



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me;

however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The landlord's testimony is as follows. The tenancy began on August 1, 2017 and ended on February 4, 2021. The tenants were obligated to pay \$6800.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$3250.00 security deposit which the landlord still holds. The landlord testified that the tenant was given below market rent in exchange for her to maintain the property and the home. The landlord testified that the tenant caused significant damage to many parts of the home through neglect and recklessness.

The landlord testified that a written condition inspection report was done at move in and move out. The landlord testified that the tenant refused to sign the move out inspection report. The landlord testified that when the deficiencies were pointed out to the tenant at the move out, the tenant advised her to go ahead and do the repairs as she did not agree to any of them and that she would not pay for them.

The landlord is applying for the following:

1.	Exterior wood retaining wall	\$7180.00
2.	Water damage to windowsill	879.00
3.	Broken door handles	421.00
4.	Neglected weeding, trimming tree, shrub replacement	5521.22
5.	Neglected cleaning of balconies, decks, doors, windows	2500.00
6.	Dryer replacement	1225.00
7.	Exterior Building Screws and misuse	8938.44
8.	Interior Building drywall and baseboard	7500.76
9.	Breach of Rental Addendum	3750.00
10.	Hardwood floors	9544.50
11.	Filing Fee	100.00
	Total	\$47,559.90

The landlord testified that although the amount sought is above the limit that the Branch can consider, she is seeking the maximum of \$35,000.00 that the Branch can award and will abandon any amounts over that amount. The landlord also advised that she has received a quote for the damaged hardwood throughout the home for \$9544.50, but that work has not been done yet.

The tenant gave the following testimony. The tenant testified that she repaired the door handles. The tenant testified that the landlord is making a claim for something that she paid for and fixed. The tenant testified that the garden was well kept including pruning and trimming. The tenant testified that the dryer was an issue for much of the tenancy, so much so, that the tenant filed an application seeking to repair the dryer as it ruined many of their clothes. The tenant testified that the retaining wall was deteriorating and rotten which the landlord repaired of her own volition. The tenant testified that she did not cause the wood to rot because of four small screws.

The tenant testified that the house is in the same condition at move out as it was at move in save and except, normal wear and tear. The tenant testified that the floors and drywall were in good condition with no change from the outset of the tenancy. The tenant testified that she hired a professional cleaner to clean the unit. The tenant testified that the unit was not repainted prior to the tenancy beginning. Counsel submits that the landlord has not undertaken many of the repairs as claimed and has failed to show any loss incurred. Counsel for the tenant submits that the landlord has failed to meet the burden on a balance of probabilities and that her entire application should be dismissed.

Analysis

At the outset of this hearing, I notified the landlord that as the applicant, she was required to present her application and prove her claims on a balance of probabilities.

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords claim and my findings around each are set out below. It is worth noting that the landlord was extremely disorganized when presenting her claim. She was unable to answer basic questions or provide answers to the claim she put forth or able to explain the amount she noted on the application and what she was seeking on the day of the hearing.

Much of her claim lack clarity or logic. The landlord presented her evidence in a very disjointed and vague fashion. In addition, the landlord would add and subtract items from her claim during the hearing and would alter the amount she was seeking. The landlord's monetary worksheet was a handwritten document that had many numbers but lacked the specificity to explain them. Despite giving the landlord numerous opportunities to clarify and explain her costs, she was unable to do so and would often cloud the issue even further. The landlords' testimony and documentation were in conflict through much of the hearing, when it was; I considered the sworn testimony in coming to her monetary calculations and when applying evidentiary weight.

Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

The landlords paperwork was extremely disorganized. In addition, many of the photos were grainy and of poor quality and did not align with her testimony. The landlord was unable to present her evidence and testimony in a clear, concise and credible manner despite being given 90 of the 120 minutes of hearing time.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

It is worth noting that each time that I asked the landlord the age of building elements she was unable to provide me with a clear and definitive answer on many of the items she has claimed for. She often stated that the property had undergone “serious renovations and major reconstructions” but would not provide a clear and direct answer to my questions.

I note this as I am required to consider the useful life of building elements as noted in Residential Tenancy Policy guideline 40. Even if a landlord can display that there may have been damage to an item, without providing some reasonable evidence to the age of the building element, the landlord could end up with a reduced entitlement or even none at all.

