



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:41 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. Landlord AJ (the landlord) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord represented landlord NJ. 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 and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

Preliminary Issue – Service

The landlord affirmed the tenant did not serve the forwarding address. The landlord received a notice of hearing for the tenant's application file number *****331 in July or August 2021 containing the tenant's address for service.

Residential Tenancy Branch (RTB) Policy Guideline 12 states:

The respondent's address may be found on the tenancy agreement, in a notice of forwarding address, in any change of address document or in an application for dispute resolution.

The landlord served the notice of hearing and the evidence (the materials) to the tenant's address for service via registered mail on January 21, 2022. The tenant's address for service and the registered mail tracking number are recorded on the cover page of this decision.

Based on the landlord's convincing testimony and the tracking number, I find the landlord served the materials in accordance with section 89(1)(c) of the Act.

Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on January 26, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

The landlord submitted extra evidence to the RTB on the hearing's date because he forgot to submit it earlier.

Rule of Procedure 3.14 states:

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

I excluded the landlord's evidence submitted late, per Rule of Procedure 3.14.

Preliminary Issue – Deposit

The landlord submitted into evidence the decision of file *****331:

In this case, the Tenant confirmed they did not provide a written forwarding address to the Landlord.

Pursuant to s. 38(1)(b), because the Tenant has not provided their forwarding address in writing, the Landlord's obligation to return the deposit has not yet been triggered. The Tenant is not entitled to the return of the security deposit until they provide the written forwarding address to the Landlord.

I caution the Tenant that s. 39 of the Act provides that a landlord may keep any deposit if a tenant does not provide an address within one year after the end of the tenancy. Their right to the return of the security deposit is extinguished after one year. Because there is no record of the Tenant providing their address to the Landlord as the Act requires, there is no return of the security deposit by the Landlord here. For these reasons, this portion of the Tenant's claim is dismissed without leave to reapply.

As the above referenced decision dismissed the tenant's claim regarding the deposit without leave to reapply, I will not consider claims regarding the deposit in this application.

Preliminary Issue – Amount of the monetary claims

The landlord's application indicates a monetary claim in the total amount of \$35,000.00. The monetary order worksheet submitted into evidence indicates a monetary claim in the total amount of \$34,561.00.

The landlord affirmed he is seeking a monetary claim in the total amount of \$34,561.00.

Section 64(3)(c) of the Act allows me to amend the application, which I have done to correct the amount of the monetary claims to \$34,561.00 and the return of the filing fee in the amount of \$100.00.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for loss?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out

below. I explained rule 7.4 to the attending party; it is the landlords' obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on July 01, 2015 and ended on July 27, 2021. Monthly rent of \$3,155.00 was due on the first day of the month. The tenancy agreement was submitted into evidence.

The rental unit was a 5-bedroom, single-family house with approximately 4,000.00 square feet. The rental unit was in good condition when the tenancy started.

The landlord is claiming compensation in the amount of \$4,000.00, as the tenant damaged the rental unit's carpet. The landlord stated when the tenancy ended the carpet had stains and burnt marks throughout the rental unit. The landlord submitted into evidence photographs showing a stained carpet on July 22, 2021 in the basement, bedrooms 1, 2 and 3, and a receipt dated September 06, 2021:

Material supplied: carpet, installation includes carpet materials, carpet underpad 8 lb, installation of carpet, remove and dump existing carpet, sub floor clean up, sub floor prep: \$4,000.00.

The landlord is claiming compensation in the amount of \$6,300.00, as the tenant damaged the rental unit's kitchen, basement and entrance hallway floor. The landlord submitted into evidence photographs showing a damaged floor on July 22, 2021 in the basement and the kitchen and an estimate dated August 02, 2021:

Material supplied and installed as per quote: laminate installation includes: laminate materials 12MM, laminate underlay soundproof 3mm, installation of laminate, remove and dump existing carpet, sub floor clean up, sub floor prep including self levelling and grinding, delivery of material to the job site. Area covered: main floor entrance and hallway, basement living room, kitchen and entrance. Total: \$6,300.00.

The landlord is claiming compensation in the amount of \$173.42, as the tenant painted the rental unit's walls without the landlord's authorization using different colours. The landlord submitted into evidence photographs showing the basement walls with mismatching paint on July 22, 2021 and a paint receipt in the amount of \$173.42.

The landlord is claiming compensation in the amount of \$14,700.00, as the tenant damaged the drywalls, baseboards, doors and ceiling. The landlord submitted photographs showing a hole in the bedroom wall, a damaged bedroom door casing, a

damaged front door and casing, a missing baseboard in the kitchen, a basement door and wall vandalized and broken door fixtures on July 22, 2021. The estimate dated July 26, 2021 states:

Door trims, wall, ceiling, baseboard, supply and material, remove and dump old material: 14,000.00 + GST. Drywall damages + baseboard damages + trim damages will be extra.

The landlord testified the contractor does not offer an estimate with more details.

The landlord is claiming compensation in the amount of \$4,620.00, as the tenant sprayed the fence around the rental unit. The landlord tried to clean the fence but was not able to. The fence contains three panels of approximately 100 x 46 inches each. The landlord submitted photographs showing a sprayed fence on July 22, 2021. The email dated October 27, 2021 states: "replacing the 3 fence sections and dumping the old one can cost you around \$4,400.00 plus tax." The landlord indicated a claim in the amount of \$4,928.00 by mistake.

