



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on March 9, 2022, wherein the Landlord sought monetary compensation from the Tenants in the amount of \$11,309.51 including recovery of the filing fee. The Landlord also sought authority to retain the Tenants' security deposit towards the amount awarded.

The hearing of the Landlord's application was scheduled for 1:30 p.m. on October 17, 2022. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:54 p.m. Additionally, 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.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that he obtained an Order for substituted service on March 23, 2022, whereby he was permitted to serve the Tenants via email. He confirmed he served the Tenant with the Notice of Hearing and the Application on April 25, 2022, by email. A copy of the email was provided in evidence before me.

I find the Tenants duly served as of April 28, 2022, three days after the email was sent, and I proceeded with the hearing in their absence.

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

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be authorized to retain the Tenants' security and pet damage deposit towards any amounts awarded?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified as follows. This tenancy began May 28, 2021, and ended on January 18, 2022. The Landlord obtained an Order of Possession at a prior arbitration which was to be effective December 30, 2021. The Tenants failed to move, and the Landlord was forced to obtain a Writ of Possession through the B.C. Supreme Court.

The Landlord filed a Monetary Orders Worksheet in which he claimed the following:

AirBnB	\$311.40
Fortis utility	\$44.16
Fortis utility	\$155.56
Fortis utility	\$33.88
Bailiff fees	\$3,625.28
Registered mail	\$17.01
Bed bug removal	\$687.75
Carpet cleaning	\$157.50
Cleaning	\$260.00
Disposal	\$42.00
Landfill	\$42.00
Wall repair	\$1,470.00
Screen replacement	\$117.00
TOTAL CLAIMED	\$11,209.51

In terms of the request for compensation for the AirBnB amounts, the Landlord testified that he paid for an AirBnB for the upstairs tenants because when the subject Tenants were moved out by the bailiff, they threw a party and were yelling and screaming. The Landlord did not want to lose these tenants as renters and knew they could not live with that disruption.

In terms of the claim for outstanding utilities, the Landlord confirmed that the Tenants were responsible for paying ½ the utilities for the unit and failed to pay the fortis utility account as required. The Landlord sought compensation for the unpaid accounts and provided copies of the bills in support of this portion of the claim.

The Landlord also claimed compensation for the costs associated with enforcing the Writ of Possession in the amount of \$3,625.28.

The Landlord testified that although the bailiff removed most of the Tenants' items, the bailiff could not move the Tenants' food, bed bug infested items and drug paraphernalia. As such, the Landlord was forced to remove those items personally. In the claim before me the Landlord sought the disposal and landfill costs related to these items.

The Landlord testified that the Tenants damaged the walls and screens such that he incurred costs for their repair. He provided photos of the damaged items as well as confirmation of the cost of the related repair.

The Landlord also sought \$17.01 in registered mail costs as well as recovery of the filing fee.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord/Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (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.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) 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.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I find the Tenants were responsible for paying the fortis utility as a term of their tenancy agreement. In failing to pay the Tenants breached the tenancy agreement. The Landlord is therefore entitled to compensation for the **\$233.40** outstanding at the end of the tenancy.

I accept the Landlord's testimony and evidence that the Tenants damaged the rental unit and failed to clean it as required by the *Act*. I find the costs to repair the walls in the amount of **\$1,470.00**, the **\$117.00** to repair the screens, the **\$687.75** to deal with the bed bug infestation and **\$157.50** in carpet cleaning to be recoverable from the Tenants.

I also accept the Landlord's testimony and evidence that he incurred considerable costs to remove the Tenants from the rental property despite having already obtained an order of Possession. The Landlord is entitled to recover the amounts paid to the bailiff

in the amount of **\$3,625.28** to enforce the order. I also accept the Landlord's testimony that he personally removed items which the bailiff refused to handle such as food, bed bug infested items and drug paraphernalia. The Landlord is entitled to recover the **\$42.00** disposal fee and the **\$20.00** landfill fees.

Finally, I find the AirBnB accommodation costs in the amount of **\$311.40** for his other renters to be reasonable, and a direct result of the Tenant's disruptive behaviour when they were moving from the rental property. A Landlord must ensure a tenant's right to quiet enjoyment is protected, and in this case, I find the Landlord acted reasonably when he paid for his other renters to stay elsewhere while the Tenants were being evicted.

I decline the Landlord's request for recovery of the registered mail costs as these costs are not recoverable under the *Act*.

Having been substantially successful in this application I award the Landlord recovery of the **\$100.00** filing fee.

Conclusion

The Landlord is entitled to compensation in the amount of **\$11,292.50** for the following:

AirBnB	\$311.40
Fortis utility	\$44.16
Fortis utility	\$155.56
Fortis utility	\$33.88
Bailiff fees	\$3,625.28
Bed bug removal	\$687.75
Carpet cleaning	\$157.50
Cleaning	\$260.00
Disposal	\$42.00
Landfill	\$42.00
Wall repair	\$1,470.00
Screen replacement	\$117.00
Filing fee	\$100.00
TOTAL AWARDED	\$11,292.50

As a result of a prior hearing, the Landlord was already authorized to retain the Tenant's security and pet damage deposit. I therefore award the Landlord a Monetary Order for the full amount of **\$11,292.50**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court. Pursuant to section 71 of the *Act*, I permit the Landlord to serve this Order on the Tenants by email.

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: November 17, 2022

Residential Tenancy Branch