



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNRL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on December 15, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation;
- an order to retain the Tenant's security deposit; and
- an order granting recovery of the filing fee.

The Landlord, the Landlord's Agent C.C., and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the Tenant confirmed that he received the Landlord's Application, amendment, and documentary evidence. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The Tenant provided some documentary evidence to the Residential Tenancy Branch in response to the Application. During the hearing, the Tenant confirmed that he has not served this evidence to the Landlord.

Preliminary Matters

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. In this case, I find that the Landlord has not been served with the Tenant's documentary evidence. As such, the Tenant's evidence will not be considered. The Tenant is able to provide verbal testimony during the hearing in response to the Landlord's Application.

The parties were provided with a full 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 Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The parties agreed that they took part in a previous dispute resolution proceeding during which the Tenant's security deposit was decided on. As such, the Landlord's claim to retain the Tenant's security deposit is therefore dismissed without leave to reapply.

The original hearing took place on April 26, 2021, however, did not complete within the allotted hearing time. As such, the hearing was adjourned. The reconvened hearing took place on September 13, 2021, however, was once again adjourned as the Landlord had not served the Notice of Adjourned Hearing to the Tenant. On January 27, 2022 the hearing reconvened with each party in attendance.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental unit, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed that the tenancy began on June 1, 2018. During the tenancy, the Tenant was required to pay rent in the amount of \$3,700.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,850.00 which has been dealt with in a previous hearing. The parties also agreed that the tenancy ended on October 31, 2020.

The Landlord is seeking a monetary order for damage or loss, as well as for unpaid rent. The Landlord provided a monetary worksheet detailing his claims which have been outlined below;

The Landlord is seeking \$500.00 for unpaid rent. The Landlord stated that rent was \$3,700.00 per month. The Landlord stated that the Tenant only paid rent in the amount of \$3,200.00 in October 2020. The Tenant stated that the parties had a verbal

agreement that the Tenant would only have to pay a reduced amount of rent in the amount of \$3,200.00 as the Tenant moved out earlier than expected. The Landlord confirmed that this was their agreement, however, it was not in writing, therefore, the Landlord is now seeking the full amount of rent for October 2020.

The Landlord is claiming \$260.00 in relation to repairing a clogged toilet during the tenancy. The Landlord stated that on February 12, 2019 the Tenant notified him that the toilet was clogged. The Landlord arranged for a Plumber to attend the rental unit to discover that some paper towel had been flushed which was obstructing the drainpipe. The Tenant denied flushing the paper towel and stated that it could have occurred prior to his tenancy.

The Landlord is claiming \$262.50 for a freezer and wall repair that took place during the tenancy. The Landlord stated that the Tenant complained that the fridge was leaking. The Landlord stated that this was a result of the Tenant overloading the freezer causing insufficient circulation of cold air in the freezer. The Tenant stated that the maintenance person attended, the freezer was empty and unplugged as requested. The Tenant stated that the fridge continued to leak regardless.

The Landlord stated that while to maintenance person was in attendance, the Tenant requested that he also repair a hole in the drywall. The Tenant stated that he had accidentally damaged the wall, which required repair.

The Landlord is claiming \$504.00 for cleaning and to remove stickers from the ceiling. The Landlord stated that the Tenant left the rental unit dirty, which required further cleaning. The Landlord stated that there were some holes in wall upstairs which needed repair. The Landlord provided pictures and an invoice in support.

The Tenant stated that there was mold in the shower only because there was poor air circulation in the bathroom. The Tenant stated he tried to clean it daily but that did not seem to remove the staining. The Tenant confirmed he left the stickers as he did not have a ladder at the end of the tenancy. The Tenant denied causing holes in the wall. The Tenant also stated that he left the house spotless. The Tenant referred to a detailed condition inspection report which did not mention these issues. The Tenant stated that the condition inspection was thorough and took hours to complete. The Landlord confirmed the same.

The Landlord is claiming \$147.00 as he experienced draining issues with a shower and toilet after the end of the tenancy. The Landlord stated he employed the services of a

plumber who attended and pulled out a clump of hair from the drain. The Landlord feels as though the Tenant is responsible. The Tenant responded and stated that they did not make use of the washroom that the Landlord is claiming had a clogged drain. The Tenant stated that the drains were not inspected prior to the commencement of the tenancy. The Landlord provided an invoice and pictures in support.

