



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPM, MNRL, MNDL-S, MNDCL**

Introduction

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

1. An Order of Possession further to a mutual agreement to end the tenancy pursuant to Sections 44(1)(c) and 55(2)(d) of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act;
3. An Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit pursuant to Sections 38 and 67 of the Act;
4. A Monetary Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
5. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlords attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. 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 Landlords and I were the only ones who had called into this teleconference. The Landlords were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlords that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlords testified that they were not recording this dispute resolution hearing.

The Landlords testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package on June 3, 2022 by Canada Post registered mail (the “NoDRP package”). The Landlords referred me to the Canada Post registered mail packages with tracking numbers submitted into documentary evidence as proof of service. I noted the registered mail tracking numbers on the cover sheet of this decision. I find that the Tenant was deemed served with the NoDRP package five days after mailing them on June 8, 2022 in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlords served the Tenant with their evidence by FedEx on September 7, 2022. The Landlords referred me to the FedEx Tracking ID# submitted into documentary evidence as proof of service. I noted the FedEx Tracking ID# on the cover sheet of this decision. I find that the Landlords’ evidence was deemed served on the Tenant on September 12, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession further to a mutual agreement to end the tenancy?
2. Are the Landlords entitled to a Monetary Order to recover money for unpaid rent?
3. Are the Landlords entitled to an Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit?
4. Are the Landlords entitled to a Monetary Order for compensation for a monetary loss or other money owed?
5. Are the Landlords entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlords testified that this tenancy began as a fixed term tenancy on June 1, 2020. The fixed term was renewed for a second year, then the tenancy continued on a month-to-month basis. Monthly rent was \$2,200.00 payable on the first day of each month. A security deposit of \$1,100.00 was collected at the start of the tenancy and is still held by the Landlord.

The parties entered a Mutual Agreement to End a Tenancy on May 31, 2022. The Landlords testified that the Tenant and all people in the rental unit vacated the rental unit according to the terms of the mutual agreement to end. The Landlords no longer require an Order of Possession.

The Landlords testified that the Tenant had two additional people staying in the rental unit without their approval. The Landlords stated that the strata council gave them warnings about the additional people in the rental unit. The Landlords discovered an advertisement for one room in the rental unit, and neighbours told them there were additional people staying in the home. The Landlords maintained there were at least four people for two years. The tenancy agreement states:

... For each additional person staying in excess of 30 days in a row, the Landlord will charge, and the Tenant(s) agree to pay \$100.00 per person per month. This does not constitute a rent increase.

The Landlords seek compensation for two additional people for two years in the amount of \$4,800.00.

The move-in condition inspection reports notes negligible damage to walls, door frames, baseboards and ceilings in the rental unit. The Landlords provided evidence of many nail and hook holes left unrepaired in the rental unit. The Tenant had also installed hooks which were used for holding swings to the ceiling. The Landlords provided photo evidence of shelving that needed to be removed and damage to door trims and baseboards in many areas in the home. The Landlords seek compensation for repair/preparation of hook/nail holes, ceiling, removal of shelving, caulking and sanding between coats of paint totalling \$8,400.00.

The Landlords replaced all the flooring in the rental unit as all the carpets were extremely dirty and overused. The carpets were originally installed in 2005. The Landlords' cost for removal and disposal of old carpets and laminate, and installation of new flooring was (\$13,800.00 + \$690.00 GST) \$14,490.00; however, the Landlords seek \$2,250.00.

On the move-in/move-out condition inspection report, the Landlords note there were two garage door openers at the start of the tenancy. The Tenant returned one at the end of

the tenancy. The Landlords seek replacement cost for a garage door remote totalling \$123.90.

The Landlords testified that a chandelier in the rental unit was gone. The cost to replace the missing chandelier was \$200.00, the Landlords seek this amount.

The Landlords replaced a broken folding door in the loft including the installation of new tracks (\$284.54 + \$14.23GST) totalling \$298.77.

The showerhead in the master bedroom ensuite was missing and the drywall around the base of the showerhead was damaged. The Landlords seek \$150.00+\$7.50GST totalling \$157.50 to repair the drywall and \$83.98 to replace the showerhead.

The Landlords reported that original stove/oven was purchased by the original owner of the home in about 2009. The Landlords stated the glasstop of the kitchen stove was damaged and was irreparable. Replacement parts were difficult to find and the Landlords purchased a floor model stove/oven replacement totalling \$1,312.62.

The Landlords needed installation and repairs to light fixtures, missing and broken electrical plug covers, and installation of two chandeliers totalling (\$300.00+\$15.00GST) \$315.00.

The Landlords paid for damaged stove and garbage pickup and removal totalling \$60.00.

The Landlords' contractors' cost for cleaning blinds, bathrooms, kitchen, windows, porch and deck totalled (\$550.00+\$27.50GST) \$577.50, and fridge and cupboard cleaning totalled \$155.00

The Landlords seek reimbursement for items "*to be purchased*", such as a towel bar in the master bathroom ensuite, replacement curtain rods, and replacing a damaged doorknob. Other items that the Landlords seek compensation on listed in the monetary worksheet as "*to be assessed*" are repairing blinds, exterior damage due to mounting hooks and hanging pod chairs.

The Landlords seek compensation to change the locks to the rental unit. The total they seek is \$682.50.

