



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

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

- a Monetary Order for damage, pursuant to section 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The landlord's agent (the "agent"), the landlord's operations manager (the "manager") and the tenant's agent (the "tenant's agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Both parties agree that the landlord served the tenant with the landlord's application for dispute resolution and evidence. I find that the tenant was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, because receipt was confirmed. No issues with the timing of service were raised in the hearing.

The tenant did not submit any evidence for consideration.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?

2. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2015 and ended on October 15, 2021. Monthly rent in the amount of \$950.00 plus \$20.00 per month for parking was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that the tenant gave the keys to the subject rental property to a friend and permitted that guest to use the subject rental property. This was not disputed by the tenant's agent. The landlord testified that the tenant's guest caused significant damage to the subject rental property. The landlord is seeking the following compensation from the tenant:

Item	Amount
Plumbing repair	\$446.25
Repair smashed windows	\$1,583.66
Emergency repairs	\$1,528.09
Repair drywall	\$750.00
Emergency call outs	\$450.00
Dump fees	\$200.00
Lock change	\$100.00
Cleaning	\$168.00
Total	\$5,226.00

Plumbing repair

The agent testified that on March 4, 2021 the landlord's facilities manager noticed a leak in the parkade and traced that leak to the subject rental property. The agent testified

that the tenant's guest allowed the maintenance person entry to the subject rental property where the maintenance person found the toilet to be overflowing.

The agent testified that a plumber was called who pulled rags and feminine hygiene products from the toilet, which had caused the clog and subsequent flooding. The landlord entered into evidence a receipt for the plumbing repair in the amount of \$446.25.

The tenant's agent testified that the tenant's guest caused the clogged toilet and that the tenant does not contest the tenant's responsibility to pay for the plumbing repair.

March 7, 2021 Incident

The agent testified that on March 7, 2021 she received multiple reports of screaming and yelling coming from the subject rental property and reports of smashed windows at the subject rental property. The agent testified that she attended at the subject rental property within a few minutes of receiving the complaints and that the police responded in approximately three minutes. The agent testified that the tenant's guest was arrested and that the inside of the subject rental property was trashed, and many windows were smashed.

The agent entered into evidence photographs of the above described damage which show large holes punched in the drywall, smashed windows, the contents of the subject rental property strewn around the floor, smashed light fixtures, and upended furniture.

The agent entered into evidence a police report which states, in part:

SYNOPSIS

On March 7, 2021 at 2041 hours, [the agent] reported loud shouting and crashes from [the subject rental property]. Police attended and spoke to [redacted by police] who was the only person in the suite. The suite was in complete disarray with holes in the walls and broken windows. [Redacted by police] adamant that [redacted by police] had arrived shortly before police arrival. [Redacted by police] told police [redacted by police] in suite as [redacted by police] is friends with one of the tenants. [Redacted by police]. Photos taken of damages. [The agent] arranged to have the suite secure and the locks changed.

SCENE UPON ARRIVAL

Police attended and knocked on the door for a few minutes and were finally greeted by [redacted by police] barely able to open the door as there was a large piece of furniture inside the residence which was in front of the door.

It was undisputed that the person the police found in the subject rental property on March 7, 2021 was the tenant's guest.

The landlord's claim for the following repairs stem from the above incident:

- Repair smashed windows,
- Emergency repairs,
- Drywall repairs, and
- Emergency call out fees.

The tenant's agent testified that she does not contest the amount of money paid to restore the subject rental property as set out in the above claims, but contests the tenant's liability to pay for those damages.

The tenant's agent testified that after the March 7, 2021 incident the tenant initially agreed to pay for the damages because the agent told her that the damage was all caused by the tenant's guest. The tenant's agent acknowledged the tenant's responsibility to pay for damages caused by the tenant's guest; however, the tenant no longer believes that her guest caused the damage. The tenant's agent testified that when she arrived at the subject rental property to inspect the damage, it appeared impossible for a woman the size of the tenant's guest's to cause all of the damage.

The tenant's agent testified that "other tenants" heard yelling and that someone shouted, "get out". The tenant's agent testified that she believes that someone other than the tenant's guest broke in and caused the damage. The tenant did not submit any evidence such as a witness statement to support the above testimony.

The agent testified that as far as she knows, the tenant's guest was arrested on March 7, 2021. The agent testified that she was at the subject rental property in a matter of minutes after receiving noise complaints and that the police were there in three minutes. The agent testified that she did not see anyone leaving the subject rental property.

The tenant's agent testified that she believes the tenant's guest was escorted off the property by police and was not arrested.

Repair Smashed Windows

The agent testified that it cost \$1,583.66 to repair the windows. A receipt for same was entered into evidence. The agent testified that the above expenses were incurred by the landlord.

