



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF, MNDCT, RPP

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- a monetary order for unpaid rent and for damage to the 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for damages and loss pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- an order that the landlord return the tenant's personal property pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The co-landlord PH (the "landlord") primarily spoke on behalf of both co-landlords.

As both parties were in attendance I confirmed service. The parties testified that they were each in receipt of the other party's application for dispute resolution and evidentiary materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the respective applications and evidence.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord testified that the amount indicated on the application

is a mathematic error and the actual amount sought is the figure indicated on the monetary worksheet calculation of \$4,168.90. As correcting an arithmetic error can be reasonably anticipated, pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlords' Application to increase the landlords' monetary claim from \$4,048.90 to \$4,168.90.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed? Are the landlords entitled to retain all or a portion of the security deposit for this tenancy? Are the landlords entitled to recover the filing fee for the application from the tenant?

Is the tenant entitled to a monetary award as claimed? Is the tenant entitled to a return of all or a portion of the security deposit? Is the tenant entitled to a return of personal property from the landlord?

Background and Evidence

The parties agreed on the following facts. This tenancy ended on May 5, 2017 when the landlords had bailiffs enforce an Order of Possession and remove the tenant from the rental property. A move-out condition inspection report was prepared by the parties on that date. The tenant disagreed with the landlord's assessment of damages and did not sign the condition inspection report. The tenant did provide a forwarding address on the condition inspection report.

The monthly rent at the end of the tenancy was \$900.00 payable on the first of the month. A security deposit of \$475.00 was paid by the tenant at the start of the tenancy. Pursuant to an order made at an earlier hearing the landlord has deducted \$100.00 from the security deposit and the current value of the security deposit held by the landlord is \$375.00.

The landlord seeks a monetary award of \$4,168.90 for the following items:

Item	Amount
Court Registry Fee, Enforcement of Order	\$120.00
Bailiff Services	\$1,815.47
BC Hydro April, 2017 bill	\$239.38
BC Hydro May, 2017 bill	\$193.05
Carpet Cleaning	\$100.00
Fumigation for Pests	\$150.00
Garbage Removal	\$16.00
Cleaning of Suite (6 hrs x \$20.00/hr)	\$120.00
Unpaid Rent May, 2017	\$900.00
Repairs to Rental Suite	\$515.00

TOTAL	\$4,168.90
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The tenant disagrees with the landlords' monetary claim. The tenant argues in her written submissions that the landlords' claim includes items for which original invoices have not been provided. The tenant argues that she should not be held responsible for the May, 2017 rent as the landlords ought to have mitigated their loss by finding a new tenant for the balance of the month.

The tenant claims the amount of \$2,250.00. The tenant says that figure represents a return of her full security deposit which she indicates is \$450.00 and reimbursement of the rent for the months of March and April, 2017 as her stove was not working.

The tenant testified that she believes the landlord has taken a garbage can and a box of holiday decorations and she seeks their return. The landlord testified that they have not taken any of the tenant's personal items.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss. I accept the landlords' evidence that they incurred costs due to the tenant's breach of the tenancy agreement. I accept the landlords' evidence that they had to retain bailiff services to enforce an Order of Possession and costs were incurred. The landlords provided into written evidence copies of the receipts and invoices for the enforcement. I accept the landlord's testimony that they incurred costs for utilities and services and cleaning. While the tenant disputes the amounts I find that the landlords have provided cogent, consistent testimony where documentary evidence was not submitted. I accept the landlord's testimony that the rental unit required repairs and several hours of cleaning.

I find that the tenant was obligated to pay the monthly rent in the amount of \$900.00 on May 1, 2017. I accept the undisputed evidence of the parties that the tenant has not paid the rent for the month of May, 2017. While a party making a claim for a monetary award has the duty to mitigate their losses by taking reasonable steps I do not find that the landlords' failure to immediately rent out the unit to be unreasonable. The tenant was in the rental unit until May 5, 2017 and the landlord had to retain the services of bailiffs to have the tenant removed. I find that the landlord acted reasonably in having the tenant removed from the rental unit and cleaning the rental suite rather than finding a new occupant immediately. Therefore, I accept the landlord's claim for unpaid rent for the month of May, 2017 in the amount of \$900.00

I accept the landlord's testimony that they incurred total damages in the amount of \$4,168.90. Therefore, I find that the landlords are entitled to a monetary award in that amount.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I find that the tenancy ended on May 5, 2017, and the tenant provided the landlords with a forwarding address on that date. Therefore, the landlords had 15 days from May 5, 2017 to either refund the security deposit or file an application to retain it. The landlords filed their application on May 15, 2017, within the timeframe provided by the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenant's security deposit of \$375.00 in partial satisfaction of the monetary award issued in the landlords' favour.

I find that the tenant has provided insufficient evidence in support of her claim. I find there is insufficient evidence to determine that the tenant had personal possessions which were not returned to her by the landlords. The tenant provided testimony which was preoccupied with irrelevant accusations and not supported by the written evidence. I find the tenant's evidence to be unconvincing and insufficient to find that there are any personal possessions of the tenant that the landlord retains. I therefore dismiss this portion of the tenant's application.

I find that there is insufficient evidence that the stove in the rental unit was not working. The tenant provided halting testimony that was not supported with written submissions. The landlord testified that the tenant did not inform them of any issues during the time the tenant claims the appliance could not be used. I find that the tenant has provided insufficient evidence in support of her claim. Consequently, I dismiss this portion of the tenant's application.

As the landlords' application was successful the landlords are entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The tenant's application is dismissed.

I issue a monetary award in the landlords' favour in the amount of \$3,893.90 under the following terms:

Item	Amount
Court Registry Fee, Enforcement of Order	\$120.00
Bailiff Services	\$1,815.47
BC Hydro April, 2017 bill	\$239.38
BC Hydro May, 2017 bill	\$193.05
Carpet Cleaning	\$100.00
Fumigation for Pests	\$150.00
Garbage Removal	\$16.00
Cleaning of Suite (6 hrs x \$20.00/hr)	\$120.00
Unpaid Rent May, 2017	\$900.00
Repairs to Rental Suite	\$515.00
Filing Fee	\$100.00
Less Security Deposit	-\$375.00
TOTAL	\$3,893.90

The landlords are provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 25, 2017

Residential Tenancy Branch