



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EQUITABLE REAL ESTATE INVESTMENT CORPORATION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit, site or property 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;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) stated that both tenants were served with the notice of hearing package via Canada Post Registered Mail on September 22, 2017. The tenant argued that he had only received notice 3 weeks prior to the scheduled hearing date. The landlord provided copies of the Canada Post Customer Receipts, tracking labels and a printout of an online search of the Canada Post Website Tracking system which shows that the packages were received by the Post Office on September 22, 2017 and signed for and received by the tenant, L.G. on September 25, 2017. As such, I find that the tenants were properly served with the notice of hearing package(s) as claimed by the landlord and are deemed served as per section 90 of the Act on September 25, 2017.

Both parties also confirmed that the landlord served both the tenants with the submitted documentary evidence via Canada Post Registered Mail on March 12, 2018. The tenant confirmed that no documentary evidence was submitted by the tenants. Neither party raised any issues with service. I accept the undisputed evidence of both parties and find that both parties have been properly served with the submitted documentary evidence on March 12, 2017.

Preliminary Issue

At the outset it was clarified with both parties that the landlord's request for an order of possession was not required as the tenants have vacated the rental unit on September 3, 2017 as a result of a 1 Month Notice to End Tenancy.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 1, 2016 on a fixed term tenancy ending on April 30, 2017 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated April 4, 2016. The monthly rent was \$1,175.00 payable on the 1st day of each month. A security deposit of \$587.50 was paid on April 4, 2016. A condition inspection report for the move-in was completed by both parties on May 5, 2016. No condition inspection report was completed for the move-out.

Both parties confirmed that the tenancy ended on September 3, 2017 when the tenants return the rental unit keys to the landlord.

The landlord seeks monetary claim of \$1,753.74 which consists of:

\$621.50	Unpaid Rent, September 1-15, 2017
\$15.00	Laundry Usage Charge(s)
\$65.00	Missing Mailbox Key/garage fob
\$140.00	Cleaning (4 hours X \$35/hr.)
\$912.24	Repairs, Damaged floors

The landlord claims that the rental unit was left dirty requiring cleaning, flooring damaged, a missing mailbox key and garage fob not returned and unpaid laundry usage charges. The landlord claims that as a result of the damaged flooring caused by the tenant and that the tenant failed to attend for a condition inspection report for the move-out, the landlord had to re-schedule the floor repair company for 1 week into September 2017. After the flooring was repaired, the new tenant who was delayed because of the flooring repair was unable to move-in until September 16, 2017. As a result the landlord seeks compensation for the loss of rental income for the first 15 days of lost rent for September 1-15, 2017.

The tenant made no comment on the landlord's claim for laundry usage charges. The tenant disputed that the rental unit was left dirty with the exception of the stove. The tenant confirmed that the stove was not cleaned inside nor was it checked underneath. The landlord argued that based upon the landlord's agent report on the "Security Deposit Cleaning Form", 4 hours were taken to clean the cupboards, stove, closet doors, toilet, bathroom floor, all windows, light switches, the bathroom vanity and replace 6 lightbulbs. The landlord submitted 3 photographs in support of these claims of a dirty toilet, dirty stove and dirty refrigerator.

The tenant also argued that the flooring was not re-finished prior to the start of the tenancy. The tenant also commented that he "didn't know if damage was caused or not". A review of the documentary evidence of the landlord shows an invoice dated May 2, 2016 for the refinishing of the flooring.

In support of this claim the landlord has provided copies of:

- A copy of the signed tenancy agreement
- A copy of the completed condition inspection report for the move-in
- Copies of 4 pages of email exchange between the landlord and tenant regarding the end of tenancy and condition of rental unit at the end of tenancy
- Copies of tenant ledger for period May 1, 2017 to September 20, 2017
- Copy of "Security Deposit Cleaning Form" re: cleaning performed at rental unit and noted conditions
- Copy of Laundry Statement Report for Tenant dated September 12, 2017
- Copy of invoice dated September 20, 2017 for refinishing floors
- Copy of email dated September 18, 2017 from flooring contractor, re: condition of floors
- Copy of invoice dated May 2, 2016 re: finishing of floors prior to tenancy start

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

In this case, I accept the evidence of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The landlord's claim are supported by the completed condition inspection report for the move-in on May 5, 2016 in conjunction with the invoices/receipts, statements and photographs provided by the landlord. As such, I find that the tenants vacated the rental premises on September 3, 2017 leaving it damaged and dirty requiring repairs and cleaning that that caused the landlord the loss of rental income for the period September 1, -15, 2017 and to incur the costs for repairs. I also accept the undisputed claims of the landlord that the tenants failed to return the mailbox key and garage fob as well as fail to pay laundry usage charges. The landlord has established the entire monetary claim of \$1,753.74.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$587.50 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$1,266.24.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: April 19, 2018

Residential Tenancy Branch