



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0821149 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord on May 12, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation for the cost of repairs necessary as the tenant or their guests damaged the rental unit during the tenancy;
- Retention of the security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on January 26, 2023, and was attended by an agent for the Landlord K.D., the Tenant and the Tenant's support person/witness R.W. All testimony provided was affirmed. As the Tenant acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. As the Tenant acknowledged receipt of the Landlord's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me for consideration. No documentary evidence was submitted by the Tenant for my consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their

opportunity to speak. The parties were also advised that recordings of the proceedings are prohibited and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be mailed to them at the addresses confirmed in the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for the cost of repairs as the tenant or their guests damaged the rental unit during the tenancy?

Is the Landlord entitled to retention of the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that the fixed term tenancy agreement commenced on April 26, 2017, and continued on a month-to-month basis after the end of the fixed-term on May 30, 2017. They agreed that rent in the amount of \$550.00 was due on the first day of each month, that a \$275.00 security deposit was paid, and that a \$100.00 key deposit was paid for the initial set of keys issued to the Tenant. Although the Tenant stated that a second key deposit was paid for a second set of keys in the amount of \$100.00, the Agent stated that they do not remember this and that if a second deposit was paid it was "maybe \$50.00". As a result, the Agent stated that the Landlord currently holds \$375.00 worth of deposits in trust, whereas the Tenant stated that it was \$475.00. The parties agreed that no forwarding address was provided.

The parties agreed that the tenancy was frustrated on the night of October 14, 2021, due to severe overland flooding which knocked out all utility services and flooded the entire first floor of the property. The Agent argued that the Tenant subsequently abandoned the rental unit resulting in damage to the rental unit and the need for significant cleaning and disposal of a fridge due to mould. The Agent also stated that the Tenant failed to return two sets of keys to the rental unit and abandoned personal

property, necessitating its disposal by the Landlord. As a result, the Agent stated that the Landlord is seeking reimbursement of the following costs:

- \$300.00 to replace a fridge;
- \$275.50 to replace keys;
- \$525.00 for the removal of possessions left behind by the Tenant;
- \$355.00 for the cost of damaged furniture;
- \$11.54 for the cost of paint; and
- \$240.00 in labour costs.

While the Tenant acknowledged failing to return the keys and abandoning personal possessions in the rental unit, they denied responsibility for the other costs sought as they argued that the mold was the result of the flood, and the furniture damage was the result of looters as the property was not properly secured and monitored by the Landlord after the floodwater receded. They also argued that the costs sought for the replacement of keys is far too high, as they could have had keys cut in town. The Agent responded by arguing that it was the Tenant's responsibility to return the rental unit in the condition it was rented to them in, and stated that the keys could not be cut in town as there is no locksmith and they are marked "do not duplicate".

Analysis

Is the Landlord entitled to compensation for the cost of repairs?

The parties agreed that the tenancy was frustrated on October 14, 2021, and as a result, I find that the tenancy ended on that date. As the tenancy was frustrated, I therefore dismiss the Agent's arguments that the Tenant abandoned the rental unit. I also dismiss the majority of the Landlord's claims for compensation, as I am satisfied that the majority of the damage caused and cleaning required, such as rotten food and mold, was the result of the Landlord's failure to act diligently after the flood and the end of the tenancy on October 14, 2021, to access, assess, and secure the rental unit. As a result, I dismiss the Landlord's claims for labour and cleaning costs, furniture, paint, and a fridge without leave to reapply.

As the Tenant acknowledged leaving behind belongings because they had already taken everything of value with them when they left the rental unit due to the flood, and their lack of resources to remove their remaining possessions, I therefore grant the Landlord recovery of the \$525.00 sought for junk removal costs incurred. As the Tenant agreed that they did not return the keys, I also grant the Landlord recovery of the

\$275.50 sought to replace the keys, less the \$100.00 key deposit paid and retained by the Landlord. Although the Landlord was not permitted to charge a \$100.00 key deposit pursuant to section 6(2) of the regulations, the parties agreed that this amount was paid and that it has not been returned to the Tenant. As a result, I permit the Landlord to retain it toward the costs incurred to replace the keys. While the Tenant argued that an additional \$100.00 key deposit was paid, no proof of this was submitted and the Agent denied knowledge of receiving a second key deposit. As a result, I find that only one key deposit in the amount of \$100.00 was paid.

Although the Tenant argued that the \$275.00 amount is excessive, I accept the Agent's testimony that this amount is reasonable as they had to travel out of town to have them made as they were marked "do not duplicate" and there is no locksmith in town. Further to this, I find that the Tenant could easily have avoided incurring these costs by returning the keys, which they did not do.

Is the Landlord entitled to recovery of the filing fee?

As the Landlord was at least partially successful in their claim, I award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

Is the Landlord entitled to retention of the security deposit?

As the Tenant acknowledged failing to provide a forwarding address in writing at the end of the tenancy, I find that section 38(1) of the Act has not yet been triggered and that the Landlord was therefore entitled to retain the \$275.00 security deposit in trust. Pursuant to section 72(2)(b) of the Act, I therefore grant them authorization to retain this amount towards the above noted amounts owed.

Based on the above, I find that the Tenant owes the Landlord \$525.50 as follows:

- \$175.50 for keys after the deduction of the \$100.00 key deposit; plus
- \$525.00 for junk removal; plus
- \$100.00 for recovery of the filing fee;
- Minus the \$275.00 security deposit.

Pursuant to section 67 of the Act I therefore grant the Landlord a Monetary Order in the amount of \$525.50, and I order the Tenant to pay this amount to the Landlord.

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$525.50**. 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 has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision and the associated order, nor my authority to render them, are affected by the fact that this decision and the associated order were issued more than 30 days after the close of the proceedings.

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: March 16, 2023

Residential Tenancy Branch