



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes:

MND, MNSD, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, unpaid rent, to retain the security and pet deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

One of the two tenants and the landlord were present at each of two hearing dates. At the start of each hearing I introduced myself and the participants. The parties were affirmed on January 23, 2017 and reminded on February 17, 2017 that they continue to provide affirmed testimony.

Issues to the Decided

Is the landlord entitled to compensation in the sum of \$1,800.00 for unfulfilled lease agreement obligations?

Is the landlord entitled to compensation in the sum of \$1,500.00 for damage to a fire counter?

May the landlord retain the security and pet deposits?

Preliminary Matters

The hearing reconvened on February 17, 2017. The parties confirmed receipt of the interim decision. The landlord expressed dissatisfaction with the interim decision findings. The interim decision provided reasons for refusal of the request to withdraw the application and accept late evidence submissions.

The landlord said that she is pursuing judicial review of the interim decision as the landlord was refused the opportunity to withdraw the application so that late evidence submissions could be submitted and the claim increased. The landlord said she has 90 days to seek review and that the process of seeking review has commenced.

It was explained that a refusal to proceed with the application will likely result in dismissal of the claim. The reasons given in the interim decision were reiterated; however the landlord was adamant that her right to submit evidence and increase the claim was not respected. Understanding that the application could be dismissed the landlord chose to refuse to proceed with the claim.

I have determined that the landlord attempted to evade the requirements of the Rules of Procedure and that the reasons were adequately set out in the interim decision. By attending the reconvened hearing and refusing to proceed I find that the landlord is attempting to avoid the findings made on January 25, 2017. The landlord had wanted to rehabilitate her late evidence submissions by withdrawing the application. I rejected that request, as to allow withdrawal would form a breach of administrative fairness and the principles of natural justice. A party may not rehabilitate an application by withdrawing.

Section 62(4) of the Act provides:

(4) The director may dismiss all or part of an application for dispute resolution if

- (a) there are no reasonable grounds for the application or part,*
- (b) the application or part does not disclose a dispute that may be determined under this Part, or*
- (c) the application or part is frivolous or an abuse of the dispute resolution process.*

(Emphasis added)

As acknowledged during the hearing, the landlord has the right to refuse to proceed with the hearing. However, I find that the decision to refuse to proceed is in direct opposition to the findings set out in the interim decision and, as such, forms an abuse of the dispute resolution process.

Therefore; pursuant to section 62(4)(c) of the Act I find that the application is dismissed without leave to reapply.

The tenant was frustrated by the landlords' refusal to proceed with the hearing. There is the matter of the \$2,300.00 security deposit and \$300.00 pet deposit that the landlord is holding. During the hearing it was suggested the tenant submit an application requesting returned of the deposits. However, as the landlords' application is dismissed I have applied Residential Tenancy Branch policy which suggests that when a landlord applies claiming against a deposit any residue of the deposit should be ordered returned to the tenant.

Section 62(3) of the Act provides:

(3) 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.

Therefore, in accordance with section 62(3) and 67 of the Act I order the landlord to return the \$2,300.00 security deposit and \$300.00 pet deposit to the tenants.

Based on these determinations I grant the tenants a monetary order in the sum of \$2,600.00. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The application is dismissed without leave to reapply.

The landlord is ordered to return the security and pet deposits to the tenants.

This final decision should be read in conjunction with the interim decision issued on January 25, 2017.

This decision is final and 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: February 17, 2017

Residential Tenancy Branch