



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSD, FF
For the landlord: MND-S, MNDC-S, FF

Introduction

This matter convened by teleconference on July 3, 2020 to deal with the applications of the parties for dispute resolution under the Residential Tenancy Act (Act).

The tenants applied for:

- a return of their security deposit; and
- recovery of the filing fee.

The landlord applied for:

- compensation for alleged damage to the rental unit by the tenants;
- compensation for a monetary loss or other money owed;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the filing fee.

The tenant, LG, and the landlord attended the original hearing and the matter of the tenants' application was considered. Due to time considerations, the hearing was adjourned in order to consider the landlord's application.

An Interim Decision was issued on July 3, 2020, in which I dismissed the tenants' application, with leave to reapply, as their application was premature at the time it was filed. Due to preliminary issues and other considerations contained therein, the Interim

Decision is incorporated by reference and should be read in conjunction with this Decision.

I further ordered the hearing be adjourned and reconvened on the date and time contained in the attached Notice of Adjourned Hearing, for the purpose of hearing from the parties in relation to the landlord's application. The parties were advised that the hearing would continue with or without their presence.

At the reconvened hearing, the landlord attended; however, neither tenant attended.

At the reconvened hearing, the landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants, to keep their security deposit to satisfy a portion of a monetary award, and recovery of the filing fee?

Background and Evidence

At the original hearing, the tenant submitted that the tenancy began on March 15, 2019, ended on April 30, 2020, monthly rent was \$1,930, and they paid a security deposit of \$965. The landlord confirmed this evidence and both parties submitted a copy of the written tenancy agreement.

The landlord retained the tenant's security deposit, having made this claim against it.

The landlord's monetary claim for damages and repairs is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Refrigerator door, large dent (50%)	\$172.65
2. Labour, refrigerator door	\$17.50
3. 5 floor planks	\$43.68

4. Flooring labour	\$262.50
5. 2 countertops, deep scratches, chips (20%)	\$35.84
6. Labour, countertops, sink cabinet (35%)	\$128.63
7. Bottom panel, sink cabinet (50%)	\$32.48
8. Cabinetry supplies (35%)	\$19.60
9. Shipping & travel counter/cabinet (35%)	\$93.35
10. Replace stained pavers materials	\$82.79
11. Labour to replace stained pavers	\$87.50
TOTAL	\$976.52

The landlord explained that he sought a monetary award to fix the damage done to the rental unit by the tenants and the costs associated with the repairs and replacement of the claimed items.

The landlord submitted that the claimed damage by the tenants was beyond reasonable wear and tear and where appropriate, he only claimed for a percentage of the actual costs in order to be reasonable to the tenants to fix the damage.

The landlord submitted photos and videos of the move-in condition and the move-out condition. The move-out condition photos show that there was a very large dent in the refrigerator, the countertops were scratched and chipped and some flooring panels were damaged. The landlord said that he is not asking the costs of the full box of panels he had to buy, but only for five, in a prorated claim.

The landlord also said that tenants damaged the bottom panel of the sink cabinet and that their movers spilled grease and stained the pavers.

The landlord submitted copies of the move-in and move-out condition inspection reports (CIR) and pointed out that the tenant, LG, signed her agreement that the tenants were responsible for the dent in the refrigerator door, scratches on the countertops, dents on the flooring, chips in the bathroom acrylic, and BBQ grease stains on the path pavers.

The landlord referred to the invoices and quotes to support each of his claims.

Unpaid utilities –

The landlord explained that although the written tenancy agreement provides that utilities are included in the monthly rent, the addendum to the tenancy agreement shows that the utilities will be metered and monitored to ensure that they are within historical averages. If the utilities exceed the historical average, the tenant would be responsible for any overage usage and be required to reimburse the measured amount within 3 months of notification.

The landlord said that the tenants immediately began going over the historical averages as they had three extra freezers and an electric SUV vehicle. The landlord submitted that he notified the tenants immediately of their overage, but they failed to pay.

The landlord's monetary claim for the outstanding utilities over the historical average is \$811.27.

The landlord submitted copies of the utility bills, spreadsheets of usage, historical average information and email communication to the tenants.

The tenants submitted documentary and digital evidence, but failed to attend the hearing to present their evidence.

Analysis

Under section 7(1) of the Act, 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 party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Claim for damages –

As to the landlord's claim for damages and repairs, section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged except for reasonable wear and tear.

I find the landlord submitted sufficient documentary and digital evidence that the tenants damaged the rental unit in the instances claimed beyond reasonable wear and tear. I find the digital evidence accurately reflected the condition of the rental unit at the end of the tenancy and I do not dispute the landlord has incurred and will incur costs to make the repairs.

I find the landlord submitted sufficient evidence to support the claimed amounts through invoices and quotes and that the claimed costs were reasonable.

Finally, I find the tenant agreed to be responsible for the damages when she signed the move-out inspection report.

I therefore approve the landlord's monetary claim for damages for \$976.52.

Unpaid utilities –

I find the landlord submitted sufficient evidence to show that the tenants were contractually obligated to and were aware they would be responsible for the utilities which were above the historical average.

The tenants ought to have been aware that when they added three freezers and an electric SUV to their home, the electricity would exceed the historical average. Furthermore, the landlord's evidence showed that he made them aware of the overage.

I find the landlord submitted sufficient evidence of the amount over the historical average during the tenancy and I approve the landlord's monetary claim for \$811.27.

I award the landlord recovery of his filing fee of \$100.00, due to his successful application.

Conclusion

Due to the above, I find the landlord has established a total monetary claim of \$1,887.79, comprised of his claim for damages of \$976.52, unpaid utilities of \$811.27, and the filing fee of \$100.00.

At his request, I direct the landlord to retain the tenants' security deposit of \$965.00 in partial satisfaction of his monetary award of \$1,887.79.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$922.79.

Should the tenants fail to pay the landlord this amount without delay, the order must be served on the tenants to be enforceable and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The tenants are cautioned that costs of such enforcement are subject to recovery from the tenants.

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: August 5, 2020

Residential Tenancy Branch