



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ENTRE NOUS FEMMES HOUSING SOCIETY & 867897
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MND FF

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act"):

The landlord sought:

- a monetary order for loss, damage and money owed under the tenancy agreement pursuant to section 67 of the *Act*;
- an order to retain the tenant's security deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant sought:

- a return of the filing fee pursuant to section 72 of the *Act*;
- an Order directing the landlord to return her security deposit pursuant to section 38 of the *Act*.

Both the landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present their testimony and to make submissions. Both parties acknowledged receipt of each other's applications for dispute resolution and evidentiary packages.

Following opening remarks the tenant explained that she was no longer pursuing her application for a return of the security deposit and was willing to surrender her security deposit to the landlord. Based on the tenant's sworn testimony, I order the tenant's security deposit to be surrendered to the landlord. As the tenant has agreed to withdraw her application for a return of the security deposit, I will only consider the landlord's application for a monetary award and a return of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

Background and Evidence

The landlord explained that this tenancy began on December 7, 2005. Rent was originally \$1,308.00 and rose to \$1,425.00 through the duration of the tenancy. A security deposit of \$500.00 paid at the outset of the tenancy continues to be held by the landlord. The tenant acknowledged during the hearing that she vacated the rental unit June 30, 2016. The parties provided conflicting testimony regarding whether or not the landlord had received sufficient notice from the tenant regarding her intention to move out from the rental unit.

The landlord is seeking a monetary award of \$1,707.21 which includes unpaid rent for July 2016, along with cleaning of the rental unit and some touch up painting that was required following the tenant's departure. The landlord said that it was their intention to re-paint the rental unit when the tenant was to vacate the suite, but she noted that they incurred an additional expense related to the colour which the tenant had painted the unit. The landlord requested \$367.50 for the added expense of returning the unit to a neutral colour from the dark blue colour which it had been painted by the tenant.

The tenant acknowledged that some cleaning and junk removal was required in the suite following her departure. She said that a persistent medical condition had prevented her from cleaning the apartment and she did not dispute the landlord's claimed expenses. The tenant said that she wished to surrender her security deposit in partial satisfaction for the cleaning that was required in the unit.

The tenant disputed the landlord's application for a return of rent for July 2016. The tenant said that she twice verbally gave the former landlord notice of her intention to vacate the apartment at the end of June 2016. The tenant said that she had originally planned on moving out of the rental unit in the spring of 2016; however, her plans changed and she phoned the landlord at the start of May 2016 to inform her of her intention to vacate the premises at the end of June 2016.

The landlord argued that the former landlord had discovered the rental unit abandoned on July 2, 2016 and that she discovered the keys and a sticky note in the rental unit, informing the landlord of the tenant's unexpected move. The tenant disputed the authenticity of this note, which was produced as part of the landlord's evidentiary

package. Furthermore, the tenant argued that she had twice provided the former landlord with information concerning her intention to vacate the rental unit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, 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 her entitlement to a claim for a monetary award.

The landlord is seeking a monetary award of \$1,707.21 for unpaid rent in July 2016, along with various cleaning and other light repairs that were required in the rental unit following the tenant's departure. The tenant acknowledged that very limited cleaning had been done in the rental unit when she moved out and did not dispute that some cleaning remained following her departure. I will therefore award the landlord the entire amount sought for cleaning and junk removal.

In addition to items left behind and some cleaning, the landlord was looking to recover the extra costs associated with repainting the unit from dark blue to a neutral colour. The landlord said that the unit was scheduled to be repainted but that she incurred extra costs associated with the painting because of the dark blue colour which had been added by the tenant.

Section 32(3) of the *Act* states, "A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions of the tenant or a person permitted on the residential property by the tenant" while section 37(2) of the *Act* states, "when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." After considering the testimony of both parties, I find that the rental unit was not returned to the landlord in state which could be considered "reasonably clean and undamaged" because of the additional costs incurred by the landlord related to painting. While the unit was scheduled to be painted following the conclusion of the tenancy, the landlord incurred extraordinary costs associated with the tenant having painted the unit a dark blue. For these reasons, I allow the landlord to recover the cost of the painting.

The final portion of the tenant's application concerns the return of rent for July 2016. The parties have provided conflicting testimony and they disagree on whether notice was provided to the landlord, or whether the apartment was found abandoned at the start of July 2016 as reported by the landlord.

R. v. Parent, 2000 BCPC 11 provides some guidelines on what is to be considered when parties present conflicting testimony and evidence based on a recollection of events. These include:

- i) the witness' ability to observe the events, record them in memory, recall and describe them accurately,
- ii) the external consistency of the evidence. Is the testimony consistent with other, independent evidence, which is accepted?
- iii) Its internal consistency. Does the witness' evidence change during direct examination and cross-examination?
- iv) The existence of prior inconsistent statements or previous occasions on which the witness has been untruthful.
- v) The "sense" of the evidence. When weight with common sense, does it seem impossible or unlikely? Or does it "make sense"?
- vi) Motives to lie or mislead the court: bias, prejudice, or advantage.
- vii) The attitude and demeanour of the witness. Are they evasive or forthcoming, belligerent, co-operative, defensive or neutral? In assessing demeanour a decision maker should consider all possible explanations for the witness' attitude, and be sensitive to individual and cultural factors, which may affect demeanour. Because of the danger of misinterpreting demeanour, I would not rely on this factor alone.

After reviewing the evidence submitted by both parties and considering the testimony presented, I find that the landlord has met the burden of proof to recover a monetary award required under section 67 of the *Act*. The landlord's evidentiary package contained a note from the tenant which explained her rapid move out and was consistent with the landlord's version of events, and it contained a letter from a third-party, that of property manager R.G. which corroborated the series of events as they

were described by the landlord. For these reasons, I allow the landlord to recover the unpaid rent of \$1,425.00 for unpaid July 2016 rent.

As the landlord was successful in her application, she may, pursuant to section 72 of the *Act* recover the \$100.00 filing fee from the tenant. The tenant must bear the cost of her own filing fee.

Conclusion

The landlord is ordered to withhold the tenant's security deposit.

I issue a Monetary Order of \$1,724.90 in favor of the landlord as follows:

Item	Amount
Carpet care services for garbage removal	\$180.60
Unit Cleaning	226.80
Re-painting bedroom	367.50
Unpaid rent for July 2016	1,425.00
Late Fee	25.00
Less Security deposit	(-500.00)
Total Monetary Order	\$1,724.90

The landlord is 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: April 25, 2018

Residential Tenancy Branch