The Landlords also seek compensation for accommodation while staying in the city where the rental unit is located totalling \$1,479.93, gas for driving to the location totalling \$289.30, and meals while on the road totalling \$200.00.

The Landlords seek aggravated damages.

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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlords' testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Based on the undisputed testimony of the Landlords, I find the Tenant had additional occupants residing in the residential unit in excess of 30 days in a row for which the Tenant was obligated to pay \$100.00 per person per month in accordance with the tenancy agreement. I find the Tenant is obligated to pay the Landlords for 24 months for two people totalling **\$4,800.00** in unpaid rent for these additional people.

The Landlords testified that the Tenant vacated the rental unit on May 31, 2022 according to the terms of the mutual agreement to end tenancy. I decline to grant compensation to the Landlords for the Tenant overholding one day as this contradicts their viva voce evidence.

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, and*
 - (b) *give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.*

Liability for not complying with this Act or a tenancy agreement

- 7** (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.*

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline 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.*” This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze 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.

The Landlords provided credible undisputed testimony about the damage done to the walls, door frames, baseboards and ceilings in the rental unit. The Tenant did not leave the rental unit reasonably clean and undamaged at the end of the tenancy. The Landlords' contractors repaired and repainted the interior of the rental unit and I find the Landlords have substantiated their claim for these repairs totalling **\$8,400.00**.

I find the Landlords also substantiated their flooring replacement in the rental unit. I grant the lower amount the Landlords seek totalling **\$2,250.00**.

Section 7(1)(a) of the *Residential Tenancy Regulation* states a landlord may charge a non-refundable fee representing the direct cost of replacing keys or other access devices. The move-in condition inspection report notes the Tenant received two garage door openers, but only returned one. Section 37(2)(b) of the Act states that a tenant must return all keys or other means of access to the landlord. I find the Landlords are entitled to compensation for the cost of the replacement garage door remote totalling **\$123.90**.

Several chandelier lights were cut down from the ceiling in the rental unit after the Tenant vacated and one chandelier fixture was gone. I find the Landlord is entitled to reimbursement for replacement of this item totalling **\$200.00**.

The Landlords are entitled to compensation for replacement and installation of a broken folding door located in the loft area of the rental unit. This item totals **\$298.77**.

The move-in condition inspection report does not set out damage in the master bedroom ensuite. I find the Landlords are entitled to compensation to replace the missing showerhead, and wall repair and installation of the fixture totalling (\$157.50+\$83.98) **\$241.48**.

The oven was nearing the end of its useful life of the appliance pursuant to RTB Policy Guideline #40-Useful Life of Building Elements. The Tenant left the stovetop damaged, and due to its age and the non-existent market for a replacement glasstop, I find the Landlords have substantiated their claim for compensation for its replacement totalling **\$1,312.62**.

I find the Landlords' claims for installation and repair of electrical items totalling \$315.00, garbage pickup and removal totalling \$60.00, and cleaning costs totalling (\$577.50+\$155.00) \$732.50 are warranted. The total for all these items is **\$1,107.50**.

I find the extent of the repairs caused by the neglect or conduct of the Tenant warrant the Landlords being compensated for loss of rental income for one month. The Landlords substantiated the loss rental income claim totalling **\$2,200.00**.

Section 25(1)(a) of the Act states that at the request of a new tenant at the start of the tenancy, the landlord must rekey the locks so that the means of access given to the previous Tenant do not give access to the rental unit. The cost of rekeying is the Landlords' burden pursuant to Section 25(1)(b) of the Act. If the Landlord complies with Section 25(1)(a) of the Act, the Landlord need not do this job a second time. I decline to grant compensation to the Landlords for rekeying the rental unit.

The Landlords should have collected the pet damage deposit during the tenancy or at the time when they were aware that the Tenant had a pet. I decline to grant this deposit to them now, anyways, they have not proven that a pet was the cause of the damages claimed, and the Landlords would be required to return the deposit to the Tenant anyways.

I decline to award compensation for items listed on the monetary worksheet as "*to be purchased*" as it is the Landlords' onus to prove the cost of these items rather than estimates. I also decline to grant compensation to the Landlords for accommodations, gas, and food while they travelled to their rental unit. I find those expenses are the cost of doing business and the Landlords must bear those expenses.

I find the Landlords are fully compensated for their damage or loss contemplated under the Act aside for items they could not prove the costs. I decline to award aggravated damages to the Landlords.

As the Landlords' claims have met with some success, I find that the Landlords are entitled to recovery of the **\$100.00** application filing fee. The Landlords' monetary award is calculated as follows:

Monetary Award

Item	Amount
Unpaid rent	\$4,800.00
Repair to walls, doorframes, baseboards and ceilings	\$8,400.00
Floor replacements (minimized)	\$2,250.00
Garage door remote	\$123.90
Chandelier fixture	\$200.00
Replacement and installation of folding door	\$298.77
Master ensuite showerhead and wall repair	\$241.48
Replacement stove	\$1,312.62
Electrical work, garbage pickup, cleaning	\$1,107.50
One month rental loss	\$2,200.00
Application filing fee	\$100.00
Less security deposit:	-\$1,100.00
TOTAL Monetary Award:	\$19,934.27

Conclusion

I grant a Monetary Order to the Landlords in the amount of \$19,934.27. The Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 Act.

Dated: October 12, 2022

Residential Tenancy Branch