



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNSD, MNR, MND, FF

Introduction

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

The hearing was conducted by teleconference on September 14, 2017 at 10:30 a.m. Only the Landlord called into the hearing. She gave affirmed testimony and as provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that she personally served the Tenant with the Notice of Hearing and the Application at 7:00 p.m. on July 9, 2017. Documentary evidence submitted by the Landlord confirmed this service. I find the Tenant was duly served as of July 9, 2017 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'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.

Preliminary Matter

The Landlord testified that the Tenant vacated the rental unit as of the end of August 2017 and as such an Order of Possession was not required.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord testified that the Tenant moved into the rental unit approximately three years ago. She confirmed that she purchased the property December 15, 2016. Monthly rent was \$750.00 per month including utilities. She confirmed that she has \$375.00 security deposit.

The Landlord stated at the hearing that the Tenant paid the outstanding rent such that she no longer sought compensation for this amount.

The Landlord claimed the sum of \$1,000.00 for the cost to repair the walls. She stated that she has not repaired the walls as the Tenant's belongings remain in the rental unit.

The Landlord confirmed that she also sought the sum of \$500.00 for unpaid utilities. She stated that the Tenant let their relatives live in the rental unit and use the washer and dryer such that her utilities were higher than normal.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

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.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove their claim.

The Landlord confirmed that she had yet to repair the damage to the walls in the rental unit; as such, she was not able to provide proof of the actual amount required to compensate her for this loss. I therefore dismiss her claim for \$1,000.00 for the cost to repair the walls, and I grant her leave to reapply once the repairs have been made and the actual cost of those repairs is determined.

The Landlord failed to submit a copy of the tenancy agreement. Although she testified that monthly rent was payable in the amount of \$750.00 *including* utilities. In the within action she sought the sum of \$500.00 for increased utilities alleging the Tenant allowed his family to live in the rental unit and use the washer and dryer. As the Landlord testified that utilities were included in the rent payment I decline her request for additional compensation. I also note the Landlord failed to provide copies of the utility accounts to support her claim and was therefore again unable to provide proof of the actual amount required to compensate her for this claim.

Although the Landlord was unsuccessful in her monetary claim, I find it likely the Tenant vacated the rental unit due to the application by the Landlord for an Order of

Possession. As such, I grant her recovery of the \$100.00 filing fee. Pursuant to section 72(2)(b), I authorize the Landlord to retain \$100.00 from the Tenant's \$375.00 security deposit; for greater clarity I reproduce that section as follows:

72 (1) 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.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

The Landlord must retain the balance of the Tenant's security deposit of \$275.00 until dealt with in accordance with section 38 of the *Act*.

The Landlord queried what she was to do with the furniture and vehicle left behind by the Tenant. The Landlord was cautioned during the hearing to follow Part 5 of the *Residential Tenancy Regulation* which provides as follows:

Landlord's obligations

25 (1) The landlord must

(a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,

(b) keep a written inventory of the property,

(c) keep particulars of the disposition of the property for 2 years following the date of disposition, and

(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

(a) the property has a total market value of less than \$500,

(b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or

(c) the storage of the property would be unsanitary or unsafe.

- (3) A court may, on application, determine the value of the property for the purposes of subsection (2).

Conclusion

The Tenant vacated the rental unit such that an Order of Possession was not required.

The Landlord's claim for the cost to repair the wall damage is dismissed with leave to reapply. The Landlord's claim for recovery of the cost of increased utilities is dismissed as the rent payment includes utilities and the Landlord failed to submit evidence to support this claim.

The Landlord is permitted to retain \$100.0 of the Tenant's security deposit as recovery of the filing fee.

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: September 14, 2017

Residential Tenancy Branch