



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Eviction Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC; FF

Introduction

This is the Landlord's application for compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant.

The Landlord and her agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were mailed to the Tenant, via registered mail, unit on April 10, 2013. She stated that there was a secondary package which included digital evidence that was sent on April 25, 2013, by express post. The Landlord's agent stated that the packages were mailed to the address provided by the Tenant at a previous Hearing on January 23, 2013. The Landlord's agent provided the tracking numbers for both packages.

Based on the affirmed testimony of the Landlord's agent, I am satisfied that the Tenant was duly served with the Notice of Hearing documents by registered mail. Service in this manner is deemed to be effected 5 days after mailing the documents. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

Issues to be Decided

- Is the Landlord entitled to compensation for damage to the rental unit and loss of revenue?

Background and Evidence

There have been three other Applications for Dispute Resolution filed and three prior teleconferences held with respect to this tenancy:

1. A hearing was convened to consider cross applications on January 10, 2013. The Landlord had applied for an Order of Possession and Monetary Orders. The Tenant had applied to cancel a Notice to End Tenancy for Cause and for Monetary Orders. At the beginning of the hearing, it was determined that the

Tenant had moved out of the rental unit and therefore the matters proceeded with respect to the parties' monetary claims only. The Landlord's application was adjourned to January 23, 2013, so that she could re-serve the Tenant with a copy of her Application for Dispute Resolution. The Tenant's application was dismissed with leave to reapply because the Tenant did not provide sufficient evidence that she had served the Landlord with a copy of her Application for Dispute Resolution. An Interim Decision was provided on January 10, 2013.

2. On January 23, 2013, both parties attended the reconvened hearing, which was to deal with the Landlord's application for unpaid rent and loss of rent for the months of December, 2012, and January 2013. The Landlord also sought to amend her application to include a claim for damages in the amount of \$17,000.00. The Arbitrator declined to amend the Landlord's Application. The Landlord applied to withdraw her claim for loss of revenue for the month of January, 2013. The Arbitrator allowed this application and gave the Landlord liberty to apply for loss of revenue for January, 2013 in a future damage claim. The Arbitrator granted the Landlord's application for unpaid rent for December and set off the security deposit and pet damage deposit against the Landlord's monetary award. A Monetary Order was provided to the Landlord in the net amount of \$1,050.00.
3. The Tenant filed another Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement and to be reimbursed for the cost of emergency repairs. This matter was scheduled to be heard on April 11, 2013. The Landlord signed into the teleconference on April 11, 2013, but the Tenant didn't. The Tenant's application was dismissed without leave to reapply.

The Landlord ("MC") gave the following testimony:

This tenancy began on September 1, 2012 and ended on January 4, 2013. Monthly rent was \$4,000.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$2,000.00 on August 15, 2012 and a pet damage deposit in the amount of \$1,000.00 on September 1, 2012, which was set off against a monetary award for the Landlord on January 23, 2013.

The rental unit is comprised of two suites, which were included in the tenancy agreement. At the end of the tenancy, there were eight people, four dogs and two cats living in the rental unit. Only two dogs were allowed under the tenancy agreement. The rental unit was re-rented on May 1, 2013.

There was a condition inspection performed at the beginning of the tenancy. MC did not provide a copy of the Condition Inspection Report in evidence. The rental unit had been renovated 7 years before the tenancy began, including a new kitchen and

appliances; decorative glass blocks; new roof; new hardwood floors; double glazed windows; new fireplace; new carpet and a new bathroom. Prior to the Tenant moving in, an older couple lived in the rental unit and it was "absolutely spotless" when the Tenant moved in. The rental unit had been painted 2 years before the Tenant moved in.

The Tenant and the occupants caused considerable damage to the rental unit. MC seeks a monetary award for damages and loss of income. She stated that she was unable to re-rent the rental unit because she required time to complete extensive repairs. She also stated that she advertised the rental unit on a popular website right away, despite the extensive damage; but that prospective tenants had a level of expectation for the price of the rent and that expectation was not met because of the poor condition of the rental unit.

MC stated that the dishwasher smelled awful and the garburator would not work at the end of the tenancy. MC found dog feces down the drain and the hose to the dishwasher was broken. She called for a repairman, who told her that the motor was burned out. The repairman found a dish rag, debris and glass in the dishwasher. He stated that it would cost approximately \$500.00 to repair it, or she could purchase a standard dishwasher for less. MC chose to purchase a standard dishwasher instead of repairing the stainless steel premium one.

MC seeks to recover the cost of a repair to the downstairs refrigerator. She stated that the Tenant told her it was not running cold enough. MC gave her credit information to the manager at the appliance store who regularly did her appliance repairs and asked the repairman to let her know what the cost would be before completing the job. MC had it repaired for \$100.24. The following day, the Tenant represented herself as MC and authorized a subsequent amount of \$241.85 without MC's knowledge. This was for work done to the refrigerator that MC did not authorize and was not necessary.

