



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSD, RPP
 MNRL-S, MNDL, MNDCL-S, FFL

Introduction

Three hearings were held in relation to the applications and amendments filed by the parties. Two interim decisions were issued. For the sake of brevity, I will not repeat the matters covered in the interim decisions. As a result, they must be read in conjunction with this decision.

Preliminary Matters

Preliminary Matter #1

Although the tenant initially sought the return of their personal possessions, they stated that they do not believe that the landlord has any of their possessions and that they received the possessions held by the bailiffs. The landlords also denied having any of the tenant's possessions. I have therefore dismissed this claim without leave to reapply.

Preliminary Matter #2

The landlords sought enforcement of a previously issued monetary order from the Residential Tenancy Branch (Branch) in the amount of \$3,100.00. As this matter has previously been decided, and enforcement of monetary orders of this value is with the Small Claims Division of the Provincial Court, I therefore dismissed this matter due to lack of jurisdiction. The landlords must seek enforcement of the previously issued monetary order in BC Small Claims Court.

Issue(s) to be Decided

Are the landlords entitled to compensation for damage caused by the tenant, their pets, or their guests?

Are the landlords entitled to compensation for monetary loss or other money owed?

Are the Landlords entitled to retain all or a portion of the tenant's security deposit? If not, is the tenant entitled to its return or double its amount?

Are the landlords entitled to recovery of their filing fee?

Background and Evidence

The parties agreed that a tenancy to which the Act applies existed between them, that \$500.00 in rent was due each month and that a \$250.00 security deposit was paid, which the landlords still hold.

On October 17, 2023, the landlords received an order of possession for the rental unit from the Branch, effective at 1:00 PM on October 31, 2022. They also received a monetary order in the amount of \$3,100.00. The landlords stated that the order of possession was posted to the door of the rental unit and the tenant acknowledged receipt. The landlords stated that as the tenant did not vacate the rental unit as required, they obtained a writ of possession for the rental unit from the BC Supreme Court on November 1, 2023, and hired a bailiff to remove the tenant on November 3, 2023. A document signed by a court bailiff on November 3, 2023, was submitted which states that on November 3, 2023, they executed the above noted writ of possession issued on November 1, 2023.

The landlords stated that upon execution of the writ of possession, the bailiff took any items of value to be stored for the tenant for a month and advised them that the rental unit was unsanitary, and that professionals were needed to remove the remaining items, which were not of any value. The landlords stated that the first company hired would not complete the work, given the unsanitary state of the rental unit, and that a specialized company had to be hired. The landlords stated that the tenant's failure to vacate the rental unit as required and to leave the rental unit reasonably clean and undamaged at the end of the tenancy cost them:

- \$2,296.35 for junk removal;
- \$577.70 for pest control as the rental unit was infested with rats and bed bugs;
- \$2,873.85 in bailiff fees; and
- \$903.45 in cleaning costs.

Further to this, the landlords sought \$3,000.00 for lost rent and pain and suffering.

The tenant stated that between October 31, 2023 – November 3, 2023, they were actively moving and in contact with the landlords. The tenant stated that the landlords advised them that this was ok and to take their time. The tenant stated that they were therefore surprised when two bailiffs attended the rental unit at 8:30 AM on November 3, 2023. The tenant stated that even though the entire unit was basically packed, the bailiffs would not allow them to remove their possessions to their moving van or pack a personal bag. The tenant stated that the bailiffs only returned to them five boxes with three items each, despite initially telling them that there were two storage lockers for them and that they would require a $\frac{3}{4}$ tonne truck.

The tenant stated that the bailiffs went through all their packed possessions, throwing them around the rental unit, and that all their possessions should have gone to storage. They denied that the rental unit was infested, and stated that irreplaceable items such as their diploma and the ashes of two of their friends, were improperly disposed of because they had not abandoned the rental unit.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations, or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that the party claiming the loss must do whatever is reasonable to minimize the damage or loss.

I am satisfied that the tenant failed to comply with an order of the Branch to vacate the rental unit by 1:00 PM on October 31, 2023, resulting in the need for the landlord to obtain a writ of possession from the BC Supreme Court and hire a bailiff service. I am also satisfied, based on the landlords' affirmed testimony and the absence of any evidence to the contrary, that the landlords paid \$2,873.85 in bailiff fees. Finally, I am satisfied that the landlords mitigated their loss by not immediately enforcing the order of possession, thereby allowing the tenant some additional time to attempt to vacate the rental unit on their own, which they did not do. Pursuant to section 7 of the Act, I therefore award the landlords recovery of this amount.

