



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MND FF
Tenant: MNDC MNSD OLC FF

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 was received at the Residential Tenancy Branch on September 19, 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; and
- an order granting recovery of the filing fee.

The Tenant’s Application is dated May 10, 2017 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order requiring the Landlord to return all or part of the security deposit and/or pet damage deposit;
- an order that the Landlord comply with the *Act*, regulation, and/or a tenancy agreement; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on her own behalf as did the Tenant. Both parties provided a solemn affirmation at the beginning of the hearing.

The Landlord testified the Landlord's Application package was served on the Tenant, in person. The Tenant acknowledged receipt. The Tenant testified that the Tenant's Application package was served on the Landlord by registered mail. The Landlord acknowledged receipt.

No issues were raised with respect to service or receipt of the above documents. I find they were sufficiently served for the purposes of the *Act*, in accordance with section 71 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

During the hearing, the Tenant confirmed her claim was for return of double the amount of the security deposit, and for recovery of the filing fee. Accordingly, the other aspects of the Tenant's Application have not been considered further in this Decision.

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 an order granting recovery of the filing fee?
3. Is the Tenant entitled to an order requiring the Landlord to return all or part of the security deposit and/or pet damage deposit?
4. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on January 1, 2016, and ended on or about March 23, 2017. At the end of the tenancy, rent in the amount of \$880.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$425.00, which the Landlord holds.

The Landlord's Claim

The Landlord claimed \$367.50 for water damage she claimed was caused by the Tenant. According to the Landlord, water on a closet floor caused mold on the baseboard and the flooring to lift. The Landlord submitted nine photographs of the floor and baseboard. The Tenant testified that the amount being sought was based on an estimate provided by a contractor.

In reply, the Tenant asserted that the water damage was first noticed when she was moving her belongings. She reported it to the Landlord right away. The Tenant was adamant that the damage was not caused by water she brought into the rental unit.

The Landlord also sought to recover the filing fee paid to make the Landlord's Application.

The Tenant's Claim

The Tenant claimed \$850.00 for the return of double the amount of the security deposit. She testified she provided the Landlord with her forwarding address in writing by registered mail on April 12, 2017. She testified that the letter was sent to the Landlord's home address, but that it was not accepted by the Landlord.

In reply, the Landlord denied receipt of the Tenant's forwarding address in writing in April 2017. However, she acknowledged the Tenant's forwarding address was received by email dated September 1, 2017. The email was read aloud during the hearing and confirmed the Tenant's address for the purpose of these proceedings.

The Tenant also sought to recover the \$100.00 filing fee paid to make the Application.

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 party 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 Tenant. Once that has been established, each party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that each 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 \$367.50 for damage to the floor in the rental unit, I find there is insufficient evidence before me to conclude the damage was caused by the Tenant, or the value of the loss. Although the Landlord submitted nine photographs of the flooring into evidence, she did not provide a copy of the condition inspection report or a copy of the estimate she referred to during the hearing. As noted above, parties making a claim for monetary relief bear the burden of proving their claim on a balance of probabilities, which the Landlord has not done. The Landlord's Application is dismissed.

The Tenant's Claim

Section 38 of the *Act* confirms that a landlord's obligation to return the security deposit to a tenant is triggered on receipt of the tenant's forwarding address in writing. Within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later, a landlord must repay the security deposit or make an application for dispute resolution. Failure to do so may entitle the Tenant, on application, to recover double the amount of the security deposit.

In this case, the Tenant testified that her forwarding address was provided to the Landlord in writing by registered mail on April 12, 2017. However, the Tenant did not provide any documentary evidence in support, and the Landlord denied receipt. The Landlord indicated she received the Tenant's forwarding address via email on September 1, 2017. I find there is insufficient evidence that the Landlord was provided with the Tenant's forwarding in a method approved under the *Act*. Accordingly, the Tenant is not entitled to receive double the amount of the security deposit. However, as the Landlord's Application for damage to the rental unit has been dismissed, the Landlord no longer has a right to retain the security deposit. Therefore, pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$525.00, which is comprised of \$425.00 for the return of the security deposit and \$100.00 in recovery of the filing fee paid to make the Tenant's Application.

Conclusion

The Landlord's Application is dismissed, without leave to reapply.

The Tenant is granted a monetary order in the amount of \$525.00. 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: October 12, 2017

Residential Tenancy Branch