



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC

Introduction

This hearing convened as a result of cross applications.

In the Tenant's Application for Dispute Resolution filed on February 26, 2016 she applied for return of her security deposit and monetary compensation. In the Landlords' Application filed on August 11, 2016 the Landlords sought authority to retain the Tenant's security deposit as well as monetary compensation from the Tenant for unpaid rent, damage to the rental unit and to recover the filing fee.

Only the Landlord, R.D., appeared at 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 Landlord testified they served the Tenant with the Notice of Hearing and their Application on August 24, 2016 by registered mail. She provided a copy of the registered mail tracking number which is reproduced on the cover page of this my Decision.

Residential Tenancy Policy Guideline, "12. Service Provisions" provides that service cannot be avoided by refusing or failing to retrieve registered mail as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Further, pursuant to section 90(a) of the *Act* documents served by registered mail are deemed served five days later; accordingly, I find the Tenant was duly served as of August 29, 2016 and I proceeded in her absence.

The line was monitored for 11 minutes and the only participant who called into the hearing was the Landlord, R.D. As the Tenant was not here to present her case her Application is dismissed.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. Should the Landlords be entitled to retain the Tenant's security deposit?
3. Should the Landlords recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began September 1, 2015. Monthly rent was payable in the amount of \$1,050.00. The Tenant paid a security deposit in the amount of \$525.00.

The Landlord further testified that the tenancy ended as the municipality in which the unit was located determined the suite was illegal such that the suite was no longer rentable. She confirmed that the Tenant moved out January 1, 2016. A copy of the Mutual Agreement to End Tenancy was also provided in evidence.

The Landlord further testified that she received the Tenant's forwarding address when she received the Tenant's application for Dispute resolution. A copy of text communication between the parties confirms the Tenant planned to move overseas after the end of the tenancy and claimed that she did not have a forwarding address at the time.

The Landlord testified that the rent was reduced to \$525.00 for December 2015 as the Tenant's roommate had moved out and the Landlord agreed to reduce the rent accordingly.

The Landlord testified that the Tenant left the rental unit dirty and damaged. A copy of the move out condition inspection report was provided in evidence noting such

deficiencies, as well as a detailed receipt for cleaning and repair services dated January 5, 2016.

A Monetary Orders Worksheet completed by the Landlords was introduced in evidence and which confirmed the Landlords sought compensation for the following:

Unpaid rent for December 2015	\$525.00
Cleaning and paint and repair	\$1,133.27
Photo development	\$27.00
Photocopying	\$18.82
Repair of the screen door	\$128.80
Replacement of the refrigerator door	\$280.00
Tax and shipping of refrigerator door	\$93.60
Filing fee	\$100.00
TOTAL	\$2,306.49

The Landlord also sought to retain the Tenant's security deposit in the amount of \$525.00 towards any amounts awarded.

Analysis

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 Landlords have 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.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the *Act* as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

I accept the Landlord's undisputed testimony that the Tenant, L.B., failed to pay rent for December 2015 and that the rent was reduced when her roommate moved out. Accordingly, I award them compensation in the amount of \$525.00 as claimed.

I also find that the Tenant failed to clean the rental unit as required and that this has caused the Landlord's to incur the cost of cleaning, painting and repair, as well as repair of the screen door and replacement of the refrigerator door (including tax and shipping on this amount). I accept the Landlord's undisputed testimony in this regard. I am also persuaded by the detailed receipt in evidence confirming the work done to clean and repair the rental unit on January 5, 2016 as well as the Move out Condition Inspection Report which was provided in evidence. Accordingly, I find that these amounts are also recoverable.

Administrative costs such as photo development and photocopying are not recoverable under the *Residential Tenancy Act*. Accordingly, I decline the Landlord's request for compensation for these expenses.

As the Landlords have been substantially successful I award her recovery of the filing fee.

In sum, I award the Landlords **\$2,260.67** in monetary compensation pursuant to sections 7, 67, and 72 as follows:

Unpaid rent for December 2015	\$525.00
Cleaning and paint and repair	\$1,133.27
Repair of the screen door	\$128.80
Replacement of the refrigerator door	\$280.00
Tax and shipping of refrigerator door	\$93.60
Filing fee	\$100.00
TOTAL	\$2,260.67

I authorize the Landlords to retain the Tenant's security deposit in teha mount of \$525.00 and I grant them a Monetary Order for the balance due in the amount of

\$1,735.67. This Order must be served on the Tenant and may be filed and enforce in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Tenant's claim is dismissed as she failed to attend the hearing.

The Landlords are awarded compensation in the amount of \$2,260.67, may retain the security deposit and are granted a Monetary Order in the amount of **\$1,735.67** for the balance due.

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: October 17, 2016

Residential Tenancy Branch

