tenants failed to pay rent and utilities as required during their tenancy such that the amount of \$4,969.28 was outstanding as of the date of the hearing. I find this amount to be recoverable from the Tenants and grant the Landlord monetary compensation in the amount of **\$4,969.28**.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) 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 am persuaded by the Landlord's undisputed testimony and evidence and in particular the photos submitted of the unit taken before the tenancy began and after it ended that the Tenants significantly damaged the rental unit. These photos depict soiled dishes and linens, rotting food, cigarette burns on the floors and walls, destroyed carpet, animal feces and litter, garbage and recyclables left strewn about the home, ripped furniture and damaged appliances. I further accept the Landlord's testimony and documentary evidence that the extent of this damage was such that various items needed to be replaced or required costly repairs. The amounts claimed by the Landlord are reasonable when considering the extensive damage caused by the Tenants. I agree with the Landlord, based on my review of the evidence that the inescapable conclusion is that the Tenants purposefully and intentionally vandalized the rental unit.

I therefore award the Landlord the full amount claimed for compensation for damage. As the Landlord has been successful in his application, I also award him recovery of the \$100.00 filing fee.

Conclusion

The Landlord is entitled to monetary compensation from the Tenants in the amount of **\$29,248.24** for the following:

Outstanding rent/utilities	\$4,969.28
Flooring repair	\$5,850.00
Carpeting	\$1,030.68
Ceiling repair	\$2,199.00
Painting unit	\$10,342.50
2 queen beds	\$1,152.90
2 queen mattresses	\$627.90

2 sofas	\$2,097.90
2 baseboard heaters	\$338.08
Labour for cleanup and install	\$540.00
Filing fee	\$100.00
TOTAL AWARDED	\$29,248.24

In furtherance of the above I grant the Landlord a Monetary Order in the amount of **\$29,248.24**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: December 20, 2021

Residential Tenancy Branch