The downstairs carpets were full of stains and urine from the dogs which would not come out. It was cheaper to replace the ruined carpets with laminate.

The Tenant was responsible for general upkeep of the yard and garden, but did not weed or cut the grass at all throughout the tenancy. In addition, her dogs were given free run and the yard was full of dog feces and garbage, including plastic, bottles and cans.

MC provided photographic evidence in support of her claim.

The Landlord's monetary claim is calculated as follows:

<u>Description</u>	<u>Receipt provided</u>	<u>Claim</u>
Replace damaged curtains with inexpensive blinds	Yes	\$168.00
Touch up paint on walls on main floor, install missing wire shelving, install bathroom fan and light fixtures	Yes	\$268.80
Repairs and painting (dogs chewed all casing around doors upstairs, master bedroom, downstairs suite and storage room door was damaged by a chainsaw)	Yes	\$2,052.88
New hinges for doors	Yes (3)	\$34.46
Cleaning supplies, door knobs	Yes	\$212.99
Installing new baseboards and two doors, one interior and one exterior (damaged doors were 7 years old)	Yes	\$2,822.40
Replacing damaged dishwasher with standard model	Yes	\$391.98
Unapproved updates to fridge in basement	Yes	\$241.85
Replace carpet with laminate in downstairs suite	Yes	\$1,595.34
Cost of cutting grass, pulling weeds and disposing of garbage and dog feces in yard (4 men @ 5 hours)	Yes	\$600.00
3 months of lost revenue (January, February, March)		<u>\$12,000.00</u>
TOTAL CLAIM		\$20,388.70

Analysis

This is the Landlords' claim and therefore the Landlord has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenant pay for the loss requires the Landlords to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I accept MC's undisputed testimony in its entirety with respect to damages caused by the Tenant, the occupants and the dogs at the rental unit, with the exception of the claim regarding damage to the garden. An addendum to the tenancy agreement provided that the Tenant was responsible for "yard maintenance". Residential Tenancy Branch Policy Guideline 1 states, in part: "*Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain flower beds. The landlord is responsible for major projects, such as tree cutting, pruning and insect control.*" The Landlords provided a copy of an email and an invoice from the landscaper dated January 12, 2013. The e-mail indicates that the trees, shrubs and bushes were "extremely overgrown" and that "one tree had to be removed as it had been leaning and **unsupported for so long that it could not be reposted** [my emphasis]." The tenancy only lasted 4 months and I find that the Tenant is not responsible for pruning trees, shrubs and bushes. The invoice indicates that labour was charged at \$25.00 an hour for four men and that there were recycling and dumping fees of \$100.00, for a total of \$600.00. I accept that the recycling/dumping fees are the responsibility of the Tenant, and that it would take approximately 2 hours to mow the lawn and pick up the garbage and debris. Therefore, I allow this portion of the Landlords' claim in the amount of \$150.00.

With respect to replacement of damaged doors and flooring, I note that these items were seven years old. The Guidelines provide a useful life of 10 years and therefore, I allow the depreciated value for these items at 30%. I also allow compensation for the dishwasher in the amount of \$150.00, as the original premium dishwasher was also 7 years old.

The Tenant did not move out of the rental unit until January 4, 2013. The invoices indicate that the repairs were not completed until March 4, 2013. I am satisfied that the Landlord was not able to show the rental unit in a satisfactory condition until March 4, 2013. The Landlord re-rented the rental unit effective May 1, 2013, and is not seeking loss of revenue for April, 2013. Therefore, I allow the Landlords' claim for loss of revenue for January, February and March, 2013.

The Landlords have been successful in their application and I find that they are entitled to recover the cost of the \$100.00 filing fee from the Tenant.

The Landlords have established a monetary award, calculated as follows:

Loss of revenue	\$12,000.00
Replace damaged curtains with inexpensive blinds	\$168.00
Touch up paint on walls on main floor, install missing wire shelving, install bathroom fan and light fixtures	\$268.80
New hinges for doors	\$34.46
Cleaning supplies, door knobs	\$212.99
Unapproved updates to fridge in basement	\$241.85
Replacing damaged used dishwasher with new standard model	\$150.00
Yard work and clean-up, dumping fees	\$150.00
Repairs and painting (replace casing around doors upstairs, master bedroom, downstairs suite and storage room. Replace door damaged by a chainsaw) (\$2,052.88 x 30%)	\$615.86
Installing new baseboards and two doors, one interior fire door and one exterior door (\$2,822.40 x 30%)	\$846.72
Replace carpet with laminate in downstairs suite \$1,595.34 x 30%	\$478.60
Recovery of the filing fee	\$100.00
TOTAL AMOUNT DUE TO THE LANDLORDS	\$15,267.28

Conclusion

I hereby grant the Landlords with a Monetary Order in the amount of **\$15,267.28** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: July 11, 2013

Residential Tenancy Branch