The landlord is claiming compensation in the amount of \$2,159.92, as the tenant damaged the rental unit's electrical installation. The landlord submitted photographs showing a damaged light switch, electrical wiring tampered in the kitchen, bedroom and basement, a light ripped out of the wall and the living room light fixtured damaged on July 22, 2021.

The invoice dated July 29, 2021 states:

Testing/troubleshooting [rental unit's address] Ensured all switches returned to operating condition, kitchen and bathroom GFCI returned to normal operating condition. Replaced receptacles with broken pronges lodged inside. Replaced all burnt out lightbulbs. 8 hours of work. Hourly rate: \$269.99. Total: \$2,159.92.

The landlord said he asked several electricians to repair the rental unit, but only one electrician was available.

The landlord is claiming compensation in the amount of \$2,300.00, as the tenant did not remove his belongings. The landlord submitted photographs showing abandoned bed mattresses, tables, chairs, couches, several boxes and garbage bags throughout the rental unit and large tools in the garage on July 22, 2021. The landlord affirmed he barely could enter the rental unit and the contractors used two trucks to dispose of the

tenant's abandoned belongings. The landlord submitted a receipt: "Received from the [landlord] the amount of \$2,300.00 for junk removal".

The landlord submitted into evidence 4 videos recorded on July 22, 2021 showing several boxes and garbage bags throughout the rental unit, damaged walls, floor, doors and electrical installation.

Analysis

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch (RTB) Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

RTB Rule of procedure 6.6 states that 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.

Based on the 4 videos and photographs submitted into evidence, I find the rental unit was in a state of disrepair when the tenancy ended.

Basement and bedrooms Carpet

Section 32(3) of the Act states: "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".

Based on the landlord's uncontested and convincing testimony, the photographs, the videos and the September 06, 2021 receipt, I find the tenant breached section 32(3) of the Act by damaging the basement and bedrooms carpet and the landlords suffered a loss in the amount of \$4,000.00.

As such, I award the landlords \$4,000.00 in compensation for this loss.

Kitchen, basement and entrance floor

Based on the landlord's uncontested and convincing testimony, the photographs, the videos and the August 02, 2021 estimate, I find the tenant breached section 32(3) of the Act by damaging the kitchen, basement and entrance hallway floor and the landlords suffered a loss in the amount of \$6,300.00.

As such, I award the landlords \$6,300.00 in compensation for this loss.

Painting

Residential Tenancy Branch Policy Guideline 1 states:

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

[...]

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises.

The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

(emphasis added)

Based on the landlord's uncontested and convincing testimony, the photographs, the videos and the July 22, 2021 receipt, I find the tenant breached section 32(3) of the Act by painting the walls with mismatching colours and the landlord suffered a loss in the amount of \$173.42.

As such, I award the landlords \$173.42 in compensation for this loss.

Drywalls, baseboards and doors damages

Based on the landlord's uncontested and convincing testimony, the photographs, the videos and the July 26, 2021 estimate, I find the tenant breached section 32(3) of the Act by damaging the bedroom wall, bedroom door casing, front and basement door, door fixtures and removing the kitchen baseboard and the landlords suffered a loss in the amount of \$14,700.00.

As such, I award the landlords \$14,700.00 in compensation for this loss.

Fence

Based on the landlord's uncontested and convincing testimony and the photographs, I find the tenant breached section 32(3) of the Act by damaging the fence.

I find the email dated October 27, 2021 is vague ("can cost you around \$4,400.00"). I find the landlord did not prove, on a balance of probabilities, the amount of the loss.

Thus, I dismiss the landlords' claim.

Electrical installation

Based on the landlord's uncontested and convincing testimony, the photographs, the videos and the July 29, 2021 invoice, I find the tenant breached section 32(3) of the Act by damaging the light switch, electrical wiring tampered in the kitchen, bedroom and

basement, a light ripped out of the wall and the living room light fixtured and the landlords suffered a loss in the amount of \$2,159.92.

As such, I award the landlords \$2,159.92 in compensation for this loss.

Removal of belongings

Section 37(2) of the Act states:

Leaving the rental unit at the end of a tenancy

37(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

Residential Tenancy Branch Policy Guideline 1 states:

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.

[...]

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

Based on the landlord's uncontested and convincing testimony, the photographs, the videos and the receipt, I find the tenant failed to comply with section 37(2) of the Act by not removing his belongings when the tenancy ended, and the landlord incurred a loss of \$2,300.00 to remove abandoned bed mattresses, tables, chairs, couches, several boxes and garbage bags throughout the rental unit and large tools in the garage.

As such, I award the landlords \$2,300.00 in compensation for this loss.

Filing fee and summary

As the landlords were successful in his application, I find the landlords are entitled to recover the \$100.00 filing fee

In summary, the landlords are entitled to:

Expenses	\$
Basement and bedrooms carpet	4,000.00
Kitchen, basement and entrance floor	6,300.00
Painting	173.42
Drywalls, baseboards and doors damages	14,700.00
Electrical installation	2,159.92
Removal of belongings	2,300.00
Filing fee	100.00
Total monetary award	29,733.34

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the landlords a monetary order in the amount of \$29,733.34.

The landlords are provided with this order in the above terms and the tenant must be served with this order in accordance with the Act. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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: August 25, 2022

Residential Tenancy Branch