



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding EXCLUSIVE PROPERTY RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL, MNDCT, MNSD, FFT

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

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

The hearing was conducted via teleconference and was attended by the landlords agent. No one was in attendance on behalf of the tenant. The landlord submitted documentary evidence that the tenant was served notice of this application and this hearing by registered mail on August 10, 2022. Canada Post tracking information was submitted in the landlord's evidence. The landlord also provided Canada Post tracking information that the tenants lawyer was served by registered mail on August 24, 2022 after the landlord received the tenants cross application for this hearing. Based on the

submissions of the landlord, I find the tenants were deemed served in accordance to sections 89 and 90 of the *Act*, five days later on August 15, 2022. The tenants filed a cross application and submitted documentation. I am satisfied that the tenants were aware of today's hearing but chose not to attend, therefore, I continued in the absence of the tenants.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenants, I order the tenant's entire application dismissed without leave to reapply.

Issue to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit and pet deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's undisputed testimony is as follows. The tenancy began on March 1, 2021 and ended on July 8, 2022. The tenants were obligated to pay \$9995.00 per month in rent and at the outset of the tenancy the tenants paid a \$4997.50 security deposit and \$4997.50 pet deposit which the landlord still holds. The landlord testified that this is a luxury rental in downtown Vancouver that was fully furnished with high end appliances, fixtures and furniture.

The landlord testified that the unit was fully renovated prior to the tenants moving in. The landlord testified that the tenant left the unit dirty and damaged at move out. The landlord testified that he has never seen such extreme damage in his career as a

property manager to a luxury unit. The landlord testified that the animal damage and smell created such a toxic bio hazard environment, that trades people and cleaners could not enter the unit. The landlord provided the following summary of the damages as part of their application:

“Extensive shocking damage to rental suite rendering it unfit for human habitation or showing it to future renters: 2 destroyed leather sofas, a swivel chair, ruined bedroom Wool carpets; damage to blinds, imported kitchen cabinets, vanities & marble dining table & chair. Stained bathroom countertop. Extensive damage to suite's paint, drywall, baseboards & doors. 1 mattress ruined. 2 night tables damaged. Decorative items broken, some kitchen hardware and small appliances and bed covers missing.

The landlord testified that the damage exceeds \$42,000.00 dollars but is aware that the Branch's limitation for monetary awards is \$35,000.00. The landlord testified that he was content to proceed and is seeking the maximum allowable under the Residential Tenancy Act.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord provided extensive documentation, **undisputed testimony**, receipts and photos along with condition inspection reports to support their application. The landlord gave clear and concise testimony outlining the extraordinary and severe damage caused by the tenants and their two dogs and cat. I am satisfied that the landlord has provided extensive evidence to show that the damage is far and above wear and tear and can be fairly categorized as extreme. The landlord has provided sufficient evidence to support the entirety of their claim. Although the landlord has proven the entirety of their claim, and as noted above, the *Act* has a maximum award of \$35,000.00, accordingly; I find that the landlord is entitled to that amount.

Conclusion

The landlord has established a claim for \$35,000.00. I order that the landlord retain the \$4997.50 security deposit and \$4997.50 pet deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$25,005.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety 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: April 18, 2023

Residential Tenancy Branch