



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenant, authority to retain the security deposit and to recover the filing fee.

The hearing was conducted by teleconference on April 11, 2017 at 1:30 p.m. Only the Landlord's representative, M.N., called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

M.N. testified that they served the Tenant with the Notice of Hearing and the Application on October 13, 2016 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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:

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.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of October 18, 2016 and I proceeded with the hearing in their absence.

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 Landlord/Tenant's submissions and

or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

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

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming this tenancy began June 1, 2011. The Tenant paid a security deposit of \$600.00 on May 27, 2013. The Tenant moved out September 29, 2016.

A copy of the Move In/Out Condition Inspection Report was also provided in evidence by the Landlord.

M.N. testified that the Tenant refused to provide a residential address and instead provided a PO Box, which is indicated on the move out Condition Inspection Report.

On October 13, 2016 the Landlord applied for Dispute Resolution.

The Landlord filed a Monetary Orders Worksheet confirming the following was sought:

Strata fine for "illegal move out"	\$200.00
Suite cleaning	\$299.25
Carpet cleaning	\$131.25
Replacement of the glass cooktop	\$845.57
TOTAL	\$1,476.07

Also introduced in evidence by the Landlord were invoices confirming the amounts claimed above, photos of the damaged glass cooktop, and communication regarding the move out inspection. In the email communication submitted in evidence M.N. confirms the Tenant requested that the Landlord arrange for cleaning of the rental unit as well as carpet cleaning.

M.N. confirmed that she did not receive confirmation that the illegal move out fee of \$200.00 was charged and accordingly she did not seek compensation for this amount at the hearing.

M.N. stated that the stove was brand new as of December 2011. At the time the tenancy ended the stove was five years old. She further confirmed that she was advised it would be more cost effective to replace the glass cooktop rather than the entire stove as it was operational and the cost to replace would have been more.

Analysis

After consideration of the evidence filed, the undisputed testimony of the Landlord's representative and on a balance of probabilities I find as follows.

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 Landlord has 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 section 37 of the *Act* as follows:

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 find, based on the undisputed evidence and testimony before me, that the Tenant failed to clean the rental unit and carpets as required. I further find the Tenant damaged

the glass cook top which required replacement. I therefore award the Landlord related compensation.

As the Landlord has been successful, I award them recovery of the \$100.00 filing fee for a total award of **\$1,376.07** for the following:

Suite cleaning	\$299.25
Carpet cleaning	\$131.25
Replacement of the glass cooktop	\$845.57
Filing fee	\$100.00
TOTAL	\$1,376.07

Conclusion

The Landlord is granted compensation in the amount of \$1,376.07, may retain the Tenant's \$600.00 security deposit towards this amount, and is granted a Monetary Order for the balance due in the amount of **\$776.07**. This Monetary Order must be served on the Tenant and may, if necessary, be filed and enforce in the B.C. Provincial Court (Small Claims Division).

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: April 11, 2017

Residential Tenancy Branch