The Landlord is claiming \$341.25 for pest control services. The Landlord stated that the Tenant notified him at the end of the tenancy that there were mice in the rental unit. The Landlord attempted to treat the rodent issued on his own, however, it proved to be ineffective. The Landlord stated that he employed the professional service of a pest control company who attended and performed treatments, closing entry points into the rental unit. The Landlord provided an invoice in support.

The Tenant stated that he did notify the Landlord of the rodent issue during the tenancy, but that the Landlord was not interested in spending any money or maintain the rental unit during the tenancy.

The Landlord is claiming \$117.79 in relation to replacing a damaged stove top element at the end of the tenancy as well as for rodent control products. The Landlord stated that the stove is 27 years but was in good condition prior to the tenancy. The Tenant denied causing damage to the stove. The Landlord provided pictures of the stove and a receipt in support.

The Landlord is claiming \$95.70 for vinyl deck patching materials. The Landlord stated that the Tenant admitted to placing a hot pot on the vinyl deck which caused a big hole to form in the vinyl. The Landlord provided a receipt for the materials. The Landlord is claiming a further \$400.00 for labour to repair the vinyl. The Tenant acknowledged that he caused damage to the vinyl, however, did not agree with the Landlord's claim for labour. The Landlord stated he paid his maintenance person \$400.00 and provided a bank statement.

The Landlord is claiming \$100.00 in relation to garbage removal. The Landlord stated that the Tenant left abandoned items on the curbside. The Landlord stated that after three weeks, he decided to have his maintenance person attend and remove the items at a cost of \$100.00. The Tenant confirmed he left the items, however, was under the impression that the City would remove such items at no charge.

The Landlord is claiming \$964.00 in relation to garden restoration. The Landlord stated that he had the yard professionally maintained at the start of the tenancy. The parties

agreed that the Tenants were responsible for maintaining the yard during the tenancy. The Landlord stated that at the end of the tenancy, he found that the Tenant had left weeds in the gardens and that the yard looked unkept. The Tenant stated that he had mowed the lawn weekly and had maintained the yard to a reasonable standard. The Landlord provided pictures of the yard before and after in support

The Landlord is claiming \$1,312.50 in relation to repairing the rotten deck which resulted from the Tenant damaging the vinyl deck, which exposed the bare wood below causing it to absorb rainwater and rotting out. The Landlord provided pictures in support. The Landlord stated that he has not yet performed the work to repair the deck, however, this was only an estimate of the repair cost.

The Tenant stated that he had immediately notified the Landlord about the vinyl damage on the deck. The Tenant stated that the Landlord did not take action to repair the deck. The Tenant denied that the wood is rotten.

The Landlord is claiming \$1260.00 in relation to replacing a discoloured cedar hedge. The Landlord stated that the Tenants placed a shed in the driveway which restricted sunlight from reaching the cedars which resulted in the discolouration. The Landlord stated that he has not yet replaced the trees but provided pictures and a quote in support. The Tenant stated that he received verbal permission from the Landlord to put the shed in the driveway and that at no point during the tenancy did the Landlord ask him to move the shed.

The Landlord is claiming \$577.50 to repair scratches in the hardwood floor. The Landlord provided pictures of the floor and a quote in support. The Landlord stated that he did not get the floors fixed before he entered into a new tenancy. The Tenant stated that the scratches were there at the start of the tenancy and that they were caused by a sectional couch which belonged to the Landlord and was left for the Tenants to use during the tenancy. The Tenant stated that the legs of the couch were not padded, therefore, had caused scratches to the floor. The Tenant stated that he notified the Landlord who did not seem concerned.

The Landlord is claiming \$367.50 in relation to repairing a cracked bathroom tile. The Landlord stated that he has not yet fixed the tile, but provided a picture and a quote for the repair in support. The Tenant stated that there was no cracked tile at the end of the tenancy. The Tenant referred to the condition inspection report which did not indicate this damage.

The Landlord is claiming \$100.00 to remove spray paint from the driveway. The Landlord stated that he has not yet removed the spray paint, however, provided pictures in support. The Tenant acknowledged that he had spray painted some items outside and that some of the paint had transferred onto the driveway. The Tenant stated that he did not have a power washer available to clean it.

