



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was scheduled to convene at 1:30 p.m. on November 23, 2023 concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of a security deposit or pet damage deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord attended the hearing, gave affirmed testimony, provided evidentiary material in advance of the hearing, and called 1 witness who also gave affirmed testimony. However, the line remained open while the telephone system was monitored for in excess of 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord's agent submitted that the tenant was served with the Notice of Dispute Resolution Proceeding and other required documents (the Hearing Package) by registered mail on March 22, 2023 and has provided a photograph of the envelope addressed to the tenant with that date stamped on the envelope by Canada Post. The envelope was returned to the landlord unclaimed by the tenant. The landlord has also provided a copy of an email addressed to the tenant dated March 22, 2023 containing attachments, including: "Condition walkthrough – Email comm," "Dispute Notice," "late moveout – email comm," "Proof of Damage," and "Respondent instructions."

The *Residential Tenancy Act* states that a party served by registered mail is deemed to have been received 5 days after mailing, and I find that the tenant has been served with the Hearing Package in accordance with the law.

The tenant was also provided with the following evidence: 2 emails, quotes, Respondent instructions, and photographs, but not the Condition Inspection Reports.

The landlord's witness testified that 2 envelopes were sent to the tenant. The first envelope sent on March 22, 2023 contained photographs, copies of emails, a copy of the tenancy agreement and a Monetary Order Worksheet. The second envelope contained Condition Inspection Reports, receipts and quotes.

I am satisfied that the tenant has been served with the evidentiary material of the landlord, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's witness testified that this fixed-term tenancy began on September 1, 2021 and reverted to a month-to-month tenancy after August 31, 2022, but is not certain when the tenancy ended. Rent in the amount of \$4,750.00 was payable on the 1st day of each month and there are no rental arrears. On August 31, 2021 the landlord collected a security deposit from the tenant in the amount of \$2,375.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a house with a basement suite, and the tenant rented the entire building.

The landlord's witness also testified that the tenant gave notice to end the tenancy by email, and was supposed to move out at the end of February, then postponed the end of the tenancy to early March, and vacated during the first week of March, 2023. The landlord's witness tried to get the tenant to complete a move-out condition inspection, and the tenant's mother tried to take care of the tenant's belongings, but the tenant didn't want to do the move-out condition inspection. The landlord's agent and the landlord's witness tried to schedule another date, but received no response from the

tenant. The landlord completed the move-out condition inspection in the absence of the tenant, but did not serve a Notice of Final Opportunity to Schedule a Condition Inspection. The condition inspection report shows that the move-out portion was completed on March 4, 2023 which contains a forwarding address of the tenant.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$7,625.15:

- 2,765.00 for damage repairs, lawn care, removal of rubbish, cleaning;
- \$153.71 for loss of rental of 1 day by delayed move-out on Mar 4/23;
- \$3,677.42 for loss of rental for time taken for arranging and conducting repairs and cleaning, etc., estimated time required from March 5 to 28;
- \$100.00 for dispute application filing fee;
- \$753.02 for reference quote of stove for estimating cost for damage beyond repair; Tenant bears a portion of the cost;
- \$176.00 for reference quote of dryer for estimating cost for damage beyond repair. Tenant bears a portion of the cost.

The landlord has also provided a copy of an advertisement for a new stove estimated to cost \$1,075.74, as well as a receipt for a new stove in the amount of \$1,278.88, for which the landlord claims \$753.02. The landlord's witness testified that there were 2 stoves in the rental home, upstairs and downstairs, and the stove downstairs was in perfect condition at the beginning of the tenancy, but the door was broken at the end of the tenancy. The landlord claims a portion of the receipt and claims \$753.02. Photographs have also been provided for this hearing, which the landlord's witness testified were taken on March 4, 2023.

The dryer downstairs had a dent on it at the end of the tenancy, but was in good condition at the beginning of the tenancy. The landlord claims \$176.00 for that damage, and has provided an advertisement for a new dryer costing \$879.99. The landlord obtained a quote, and estimated 20% of the cost due to its age.

The landlord purchased the rental home in 2021 and the appliances were included in the sale, however, the landlord's witness indicated that the tenant ought to bear a portion of the costs incurred.

