



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0821149 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") for a Monetary Order for: damage to the rental unit; to keep the Tenants' security deposit; and, to recover the filing fee from the Tenants.

An agent for the company Landlord, who was also the building manager, appeared for the hearing and provided affirmed testimony as well as documentary and photographic evidence prior to the hearing. There was no appearance for the Tenants during the 24 minute hearing or any prior submission of written evidence. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord's agent testified that he served each Tenant with a copy of the Application and the Proceeding Package by registered mail on June 9, 2017 to the postal box address the Tenants provided after the tenancy had ended. The Landlord provided the Canada Post tracking numbers into evidence to verify this method of service.

The Landlord's agent testified that the male Tenant received and signed for the documents on June 13, 2017. However, the documents served to the female Tenant were returned back as unclaimed. The Landlord's agent testified that as a result, he was able to serve them personally to the female Tenant on September 26, 2017.

Based on the undisputed evidence of the Landlord, I find the male Tenant was served with the required documents pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"), and the female Tenant was served personally pursuant to Section 89(1) (a) of the Act. The hearing continued to hear the undisputed evidence of the Landlord as follows.

Issue(s) to be Decided

- Is the Landlord entitled to damages and loss of items in the rental unit?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of the monetary claim?
- Is the Landlord entitled to the filing fee?

Background and Evidence

The Landlord's agent testified that this tenancy started when the Tenants moved in on July 20, 2016. A month to month tenancy agreement was signed and rent in the amount of \$500.00 was payable by the Tenants on the first day of each month. The Tenants paid a \$250.00 security deposit which the Landlord still retains in trust.

The Tenants were provided with a furnished rental unit and the tenancy agreement was accompanied by a signed list detailing all the furnished items being provided by the Landlord.

The Landlord provided a copy of the move-in Condition Inspection Report (the "CIR") which was completed with the Tenants on the day they moved in. The Landlord's agent testified that the Tenants provided written notice to end the tenancy for the end of May 2017 and then moved out on June 1, 2017.

The Landlord referred to two written notices provided to the Tenants which explained that the move-out CIR would be completed with the Tenants on May 31, 2017 at 1:00 p.m. The Landlord's agent confirmed that he did not get anything back from the Tenants to say they could not make this appointment or a suggestion of an alternative time or date.

The Landlord's agent testified that when he attended the rental unit on May 31, 2017, after waiting two hours, he determined that the Tenants had abandoned the rental unit. The Landlord's agent completed the move-out CIR in the Tenants' absence.

The Landlord's agent testified that he located the Tenants on June 5, 2017 which was when he was given the keys and the Tenants' forwarding address. The Landlord's agent confirmed that he then returned to the Tenants their \$100.00 key deposit. The Landlord's agent testified to the condition of the rental unit as follows. The Landlord's agent explained that the Tenants had been provided with a new bed at the start of the tenancy; however, at the end of the tenancy, the Tenants had left the

mattress badly damaged as it had several tears in it as well as the fact that it had been defecated on. The Landlord's agent testified that the Tenants had also damaged a living room chair as well as a shelf and lamp.

The Landlord's agent testified that the Tenants had taken two kitchen chairs, a garbage can, a drain tray, a boot tray, shower curtains, burner caps and light bulbs at the end of the tenancy. The Landlord's agent confirmed that these items were provided by the Landlord as part of the furnished rental unit.

The Landlord's agent testified that the Tenants had also failed to clean the rental unit, the carpets and the drapes. As a result, the Landlord's agent cleaned the carpets, removed various junk items left by the Tenants at the end of the tenancy, and prepared the rental unit for re-rental.

The Landlord claims: \$150.00 for the replacement of the damaged bed; \$55.00 for the damaged living room chair; \$35.00 for damage to the shelf and lamp. The Landlord's agent confirmed that these items could not be salvaged and had to be replaced.

The Landlord claims a total of \$61.17 to replace the missing items taken by the Tenants. The Landlord also claims \$90.00 for a cleaning fee charged by a cleaning lady who cleaned the rental unit including the appliances. The Landlord's agent claims \$170.00 for his labor costs for cleaning the rental unit, junk removal, and readying the unit for re-rental. The Landlord's agent provided an hour by hour breakdown of the labor performed and charged \$20.00 for 8.5 hours of labor.

The Landlord's agent also explained that he incurred \$3.50 in coins that he used to operate a laundry machine to clean the rental unit drapes, thereby mitigating loss for professional cleaning.

The Landlord's agent referred to extensive photographic evidence he had submitted to prove the damage and losses being claimed. In addition, the Landlord referenced invoices and receipts provided into evidence to verify the costs being claimed. The Landlord's agent confirmed in the hearing that the amount claimed on the Application was a calculation error and that it was the lessor amount of \$564.67 that was being claimed.

Analysis

Firstly, I find the Landlord made this Application within the 15 day time limit provided by Section 38(1) of the Act to make a claim to keep the Tenants' security deposit.

Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. In addition, Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary.

Based on the foregoing, I accept the Landlord's undisputed evidence that the Tenants caused the damage shown in the photographs to the furniture that was provided with the rental unit. Therefore, I award the Landlord the replacement costs claimed as verified by the receipts provided into evidence.

I also find the Tenants failed to comply with the cleaning requirements of the Act. I am satisfied by the amounts claimed by the Landlord to remedy the cleaning of the rental unit and making it fit for re-rental.

Therefore, I award the Landlord the total amount claimed for \$564.67. As the Landlord has been successful in this matter, the Landlord is also entitled to the \$100.00 filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is \$664.67.

Section 36(1) of the Act provides that the right of a tenant to the return of a security deposits is extinguished if the landlord has provided two opportunities for the tenant to take part in the condition inspection at the end of the tenancy.

I have examined the written communication between the parties that was provided by the Landlord for this hearing which the Landlord referred to in his testimony. As a result, I conclude that the Tenants failed to appear for move-out CIR that was scheduled to take place on May 31, 2017 at 1:00 p.m.

The Tenants provided no alternative time or date for the move-out CIR and did not indicate that they were unable to make the date and time proposed by the Landlord. Therefore, I am only able to conclude from the evidence before me that the Tenants extinguished their right to the return of their security deposit.

Accordingly, as the Landlord already holds \$250.00 in the Tenants' security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is awarded the outstanding balance of \$414.67.

Conclusion

The Tenants have breached the Act by causing damage to the rental unit. Therefore, the Landlord may keep the Tenants' security deposit and I grant the Landlord a Monetary Order for the remaining balance of \$414.67.

Copies of this order are attached to the Landlord's copy of this decision. This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court. The Tenants may also be liable for the enforcement costs of the order.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 20, 2017

Residential Tenancy Branch