



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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A matter regarding MONTEG VENTURES INC. and
[tenant name suppressed to protect privacy]

DECISION

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

Introduction

The landlord seeks compensation pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act").

A dispute resolution hearing was convened on May 26, 2022. Only the landlord's agent (hereafter the "landlord") attended the hearing, which ended at 1:48 PM.

The landlord was affirmed, no service issues were raised, and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained.

Preliminary Issue: Service of Notice of Dispute Resolution Proceeding and Evidence

The landlord testified under oath that she served the Notice of Dispute Resolution Proceeding and both packages of her documentary evidence, including a final Monetary Order Worksheet, on the tenant by way of Canada Post registered mail. She sent the mail to the forwarding address that the tenant had given her. Some of the mail was returned to the landlord undelivered. Canada Post attempted to contact the tenant to clarify or confirm the tenant's address, but to no avail.

Based on the above, it is my finding that the landlord has served the required Notice and documentary evidence in compliance with the Act and the Residential Tenancy Branch's *Rules of Procedure* necessary for the tenant to attend and participate in the dispute resolution process.

Issue

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began April 25, 2021 and ended October 31, 2022. Rent was \$2,000.00 and there was a \$1,100.00 security deposit and a \$1,100.00 pet damage deposit. Both deposits are in trust pending the outcome of this application. A copy of a written tenancy agreement is in evidence.

The landlord seeks a total of \$55,715.64, including \$100.00 for the filing fee. A revised *Monetary Order Worksheet* was completed and submitted into evidence; it lists nine items and breaks down the individual losses and claims. Compensation is being sought for the following (reproduced from the application):

- Damages to floor due to Pet Feces and Misc Substances - Repolish floors - Repair and Repainting of 6 interior doors (both sides) and 1 Exterior Door - Cleaning of entire unit - walls, cabinets (in/out), counters, bathrooms, appliances, windows - Damages to walls - Replacement of 5x5 triple pane window - Dented Fridge Door - Repairs to toilet seat x 2 - Repainting of Master and 2nd bedroom - Paint scuffs on stair railing - Clean up of 3 large cat litter dump piles in yard & 2 smashed pumpkins [and for] Removal of Garbage - Removal of non residential garbage - fan, suitcases, bins, totes - Removal of abandoned couch - Inability for rent the unit until repairs, painting, cleaning completed [that is, loss of rental income] - 10 days - Gravel placed in areas of cat litter dumping –

The landlord testified and confirmed that her claim is for damage, repairs, and cleanup caused by her former tenant. The largest portion of the landlord's claim was for extensive damage caused to the concrete floors: it will cost the landlord more than \$50,000.00 repair them. To support her claim, the landlord submitted the following documentary evidence: numerous photographs, video, invoices, receipts, an estimate, a statement from a witness, text messages, and a completed Condition Inspection Report.

It is worth noting that the rental unit was brand new at the start of the tenancy and that there was no damage or defects with the property. The landlord also submitted photographs depicting the state and condition of the rental unit at the start of the tenancy. There is, therefore, a preponderance of evidence supporting the fact that the rental unit was brand new at the start of the tenancy.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. And section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

Section 37(a) of the Act requires that a tenant “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear” when they vacate.

Based on the sworn, undisputed evidence before me, it is my finding that the tenant did not leave the rental unit reasonably and damaged. And I do not find that any of the damage was caused by reasonable wear and tear. Further, it is my finding that but for the tenant’s negligence or wilful conduct, the landlord would not have suffered the monetary loss for which she now claims. Last, the landlord’s documentary evidence of receipts, invoices, and an estimate firmly establishes the specific amounts sought.

In respect of the total amount claimed, [subsection 58\(2\)\(a\)](#) of the Act prevents a Residential Tenancy Branch arbitrator from determining a dispute if the amount claimed is more than the monetary limit for claims under the *Small Claims Act*, which is presently \$35,000.

However, [Rule 2.8](#) of the *Rules of Procedure* states that

An applicant who has a claim amounting to more than \$35,000.00 may abandon the part of the claim that exceeds \$35,000 so that the balance of the claim may be heard by the arbitrator.

The landlord was asked to confirm whether she wished to withdraw her application and instead pursue civil action in the Supreme Court of British Columbia (for which monetary claims above \$35,000 may be considered) or to abandon that portion of her claim exceeding \$35,000. The landlord confirmed that she would abandon the amount above the maximum permitted amount under the Act.

Pursuant to section 67 of the Act the tenant is ordered to pay to the landlord a total of \$35,000.00. (For the purposes of the application, this amount shall contain a \$100.00 award to pay for the cost of the filing fee.)

Section 38(4)(b) of the Act permits an arbitrator to authorize a landlord to retain a tenant's security and pet damage deposit after the end of a tenancy. As such, the landlord is authorized to retain the tenant's \$2,200.00 security and pet damage deposits in partial satisfaction of the amount awarded.

The balance of the award (\$32,800.00) is granted by way of a monetary order. A copy of this monetary order is issued in conjunction with this decision, to the landlord. As briefly explained to the landlord, she must serve a copy of the order on the tenant. The monetary order may then be enforced in the Provincial Court of British Columbia (Small Claims Court).

Conclusion

For the reasons given above, the landlord's application is hereby **GRANTED**.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: June 2, 2022

Residential Tenancy Branch