



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for unpaid rent pursuant to section 67 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:49 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's representative ("the landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. The landlord sought to amend her application reducing the amount sought from \$692.30 to \$292.30 indicating that the tenant had paid \$400.00 of the outstanding amount since the application was filed.

The landlord testified that the tenant was served with the landlord's Application for Dispute Resolution by registered mail on January 9, 2015. She provided a receipt and tracking information, indicating that the tenant had signed for receipt of the package on January 16, 2015. Based on the evidence provided and pursuant to sections 89 and 90 of the *Act*, I find the tenant deemed served with the landlord's Application for Dispute Resolution on January 15, 2015.

Issue(s) to be Decided

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

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began April 27, 2012 and continued on interim fixed term tenancies until April 30, 2014. The landlord testified at this hearing that the tenant has now returned to reside within their rental property (complexes). At the end of this tenancy, the rental amount was \$487.00 payable on the first of each month. The landlord testified that no security deposit was provided by the tenant.

The landlord testified that, when the tenant vacated the rental unit, it was not cleaned sufficiently and there was damage to the unit. The landlord provided photographs depicting a dirty rental unit with many holes in the walls, broken door latches and items left behind. The photographic evidence also shows that the smoke detectors were removed from within the rental unit. The landlord provided undisputed receipts with respect to cleaning (\$441.95); bathroom door replacement (\$63.00); and repair of drywall throughout the unit (\$489.30). The landlord testified that, prior to the filing of the dispute resolution application, the tenant paid \$300.00. The landlord testified that the tenant had a credit on her account for \$1.95. The landlord testified that, after the filing of the dispute resolution application, the tenant paid \$400.00 to the landlord.

The landlord provided documentary evidence to show that the landlords had communicated with the tenant on more than one occasion with respect to payment for damage to the rental unit. The landlords provided a letter dated October 27, 2014 that advised the tenant of an outstanding balance for work done by the landlords when the unit was vacated by the tenant. It stated in part,

chargebacks are for work completed because it exceeds reasonable wear and tear to the unit or is not the landlord's responsibility to repair, as per your Residential Tenancy Agreement...

The landlord submitted condition inspection reports prepared at move-in and move-out. The move-out inspection report is signed by both the tenant and the landlord. The report indicates damage to several areas of the residential premises. The landlord testified that the tenant agreed to pay the "chargeback" and that she has made some payments towards the amount claimed by the landlord. The landlord sought an order to enforce the payment of the final outstanding amount. The landlord testified that the tenant has agreed to continue to make efforts to pay.

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord testified to the damage within the unit and the loss to the landlord for repairing that damage. The landlord has supported her testimony with photographic evidence that clearly illustrates the need for repairs and cleaning to the rental unit. Beyond the fact that the tenant was the sole resident in this unit, as evidenced by the Residential Tenancy Agreement, the tenant has acknowledged the damage in signing the condition inspection report. The undisputed sworn testimony of the landlord is that the tenant has acknowledged the damage to the unit as well as the resulting debt to the landlord. This is further evidenced by the landlord's application to amend the amount owed by the tenant, testifying that she has paid a portion of the amount.

The landlord provided receipts and invoices to reflect the amounts paid for cleaning and repairs. The landlord also acknowledged partial payment by the tenant. The monetary loss and payments were provided by the landlord as follows;

Landlord's Items	Amount
Cleaning	\$441.95
Door Replacement	63.00
Drywall work	489.30
Tenant payment	-300.00
Tenant payment	-400.00
Tenant credit on landlord account	-1.95
Amount landlord claims owed by tenant	\$292.30
Filing Fees for the cost of this application	50.00
Total Amount Sought by landlord	\$342.30

Based on all of the evidence provided and the sworn, undisputed testimony of the landlord, I find that the landlord is entitled to a monetary order including the remaining, outstanding amount of \$292.30 and, as the landlord was successful in this application, the landlord is entitled to recover the \$50.00 filing fee.

Conclusion

I issue a monetary Order in favour of the landlords in the amount of \$342.30.

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia

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: May 08, 2015

Residential Tenancy Branch

