



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on August 16, 2017, and corrected on August 23, 2017 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing in person. The Tenant attended the hearing in person. The parties provided affirmed testimony.

The Landlord testified the Application package was served on the Tenant by email and to the Tenant's address. The Tenant acknowledged receipt. Pursuant to section 71 of the *Act*, I find the Tenant was sufficiently served with the Application package for the purposes of the *Act*.

The Tenant testified a documentary evidence package was sent to the Landlord by registered mail on February 10, 2018. A Canada Post registered mail receipt was submitted in support. The Landlord denied receiving the evidence package. However, pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Tenant's documentary evidence package is deemed to be received by the Landlord on February 15, 2018.

The parties were provided with a full opportunity to present 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

In his Application materials, it was evident that the Landlord also sought to recover expenses related to cleaning in the rental unit. The Landlord did not specifically request a monetary order for money owed or compensation for damage or loss. However, I find it is appropriate in the circumstances to amend the Landlord's Application, pursuant to section 64(3) of the Act, to include a request for a monetary order for money owed or compensation for damage or loss.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to retain all or part of the security deposit or pet damage deposit?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties confirmed the tenancy began on or about October 10, 2016, and ended when the Tenant vacated the rental unit on or about August 14, 2017. Rent was due in the amount of \$1,250.00 per month. The Tenant paid a security deposit of \$700.00, which the Landlord holds.

The Landlord testified the Tenant did not pay rent for the month of August 2017. The Tenant acknowledged rent was not paid. However, the Tenant testified the parties had a conversation in June 2017, during which the Landlord advised him that he intended to have a family member move into the rental unit. The Tenant submitted that when a notice to end tenancy for landlord's use of property is issued, a tenant becomes entitled to the last month of rent free. However, the Tenant stated he never received a notice in the approved form, and neither party submitted a copy of a notice to end tenancy for landlord's use of property.

In addition, the Landlord claimed \$376.90 for carpet and general cleaning in the rental unit at the end of the tenancy. He testified that the odour left by the Tenant's dog necessitated cleaning. The Tenant disagreed and testified that his dog was kennelled whenever he was not home and the smell of dog was present at the beginning of the tenancy. The Tenant also submitted that the Policy Guidelines indicate that carpet cleaning is not required for tenancies that last less than one year.

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

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

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 the Landlord 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, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim for \$1,250.00 for unpaid rent, I find the Landlord has established an entitlement to recover rent for August 2017. While the parties may have had a discussion about ending the tenancy so a family member could move into the rental unit, the Tenant confirmed that no such notice was received. Further, neither party submitted a copy of a notice to end tenancy for landlord's use of property into evidence.

With respect to the Landlord's claim for \$376.90 for cleaning expenses, I find there is insufficient evidence before me to conclude that the Tenant's dog was the cause of any odour in the rental unit. The parties' oral testimony conflicted directly in this regard. That the Landlord incurred an expense is not sufficient evidence that the Tenant is responsible.

As the Landlord has been partially successful, I grant an award of \$100.00 for recovery of the filing fee. In addition, I order that the Landlord may retain the \$700.00 security deposit in partial

satisfaction of the claim. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$650.00, which has been calculated as follows:

Item claimed	Amount allowed
Unpaid rent:	\$1,250.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$700.00)
TOTAL:	\$650.00

Conclusion

The Landlord is entitled to a monetary order in the amount of \$650.00. The 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: February 28, 2018

Residential Tenancy Branch