



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

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

The hearing was conducted by teleconference on October 19, 2017. Only the Landlord called into the hearing. She gave affirmed testimony and was 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 served the Tenant with the Notice of Hearing and the Application on May 10, 2017 by sending the package by registered mail to the address the Tenant provided to the Landlord by email on April 15, 2017. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 May 15, 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/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

The Landlord testified that the tenancy initially began with the Tenant and her boyfriend and then continued as a one year fixed term tenancy beginning September 1, 2017. A copy of the residential tenancy agreement for the fixed term tenancy was provided in evidence and confirmed that the tenancy was to end July 1, 2017. The Landlord testified that the Tenant moved out of the rental unit before the expiration of the fixed term on April 22, 2017. The Landlord stated that although the tenancy agreement indicated that the monthly rent was \$1,020.00 this sum included \$20.00 for parking. The Landlord also stated that she received and continues to hold a \$500.00 security deposit.

The Landlord testified that she was no able to rent the unit until June 2017, such that she sought loss of rent for May 2017 in the amount of \$1,000.00.

The parties participated in a move out condition inspection on April 15, 2017. The Landlord stated that originally the Tenant admitted to damaging the bi-fold door and stated that her dad would make the necessary repairs; however, despite this assurance the door was not repaired by the Tenant.

The Landlord further stated that the Tenant failed to clean as required and as such the cleaners cleaned the balcony, the stove, the refrigerator and the bathrooms as well as some other general cleaning.

The Landlord provided a Monetary Order Worksheet wherein she confirmed that she sought compensation for the following:

cleaning costs	\$60.00
replacement of bi-fold door	\$71.18
unpaid rent for May 2017	\$1,000.00
filing fee	\$100.00
TOTAL CLAIMED	*\$1,231.18

** Note: the Landlord erroneously totaled these figures as \$1,151.18; I have corrected her calculation on the above table.*

The Landlord also provided receipts for the above claimed expenses as well as a photo of the bi-fold door

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.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I find that the Tenant breached the tenancy agreement by vacating the rental unit prior to the expiration of the fixed term. I accept the Landlord's evidence that she was not able to re-rent the unit until June 2017 such that she suffered a loss of rent for May 2017. As the Tenant was obligated to pay rent to the end of the fixed term, I find the loss of rent in the amount of \$1,000.00 is recoverable from the Tenant.

I further accept the Landlord's evidence that the Tenant failed to clean the rental unit as required, and damaged the bi-fold door. As such, I grant her the amounts claimed for cleaning and repairs.

As the Landlord has been substantially successful, I also award her recovery of the filing fee.

Conclusion

Having failed to attend the hearing, although duly served, I accept the Landlord's undisputed testimony and award her the amounts claimed. The Landlord is granted monetary compensation in the amount of **\$1,231.18** for the following:

cleaning costs	\$60.00
replacement of bi-fold door	\$71.18
unpaid rent for May 2017	\$1,000.00

filing fee	\$100.00
TOTAL AWARDED	*\$1,231.18

The Landlord is authorized, pursuant to sections 38 and 72 of the *Residential Tenancy Act*, to retain the Tenant's **\$500.00** security deposit as partial payment of the amount awarded and is granted a Monetary Order for the balance due in the amount of **\$731.18**. The Landlord must serve the Monetary Order on the Tenant and may file and enforce it 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: October 19, 2017

Residential Tenancy Branch