



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT, FFL, MNDCL-S, MNDL-S, OPC, OPU

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order of possession pursuant to section 55; and
- authorization to recover the filing fee for the application from the tenants pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38; and
- authorization to recover the filing fee for the application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord who identified himself as the manager of the property primarily spoke on behalf of both landlords (the “landlord”).

As both parties were in attendance service of documents was confirmed. The parties testified that they were each in receipt of the other party’s application for dispute resolution and evidentiary materials. Based on the undisputed testimonies, I find that

the parties were duly served with copies of the respective applications and evidence in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties stated that the tenants have vacated the rental unit and the landlords withdrew the portions of their application seeking an order of possession.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed? Are the landlords entitled to recover the filing fee for the application from the tenants?

Is the tenant entitled to a return of all or a portion of the security deposit? Is the tenant entitled to recover the filing fee for their application from the landlords?

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 parties' claims and my findings around each are set out below.

The parties agreed on the following facts. This tenancy began on October 1, 2017 and ended on February 28, 2018. A security deposit of \$1,200.00 was paid at the start of the tenancy. The parties participated in both a move-in and move-out inspection and a condition inspection report was prepared. At the end of the tenancy, as the tenants disputed the landlord's assessment of the condition of the rental unit, the tenants did not sign the condition inspection report.

The tenants provided their forwarding address on the last day of the tenancy, February 28, 2018. The landlords returned \$449.67 of the security deposit to the tenants on March 15, 2018. The landlord said that figure represents the security deposit less an unpaid utility bill of \$330.33 for BC Hydro and a fee of \$420.00 for carpet cleaning. The landlord submits that the tenant's obligation to pay utilities for the tenancy was established in an earlier decision from the Residential Tenancy Branch.

The landlord claims the amount of \$25,000.00, stating that they need to replace the carpets for the rental unit. The landlord said that the tenants, in violation of the tenancy agreement, had a dog that caused damage to the carpet and underlay requiring it be replaced. The landlord said that the carpet was first installed in 2009. The landlord also

seeks a monetary award of \$10,000.00 saying that there was a violent altercation with the tenants and they seek damages for the incident.

The tenants say that they did not authorize any deduction from the security deposit and dispute that they owe any amount for utilities. The tenant testified that their dog did not cause damage to the rental unit and dispute that there was any violent altercation with the landlord.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

In the present case the parties agree that the tenant provided their forwarding address in writing to the landlord at the end of the tenancy on February 28, 2018 and the landlord returned the amount of \$479.67 to the tenants on March 15, 2018. The parties acknowledge that the tenants did not provide written authorization that the landlord may retain any portion of the security deposit for this tenancy.

I find that the landlord was without basis to withhold any amount from the tenants' security deposit. In the absence of written authorization the landlord was not empowered to make a deduction for carpet cleaning costs. A landlord may not make a unilateral deduction without getting the appropriate authorization or by making an application in accordance with the *Act*. Based on the evidence of the parties I find that the landlord did not have authorization to withhold an amount from the security deposit for carpet cleaning nor did they file an application to retain the deposit within the timeframe provided under section 38(1)(c) of the *Act*.

I find that the landlord did not have authorization to retain any portion of the security deposit for utility payments. The landlord referenced a previous decision under the file number on the first page of this decision. However, the earlier decision makes no finding in regards to the landlord's right to collect BC Hydro utilities for this tenancy. The earlier decision principally deals with a monetary award for rent but is silent on the subject of the tenant's obligation to pay utilities for this tenancy. Similarly, I find that the

tenancy agreement submitted into evidence does not set out that the tenant is obligated to pay utilities to the landlord. The agreement indicates that electricity is not included in the monthly rent payment but does not impose a positive obligation on the tenant that they are required to pay the landlord BC Hydro utilities. The tenancy agreement does set out that the tenant is responsible for “phone/interent/cable” but does not set out that the tenants are obligated to pay BC Hydro bills. I find that the landlord had no basis to withhold the amount of \$330.33 from the security deposit for utility bills.

I find that the landlord has failed to return the full security deposit within 15 days of the end of the tenancy. I find that the deduction of \$720.33 was made without the tenant’s written permission or order from the Branch. Consequently, in accordance with section 38(6)(b) of the *Act* and Residential Tenancy Policy Guideline 17 I find that the tenants are entitled to a monetary award in the amount of \$1,920.33, double the amount of the security deposit less the amount of \$479.67 already returned to the tenant. No interest is payable over this period.

$$(\$1,200 \times 2) - \$479.67 = \$1,920.33$$

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there is insufficient evidence in support of the landlords’ claim for damages and loss. The landlord claims the amount of \$25,000.00 submitting that the entire rental unit needs to be re-carpeted as a result of the tenant’s occupancy with a dog. The landlord has said that the carpet was first installed in 2009. The average useful life of carpeting, as set out in Residential Tenancy Policy Guideline 40, is 10 years. I find it more likely that any need for replacement of the carpets arises from the age of the suite and the expected wear and tear. I do not find that there is evidence to show that a single dog over the span of a 4 month tenancy caused such damage to the floors of an entire rental suite that it must be entirely re-carpeted. Furthermore, the landlords have not submitted estimates or invoices to show how they arrived at the \$25,000.00 figure they are claiming. I find that the landlords’ claim to not be supported in the evidence submitted. I dismiss this portion of the landlord’s claim.

I find that there is insufficient evidence in support of the landlord's claim that there was an altercation. Even if there was an episode between the parties the landlord has provided no evidence that there has been any damages or loss suffered as a result. I find that the suggested amount of \$10,000.00 to be without evidentiary basis. I find this portion of the landlord's application to be without merit and dismiss it.

As the tenants were successful in their application the tenants are entitled to recover the \$100.00 filing fee for their application.

Conclusion

The landlords' application is dismissed without leave to reapply.

I issue a monetary award in the tenants' favour in the amount of \$2,020.33, representing double the security deposit for this tenancy less the amount already returned by the landlord and the filing fee for their application.

The landlords must be served with this Order as soon as possible. Should the landlords 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: June 1, 2018

Residential Tenancy Branch