



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

Page: 1

DECISION

Introduction

The landlord seeks compensation under the *Residential Tenancy Act* (the “Act”).

Procedural History

The landlord filed this application on October 20, 2022. The first hearing did not occur until July 24, 2023. On July 24, the matter was adjourned (as set out in my Interim Decision of July 24, 2023) to September 8, 2023, to address service issues. On September 8, the matter was (upon the landlord’s objection) adjourned upon the tenant’s request due to the tenant having recently lost a family member. Shortly thereafter, I exercised my discretion under section 74(2) of the Act and adjourned the matter, as set out in my Interim Decision of September 13, 2023, to written submissions to be considered on December 15, 2023.

Both parties received a copy of the September 13 Interim Decision on that same date, and in which it was clearly explained that both parties were permitted to submit written submissions and evidence before December 15, 2023. On the evening of December 14 and the morning of December 15, I carefully reviewed and considered the written submissions and evidence, and then rendered this decision.

As an aside, the landlord must be thanked for her patience during what has turned out to be an exceedingly lengthy process spanning well over a year from the date of application to this final decision.

It should be noted that the tenants had not, by the evening of December 14, submitted *any* written submissions or evidence in respect of the application, despite the tenants having more than three months to do so.

Issue

Is the landlord entitled to compensation?

Evidence and Analysis

In an application under the Act, an applicant must prove their claim on a balance of probabilities. Stated another way, the evidence must show that the events in support of the claim were more likely than not to have occurred. I have reviewed and considered all the evidence but will only refer to that which is relevant to this decision.

The tenancy began July 29, 2020, and ended on September 30, 2022. Rent was not indicated on the landlord's application, but it is noted that there was a \$800.00 security deposit and a \$800.00 pet damage deposit. These deposits are being held in trust by the landlord pending the outcome of this application.

The landlord seeks a total of \$3,188.68 in compensation for cleaning supplies (\$24.14), painting (\$871.02), a strata move in and move out fee (\$200.00), lost keys and a fob (\$90.00), for missing radiator panels (\$67.16), a mirror door top track (\$66.37), a lamp shade (\$89.36), for curtain rods and ends (\$42.97), registered mail costs (\$31.16), floor planks (\$1,606.50), and \$100.00 for the Residential Tenancy Branch application fee.

A revised Monetary Order Worksheet, along with a well-written and articulate written submission was submitted by the landlord, outlining the various claims.

Also submitted by the landlord in support of this application are several colour photographs of the rental unit generally and photographs of the above-noted damaged and missing items specifically. A copy of a detailed, 17-page move in and move out condition inspection report was provided into evidence, a review of which substantiates the landlord's submissions regarding the claims made. An excerpt of the landlord's written submissions is helpful, in respect of some of the damage sustained:

The Move-out Inspection report can be referred to for a full list of damages. A few of the damages to note were:

- No keys were returned, including the garage fob, 2 entrance and 2 unit keys and a mailbox key
- Fecal matter on the living room wall, and baseboards
- Tar like substance on floors and walls
- Nicotine spots all over the crown mouldings, ceilings and lampshade, as well as smoke stains
- A strong and intense smell of cigarettes and a further smell I could not identify
- Wall plug pulled partly out of wall

- Sliding door placed in wrong track (damaged the door unit and had to be pried out)
- Missing radiator cover panel and ends
- Beyond regular “wear and tear” water damage to floors, black dirt like substance stuck in it’s seems, and deep scratches

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. A party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

In respect of the landlord’s claims for cleaning supplies, painting, keys, missing radiator panels, the door track, lamp shade, curtain rods and ends, and the floor, based on the landlord’s undisputed evidence it is my finding that the tenants breached section 37(2) of the Act.

Section 37(2) of the Act states that

When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The evidence overwhelmingly leads me to find that the tenants did not leave the rental unit reasonably clean and undamaged and did not give the landlord all the keys and other means of access to the rental unit.

The landlord would not have suffered these monetary losses but for the tenants' breach of the Act, the amounts have been proven, and the landlord has acted reasonably to minimize her loss in respect of these losses. For this reason, I award the landlord the amounts claimed for those items listed above.

I further find that but for the tenants' breach of the Act the landlord would not have had to file this application and is thus entitled to the recovery of her registered mail costs in the amount of \$31.16.

Regarding the strata move in and move out fee, section 7(1)(f) of the *Residential Tenancy Regulation* states that a landlord may charge a non-refundable move-in and move-out fee charged by a strata corporation to the landlord. In this application, the landlord submits that the tenants did not pay these required fees and is thus entitled to \$200.00.

The landlord is entitled to recover the cost of the \$100.00 application fee.

In total, the landlord is awarded a total of \$3,188.68. Pursuant to subsection 38(4)(b) of the Act the landlord is authorised to retain the tenants' security and pet damage deposits in the amount of \$1,600.00, in partial satisfaction of the award. **The tenants are hereby ordered to pay the balance of \$1,588.68 to the landlord forthwith.**

A monetary order in the amount of \$1,588.68 is issued with this decision to the landlord. Should the tenants fail or refuse to pay this amount then the landlord must serve a copy of the monetary order upon the tenants and then may enforce the monetary order in the Provincial Court of British Columbia.

Conclusion

The application is hereby granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: December 15, 2023

Residential Tenancy Branch