



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL, FFL**

Introduction

This hearing dealt with an application by the landlords pursuant to the Residential Tenancy Act ("the Act") for orders as follows:

- For a monetary order for damage or compensation pursuant to section 67 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Both parties attended the hearing with the landlords being represented by landlord BP, while ("the tenant"), DD appeared for himself. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the landlords' application for dispute resolution and supporting materials substitutionally served as permitted by a previous order of an arbitrator. Pursuant to sections 88 and 89 of the Act the tenant is found to have been served in accordance with the Act. The tenant provided no documentary evidence.

Issue(s) to be Decided

1. Are the landlords entitled to a monetary order for compensation as a result of damage?
2. Are the landlords entitled to recover their filing fee for the application?

Background and Evidence

The tenancy commenced September 1, 2021, on a month-to-month basis. Rent was \$1,400.00 per month and a \$570.00 security deposit, and a \$200.00 pet deposit were initially paid. The tenant occupied the lower suite and other renters occupied the upper suite. The tenant named in the dispute has vacated the subject rental property and the security deposit and pet deposit have been returned to him.

The landlords are requesting a monetary order for compensation in the amount of \$12,459.00 representing the costs incurred by the landlords to clean up and repair damage allegedly done to the suite during the course of the tenant's occupancy. They provided several pictures depicting the condition of the suite once the tenant vacated and provided itemized invoices for the work done for clean up and repair. The landlords are also claiming for loss of rental income due to the tenants on the upper floor of the suite ending their tenancy early as a result of the actions of the tenant DD.

The landlords provided a monetary order worksheet as follows:

ITEM	AMOUNT
Contracting	362.25
Xtreem Klean	611.25
Pester's Contracting	708.09
Citrus Q Carpet Care	300.30
Hydro (Aug-Oct 2021 + Oct-Nov 2021)	593.23
Lost rental revenue "upstairs" (December 2021)	1,890.00
Water Bill	91.38
Damage Deposit	675.00
Patch and Paint suite	3,937.50
Rental revenue loss for December 2021	3,290.00
Total =	12,459.00

The tenant stated that he was not responsible for all the damage and the rental property was in poor condition at the time the tenancy commenced.

No move in inspection report or move out condition inspection reports were provided in evidence.

Analysis

Rules of Procedure 6.6 states, "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, in this case the landlord.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove their entitlement to a claim for a monetary award.

Clause 26 of the tenancy agreement and section 37(2) of the Act require the tenant to leave the premises in a clean, orderly condition and repair any damage to the rental property. The photographs clearly depict the rental unit in a messy condition, with excess garbage and debris both inside and outside the residence. Further the landlords have clearly demonstrated that he incurred some expense in garbage removal and clean up.

However, I find that the landlords have failed to establish the exact value of the damage or loss suffered. There is no evidence before me about the condition of the subject rental property prior to the tenant occupying the residence. The tenant disagreed with the extent of damages claimed by the landlords, and without some evidence about the condition of the rental property when the tenant moved in, I am not satisfied that the landlords have established that all of the garbage and excess items were left by the tenant. While the tenancy agreement suggests that the property was rented in an unfurnished state, the landlords have not established that the damage shown in the photos was caused during the course of the tenancy as there is no evidence of the state of the premises prior to the move in. Additionally, the yard appears to be a space that both rental units on the property could access, and there is no evidence before me

showing that it was the tenant DD who left the outside of the premises in the state depicted in the photographs.

The landlords have also claimed for loss of rental income as the upstairs tenants ended their tenancy early and that unit could not be rented until the tenant DD vacated the premises and the premises were cleaned up. The landlords stated it was due to the actions of the tenant DD, and the upstairs tenants were “fed up”, however they did not provide specifics about the tenant DD’s actions, nor did they provide evidence such as a statement from the upstairs tenants about what had transpired on the property that caused them to end their tenancy early. I find that the landlords have not established that the tenant caused the landlords to lose rental income from the upstairs suite.

I will address each item on the landlords’ monetary order worksheet:

1. Move out clean - \$362.25 Photographic evidence taken after the tenant moved out shows the rental unit in a condition that would require cleaning before other occupants could take possession. The kitchen photos show dishes and debris on the counters and the fridge is full of food. I will award this claim.
2. Xtreme cleaning - \$611.25. This appears to be a receipt for dumping fees. It is not specific whether these dumping fees are solely for the house contents or also included the debris in the yard. Therefore, I will award one half of the amount of the receipt of \$305.62.
3. Pester Contracting - \$708.00 For removal of house and yard debris. The landlords have not established that the yard debris was from the tenant.