The tenant's agent testified that she does not contest that the above costs were incurred by the landlord as a result of the March 7, 2021 incident, but contests the tenant's liability to pay for the costs incurred.

Emergency Repairs

The agent testified that after the police attended and arrested the tenant's guest, she called maintenance and they had to board all the windows up to secure the property and had to replace light fixtures that were smashed by the tenant's guests. The agent testified that the repairs were done in-house.

The agent entered into evidence an email dated April 7, 2021 from the landlord's maintenance department which states:

Hi [landlord agent]- Replace and repair cost broken down below. Estimate from Home Hardware attached.

Home Hardware quote-	\$533.09
2 hall lights-	\$100.00
1 dining light-	\$100.00
3 sheets ½" Plywood-	\$195.00
Technician hours x8	\$600.00
 Total-	 \$1528.09

The agent testified that the above expenses were incurred by the landlord. The tenant's agent testified that she does not contest that the above costs were incurred by the landlord as a result of the March 7, 2021 incident, but contests the tenant's liability to pay for the costs incurred.

Drywall Repairs

The agent testified that it cost the landlord \$750.00 to repair the holes in the drywall. The landlord entered into evidence an email from a contractor which states the cost is \$750.00. The landlord entered into evidence a responding email in which the cost is approved and in which the landlord requests the contractor to proceed with the work. The agent testified that the above expenses were incurred by the landlord.

The tenant's agent testified that she does not contest that the above costs were incurred by the landlord as a result of the March 7, 2021 incident, but contests the tenant's liability to pay for the costs incurred.

Emergency Call Outs

The agent testified that each time there was an emergency at the subject rental property, an emergency maintenance person was dispatched to the subject rental property. The agent testified that each occurrence cost the landlord \$150.00.

The agent testified that a landlord representative was dispatched to the subject rental property three times:

- (1) February 1, 2021- tenant's guest set off the fire alarm and the fire department attended.
- (2) March 4, 2021- the tenant clogged the toilet and the plumber was called.
- (3) March 7, 2021- Police called due to significant damage to subject rental property.

No receipts or other documentary evidence for the call out claim were entered into evidence. The agent testified that this is because it was an internal expense.

The tenant's agent testified that if the landlord incurred an expense of \$150.00 for having to attend the subject rental property, then the tenant is only liable for the call out for the plumbing problem.

Lock Change

The agent testified that immediately after the March 7, 2021 incident, the landlord

changed the locks for safety reasons. The agent testified that this was done internally at a cost of \$100.00. No receipts or other documentary evidence supporting the cost of the lock replacement was entered into evidence.

The tenant's agent testified that by the time she arrived at the subject rental property, the emergency repair work had already been completed. The tenant's agent testified that she could not come straight away as she was living in the United States, and this was during COVID boarder restrictions. The tenant's agent testified that when she arrived at the subject rental property she also changed the locks and gave a copy to the landlord.

Dump Fees

The agent testified that the tenant left furniture in the subject rental property that had to be hauled to the dump. The landlord is claiming \$200.00 for dumping the items left behind and that this sum includes the cost of the dump fees, the gas to the dump and the labour to haul the items to the dump. No receipts or other documentary evidence supporting the cost for same were entered into evidence. The agent testified that there are no receipts because the work was completed internally.

The tenant's agent testified that she contests the dump fee charge because she only left one item at the subject rental property which was a small desk.

The agent entered into evidence photographs of the subject rental property taken at the end of the property which show the following items left behind:

- dining room chair,
- garbage bin,
- portion of a couch,
- black stand,
- small patio table and two matching chairs,
- orange patio chair,
- wood slats,
- arm chair,
- pot, and
- blender jar.

Cleaning

Both parties agree that the tenant had possession of the subject rental property for several months after the March 7, 2021 incident. Both parties agree that the tenant's agent cleaned up the suite before the end of the tenancy; however, the agent testified that the subject rental property was not left satisfactorily clean. The landlord is seeking \$168.00 for cleaning. The agent testified that the landlord had cleaners to in and clean the subject rental property for four hours. The agent testified that the cleaning was not done in house and that a third party completed the cleaning. No receipts were entered into evidence.

The tenant's agent testified that she is not sure what items needed to be cleaned at the end of the tenancy, though "maybe the stove needed wiping down". The tenant testified that she is not sure what amount is reasonable.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

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

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure 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. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

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.

Section 37(2)(a) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the testimony of both parties, I find that the tenant permitted a guest to stay at the subject rental property in March of 2021. The police report states that the tenant's guest was the only person at the subject rental property when they attended. The agent testified that she was at the subject rental property within minutes of the complaints being received and did not see any other person leaving the scene. I accept the agent's testimony on this point and find that it was an honest recollection of events.

