



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNDL-S

Introduction

The landlords applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The landlords ask me for the following orders against the tenants.

1. Exclusive possession of the rental unit in favour of the landlords.
2. Payment of \$8,751.99 for damage the tenants caused to the rental unit.

The landlords appeared at the hearing on 28 April 2023. The tenants did not.

Issues to be Decided

Should the landlords have exclusive possession of the rental unit?

Should the tenants pay \$8,751.99 to the landlords for damage to the unit?

Preliminary Matter

The tenants did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 1100 hours and ended at about an hour later. I confirmed:

1. that the landlords affirmed that they sent a copy of the Notice of Hearing to the address of the rental unit *via* registered mail on 23 March;
2. that the RTB had provided the correct call-in numbers and participant codes in the Notice of Hearing; and

3. by reviewing the teleconference system, that the landlords and I were the only ones who had called into this teleconference.

Rule 7.3 of the RTB Rules of Procedure reads:

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.

The tenants failed to attend this hearing, but I conducted it in their absence. The landlords' evidence satisfied me that they had correctly notified the tenants of this hearing and how to participate.

Background and Evidence

The landlords told me that the rental unit is an old house, about 100 years old, that has been extensively refurbished.

The landlords affirmed that the tenants moved in in 2018, and deposited \$900.00 with the landlords as a security deposit. Upon moving in, the landlords inspected the unit with the tenants. As a result of this inspection, the landlords produced a report [the 'Inspection Report'], which the tenants signed. The landlords told me that at the time the tenants signed the Inspection Report, they agreed that it accurately reflected the state of the unit.

The landlords also said that the rent each month is \$1,950.00, and that it is due on the first day of each month.

Sometime in the fall of 2022, the landlords had occasion to inspect the unit, and noticed only a broken window in a door [the 'Door Window'].

They told me that the tenants did not pay rent on 1 March, and so the landlords attached a 10-day Notice to End Tenancy for Unpaid Rent [the 'Notice'] on the door of the rental unit on 2 March. The landlords affirmed the following about the Notice:

1. they used the RTB form 30;

2. they signed and dated it 2 March;
3. they entered the address of the rental unit;
4. they recorded the effective date of the Notice as 13 March; and
5. they recorded the basis of this Notice as failure to pay \$1,950.00 for rent due 1 March.

The landlords supported this testimony with a copy of the Notice. They also told me that the tenants had not disputed this Notice, and that the tenants had also not paid rent for April.

Then, in January 2023, a friend of the tenants who was staying at the unit contacted the landlords about an issue with the unit's bathroom. When the landlords entered the unit to look at the bathroom, they noticed that the Door Window had not been repaired, and they also discovered the following damage:

1. a hole in the kitchen floor [the 'Hole'];
2. a different stove from the original stove that the landlords had installed before the tenancy began, with a broken door [the 'Stove'];
3. a door with a missing locking handle [the 'Door Lock'];
4. two doors without knobs [the 'Doorknobs'];
5. extensive damage to baseboards [the 'Baseboards']; and
6. one missing door, and three damaged doors [the 'Doors'].

The landlords corroborated this damage with photographs of each item. And the landlords told me that none of this damage appeared in the Inspection Report. The landlords believe that the tenants caused this damage.

Since discovering this damage, the landlords contacted the tenants several times in February and March (after the Notice had been served) by various means: e-mail, text and phone calls. But the tenants never responded to any of this contact, and none of the communication to the tenants referred to the damage done to the unit.

The landlords told me that they can repair all of this damage themselves – except for the Doors, which must be installed by others. And they told me the following about the cost of repairing the damage:

1. \$20.38 for a subfloor panel to repair the Hole, along with \$333.60 for 120 square feet of vinyl flooring and \$73.99 for vinyl glue to re-floor the kitchen (which is necessary as the landlords cannot source flooring to match that presently in the kitchen and which the tenants have damaged);

2. \$1,199.99 to replace the Stove;
3. \$29.97 to replace the Door Lock;
4. \$69.99 to replace the Doorknobs;
5. \$334.80 for 90 feet of new baseboard to replace the damaged Baseboards; and
6. \$6,689.32 to replace and install the Doors and the Door Window - all of which must be custom-built as the doors were of non-standard size in order to fit the smaller jambs of the antiquated unit.

The landlords corroborated these costs with copies of estimates from various suppliers. And they told me that the total of all these estimates is \$8,751.99.

There was no evidence before me to contradict any of these estimates, or to suggest that anyone other than the tenants caused this damage.

Analysis

Should the landlords have exclusive possession of the rental unit?

Based on the evidence before me, I find that the Notice is an effective notice, and that the landlords served it on the tenants on 2 March. There is no evidence that the tenants applied for dispute resolution after receiving this Notice. According, therefore, to section 47 (5) of the *Residential Tenancy Act* [the 'Act'], the tenants are conclusively presumed to have accepted that the tenancy ended on 13 March 2023.

Also, I accept the landlords' evidence that the tenants failed to pay rent for March and April. So, *per* section 55 (1.1) of the Act, the tenants must pay to the landlords \$3,900.00 for unpaid rent for March and April.

Should the tenants pay \$8,751.99 to the landlords for damage to the unit?

Section 7 (2) of the Act requires a party claiming compensation for damage that results from the other party's failure to comply with the Act to do whatever is reasonable to minimize the damage.

In this case, to comply with the above section of the Act, the landlords would have had to notify the tenants of both the damage and the tenants' obligation to repair it. Because the landlords did not do this, they have not done whatever is reasonable to minimise the damage.

So, I dismiss this claim with leave to re-apply once the landlords have notified the tenants of the damage and their obligation to repair it. Such notification must comply with methods of service outlined in section 88 of the Act.

Conclusion

I make an Order of Possession in favour of the landlords. This order is effective two days after the landlords serve it upon the tenants. If the tenants or any occupant of the rental unit fails to comply with my order, then the landlords can file this order with the Supreme Court of British Columbia, and enforce it as an order of that court.

At the end of the tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Tenants and landlords both have an obligation to complete a move-out condition inspection at the end of the tenancy. To learn about obligations related to security deposits, damage and compensation, search the RTB website for information about after a tenancy ends.

I also order that the tenants pay the outstanding rent, in the amount of \$3,900.00. The landlords must serve this order on the tenants as soon as possible. If the tenants fail to obey my order, then the landlords can file this order with the Small Claims Division of the Provincial Court of British Columbia, and enforce it as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 5 May 2023

Residential Tenancy Branch