The Landlord is claiming \$100.00 to repair a small hole in a windowpane. The Landlord stated that he has not yet repaired the window, however, provided pictures of the window in support. The Landlord also noted the same type of damage to the shed in the backyard and suspects the Tenants may have shot a pellet gun, causing small holes to the shed door. The Landlord estimates a further \$200.00 to repair the shed. The Tenant denied causing damage to these items and stated that he noticed this damage at the start of the tenancy and notified the Landlord.

The Landlord is claiming \$100.00 which is the estimated cost of repairing damage to the backside of a wall in the rental unit. The Landlord provided pictures of the damage, but states that he has not yet repaired the wall and did not provide a quote for the proposed work.

The Landlord is claiming \$9,760.00 in relation to loss of rental income as a result of the necessary repair work which was needed to be completed at the end of the tenancy, which delayed the Landlord's ability to re-rent the rental unit until February 1, 2021. The Tenant responded by stating that the Landlord had the rental property listed for sale and was most likely not motivated to re-rent the rental unit for this purpose.

The Landlord is claiming \$50.00 to replace the cover which protect the light bulb on the garage door opener. The Landlord stated this was only a quote and that he has not yet replaced the cover. The Tenant denied removing the cover and did not notice it missing during the tenancy.

The Landlord is claiming \$67.17 to replace a toilet seat which had been damaged during the tenancy. The Landlord provided a picture of the damaged toilet seat and a quote for its replacement which has not yet been replaced. The Tenant acknowledged damaging the toilet seat.

Analysis

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

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*. 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 Landlord 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 Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

According to the Residential Tenancy Policy Guideline 1; The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets

reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Section 32 of the *Act* states; 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.

The Landlord is seeking \$500.00 for unpaid rent. The Landlord stated that rent was \$3,700.00 per month. The Landlord stated that the Tenant only paid rent in the amount of \$3,200.00 in October 2020. I accept that the parties verbally agreed to Tenant paying the Landlord a reduced amount of rent near the end of the tenancy. I find that the Landlord did not mitigate his loss by agreeing to and accepting less rent. As such I dismiss this claim without leave to reapply.

The Landlord is claiming \$260.00 in relation to repairing a clogged toilet during the tenancy. I find that the Landlord provided insufficient evidence to demonstrate that the clogged toilet was a result of the Tenant's deliberate damage or neglect. Instead, I find it is the Landlord's responsibility to repair and maintain the plumbing in the rental unit.

The Landlord is claiming \$262.50 for a freezer and wall repair that took place during the tenancy. I find that the Landlord provided insufficient evidence to demonstrate that the freezer requiring repair was a result of the Tenant's deliberate damage or neglect of the freezer. I find the Landlord would be responsible to repair and maintain the freezer.

With respect to the wall repair, I accept that the Tenant took responsibility for damaging the wall. While the Landlord provided a receipt in support of the freezer and wall repair, I find that the receipt is not itemized, therefore, it is not clear how much the Landlord is claiming for each item. I accept that the parties agreed that the Tenant is responsible for the repair, I award the Landlord a nominal award in the amount of **\$150.00** to repair the wall.

The Landlord is claiming \$504.00 for cleaning and to remove stickers, cleaning, and repairing holes in the ceiling. In this case, I find that the Landlord provided sufficient evidence to demonstrate that the rental unit required further cleaning and some wall repair. I find the Landlord provided sufficient evidence to demonstrate he suffered a loss and is therefore entitled to compensation in the amount of **\$504.00**

The Landlord is claiming \$147.00 as he experienced draining issues with a shower and toilet after the end of the tenancy. I find that the Landlord provided insufficient evidence to demonstrate that the drainage issues were a result of the Tenant's deliberate damage or neglect. I find the Landlord is responsible for repairing and maintaining the drains in the rental unit. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$341.25 for pest control services. The Landlord stated that the Tenant only notified him of a rodent problem at the end of the tenancy. The Tenant stated he notified the Landlord during the tenancy. The Landlord provided an invoice in support. I note that the invoice states *"mice are likely getting in through the garage and roof"*.

I find that the I find that the Landlord provided insufficient evidence to demonstrate that the rodent issue was a result of the Tenant's deliberate damage or neglect of the rental property. I find that it would have been the Landlord's responsibility to repair and maintain the rental property to ensure there were no access point present to reduce the likelihood of rodents entering the rental unit. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$117.79 in relation to replacing a damaged stove top element at the end of the tenancy as well as rodent control products. After having made my previous finding relating to the Landlord's claim for pest control compensation, I find the Landlord is not entitled to compensation for pest control products. The Landlord stated that the stove is 27 years but was in good condition prior to the tenancy.