I find that while the tenant's guest told police that she had only just arrived at the subject rental property, I find that this statement is not credible and was likely made to avoid the repercussions of her actions. I find that the evidence proves, on a balance of probabilities, that the tenant's guest was the only person at the subject rental property minutes after the sounds of smashing windows were heard. The agent testified that no other person was seen at or leaving the scene. I find that there is no evidence to suggest anyone else was at the scene.

The police report states that when the police arrived they could barely open the door because a large piece of furniture was in the way. I find, on a balance of probabilities, that had the tenant's guest just arrived at the subject rental property, the door would not be blocked to such an extent as the tenant would have had to move it to gain entry. I

find it more likely that the tenant's guest caused the damage and moved the furniture which blocked the door and made it difficult for police to enter. I find on a balance of probabilities that the tenant's guest caused the damage to the unit on March 7, 2021.

I found the tenant's agent testimony regarding a petit woman being unable to smash windows, move furniture and put holes through walls to be unrealistic. I find that the damage seen in the photographs and described in the police report to be well within the capabilities of any able-bodied person. The tenant's agent did not testify that the tenant's guest was not able-bodied.

I find that the tenant's agent's hypothesis of an unknown person committing the damage to be unsupported by the evidence. I find that the tenant is responsible for damage to the subject rental property caused by the tenant's guest. As stated above, to be successful in their monetary claims, the landlord must satisfy the four-point test outlined in Policy Guideline 16 regarding monetary claims for compensation.

Plumbing repair

Both parties agreed that the tenant owes the landlord \$446.25 for the plumbing repair. I find that this claim was settled by the parties in the hearing pursuant to section 63 of the *Act*. I therefore award the landlord \$446.25.

Repair Smashed Windows

I find that the tenant's guest broke windows in the subject rental property contrary to the *Act*. I find that the tenant is responsible for the actions of her guest. I find that the landlord has proved that the landlord suffered a loss in the amount of \$1,583.66 as evidenced by the receipt for same. I find that no mitigation issues were raised in the hearing. Pursuant to section 67 of the *Act*, I award the landlord \$1,583.66.

Emergency Repairs

Based on the testimony of the agent, the photographs entered into evidence and the police report, I find that the tenant's guest broke windows and light fixtures in the subject rental property, contrary to the *Act*. I find that the tenant is responsible for the actions of her guest. I accept the agent's testimony that an internal maintenance person had to make emergency repairs, board up the windows, and install new light fixtures following the March 7, 2021 incident. I find that the agent has proved that the landlord suffered a

loss totalling \$1,528.09 for the emergency repairs as set out in the email from the maintenance department. I am satisfied that the landlord suffered the loss as stated in the email. I find that no mitigation issues were raised in the hearing. Pursuant to section 67 of the *Act*, I award the landlord \$1,528.09.

Drywall Repairs

Based on the testimony of the agent, the photographs entered into evidence and the police report, I find that the tenant's guest made large holes in the drywall, contrary to the *Act*. I find that the tenant is responsible for the actions of her guest. I find that the landlord has proved the value of the loss suffered by the above breach of the *Act* is \$750.00 as set out in the email from the contractor. I find that no mitigation issues were raised in the hearing. Pursuant to section 67 of the *Act*, I award the landlord \$750.00.

Emergency Call Outs, Lock Change, Dump Fees

The landlord did not submit any documentary evidence to prove the monetary value of the loss allegedly suffered for emergency call outs, changing the locks, or dump fees. The agent testified that no documentary evidence was submitted because these were internal charges. I note that the emergency repairs claimed were also completed internally but the landlord had documentary evidence to support the value of their monetary claim.

I find that the landlord has not proved the quantum of the alleged loss suffered as no documentary evidence pertaining to same was provided; I therefore find dismiss the landlord's claims for emergency call outs, changing the locks, and dump fees, without leave to reapply.

Cleaning

The landlord did not submit any documentary evidence to prove the monetary value of the loss allegedly suffered for cleaning. The agent testified that the cleaning was done by a third party, as such I find that a receipt or other documentary evidence pertaining to the amount charged should have been available to the landlord. I find that the landlord has not proved the value of the loss suffered for cleaning and so the landlord's claim for cleaning is dismissed without leave to reapply.

Filing Fee

I find that since the landlord was successful in their monetary claim, the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Plumbing repair	\$446.25
Window repair	\$1,583.66
Emergency repairs	\$1,528.09
Drywall repairs	\$750.00
Filing Fee	\$100.00
TOTAL	\$4,408.00

The landlord is provided with this Order in the above terms and 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 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: January 11, 2023

Residential Tenancy Branch