



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding BAYSIDE TOWERS APARTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on February 26, 2016. The Landlord filed seeking a \$1,101.00 Monetary Order for: unpaid rent or utilities; to keep the security deposit and to recover the cost of the filing fee.

Upon review of the Landlord's application for dispute resolution the Landlord listed the items he was seeking compensation for in the details of the dispute which included: rent; parking fees; cleaning costs including garbage removal; drape rental; and drape dry cleaning. Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box on the application *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover compensation for additional items other than unpaid rent. Therefore, I amended the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

The hearing was conducted via teleconference and was attended by the Landlord, his assistant, and the Tenant. The Landlord and Tenant gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each party confirmed receipt of the evidence submitted by each other. Each party affirmed that they served the other party with copies of the same documents that they had served the Residential Tenancy Branch (RTB). No issues regarding service or receipt were raised. As such, I accepted the submissions from each party as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to monetary compensation?
2. If so, is the Landlord entitled to retain the security deposit in partial satisfaction of his claim?

Background and Evidence

The parties entered into a written fixed term tenancy agreement which began on February 8, 2015 and was not scheduled to end until January 31, 2016. As per the written tenancy agreement a total rent of \$1,155.00 (\$1,095.00 rent + \$60.00 parking) was payable on or before the first of each month. On February 8, 2015 the Tenant paid \$547.50 as the security deposit.

On January 15, 2016 the Landlord was issued an Order of Possession effective upon two days of service and a Monetary Order of \$1,095.00 for January 2016 unpaid rent.

On February 9, 2016 the Landlord was issued a Writ of Possession from the Supreme Court of British Columbia. A bailiff executed the Writ of Possession and removed the Tenant and his possessions from the rental unit on February 11, 2016.

The Landlord now seeks compensation of \$1,101.00 comprised of the following: \$659.00 for loss of rent from February 1 -16, 2016; \$100.00 for drape rental and dry cleaning; \$133.00 for parking fee for January 1, 2016 to part of February 2016; \$109.00 for garbage removal from suite and cleaning costs; and the \$100.00 filing fee. The Landlord requested that the \$1,101.00 amount be offset against the Tenant's security deposit.

The Landlord testified the Tenant refused to allow them access to show the rental unit which prevented them from being able to re-rent the unit right away. The Tenant did not dispute this submission.

The Landlord asserted the term in the tenancy agreement for drape rental and cleaning was optional and the Tenant agreed to that option as provided for in the tenancy agreement.

The Tenant testified and confirmed he remained in the rental unit until February 11, 2016. The Tenant argued he should only have to pay for rent until February 11, 2016 the day he was removed from the unit. He argued he should not have to pay rent for the period of February 12 - 16, 2016; as he did not occupy the rental unit after February 11, 2016.

The Tenant asserted the Landlord included a term in his tenancy agreement to automatically deduct the cost of drape rental and cleaning from the security deposit which is in breach of section 20(e) of the *Act*. The Tenant argued the drapes were clean and in good shape at the end of his tenancy and no cleaning of the drapes was required.

The written tenancy agreement, as submitted into evidence by the Landlord stipulated, in part, as follows:

Security deposit. *A security deposit is payable in advance, in the amount of \$547.50 Less rental of drapes & dry cleaning of same for the first year \$100.-*
Net security deposit \$447.50

[Reproduced as written]

The Tenant did not dispute the \$133.00 claimed by the Landlord for parking. He testified the amount claimed was the correct amount he owed for parking.

The Tenant disputed the claim for garbage removal. He asserted the bailiff contacted him on his cellphone to inform him they were removing his possessions. The Tenant said he attended the rental unit shortly after receiving that call and he witnessed the 4 movers remove all of his possessions and all of the garbage from the unit. He then conducted a walk through with the bailiff and nothing remained in the rental unit.

The Tenant asserted he never signed nor initialed the move in condition report submitted by the Landlord and alleged his initials were a forgery on that document. He argued he never received a copy of that report until he received the Landlord's evidence submission; therefore, the Landlord extinguished his right to retain or claim against his security deposit.

The Landlord disputed the Tenant's submissions and argued the bailiff only removed the Tenant's possessions. He asserted the bailiff did not remove garbage and the bailiff did not conduct cleaning. The Landlord pointed to his evidence which included "bills" showing the amount of cleaning that was completed on the rental unit.

The Landlord testified the move in condition report was completed in the presence of the Tenant and the initials on that document were written by the Tenant. The Landlord stated the Tenant would have been given a copy of the move in report at the beginning of the tenancy, shortly after it was signed, just as they always do.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 62(3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this *Act* applies.