Exterior Wood - \$7180.00

The landlord testified that the tenants used over twenty screws on pressure treated wood that caused the wood to rot and required full replacement of all of the wood. The landlord did not provide sufficient evidence to show that the tenant was reckless or negligent or that the wood required replacement or provide sufficient evidence of the age of the wood; accordingly, I dismiss this portion of the landlords' claim.

Damage to Windowsills and plant - \$879.00

The landlord testified that the tenant damaged the windowsill by keeping plants on it. The landlord testified that four windowsills had to be repainted because of it. The landlord testified that the paint was new when the tenant moved in. The tenant testified that there was only a small section of the wall near the top of the stairs that was painted as the previous tenant had a child gate for safety. The landlord has not provided sufficient evidence to support her claim, accordingly; I dismiss this portion of the landlords claim.

Broken Door Handles - \$421.08

The landlord testified that the tenant broke four different door handles in the home. The landlord testified that the tenant forgot their keys and had to break the locks. The tenant testified that she was the one who repaired and paid for the broken door handles that

the landlord is now trying to claim for. The landlord has not provided sufficient evidence to support her claim, accordingly; I dismiss this portion of the landlords claim.

Neglect to weed and trim plants, shrubs and trees \$5521.22

The landlord testified that as part of the negotiated reduced rent, the tenant was to maintain all plants, trees, and to do all weeding. The landlord testified that the tenant did not. The tenant testified that she kept the property in very good condition and that the yard was in a very similar condition at the end of the tenancy as it was at the beginning including trimming and pruning. The tenant provided documentation to support that position. Based on the insufficient evidence before me from the landlord, I hereby dismiss this portion of the landlords claim.

Neglect to clean and maintain property - \$2500.00

The landlord testified that as part of the negotiated reduced rent, the tenant was to power wash all doors, windows, decks and balconies. The tenant repeated her position as the previous claim, that she did regular maintenance on the property and that she met her obligation during the entire tenancy. The landlord has not provided sufficient evidence to support her claim, accordingly; I dismiss this portion of the landlords claim.

Dryer – \$1225.00

The landlord testified that she had “no idea” how old the dryer was. In addition, the landlord failed to provide sufficient evidence that the tenant was reckless or negligent and if the dryer needed replacement. Based on the above, I dismiss this portion of the landlord’s claim.

Exterior Building Damage due to screws – \$8938.44

The landlord testified that the tenants put screws all over the woodwork around the property including the fascia to hang party lights and Christmas lights. The landlord testified that the tenants also hung exercise equipment from wooden beams and door handles on the French doors causing damage. The tenant adamantly disputed that she put the screws as alleged by the landlord. The landlord has not provided sufficient evidence to show that the tenant was reckless or negligent or that they purposely put screws throughout the property, accordingly; I dismiss this portion of the landlords claim.

Interior Wall - \$7500.76

The landlord testified that because of the tenants putting in so many screws in the exterior, water seeped into the interior causing large areas of water damage and mold. The landlord testified that the tenants purposely didn't report this issue to exacerbate the damage. The tenant testified that she saw the stain at move out along with the landlord. The tenant testified that the landlord came numerous times to inspect the property and didn't notice it either. Based on the insufficient evidence before me and the landlord's inability to satisfy me of the four elements listed above, I dismiss this portion of the landlords claim.

Hardwood Floors - \$9544.50

The landlord testified that she has not yet done this work. I find that the landlord did not provide sufficient evidence to show that the alleged damage was anything beyond normal wear and tear. In addition, the landlord was unable to give the age of the flooring. Furthermore, as the landlord has not conducted any of this work, she has not provided any proof of actual out of pocket costs. Finally, the landlord failed to provide sufficient evidence of loss, accordingly; I dismiss this portion of her claim.

Breach of Rental Addendum - \$3750.00

The landlord testified that as part of the negotiated reduced rent, the tenant was to undertake numerous tasks to maintain the upkeep of the property for which they didn't do for 7.5 months. The landlord testified as part of that agreement, a \$500.00 payment to the landlord is required for each month those duties were not done. The landlord has not provided sufficient evidence to support this claim, accordingly; I dismiss this portion of the landlords claim.

Filing Fee

As the landlord has not been successful in her application, she is not entitled to the recovery of the filing fee and must bear that cost.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply. The landlord must return the \$3250.00 security deposit back to the tenant. I grant the tenant an order under section 67 for the balance due of \$3250.00. This order may be filed in the 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: April 26, 2022

Residential Tenancy Branch