



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Introduction

The Landlords and the Tenant have filed cross-applications claiming compensation against the other, under the *Residential Tenancy Act* (the “Act”).

Issue

Is either party entitled to any compensation?

Background and Evidence

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 on August 1, 2021, and ended on August 8, 2023. Monthly rent was \$2,605.00. Rent increased on August 1, 2022, to \$2,715.00. There was a written tenancy agreement in place during the tenancy. There was no security or pet damage deposit on the tenancy.

1. Landlords’ Claims

The Landlord seeks the following compensation:

- A. Rent Arrears – the Landlords gave affirmed testimony in which they claim \$1,080.00 in rent arrears which accumulated over the period of April to June 2023.
- B. Various Household – the Landlords gave affirmed testimony in which they claim:
- a. Painting and Repairs - \$1,500.00 in estimated costs for painting and repairs. The rental unit was last painted in 2019. The Tenant caused damage resulting in lots of removal and scraping. It was “no easy spackle” repair, the Landlords noted.
 - b. Plumbing Costs - The Landlords made a claim for plumbing but did not have a final estimate or amount regarding this aspect of their claims. According to the Landlords, the Tenant had tried to flush food products down the kitchen sink which plugged the pipes. As a result, when the Tenant went to use the laundry machine, the pipes backed up and a flood resulted.
 - c. Garbage Removal - \$6,746.25 for garbage removal. Receipts were submitted into evidence. The Landlords testified that the Tenant’s mattresses were left behind and had to be removed.
 - d. Mattress Bags - \$81.46 for mattress bags, which the Landlords needed to put the Tenant’s mattresses into before disposing thereof.
 - e. Lawnmower - \$1,198.00 for the cost of purchasing a new lawnmower, as the Tenant somehow managed to destroy the lawnmower supplied with the rental unit. The Landlord testified that they tried to mow the law—which the Tenant was required to maintain during the tenancy—but there was lots of “embedded stuff” and the crankshaft ended up being broken

after it ran over something. The lawnmower was about ten-years old and was commercial grade.

- f. FortisBC Account Reactivation - \$94.50 for the cost of reactivating a FortisBC which was suspended in April 2023 due to non-payment by the Tenant. The Tenant testified that an increased amount of utilities was imposed upon them without proper authority.
 - g. Furniture - \$2,500.00 is claimed for estimated costs for cabinet, table and hutch that the Tenant purportedly damaged.
- C. Bailiff Costs – The Landlords seek \$11,376.39 for bailiff and bailiff-related costs required to remove the Tenant after the Tenant refused to comply with a Residential Tenancy Branch-issued order of possession. The Tenant was asked repeatedly to move out (and comply with the order of possession) Receipts and balance statements for these costs were submitted into evidence.

It is noted that the Landlords received an order of possession from the Residential Tenancy Branch on July 27, 2023. They served the order on the Tenant on July 29, 2023. The order of possession had an effective period of two days—in other words, the Tenant had two days from the date of receiving the order to vacate the rental unit. The Tenant filed an application for review consideration, which confirmed the order of possession, on August 4. The Landlords attended to the court on August 5 and obtained a writ of possession.

The writ of possession was executed, and the Tenant removed from the rental unit on August 8, 2023.

2. Tenant's Claim

The Tenant claims \$1,797.19 for the portion of the rent paid for August 2023 for the period after which they were removed by bailiffs on August 8, 2023. In response, the Landlords testified that they collected all of August's rent because they did not know how long the court process would take to obtain a writ of possession.

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. 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?

1. Landlords' Claims

A. Rent Arrears

The Landlords provided no documentary evidence to support this claim. While they refer to the Tenant "agreeing" to a rent increase in 2022, I see no evidence to support this agreement. Nor, for that matter, is there any documentary evidence to support any finding that rent was increased in compliance with Part 3 of the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlords have not met the onus of proving this claim.

B. Various Household

- a. Painting and Repairs – The Landlords’ written submissions simply stated that “we estimate the cost to repair and paint the house to be \$1500 or more.” No estimates, quotes, or any other document was submitted to support this estimate. I am therefore not satisfied, on a balance of probabilities, that the Landlords have proven the dollar amount of this claim, which is one of the required parts of the four-part test.

This claim is dismissed without leave to reapply.

- b. Plumbing Costs – Because no specific estimate, supported by any documentary evidence, was proven, I am also unable to find that the Landlords have proven the amount of loss or potential loss in respect of this claim. While the Landlords referred to the hiring of a plumber, no copies of any receipts or invoices were submitted into evidence. Thus, having found that the amount was not proven I need not consider the remaining parts of the four-part test.

Accordingly, this claim is dismissed without leave to reapply.

