



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNDC MNR MNSD OPN

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and utilities, and money owed for loss under the *Act*;
- an application to keep all or part of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Counsel for the landlord, J.W., and the tenant attended the hearing. Both parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord's application for dispute resolution and evidentiary package, while counsel for the landlord said that no evidentiary package had been received by her office. The tenant said that his evidentiary package had been sent by way of Canada Post Registered Mail on March 16, 2018. A Canada Post tracking number was provided to the hearing. Pursuant to sections 88 & 90 of the *Act*, the landlord is deemed served with this evidentiary package on March 21, 2018, five days after its posting.

Following opening remarks, counsel for the landlord explained that the landlord was seeking to amend their application for a monetary award to reflect a lower figure of \$6,436.58, plus a return of the filing fee. As the tenant would not be prejudiced by this change, pursuant to section 64(3)(c) of the *Act*, the landlord's application is amended to the figure cited above.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord retain any part of the security deposit?

Can the landlord recover the filing fee associated with the application?

Background and Evidence

Undisputed testimony provided to the hearing by counsel for the landlord explained that this tenancy began on July 1, 2015. The tenant vacated the rental unit on June 30, 2017. Rent was \$2,500.00 per month, and a security deposit of \$1,200.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord is seeking a monetary award of \$6,436.58. This figure represents the following:

ITEM	AMOUNT
Unpaid Rent for June 2017	\$2,500.00
Unpaid Fortis	896.00
Unpaid water utility	249.38
BC Hydro	1,241.20
Gardening required after the end of tenancy	1,000.00
Carpet Cleaning	250.00
Disposal of items left in rental unit	300.00
TOTAL =	\$6,436.58

Counsel for the landlord explained that the landlord was unable to attend the hearing as they were in the midst of travelling; however, counsel confirmed that she had been retained to act on behalf of the landlord. Counsel said that she did not have personal knowledge of the matter for which she had been retained, and could not speak to it in detail, but she noted that the landlord had left her with an evidentiary package which had been submitted to the hearing.

During the hearing, counsel for the landlord argued that was the landlord's position that rent remained unpaid for June 2017, and that several utilities were not paid at the end of the tenancy. In addition, it was alleged that a large amount of gardening was required following the tenant's departure from the rental unit. Counsel argued that the tenant had

failed to fulfil the terms of his tenancy agreement which stated, "Tenants are responsible for the front and back yard works including snow and grass" and "Tenants are responsible for both the front and back yard works including snow removal in winter."

The final portion of the landlord's application for a monetary award concerned carpet cleaning which was required at the end of the tenancy, along with garbage and debris left in the unit by the tenant. At the hearing it was alleged that the tenant did not clean the carpets following the conclusion of the tenancy and left several items which needed to be removed and taken to the municipal transfer station.

The tenant disputed all aspects of the landlord's application. The tenant argued that rent and all related utilities (hydro/gas/water) for which the landlord is seeking compensation were paid in cash on June 2, 2017. The tenant said that the landlord refused to give him a receipt and that he had no idea how much was due for utilities because the landlord consistently failed to provide him with amounts of the utility bills which were due, or to transfer the utilities into the tenant's name. Counsel for the landlord's said that she was unaware that a payment may have been made and noted that she would have to speak to her client, informing them that they could not apply for compensation related to these items, if the tenant's claims of payment were true.

During the hearing, the tenant said that he made a sincere effort to care for the plants and garden to the best of his abilities but argued that his efforts were frustrated because of a severe drought and watering restrictions which had been imposed by the municipality. The tenant explained that he left the garden in an acceptable state at the conclusion of the tenancy and that any landscaping for which the landlord is seeking compensation was beyond the scope of his responsibility.

The tenant disputed that any garbage or debris were left in the rental unit following the conclusion of the tenancy and argued that he had in fact cleaned the carpets at the end of the tenancy.

A review of the evidence submitted to the hearing submitted to the hearing by both parties showed numerous invoices from various utilities, a copy of the condition inspection report, a copy of the tenancy agreement and addendum, pictures of the garden and interior of the home, and a monetary order worksheet.

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 their claim for a monetary award.

I will begin by analyzing the portion of the landlord's application related to unpaid rent and utilities, and then turn my attention to the remaining portion of the application for a monetary award.

The landlord is seeking unpaid rent for the month of June 2017, along with unpaid gas, water and hydro utilities. The tenant argued that these items were paid in cash on June 2, 2017 and that no receipt was provided to him for their payment. Furthermore, the tenant argued that no specific breakdown of the utilities which were due under the tenancy was ever provided to him. As part of their evidentiary package, the landlord submitted numerous utility bills but failed to provide any ledgers or accounting showing that the bills submitted remained unpaid, or that any funds had not been received. Counsel for the landlord confirmed she had no personal knowledge of the landlord's application.

As explained above, when a party seeks a monetary award, the onus is on the person seeking the award to demonstrate that they have suffered damage or loss. While counsel for the landlord attended the hearing and presented the landlord's application to the best of her abilities, I find that the landlord's failure to attend the hearing and provide any detail regarding the invoices submitted, or their current status made it very difficult to determine if the funds requested remained outstanding. I find that insufficient information was provided to the hearing rebutting the tenant's claim that these outstanding amounts were paid and no explanation regarding the utility bills submitted to the hearing by the landlord was provided. For these reasons, I dismiss this portion of the landlord's application.

In addition to an application for unpaid rent and utilities, the landlord is seeking a monetary award related to landscaping which the tenant allegedly failed to perform. The terms of the tenancy agreement state as follows, "Tenants are responsible for the front and back yard works including snow and grass" and "Tenants are responsible for both the front and back yard works including snow removal in winter." I find little evidence was presented at the hearing that the tenant failed to fulfil his obligation related to the terms of the tenancy as they relate to the landscaping. The terms of the tenancy provide little detail and note only that the tenants "are responsible for front and back yard works." Based on the photos entered into evidence and the oral testimony of both parties, I find that tenant left the garden in an acceptable state following the end of the tenancy, and that the tenant fulfilled his obligations related to landscaping as described in the tenancy agreement. For these reasons, I dismiss this portion of the landlord's application.

The final two items for which the landlord seeks compensation relate to carpet cleaning which the tenant purportedly failed to do at the end of the tenancy, and garbage and debris which required removal following the tenant's departure. The tenant argued that he performed both duties and said that no items were left in the home upon his move out. As part of the landlord's evidentiary package, an invoice for carpet cleaning, along with photos of the property were submitted.

After reviewing the evidentiary package submitted at the hearing, I find that insufficient evidence was produced by the landlord demonstrating that items were left in the rental unit or that the landlord suffered a loss of \$300.00. No invoices for the removal of debris or for waste disposal were submitted to the hearing, and the photos submitted by the landlord contained no explanation or detail to put them in context. The invoice submitted for carpet cleaning shows that the carpets were cleaned 6 weeks after the tenancy ended and the condition inspection report submitted by the landlord is blank other than a note saying, "Details of condition are in picture form attaching at the back of this report." The photos submitted in the landlord's evidentiary package are of poor quality and contain no context or detail. For these reasons, I dismiss this portion of the landlord's application for a monetary award.

As the landlord was unsuccessful in their application for a monetary award they must bear the cost of their own filing fee.

The landlord is directed to return the security deposit to the tenant.

Conclusion

The landlord's application for a monetary award is dismissed.

The landlord is ordered to return the security deposit to the tenant.

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 5, 2018

Residential Tenancy Branch