This amount also includes a fee for changing locks. Policy Guideline 1 speaks to responsibilities for locks, and states in part:

The landlord is responsible for providing and maintaining adequate locks or locking devices on all exterior doors and windows of a residential premises provided however that where such locks or locking devices are damaged by the actions of the tenant or a person permitted on the premises by the tenant, then the tenant shall be responsible for the cost of repairs.

There is no evidence before me that the landlords changed the locks as a result of the actions of the tenant, therefore this expense is not granted.

The photos show some of the items to be removed include a freezer and a dishwasher. It is not clear who these items belonged to , or why they needed to be removed. I find that the landlords are entitled to compensation of \$281.25,

which represents one half of the debris removal fee, excluding the expense for the locks.

4. Carpet cleaning - \$300.30. The landlords have established that the carpets needed to be cleaned due to damage from pets belonging to the tenant. RTB Policy Guideline 1 addresses carpet cleaning and states in part:

The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

Therefore, the landlords are entitled to compensation for this expense.

5. Hydro bill - \$231.00. The tenancy agreement appears to include utilities, specifically electricity, heat, gas, and water. I find that therefore that this is not an allowable expense and I decline to grant it.
6. Hydro bill - \$362.23. Utilities are included in the tenancy agreement. I therefore decline to grant this expense.
7. One month loss of rental income - \$1,890.00 for loss of rental income for the upstairs rental unit. The landlords have not established that this loss resulted from the tenant's breach of the tenancy agreement or the Act.
8. Water bill - \$91.38. The tenancy agreement includes water. I therefore decline to grant this expense.
9. Damage deposit - \$675.00. This is not damage or loss caused by the tenant
10. Painting quote - \$3,937.50. The landlord BP stated he paid the amount in the written quote provided in evidence. RTB Policy Guideline 1 states in part:

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

The only damage to walls depicted in the photographic evidence was one hole in the drywall. It is not clear if all of the items listed in the painting quote, specifically drywall patching and repair were damage caused by the tenant, as there is no move in inspection report showing the state of the premises prior to the tenant taking possession.

It appears from the painting quote provided in evidence that the entire rental unit was painted. The landlords have not established that the paint was necessary due to damage caused by tenant. Additionally, RTB Policy Guideline 40 states that the useful life of interior paint is 4 years. The landlords did not state the date that the unit was last painted and therefore it is not clear whether the unit had been painted within the past 4 years. They have not satisfied their onus to show that the tenant was responsible for all or part of painting cost.

RTB Policy Guideline 16 gives guidance on compensation where the exact loss cannot be established:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Given that the landlords have not established the exact amount of loss in terms of damage to the walls and the need for painting, but that it is clear that the tenant has done some amount of damage that required repainting I find that the landlords are entitled to \$250.00 in nominal damages for painting.

11. Loss of rental income of \$3,3290.00 which represents loss of rent for one month for both suites on the property. The landlords stated that the subject rental unit and yard were being cleaned up and they were unable to rent either the upstairs or the downstairs suite for December, 2021. I find that the evidence shows that the clean up was limited to the subject rental unit and the yard and did not specifically involve the other rental unit on the property. Therefore, I find that the landlords are entitled to \$1,400.00 representing the loss of one month's rent for the subject rental unit due to the cleanup. However, as stated earlier, the landlords have not established that the tenant was the cause of the loss of rental income for the upper suite.

I find that the landlords have established his entitlement to compensation is the carpet cleaning fee of \$300.30. I find that with respect to that fee the landlords acted reasonably in hiring a professional carpet cleaning company to clean the carpets due to pet damage. The landlords are also entitled to compensation in the amounts of \$305.62

and \$281.25 for removal and dumping of the debris from the interior of the rental unit. The landlords are entitled to recover lost rental revenue for the subject rental unit in the amount of \$1,400.00 for one month's rent.

As the landlords were partially successful in his application, they are also entitled to recover his filing fee for the application.

Conclusion

The landlords are granted a monetary order for \$2,999.42. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

Item	Compensation Granted
Cleaning rental unit	\$362.25
Carpet cleaning	\$300.30
Debris removal (interior of rental unit)	\$305.62
Painting	\$250.00
Hauling	\$281.25
Rent (subject rental unit – 1 month)	\$1,400.00
Filing fee	\$100.00
Total	\$2,999.42

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 10, 2022

Residential Tenancy Branch