The landlord has also provided a receipt for repairs and cleaning totaling \$2,765.00, which includes:

- \$1,300.00 for wall damage repair (Labour & material included)
 - Nail holes, dents and cracks patching and re-painting;

- Curtain rods removal, holes patching and re-painting;
- \$70.00 for Damaged Wall plate replacement (Labour & material included);
 - at living room & a bedroom;
- \$70.00 for 2 Damaged door handles replacement (Labour included), in the bathroom
- \$250.00 for Metal door damaged with dents – replacement (Labour & material included) – the connection door between upper floor and lower floor suite;
- \$70.00 for Damaged closet doors repair (Labour & material included);
 - at side entrance;
 - reinstate loose door knobs;
 - patching dents and re-painting;
- \$120.00 for Damaged closet doors replacement (Labour & material included) at the lower floor suite living room;
- \$250.00 for Damaged exhaust fan cover replacement (Material included) at the lower floor suite bathroom;
- \$35.00 for Damaged patio screen door reinstatement at lower floor suite entrance;
- \$200.00 for Debris disposal fee;
 - Damaged bookcase, cooking stove
 - Tenant's leftover;
- \$100.00 for Lawn remedial and clearance work;
- \$300.00 for Professional cleaning fee;
 - Carpet, 2 refrigerators, stove & oven, 2 range hoods.

The Invoice also includes;

- Damaged Cooking stove – beyond repair at lower floor suite kitchen;
- Bookcase drilled a hole – beyond repair at upper floor bedroom; and
- Dents on laundry dryer – beyond repair at laundry room;

for which there is no fee charged.

The landlord also claims 1 day of loss of rental revenue for the tenant failing to vacate on time. The landlord also claims \$3,677.42 for loss of rental revenue due to repairs required after the tenant vacated the rental unit. The landlord advertised the rental unit for rent before the tenants vacated, in late February, 2023 and advertised again in late March, 2023. The rental unit was re-rented for August 1, 2023.

The tenant gave information to the landlord regarding return of the security deposit, but the landlord's agent told the tenant that the security deposit would be held. The tenant has not served the landlord with an application claiming the security deposit.

Analysis

In order to be successful in a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

Also, the *Residential Tenancy Act* states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. However, a landlord is required to provide the tenant with at least 2 opportunities to schedule the inspections, and the final opportunity must be in the approved form:

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
- (b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
- (b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The regulations state:

Two opportunities for inspection

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

In this case, the landlord did not give a Final Opportunity to Schedule the move-out condition inspection in the approved form, and therefore, I find that the landlord's right to claim against the security deposit for damages is extinguished.

However, the landlord's right to make a claim against the security deposit for loss of rental revenue is not extinguished.

I have reviewed all of the evidence of the landlord, which does not include the notice to end the tenancy given by the tenant. The landlord's witness testified that the tenant was to vacate on March 3, 2023 but didn't actually vacate until March 4, 2023, and the landlord notified the tenant that the extra day would be claimed. I find that the landlord has established a claim of \$153.23 for 1 day rent for overholding.

The landlord also claims an additional \$3,677.42 for loss of rental for time taken for arranging and conducting repairs and cleaning, etc., estimating the time required from March 5 to 28, which amounts to 24 days, or \$3,677.42. The Invoice for the repairs shows a service date of March 24, 2023, which I find is within that 24 day period, and I find that the landlord has established the claim of \$3,677.42.

I have also reviewed the photographs provided by the landlord, and compared them to the move-in condition inspection report, which was signed by the tenant at the beginning of the tenancy. I have also reviewed the receipts for repairs and appliances, and I am satisfied that the landlord has established a claim of \$2,765.00 for repairs and cleaning; \$753.02 for a portion of the stove replacement and \$176.00 for the dryer replacement.

I further find that the landlord made this application within the 15 days as required under the *Act*.

Since the landlord has been successful with the application the landlord is also entitled to recover the \$100.00 filing fee from the tenant.

The landlord has applied to keep the \$2,375.00 security deposit, and given my finding that the loss of rental revenue is more than that amount, I order the landlord to keep the security deposit and I grant a monetary order in favour of the landlord for the difference of \$5,249.67 ($\$153.23 + \$3,677.42 + \$2,765.00 + \$753.02 + \$176.00 + \$100.00 = \$7,624.67 - \$2,375.00 = \$5,249.67$). The tenant must be served with the order which

may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$2,375.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$5,249.67.

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 30, 2023

Residential Tenancy Branch