- c. Garbage Removal – Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Based on the evidence before me, even in the absence of any condition inspection report, I am persuaded that the Tenant breached section 37 of the Act in respect of this

claim. But for the Tenant's breach the Landlords would not have incurred costs to remove the Tenant's belongings, the amount claimed, while expensive, is not unreasonable in the circumstances. The amount of the loss has been proven through oral and documentary evidence.

The Landlords are awarded \$6,746.25 for this claim.

- d. Mattress Bags – This claim, as with the garbage removal, is proven. Without any doubt it is my finding that the Tenant breached section 37 of the Act necessitating the Landlords to acquire mattress bags for the safe removal of the Tenant's mattresses. The amount is both reasonable and has been established through documentary evidence.

The Landlords are awarded \$81.46 for this claim.

- e. Lawnmower – While the Tenant may or may not have kept up the yard to a standard acceptable to the Landlords, it was not the Tenant who broke the decade-old lawnmower. Further, even if the Tenant's inaction on maintaining a better yard indirectly caused the lawnmower crankshaft to break, it cannot be overemphasized that the lawnmower was rather old, and likely at the end of its useful life. In the alternative, even if the Tenant's inaction and the age of the lawnmower lead to its demise, I do not find that the Landlords acted reasonably to minimize their loss in obtaining a new lawnmower. A new lawnmower may be purchased for well below \$1,300.

In any event, I am ultimately not satisfied on a balance of probabilities that the Tenant is liable for the cost of a lawnmower. This claim is dismissed without leave to reapply.

- f. FortisBC Account Reactivation – The tenancy agreement included no term or clause requiring the Tenants to pay FortisBC. Nor is there any document in evidence, such as an addendum to the tenancy agreement, establishing that the Tenant was required to pay for FortisBC. While I acknowledge that natural gas is not included in the tenancy agreement, there is nevertheless nothing to link responsibility for the Tenant to pay the Landlords' FortisBC account. Nor, for that matter, is there any evidence that the Tenant was responsible for deactivating the account.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has not proven this claim and it is dismissed without leave to reapply.

- g. Furniture – The Landlords' submissions on this were that there was, among other pieces of furniture that purportedly went missing, "an antique cabinet which on Craigslist is price[d] very high. Estimated value \$2500." However, the Landlords did not provide any supporting evidence to substantiate this amount. No copies of appraisals or listings for a similar-priced piece of furniture.

On a balance of probabilities, I am simply unable to conclude that the Landlords have proven the loss or monetary value of the missing furniture. For this reason, I must respectfully dismiss this claim without leave to reapply.

C. Bailiff Costs

The Tenant was served with an order of possession (later affirmed upon an application for review consideration decision) on July 29, 2023.

They had two days to vacate the rental, which they did not. It was not until August 8 that bailiffs had to remove the Tenant.

While the Tenant takes issue with the validity of the order of possession and a related monetary order, the undeniable fact remains that the order of possession legally required the Tenant to vacate the rental unit by the end of day on July 31 (or by end of the day on August 6, after the review consideration decision was issued). The Tenant did neither. As such, the Landlords are entitled to enforce any valid order of possession through the courts, which they did.

The Tenant failed to comply with section 55(3) of the Act after being served with an order of possession, and the Landlords subsequently incurred costs required to enforce compliance with the order of possession.

But for the Tenant's refusal to vacate the Landlords incurred bailiff costs, and there is little (given that there are only a few bailiff companies operated in the province) that the Landlords could have done to minimize their costs to enforce the order. The amount has been proven through documentary and affirmed oral evidence.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlords have met their onus of proving this claim. The Landlords are awarded \$11,376.39.

Last, the Landlords are awarded an additional \$100.00 under section 72 of the Act to pay for the cost of their application fee.

2. Tenant's Claim

The Tenant seeks compensation for rent paid for a period after which they were evicted from the rental unit. The Tenant calculates this amount to be \$1,795.19. The Tenant occupied the rental unit until August 8, 2023.

While it is not lost on me that the Tenant paid rent for the entire month of August, they have failed to demonstrate on what legal basis they are entitled to the return of any of that rent. Indeed, they paid the full month's rent, but then chose to ignore an order of possession and remained in the property until bailiffs were required to remove them. I am unable to conclude on what basis the Tenant may be entitled to the return of the rent. As such, the Tenant's claim for compensation is dismissed without leave to reapply.

Conclusion

The Landlords are awarded \$18,304.10. A monetary order in this amount is issued with this Decision to the Landlords, who must serve a copy upon the Tenant.

The Tenant's application is dismissed.

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

Dated: August 7, 2024

Residential Tenancy Branch