



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on April 20, 2021, wherein the Landlord sought an Order for monetary compensation from the Tenant, authority to retain their security deposit towards any amounts awarded and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 1:30 p.m. on October 22, 2021. Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:45 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. At the time of service, and by Director's Order dated March 30, 2020, notice of a hearing was able to be served by e-mail if the sender and recipient e-mail addresses have been routinely used for tenancy matters. The Landlord confirmed that she and the Tenant regularly communicated by email during the tenancy. The Landlord provided copies of such communication in evidence before me. The Landlord testified that she sent her Application, Notice of Hearing, and evidence by email to the Tenant on April 30, 2021.

I find the parties used email to communicate about tenancy matters. I therefore find that the Tenant is deemed served with Notice of this participatory hearing on May 3, 2021, three days after the email was sent.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and 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 Tenant?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that this tenancy began November 1, 2020. Monthly rent was \$1,275.00 and the Tenant paid a \$625.00 security deposit, which the Landlord continues to hold.

The Landlord filed a monetary orders worksheet in which she set out her claim as follows:

Labour to install fence panel	\$189.00
Replacement cost of cedar hedge	\$367.38
Cleaning	\$140.00
Filing fee	\$100.00
TOTAL	\$796.38

The Landlord testified that the Tenant removed a fence panel and aggressively cut back a privacy hedge to make room for his landscaping work tent. He promised the Landlord he would replace the panel prior to leaving and failed to do so. As well, the manner in which the hedge was cut back was so severe it needed to be replaced. The Landlord

confirmed that she extended the hedge and was only seeking half the total cost of the hedge.

The Landlord also testified that the Tenant failed to clean the rental unit as required. In support she provided photos of the rental unit.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

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.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the Landlord's undisputed testimony and evidence and on a balance of probabilities, I find as follows. I find the Tenant damaged the fence and hedge at the rental unit such that the Landlord incurred the cost of \$189.00 to replace the fence, and \$367.38 to replace the hedge. I find these amounts to be recoverable from the Tenant and I therefore award her the requested compensation.

I also find the Tenant failed to clean the rental unit as required by section 37 of the *Act*. I find the amount claimed by the Landlord to be reasonable considering the condition of the rental unit as depicted in the photos submitted in evidence by the Landlord. I therefore find the \$140.00 cost to be recoverable from the Tenant.

As the Landlord has been successful in her Application, I also award her recovery of the \$100.00 filing fee.

Conclusion

The Landlord's claim for monetary compensation from the Tenant for the following is granted:

Labour to install fence panel	\$189.00
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Replacement cost of cedar hedge	\$367.38
Cleaning	\$140.00
Filing fee	\$100.00
TOTAL AWARDED	\$796.38

I authorize the Landlord to retain the Tenant's \$625.00 security deposit and I grant the Landlord a Monetary Order for the balance due in the amount of **\$171.38**. This Monetary Order must be served on the Tenant and may be filed and enforced 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: November 3, 2021

Residential Tenancy Branch