Section 38(3) of the Act states that a landlord may retain from a security deposit or a pet damage deposit, an amount that the director has previously ordered the tenant to pay to the landlord, and at the end of the tenancy remains unpaid. I have before me a monetary order dated October 17, 2023, wherein the tenant was ordered to pay the landlord \$3,100.00. No evidence was presented that the tenant had paid this amount, or any portion thereof, prior to the end of the tenancy. As a result, I find that the landlord was entitled under section 38(3) of the Act to retain the tenant's \$250.00 security deposit at the end of the tenancy in partial satisfaction of this amount, without the need

to claim against it under section 38(1) of the Act. As a result, I therefore dismiss the tenant's application seeking its return, or double its amount, without leave to reapply. I also dismiss the landlord's application seeking its retention against the current claims without leave to reapply. No findings were therefore necessary regarding condition inspections or extinguishment.

Although the tenant stated in the hearing that most of their belongings were already packed at the time the bailiffs arrived, it is clear to me from the photographs submitted by both the tenant and the landlords that this was not the case. Possessions appear to be haphazardly strewn about the rental unit in a manner that suggests they are refuse or discarded items. Further to this, in the photographs submitted by the tenant, I see nothing of any significant value. While the tenant submitted an accounting of tools and their values, no proof that these tools were owned by the tenant or in the rental unit on November 3, 2023, was submitted.

Although the tenant denied abandoning the rental unit and their possessions, they were removed by a bailiff on November 3, 2023, after having failed to comply with an order of possession from the Branch effective October 31, 2023, at 1:00 PM. As a result, I find that the landlord was entitled to deem their remaining possessions abandoned under section 24(1)(a) of the Act. I also find that the landlord was entitled to dispose of the property as they did, under section 25(2) of the Act, as I am satisfied that a reasonable person under the same circumstances would not have deemed the total market value of what was left, as shown in the photographs, to be worth more than \$500.00. I am also satisfied that the remaining possessions, and the rental unit, were in an unsanitary state. As a result, I grant the landlords the \$2,296.35 in junk removal fees.

Section 37(2)(a) of the Act states that when a tenant vacates a rental unit, they must leave it reasonably clean. Based on the photographs before me from both parties, the videos from the landlords, the cleaning invoices, and an email from one of the cleaners, I am satisfied that the tenant failed to leave the rental unit reasonably clean at the end of the tenancy. As a result, I grant the landlords recovery of the \$903.45 spent on cleaning, which I find to be very reasonable under the circumstances.

Section 32(2) of the Act states that 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. Although the tenant denied that there were any pests in the rental unit, the landlord submitted an invoice for \$577.70 for pest control at the rental unit related to rats and bed bugs. As a result, I am satisfied that there was a rat and bed bug infestation at the rental unit. While Residential Tenancy Policy Guideline (Policy Guideline) #1 states that generally landlords are responsible for major projects, such as insect control, I am satisfied on a balance of probabilities based on the condition of the rental unit, that the rat and bed bug infestation was either caused, or significantly contributed to, by the tenant's failure to maintain reasonable health and

cleanliness standards as required by section 32(2) of the Act. As a result, I award the landlords recovery of the \$577.50 spent on pest control at the rental unit after the end of the tenancy.

Although the landlords sought \$3,000.00 for pain and suffering and loss of rent, no evidence was submitted to support loss of rent or to demonstrate how the amount of \$3,000.00 was reached for both lost rent and pain and suffering. As a result, I have dismissed this portion of their claim without leave to reapply.

Finally, as the landlords were largely successful in their application, I award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

Pursuant to section 67 of the Act, I therefore grant the landlords a **\$6,751.15** monetary order, and I order the tenant to pay this amount to the landlords.

Conclusion

Pursuant to section 67 of the Act, I grant the landlords a Monetary Order in the amount of **\$6,751.15**. The landlords are 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, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application is dismissed, in its entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: October 25, 2023

Residential Tenancy Branch