



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNRT MNDCT FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' Application for Dispute Resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed, I find that these were duly served in accordance with section 88 of the *Act*.

Issues

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 1, 2014 and ended on July 31, 2017. Monthly rent was set at \$1,125.00, payable on the 29th day of the month. The tenants paid a \$550.00 security deposit and \$275.00 pet damage deposit. A hearing was held on March 20, 2018, and the landlord was ordered to return the deposits to the tenants, as well as compensate the tenants under section 38 of the *Act*. In the decision dated March 29, 2018, the tenants were also ordered to compensate the landlord \$200.00 for carpet cleaning

The tenants are making a monetary claim for \$6,497.00 as detailed in the table below:

Item	Amount
Carpet Cleaning	\$200.00
Water Bill Reimbursement	350.00
Deck Repair Invoice	1,064.39
Loss of quiet enjoyment	4,883.00
Total Monetary Order Requested	\$6,497.00

The landlord is not disputing the tenants' request for \$350.00 as set out in line number 2 of the table above.

The tenants submitted in their evidence a copy of an invoice for deck repairs. The invoice date is August 30, 2016 for repairs done by the tenants as the deck and railing were rotten. The tenants testified that they had made several requests to the landlord as the deck was not safe. The tenants submitted this claim stating that it was an emergency repair. The tenants confirmed that they did not have the written permission of the landlord to undertake repairs on their own. The landlord is disputing this claim stating that the issue was addressed, including the supply of materials for repairs. The landlord also states in his evidence that the tenants have caused deliberate damage to the handrails and posts themselves by kicking them.

The tenants also submitted a monetary claim of \$4,883.00 for loss of quiet enjoyment. The tenants testified that they did not feel safe due to several incidents that took place during the tenancy. The tenants testified that the landlord was often intoxicated and would scream profanities at the nanny, as well as act in a flirtatious manner. The tenants testified that the landlord would also enter without knocking on the door, and yell at the children and tenants. The tenants testified that the children felt

uncomfortable. The tenants testified that the landlord would fight with his wife, and would yell at the wife for receiving messages from the tenants. The tenants testified that they had placed scotch tape on the doors to test if the landlord entered without proper notice, which they believe the landlord had done.

The landlord disputes the tenants' claim for loss of quiet enjoyment, and stated that he was never presented with a breakdown of this monetary claim before the hearing.

The tenants also made a claim under section 38 for their deposits, which was dealt with at a previous hearing.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the

Act on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Both parties confirmed in the hearing that the issues of the security and pet damage deposits, as well as the carpet cleaning was dealt with at a previous hearing, and I find that these matters have already been decided. A decision was already made on March 29, 2018, after a hearing on March 20, 2018 by the Arbitrator in regards to these two claims.

This is therefore a second application for compensation related to the same issues. I therefore find that this current application is *res judicata* meaning the matters have already been conclusively decided and cannot be decided again. Accordingly, I dismiss the tenants' application for the return of their deposits and compensation for carpet cleaning without leave to reapply.

As the landlord is not disputing the tenants' claim for \$350.00, the tenants will be granted a monetary order for this amount.

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, **and**
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system...
 - (v) the electrical systems....

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Under Section 33 (1) of the *Act*, deck and railing repairs do not meet the definition of an “emergency repair”.

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I have considered the testimony of both parties, and although the deck and handrails might have required repairs, I am not satisfied that the landlord has failed in his obligations under section 32 of the *Act*. The landlord disputes the tenants' claim stating that he had provided materials for repairing the deck, and that the tenants caused further damage to the railings. Furthermore then tenants have never obtained the written permission of the landlord to undertake these repairs themselves, nor have they provided evidence to support that any previous applications were made during the tenancy for the landlord to perform repairs.

As stated above, the tenants bear the burden of establishing their claim. I find that the tenants failed to establish that they suffered a loss due to the landlord's failure to comply with section 32 of the *Act*. I find that the tenants made the decision to repair the deck and railings themselves without an Order of an Arbitrator or the permission of the landlord to do so. I find that the deck repairs do not meet the requirements of section 33 for Emergency Repairs. On this basis, this monetary claim is dismissed without leave to reapply.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

- (b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

The tenant requested \$4,883.00 for loss of quiet enjoyment due to the landlord's behavior towards them and other occupants, as well as the nanny. Although I sympathize with the tenants and the fact that they found the landlord's behavior disturbing in nature, I find that they did not establish in detail how this monetary amount was obtained, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the damages or losses the tenants are seeking in this application. Furthermore I find that the tenants failed to establish how their suffering was due to the deliberate or negligent act or omission of the landlord. On this basis I dismiss the tenants' monetary claim for \$4,883.00 in compensation, without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were only partially successful in their claim, the tenants will only be allowed to recover half of the filing fee.

Conclusion

I issue a Monetary Order in the tenants' favour for \$400.00, which allows for the \$350.00 claim for the water bill as well as \$50.00 in recovery of the filing fee for this application

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I dismiss the remaining portion of the tenants' application without leave to reapply.

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 2, 2018

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant