



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

The landlords applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The landlords ask me for the following orders against the tenants.

1. Payment of \$389.26 of unpaid rent and utilities [the 'Utilities Claim'].
2. Payment of \$3,978.67 for repairs to the rental unit [the 'Repair Claim'].
3. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the hearing on 12 June 2023. The tenants did not.

Preliminary Matter - Non-appearance at the Hearing

The tenants did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 1330 hours and ended about 40 minutes later. I confirmed:

1. that the landlords affirmed that they sent a copy of this Notice of Hearing to the forwarding address give to them by the tenants *via* registered mail on 21 April;
2. that the RTB had provided the correct call-in numbers and participant codes in the Notice of Hearing; and
3. by reviewing the teleconference system, that the landlords and I were the only ones who had called into this teleconference.

Rule 7.3 of the RTB Rules of Procedure reads:

7.3 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.

The tenants failed to attend this hearing, but I conducted it in their absence. The landlords' evidence satisfied me that they had correctly notified the tenants of this hearing and how to participate.

Issues to be Decided

Do the tenants owe \$389.26 for unpaid rent and utilities?

Do the tenants owe the landlords \$3,978.67 for repairs to the rental unit?

Should the tenants reimburse the landlords for the cost of filing this application?

Background and Evidence

Rent was \$1,319.50, due on the first day of each month. The tenants paid \$650.00 as a security deposit.

On 1 March, the tenants did not pay rent.

As a result of this failure to pay rent, the landlords issued a 10-day Notice to End Tenancy for Unpaid Rent and Utilities on 6 March and served it personally on the tenants. They also served the tenants with a letter that read (in part): 'please note, utilities of \$175 were due on March 1'.

Then, less than two hours after serving the Notice on the tenants, the rental unit was on fire. According to the landlords, the police are investigating the tenants for arson, and the landlords' insurer has deemed this fire an arson.

During the tenancy, the tenants had stained the carpet in the rental unit, and agreed with the landlords that, as a result, it needed to be replaced. After the fire, the landlords had it torn out. The landlords received an estimate of \$1,628.67 to replace the carpet.

Also, the landlords claim that the tenants never returned their key to the unit. They told me that this key is special, as it and the door lock that it fits, come from Europe, and

cannot be replaced without buying a new lock from Europe, which costs \$300.00. But they also told me that the police who are investigating the fire removed the door lock, along with two spare keys, from the rental unit, and that they may return both to the landlords at the conclusion of their investigation.

The landlords also claim \$789.48 in fees that they paid to have the fire-damaged belongings of the tenants removed to the dump, as the tenants did not take these belongings away. The landlords supported these amounts with copies of invoices.

Finally, the landlords claim that the tenants threw away a garbage can during the tenancy, which the landlords told me will cost \$21.98 to replace. This amount was supported by an estimate from a store.

Analysis

The landlords told me that the \$175.00 of utilities are for the entire month of March. But since the tenancy ended with the fire on 6 March, they say that only \$26.64 of the utilities are owing (for the first six days of March).

Based on the uncontroverted statements made by the landlords during this hearing, I am satisfied that the tenants were aware of the utilities owing, and that they failed to pay those utilities. As a result, I accept that they owe \$26.64 in utility charges and grant the Utilities Claim in that amount.

In analysing the Repair Claim, I will consider the following questions:

1. Did the tenants fail to comply with sections 32 (2) and 37 (2) (b) of the *Residential Tenancy Act* [the 'Act']?
2. Did the landlords' losses result from this non-compliance?
3. Can the landlords prove the amount of or value of the loss?
4. Did the landlords act reasonably to minimize the loss?

Section 32 (2) of the Act reads, 'A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit...'

Section 37 (2) (b) of the Act requires a tenant to return the key to the rental unit at the end of a tenancy.

I find that the tenants failed to maintain reasonable cleanliness standards throughout the rental unit for these reasons:

1. after the fire, they failed to return to the unit to clean up their damaged belongings;
2. before the fire, they stained the carpet such that they conceded it needed to be replaced, and disposed of a garbage can.

I also accept that the tenants did not return the key to the rental unit.

It is clear that the losses the landlords claim resulted from these failures: they had to hire people to come and dispose of the tenants' damaged belongings; and they will have to replace the carpet and garbage can due to the actions of the tenants.

Can the landlords prove the amounts of these losses? Their statements to me of the value of these losses are uncontroverted, and do not appear on their face to be unreasonable.

But did the landlords act reasonably to minimize their losses?

The landlords told me that the tenants agreed that the carpet must be replaced. There is nothing to suggest that, after agreeing to this, that the tenants actually attempted to have it replaced. Accordingly, I am satisfied that, having given the tenants the opportunity to replace the carpet during the tenancy, the landlords attempted to minimize their loss.

But there is nothing to indicate that the landlords contacted the tenants with requests to remove their damaged belongings or replace the garbage can. While it may very well be that the tenants would have refused to do so, the landlords are still obliged to give the tenants this opportunity in order to minimize their own damages by hiring people to do what the tenants ought to have done, or buying a garbage can that the tenants ought to have bought. I dismiss this portion of the Repair Claim (with leave to re-apply for the cost of the garbage can).

Regarding the key and lock, the landlords told me that the police may return this lock and spare keys: if so, then there is no need to buy a new lock. I dismiss this portion of the claim, with leave to re-apply in the event that the police do not return the lock.

As the landlords succeeded in their application, I order that the tenants pay the cost of filing it, that is, \$100.00.

Conclusion

I order that the tenants pay to the landlords \$1,755.31 *per* section 67 of the Act (representing \$26.64 for unpaid utilities; \$100.00 filing fee; and \$1,628.67 for the carpet).

I authorise the landlords to retain the tenants' security deposit of \$650.00 in partial satisfaction of this sum *per* section 72 (2) (b) of the Act. This leaves a balance owing of \$1,105.31.

The landlords must serve this order on the tenants as soon as possible. If the tenants do not comply with my order, then the landlords may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlords can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 20 July 2023

Residential Tenancy Branch