



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND MNDC MNSD OPC FF O
Tenant: MNDC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord’s Application is dated May 23, 2017 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for compensation for damage to the unit, site or property;
- a monetary order for money owed or compensation for damage or loss;
- an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit in partial satisfaction of the Landlord’s claim;
- an order of possession for cause;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenant’s Application was received at the Residential Tenancy Branch on April 19, 2017 (the “Tenant’s Application”). The Tenant applied for a monetary order for money owed or compensation for damage or loss, pursuant to the *Act*.

The Landlord attended the hearing on her own behalf and was accompanied by a witness, K.T. The Tenant attended the hearing on her own behalf and was assisted by her mother, F.P. All parties giving evidence provided a solemn affirmation.

Each party acknowledged receipt of the other's Application package and documentary evidence. No issues were raised during the hearing about service or receipt of any of the evidence that was relied upon by the parties. Pursuant to section 71 of the *Act*, I find the parties were sufficiently served with their respective documents for the purposes of the *Act*.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord applied for an order of possession based on a notice to end tenancy for cause. However, the parties confirmed the Tenant vacated the rental unit on April 30, 2017. The tenancy is ended. Accordingly, I have not considered this aspect of the Landlord's Application further.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for compensation for damage to the unit, site or property?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to an order allowing them to retain all or part of the security deposit or pet damage deposit in partial satisfaction of the Landlord's claim?
4. Is the Landlord entitled to an order granting recovery of the filing fee?
5. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence by the Landlord. It confirmed a fixed-term tenancy in effect from September 7, 2016 to August 31, 2017. However, the Landlord issued a Notice to End Tenancy for Cause, dated March 31, 2017, and the Tenant vacated the rental unit on April 30, 2017. During

the tenancy, rent in the amount of \$1,300.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$650.00, which the Landlord holds.

The Landlord's Claim

The Landlord's claim was summarized in a Monetary Order Worksheet, dated May 14, 2017. First, the Landlord claimed \$49.00 for carpet cleaning. A receipt was submitted in support of the amount. She stated that although the Tenant had rented a steam cleaner, the carpets were still dirty. Even after professional cleaning, the carpets remained stained. The Landlord testified that she had photographs of the carpets, which were not included with her documentary evidence.

In reply, the Tenant disagreed with this aspect of the Landlord's claim. She testified that she rented a steam cleaner and referred me to the receipt submitted with her documentary evidence. The Tenant testified that she and three others cleaned the rental unit, and that she did not know what more she could have done.

Second, the Landlord claimed \$275.00 to clean the rental unit. She testified that the interior of the suite needed to be cleaned, and that the cleaner also tidied the outside of the rental unit. The Landlord included copies of photographs that depicted the inside of the oven, a bathroom drawer, a doorknob, a baseboard heater, and a window sill. The Landlord also included a copy of a receipt for 5.5 hours at \$25.00 per hour.

In reply, the Tenant testified she disagreed with the amount claimed. The Tenant stated that she and three others cleaned the rental unit, and that she does not know what else she could have done.

Third, the Landlord claimed \$750.00 for fire damage. She submitted with her evidence a quote for the repair in the amount claimed. The Tenant stated the fire was an accident and acknowledged responsibility to pay this amount.

The Tenant's Claim

The Tenant provided a breakdown on a hand-written piece of paper, submitted with the Tenant's documentary evidence. First, the Tenant claimed \$650.00 as reimbursement for two weeks rent. She testified there were expenses associated with moving, and that she had to pay more when she moved as a result of an "unfair eviction".

In reply, the Landlord testified she issued a notice to end tenancy for cause, which had an effective date of April 31, 2017. The Tenant agreed to move out rather than to dispute the notice to end tenancy for cause.

Second, the Tenant claimed \$443.09 for BC Hydro and Fortis bills that did not get paid by the other tenant in the rental property. She testified that she received the invoices and paid 2/3 of these utilities, while the other tenant paid 1/3 of these utilities. The Tenant provided a calculation showing the total amount due, which was \$843.09. She also provided a bank statement confirming only \$400.00 was received from the other tenant.

