



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MSND, MND, FF

Introduction

This hearing convened as a result of Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation for damage to the rental unit, authority to retain the Tenants' security and pet damage deposit and to recover the filing fee.

The hearing was conducted by teleconference on May 29, 2017. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that he served the Tenants with the Notice of Hearing and the Application on November 28, 2017 by registered mail to the forwarding address provided by the Tenants (a copy of their letter was also provided in evidence). Introduced in evidence were copies of the registered mail tracking numbers for the packages sent to each Tenant. The Landlord confirmed the packages were returned as unclaimed.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenants were served as of December 4, 2016 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants for damage to the rental unit?
2. Should the Landlord be authorized to retain the security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that this one year fixed term tenancy began on April 1, 2015 following which it continued on a month to month tenancy. Monthly rent of \$1,050.00 was due on the 1st of each month and the Tenants paid a security deposit of \$525.00 and a pet damage deposit of \$525.00 paid.

By Decision dated October 7, 2016, the Landlord obtained an Order of Possession. He advised that he enforced the Order of Possession in the B.C. Supreme Court and obtained a Writ of Possession. He further advised that the Tenants applied for, and were granted, a stay of proceedings, and were permitted to remain in the rental unit October 24, 2016.

Introduced in evidence was a Monetary Orders worksheet wherein the Landlord sought \$6,322.65 in compensation for the following:

Replacement of flooring	\$4,716.08
Replacement of living room blinds	\$247.09
Garbage removal	\$325.00
Replace dishwasher	\$584.48
Drywall repairs	\$300.00
Replace bedroom door	\$150.00
Replace range	No amount specified
TOTAL	\$6,322.65

Photos submitted by the Landlord confirm the damaged condition of the rental unit at the end of the tenancy and support the above claims. The Landlord also submitted receipts supporting the amounts claimed.

The Landlord stated that the flooring was approximately four years old at the time the tenancy began, save and except for the bedroom which had brand new flooring as the Tenant asked that the carpet be replaced for mobility reasons.

The Landlord also said the blinds were two years old and had been professionally cleaned before the Tenants moved in.

The Landlord also testified that the dishwasher was brand new as it had been replaced during their tenancy.

The Landlord also testified that the bedroom door was approximately three to four years old at the time the tenancy ended.

The Landlord testified that in addition to the amounts claimed on the Application, he also incurred the cost of a bailiff to remove the Tenants from the rental unit, he has not been able to rent the rental unit due to the damage caused by the Tenants, is responsible for the cost to repair a water main broken by the Tenants and has yet to replace the cooking range due to a lack of funds.

I informed the Landlord that as those amounts were not claimed on the application, they are not properly before me. I further informed the Landlord I would give him leave to reapply for further monetary compensation once the amounts are known for these additional losses, provided that they do not exceed the jurisdiction of the *Act* when considered in relation to the amounts awarded today.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in section 37 of the *Act* as follows:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I find, based on the undisputed testimony and evidence of the Landlord that the Tenants damaged the rental unit and failed to clean it as required when the tenancy ended.

Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements provides in part as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 also provides a table setting out the useful life of most building elements. Accordingly, I discount the Landlord's claim for replacement of the following building elements.

The Landlord claimed compensation in the amount of \$4,716.08 for replacement of the flooring. He testified that the flooring was four years old at the time the tenancy ended. *Policy Guideline 40* provides that flooring has a useful life of 10 years. Accordingly, I discount the Landlord's claim of \$4,716.08 by 40% and award him the sum of **\$2,829.64**.

The Landlord claimed compensation in the amount of \$247.09 for replacement of the living room blinds. He testified that the blinds were two years old at the time the tenancy ended. *Policy Guideline 40* provides that blinds have a useful life of 10 years. Accordingly, I discount the Landlord's claim of \$247.09 by 20% and award him the sum of **\$197.67**.

The Landlord claimed compensation in the amount of \$584.48 for replacement of the dishwasher. He testified that the dishwasher was brand new having been replaced during the tenancy. Accordingly, I award him the full **\$584.48** claimed.

The Landlord claimed compensation in the amount of \$150.00 for replacement of the bedroom door. He testified that the door was three to four years old at the time the tenancy ended. *Policy Guideline 40* provides that doors have a useful life of 20 years. Accordingly, I discount the Landlord's claim of \$150.00 by 20% and award him the sum of **\$120.00**.

I award the Landlord the full amount claimed for the garbage removal and drywall repairs.

Having been substantially successful the Landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

In total I award the Landlord compensation in the amount of **\$4,456.79** for the following:

Replacement of flooring (discounted amount)	\$2,829.64
Replacement of living room blinds (discounted amount)	\$197.67
Garbage removal	\$325.00
Replace dishwasher	\$584.48
Drywall repairs	\$300.00
Replace bedroom door (discounted amount)	\$120.00
Filing fee	\$100.00
TOTAL AWARDED	\$4,456.79

The Landlord is authorized to retain the Tenants deposits in the amount of \$1,050.00 and is granted a Monetary Order for the balance due in the amount of **\$3,406.79**. The Landlord must serve the Monetary Order on the Tenants and may file and enforce it in the B.C. Provincial Court (Small Claims Division).

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: June 16, 2017

Residential Tenancy Branch