



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-S, MND-S, FF

Introduction

This hearing convened to consider the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed;
- compensation for alleged damage to the rental unit by the tenant;
- authority to keep the tenants' security deposit to use against a monetary award and
- recovery of the filing fee.

The landlord's advocate and agent and the tenants attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

All parties were provided the opportunity to present their affirmed evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

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

Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary Issue –

Tenant CZ stated that he was not served with the landlord's application as he did not live at the address where the documents were sent. CZ indicated that he no longer lived with the tenant, CD.

I have reviewed the documentary evidence supplied by the landlord, which included the registered mail receipt for CZ, whose tracking information shows the mail was returned. The address used was the address of a person who had the same surname as tenant CD.

As a result of the above, I find the landlord submitted insufficient evidence that the address used to send tenant CZ their application for dispute resolution was a forwarding address provided by the tenant. I therefore find the landlord submitted insufficient evidence that the tenant CZ was served in a manner required by section 89 of the Act and I have excluded CZ from any further consideration in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and/or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

This tenancy began on June 1, 2020, for a monthly rent of \$1,720 due on the first day of the month. The tenants paid a security deposit of \$860.

The tenancy ended by way of an order of possession of the rental unit being granted to the landlord on November 3, 2021, on the tenants' application seeking cancellation of the One Month Notice to End Tenancy for Cause (Notice) issued by the landlord. Filed

in evidence was a copy of the Decision and order of possession issued by another arbitrator.

The total monetary claim of the landlord on their original application for dispute resolution was \$27,689.59, for various trades invoices in repairing the fire damage and employee overtime pay, and with an additional \$3,765 in the amended application for dispute resolution in post fire repairs, for a total of \$31,364.59. Filed in evidence were the trades invoices.

The breakdown of the claim is as follows:

| ITEM DESCRIPTION | AMOUNT CLAIMED |
|--|--------------------|
| 1. Water removal, assist emergency services | \$1,140.00 |
| 2. Overtime payroll cost for property manager | \$818.22 |
| 3. Repair, remove, replace flooring, etc. | \$16,476.00 |
| 4. Painting | \$2,521.60 |
| 5. Repairs, flood restoration | \$2,574.00 |
| 6. Carpet care, drying | \$2,205.01 |
| 7. Service call-out | \$483.78 |
| 8. Service to bathroom fan, hallway lighting | \$468.56 |
| 9. Post fire repairs, water damage, dry wall | \$3,675.00 |
| 10. Discounted rent for 18 days, not habitable | \$1,002.42 |
| TOTAL | \$31,364.59 |

In support of this claim, the landlord submitted that on May 21, 2021, a fire in the rental unit was started by tenant CD while smoking in her bathroom. The building is a non-smoking building, which was acknowledged by both tenants. The landlord alleged that by her own admission, CD, had been taking medication and drinking, and while smoking inside the rental unit, she discarded a cigarette butt into the waste basket in the bathroom. The landlord submitted that the tenant failed to extinguish the cigarette and it ignited the contents of the waste basket, causing a fire. The landlord submitted they sustained a large amount of damage due to the tenant's negligence.

The landlord submitted that the fire went up the wall of the bathroom and caused the towels and towel rack to catch fire, resulting in the plastic housing for the bathroom fans

to melt. The landlord submitted that the fire caused the automatic sprinklers to engage and over a period of time, extinguished the fire.

The fire triggered the fire alarm, and the local fire department was dispatched to the residential property. The landlord submitted that there was heavy smoke and extensive water damage to multiple floors of the building and several residents in other units were displaced as a result of the fire.

The landlord submitted that due to the extensive damage caused by the fire, restoration and remediation work on the rental unit and residential property were necessary. Further, the fire, smoke and water caused damage to other parts of the building, including the basement.

According to the landlord, after the tenant was able to return to the rental unit, her smoking and drinking continued. The building manager was given a report of smoking smells coming from the rental unit and after entry to the unit, the building manager observed numerous cigarette butts.

The monetary claim is for damages to the rental unit, suites and building resulting from the tenant's negligence in starting a fire.

The landlord submitted that the tenant, CD, has accepted responsibility, as shown by the signed acknowledgment filed in evidence.

Also filed in evidence was a breakdown of a portion of the monetary claim, which included trades invoices and overtime payroll costs to property managers, and discounted rent for 18 days when the tenant could not live in the unit.

Also filed in evidence was a detailed report from the local fire department, restoration companies' reports, and photographs of the damaged property.

The tenant CD testified in the hearing that the fire was her mistake; however, the claim of the landlord showed they were trying to claim as much as they could. CD said the landlord should claim against their insurance company instead of seeking the compensation from her.

CD did not file documentary evidence.

The landlord's advocate said the landlord's insurance deductible in this case is \$100,000.

Analysis

Test for damages or loss

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 in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of 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 whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/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 whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, I find the landlords submitted sufficient evidence to support their monetary claim. The tenant CD agreed that she caused the fire in the rental unit and signed a statement to that account. As a result, I find the tenant's negligence caused the landlord to sustain the losses in making the repairs to the rental unit and residential property.

I have reviewed the landlord's photographic evidence along with the receipts and invoices for the amounts claimed. Upon review of this evidence, I find the costs claimed

to be reasonable. I therefore find the landlords have established a monetary claim of **\$31,364.59**, as shown on the various trades invoices filed in evidence.

I grant the landlord recovery of their filing fee of \$100.

Due to the above, I find the landlords have established a total monetary claim in the total amount of **\$31,464.59**, which includes the filing fee of \$100.

From this amount, I deduct the tenant's security deposit of \$860, in partial satisfaction of the monetary claim, and I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of **\$30,604.59**.

Should the tenant fail to pay the landlord this amount without delay, the order must be served to the tenant for enforcement. Thereafter, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is **cautioned** that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlords' application for monetary compensation is granted and they have been awarded a monetary order for the amount of **\$30,604.59**.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 25, 2022

Residential Tenancy Branch