The Residential Policy Guideline 40 is a general guide for determining the useful life of building elements for considering applications and determining damages. According to the guide, the useful life of a stove is 15 years. In this case, the Landlord stated that the stove is 27 years old which almost doubles its useful life. As such, I decline to award the Landlord compensation relating to a damaged element and dismiss this claim without leave to reapply.

The Landlord is claiming \$95.70 for vinyl deck patching materials. I accept that during the hearing, the parties agreed that the Tenant caused the damage to the vinyl deck. I find the Landlord provided sufficient evidence based on the receipt provided that he suffered a loss and award the Landlord compensation in the amount of **\$95.70** for material to repair the deck.

The Landlord is claiming a further \$400.00 for labour to repair the vinyl. The Landlord provided a bank statement in support of the cost. I find that the Landlord's bank statement did not reflect any amount that the Landlord is claiming for, nor do the amounts sum up to the amount the Landlord is claiming for. As such, I find that the Landlord provided insufficient evidence to demonstrate he suffered a loss and dismiss the Landlord's claim without leave to reapply.

The Landlord is claiming \$100.00 in relation to garbage removal. I accept that the parties agreed that the Tenant left some of his possessions in front of the rental unit, hoping that the City would collect the items at no cost. I accept that these items were not collected and find it reasonable to award the Landlord compensation in the amount of **\$100.00** to dispose of the Tenant's abandoned possessions.

The Landlord is claiming \$964.00 in relation to garden restoration. The Landlord stated that he had the yard professionally maintained at the start of the tenancy. The parties agreed that the Tenants were responsible for maintaining the yard during the tenancy. While the Tenant stated that he maintained the yard throughout the tenancy, I find that the pictures of the yard provided by the Landlord would indicate otherwise. I find that the Landlord is entitled to some compensation, however, the Landlord did not provide a receipt in support of the amount he is claiming but provided pictures indicating that the work had been completed. I find that the Landlord is entitled to a nominal monetary award in the amount of **\$200.00** for yard restorations.

The Landlord is claiming \$1,312.50 in relation to repairing a rotten deck, \$1,260.00 in for replacing a discoloured cedar hedge, \$577.50 to repair scratches in the hardwood floor, \$367.50 in relation to repairing a cracked bathroom tile, \$50.00 to replace the

cover which protect the light bulb on the garage door opener, \$100.00 to repair a small hole in a windowpane, \$100.00 to repair the backside of a wall in the rental unit, and a further \$200.00 to repair the shed. The Tenant disagreed with the above-mentioned claims.

With respect to each of these claims, the Landlord stated that he has not yet completed any of these repairs, and therefore has not provided an invoice in support of these claims. I find that the Landlord has provided insufficient evidence to demonstrate that he has suffered a loss in the amounts being claimed. As such, I dismiss these claims without leave to reapply.

The Landlord is claiming \$9,760.00 in relation to loss of rental income as a result of the necessary repair work which was needed to be completed at the end of the tenancy as of October 31, 2020, which delayed the Landlord's ability to re-rent the rental unit until February 1, 2021. The Tenant responded by stating that the Landlord had the rental property listed for sale and was most likely not motivated to re-rent the rental unit for this purpose.

In this case, I find that the majority of the Landlord's monetary claims are for repairs that have not yet been completed. I find that the Landlord has provided insufficient evidence to demonstrate that he was unable to re-rent the rental unit in a timely manner. As such, I dismiss the Landlord's claim for loss of rent without leave to reapply.

The Landlord is claiming \$67.17 to replace a toilet seat which had been damaged during the tenancy. The Landlord provided a picture of the damaged toilet seat and a quote for its replacement which has not yet been replaced. The Tenant acknowledged damaging the toilet seat as such I find that the Landlord is entitled to monetary compensation in the amount of **\$67.17**.

The Landlord is claiming \$100.00 to remove spray-paint from the driveway. The Tenant acknowledged spray-painting in the driveway and was unable to clean it on his own. I find that the Landlord is entitled to monetary compensation in the amount of **\$100.00**.

Having been partially successful, I find that the Landlord is entitled to the return of the **\$100.00** filing fee.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$1,316.87.

Conclusion

The Landlord has been granted a monetary order for compensation in the amount of **\$1,316.87**. The order should be served to the Tenant 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: February 25, 2022

Residential Tenancy Branch