In reply, the Landlord offered K.T., the other tenant, as a witness. K.T. testified that the Tenant would never let her see the invoices, and acknowledged she would always hold back a portion. She also testified that the Tenant's boyfriend was always there and that she wanted to renegotiate how utilities were shared. K.T. also testified the tenancy agreement is silent on the division of utilities.

Third, the Tenant sought the return of the security deposit. She conceded that she told the Landlord her forwarding address verbally, but did not provide it to the Landlord in writing.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and

4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on each of the parties to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

The Landlord's Claim

With respect to the Landlord's claim for \$49.00 for carpet cleaning, I find there is insufficient evidence before me that the additional cleaning was required. The Landlord's testimony and receipt provided in support were balanced with the Tenant's testimony and receipt demonstrating she had rented a steam cleaner and had cleaned the carpets. This aspect of the Landlord's Application is dismissed.

With respect to the Landlord's claim for \$275.00 for cleaning, I am satisfied that the cleaning was required was to address items that had not been sufficiently cleaned by the Tenant at the end of the tenancy. I note the Landlord provided photographic images in support, and that the Tenant acknowledged the outside of the rental unit was left in a mess. The Landlord has demonstrated an entitlement to a monetary award of \$275.00 for general cleaning at the end of the tenancy.

With respect to the Landlord's claim for \$750.00 to repair fire damage, the Tenant acknowledged her responsibility to pay this amount.

I find the Landlord is entitled to a total monetary award of **\$1,025.00** for general cleaning (\$275.00) and fire damage repairs (\$750.00).

The Tenant's Claim

With respect to the Tenant's claim for \$650.00 for costs associated with moving and increased rental costs, I find the Tenant is not entitled to recover this amount from the Landlord. The Landlord issued a notice to end tenancy for cause, which was effective April 30, 2017. Although the Tenant could have disputed the notice to end tenancy for cause, she did not. Instead, she chose to move out. This aspect of the Tenant's Application is dismissed.

With respect to the Tenant's claim for \$443.09 for the other tenant's share of BC Hydro and Fortis invoices that were not paid to her, Policy Guideline #1 states:

If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenant's share of the unpaid utility bills.

[Reproduced as written.]

In this case, I find it was a verbal term of the tenancy agreement that the Tenant would maintain BC Hydro and Fortis accounts in her name, pay for these utilities, and seek reimbursement of 1/3 of the amount owing from the other tenant, K.T. The Tenant provided documentary evidence of the amount owing by K.T., the amount paid to her by K.T., and the amount outstanding. K.T. did not dispute the agreement, or the amount claimed. Rather, she merely thought the arrangement was unfair and claimed the Tenant did not show her the invoices, which the Tenant disputed. Accordingly, I find the Tenant is entitled to a monetary award of \$443.09 for utility charges that were not reimbursed to the Tenant by K.T.

With respect to the Tenant's claim for the return of the security deposit, I find the Landlord was not provided with the Tenant's forwarding address in writing, as required under section 38 of the *Act*. Accordingly, the Landlord has been under no obligation to return the security deposit to the Tenant. This aspect of the Tenant's Application is dismissed.

I find the Tenant is entitled to a total monetary award in the amount of \$443.09 for utility charges that were not reimbursed by K.T. as per the agreement.

Set Off of Claims

I have found the Landlord has demonstrated an entitlement to recover \$1,025.00 from the Tenant. I order that the Landlord may retain the security deposit of \$650.00 in partial satisfaction of the claim and find that \$375.00 remains owing to the Landlord.

In addition, I have found the Tenant has demonstrated an entitlement to recover \$443.09 from the Landlord for utility charges.

Setting off the amounts owed (\$443.09 - \$375.00), I order, pursuant to section 67 of the *Act*, that the Landlord pay to the Tenant the sum of \$68.09.

As to the filing fees the parties paid for the cost of these Applications I find both parties had partial success and decline to award compensation for their filing fees to either party.

Conclusion

The Tenant is granted a monetary order in the amount of \$68.09. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 20, 2017

Residential Tenancy Branch