As found in the January 15, 2016 Decision, this tenancy ended **January 17, 2016** which was the effective date of the 10 Day Notice that was served upon the Tenant on January 6, 2016. In addition, the Landlord was granted a Monetary Order on January 15, 2016 which included \$1,095.00 compensation for January 2016 rent that was due on January 1, 2016.

Residential Tenancy Policy Guideline 3 provides that a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provisions, however if a tenant remains in possession of the premises (over holds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. I concur with this policy and find it relates to the matters currently before me.

In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent if the rental unit is not able to be re-rented immediately upon the tenant vacating the rental unit due to the tenant's actions or neglect. For example, if the tenant fails to allow the landlord access to show the unit to prospective tenants or the premises are un-rentable due to the state of cleanliness the unit was left in, the landlord is entitled to claim damages for loss of rent. That being said, the landlord is required to mitigate the loss by completing all required work in a timely manner.

The irrefutable evidence was the Tenant remained in possession of the rental unit until February 11, 2016, the date which the bailiff removed all of the Tenant's possessions and returned possession of the rental unit to the Landlord. Notwithstanding the Tenant's submission that the bailiff removed all of the garbage from the rental unit when they removed his possessions, I accept the Landlord's submission that the rental unit required cleaning. I further accept the Landlord's submissions that he was prevented from re-renting the unit right away due to the Tenant's refusal to allow him to show the unit to prospective tenants. The time sheets submitted into evidence by the Landlord indicate the cleaning was conducted on February 11 and 12, 2016. Based on the aforementioned, I find the Landlord did what was reasonable to mitigate his loss by having the unit cleaned as soon as possible and began showings to prospective tenants once the Tenant was removed by the bailiff. Accordingly, I grant the Landlord's application for loss of rent for the period of February 1 – 16, 2016 at the daily per diem rate of \$36.00 ($\$1,095.00 \text{ monthly rent} \times 12 \text{ months} \div 365 \text{ days per year} = \36.00 per day) for a total amount of **\$576.00** (16 days x \$36.00/day), pursuant to section 67 of the *Act*.

Section 20(e) of the *Act* stipulates that a landlord must not require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

As listed above, the tenancy agreement provided for an automatic \$100.00 deduction from the security deposit for drape rental and dry cleaning. I accept the Tenant's submissions that the aforementioned automatic deduction from his security deposit is in breach of section 20(e) of the *Act* and is therefore, unenforceable. In addition, I find the Landlord provided insufficient evidence that the drapes required cleaning or were in fact dry cleaned at the end of this tenancy. Accordingly, I dismiss the Landlord's claim of \$100.00 for drape rental and cleaning, without leave to reapply.

The Tenant did not dispute the Landlord's claim of \$133.00 for parking. Rather, the Tenant confirmed the amount claimed was the correct amount he owed for parking. Accordingly, I grant the Landlord's claim of **\$133.00** for parking, pursuant to section 67 of the *Act*.

Notwithstanding the Tenant's submission that he witnessed the bailiff remove everything from the rental unit; I favored the Landlord's submissions that the rental unit required cleaning prior to renting it to a new tenant. I favored the Landlord's submissions regarding cleaning as they were reasonable given the circumstances presented to me during the hearing and were supported by timesheets of the staff who conducted the cleaning. Accordingly, I find there was sufficient evidence to support the Landlord's claim for cleaning costs and I award him **\$109.00** (\$75.00 + \$34.00), pursuant to section 67 of the *Act*.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has primarily succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*.

Monetary Order – In regards to the Tenant's assertion that the Landlord extinguished his right to claim against the security deposit due to: (a) the Tenant's allegation that he had never seen or signed the move in condition inspection report form at the beginning of this tenancy; (b) the form had been fraudulently completed with the Tenant's initials; and (c) the Tenant did not receive a copy of the move in report form until he received the Landlord's evidence submissions; I find there was insufficient evidence to prove the Tenant's allegations. Rather, given the circumstances presented to me during the hearing, I favored the Landlord's submissions that their staff conducted the move in inspection, completed the form in the presence of the Tenant, and provided a copy of that form to the Tenant a day or two after the start of the tenancy; as they do with every tenancy.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$547.50 deposit since February 8, 2015. After consideration of the above, and pursuant to section 62 of the *Act*, I

find that the Landlord's monetary award meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Loss of rent up to February 16, 2016	\$ 576.00
Parking	133.00
Cleaning	109.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$ 918.00
LESS: Security Deposit \$547.50 + Interest 0.00	<u>- 547.50</u>
Offset amount due to the Landlord	<u>\$ 370.50</u>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$370.50 forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$370.50**.

Conclusion

The Landlord was primarily successful which his application and was granted a monetary award in the amount of \$918.00. The Tenant's security deposit was offset against that award leaving a balance owed to the Landlord of **\$370.50**.

This decision is final, legally binding, and 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 26, 2016

Residential Tenancy Branch