



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MND, MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for landlord's use of property pursuant to section 55;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package in person on March 31, 2017. The landlord also stated that the tenant was served with the submitted documentary evidence in person on March 31, 2017 in the same package. The tenant disputes this stating that no documentary evidence was received. The landlord has provided as confirmation of service a copy of the 4 pages of documentary evidence in which the tenant had signed and dated March 31, 2017 as "received". No evidence was submitted by the tenant. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per section 89 of the Act. I also find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant regarding the service of the documentary evidence. The landlord's claim was supported by the signed acknowledgement of the tenant dated March 31, 2017. As such, I find that the tenant was properly served in person on March 31, 2017 and is deemed sufficiently served as per section 90 of the Act.

Preliminary Issue(s)

Extensive discussions with both parties resulted in the landlord's application for dispute being clarified regarding the request for an order of possession as a result of a 2 Month Notice for Landlord's Use by the landlord. The landlord provided affirmed testimony that the tenant vacated the rental unit on March 31, 2016, 1 year before the application was

filed. The landlord also clarified that a request for an order of possession was not made. As such, I find that the selection on the landlord's application for dispute was made in error and as such, is not required. No further action is required for this portion of the application.

Discussions with both parties also clarified the landlord's request to be allowed to retain all of part of the security deposit in satisfaction of this damage claim. Both parties confirmed in their direct testimony that the tenant had filed for an application for dispute over the security deposit in another hearing and that the tenant was granted a monetary order for return of double of that deposit. As such, I decline jurisdiction regarding the security deposit as that matter has already been spoken to in a previous decision.

The hearing shall proceed on the landlord's claim for damages.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided affirmed testimony that this tenancy began on January 18, 2015 and ended on March 31, 2016.

The landlord claims that after vacating the rental premises, the landlord discovered that the tenant left it damaged with,

A hole in the wall
Carpet and floor burnt
Garbage left behind

In support of this claim the landlord has provided a copy of an invoice dated April 10, 2016 which states that a contractor had removed (a rug) and installed (laminated) flooring and fix the drywall in room for \$861.00.

The tenant disputes the landlord's claim regarding the hole in the wall and the garbage left behind. The tenant claims that no garbage was left and that the hole in the wall was

present at the start of her tenancy. The tenant has confirmed that she did cause damage in the flooring by leaving burn marks in different sections of it due to cigarettes.

The landlord stated that there was no evidence to show that garbage was left behind or that the hole in the wall was caused by the tenant.

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. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Both parties have confirmed that the flooring was damaged by burns and that there was a hole in the wall. The tenant has confirmed that burns in the flooring were caused by her. The tenant has disputed that garbage was left behind and that the hole in the wall was present when she began her tenancy.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, I find based upon the undisputed affirmed evidence of both parties that the tenant caused damage to the flooring due to burn marks. I find regarding the landlord's claim that a hole in the wall was caused by the tenant has failed. The landlord has failed to provide any supporting evidence to show that a hole was not pre-existing at the start of this tenancy. I also find that the landlord has failed to provide any evidence regarding garbage left behind by the tenant. This claim was disputed by the tenant. The landlord failed to disclose any details of this portion of the claim or of any evidence to support it that garbage was left behind by the tenant.

As the landlord has submitted one invoice for \$861.00 for the combined replacement of flooring and the repair of the drywall, I find that the landlord is only entitled to a portion of the \$800.00 claim for damaged flooring. The landlord provided no details of portioning the invoice for flooring damage or fixing the drywall. The landlord has also failed to provide any details of the claim that the tenant left garbage behind. On this basis, I make an arbitrary finding that the tenant shall be credited with \$100.00. As such, the landlord has established a claim for \$700.00 in compensation for damaged flooring.

Conclusion

The landlord is granted a monetary order for \$700.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division 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: August 28, 2017

Residential Tenancy Branch