



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

On June 21, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages and compensation for unpaid utilities, to apply the security deposit to the claim and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenant did not attend at any time during the 42-minute hearing. The Landlord testified that she attempted to serve the Tenants with the Notice of Hearing by sending it via registered mail on June 25, 2018 to the forwarding address the Tenants had provided to the Landlord on June 11, 2018.

According to both the Landlord and the Canada Post website, a notice was left at the Tenants’ residence that indicated where and when to pick up the Notice of Hearing package; however, it was never picked up and eventually returned to the sender.

I accept the Landlord’s testimony that the Notice of Hearing package was mailed to the Tenants’ forwarding address and find that the Tenants have been duly served with the Notice of Hearing in accordance with Section 89 the Act. I find that the package is deemed to have been received on June 30, 2018, in accordance with Section 90 of the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenants did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

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.

Issues to be Decided

Should the Landlord receive a Monetary Order in compensation for damages to the rental unit, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order in compensation for unpaid utilities, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Section 72 of the Act?

Should the Landlord recover the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord provided the following undisputed testimony:

The month-to-month tenancy began on September 20, 2017 and the monthly rent of \$1,300.00 was due on the first of each month. The Tenants were responsible for 50% of the hydro and gas utilities. A security deposit of \$650.00 was collected and is currently held by the Landlord.

The Landlord stated that no move-in condition inspection was conducted at the beginning of the tenancy. The Tenants moved out of the rental unit on June 1 or 2, 2018 and left the keys inside the unit. The Tenants met with the Landlord on June 11, 2018 to walk through the rental unit and there was disagreement as to who was responsible for various issues and damage. The Landlord did not complete a move-out inspection report. The Landlord stated that the Tenants provided their forwarding address in written form during the move-out inspection.

The Landlord referred to a Monetary Order Worksheet that she had submitted as evidence and made the following itemized claims:

1. The Landlord stated that the Tenants had claimed that the dryer required repair about two months prior to the end of the tenancy. The Landlord said that the dryer element had burned out because of the Tenants overloading the dryer. A service invoice was submitted for an amount of \$89.25.
2. The Landlord submitted pictures of damaged closet doors and stated the Tenants were responsible for the damage. The Landlord provided an estimate for a replacement closet door in the amount of \$69.39.
3. The Landlord provided testimony and pictures of garbage and furniture that the Tenants left behind. The Landlord provided an invoice for disposal fees, labour and fuel for a total of \$100.00.
4. The Landlord provided a copy of a BC Hydro utility bill, dated May 17, 2018, for a total of \$173.53. The Landlord stated that the Tenants have not paid 50% of this bill and is claiming compensation for a total of \$86.77.

5. The Landlord provided a copy of a Fortis bill, dated April 23, 2018, and stated that only one of the Tenants paid her share of the \$104.66 bill. The Landlord is claiming that \$25.00 is still outstanding.
6. The Landlord provided a copy of a Fortis bill, dated, May 22, 2018, for a total of \$41.98. The Landlord stated that the Tenants have not paid 50% of this bill and is claiming compensation for a total of \$20.99.

The Landlord stated that they had to complete further cleaning in the rental unit in order to ready it for new tenants; however, are not making any claim in that regard. The total monetary claim for the Landlord is \$391.40.

Analysis

Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply.

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Before I consider the Landlord's monetary claim, I must determine if the Landlord has met their requirements under Sections 24(2) and 36(2) of the Act, in regard to tenancy condition report requirements, as this can affect the Landlord's ability to claim against a security deposit.

Sections 23 and 35 of the Act directs a Landlord and Tenant to inspect the condition of a rental unit at both the beginning and end of the tenancy. The Landlord must offer the Tenant at least two opportunities for the inspections and the Landlord must complete condition inspection reports in accordance with the Regulations. Both parties must sign the condition inspection reports and the Landlord must give the Tenant a copy of the reports. The Landlord must make each inspection, complete and sign the reports without the Tenant if the Landlord has offered two opportunities for both the beginning and end of tenancy inspections and the Tenant does not participate on either of the occasions.

Sections 24(2) and 36(2) of the Act explain that the Landlord's right to claim against a security deposit for damage to the residential property is extinguished if the Landlord does not comply with Sections 23 or 35 of the Act. In this case, the Landlord has testified that a move-in condition inspection was not completed, and, although a move-out condition inspection

occurred, that no condition inspection reports were ever completed and therefore, copies were not provided to the Tenants. As a result, I find that the Landlord has extinguished their right to claim against the security deposit for damages to the residential property, pursuant to Sections 24(2) and 36(2) of the Act.

I accept the Landlord's undisputed evidence that the Tenants had reported problems with the dryer prior to the end of the tenancy. The Landlord claimed, and submitted a video as evidence, that the Tenants were to blame for burning out the element as a result of overloading the dryer. However, the invoice that the Landlord provided does not indicate that anything was wrong with the dryer or if an element was charged for or replaced. *Residential Policy Guideline #1 – Responsibility for Residential Premises* states that the Landlord is responsible for repairs to appliances unless the damage was caused by the deliberate actions or neglect of the Tenant. Consequently, I find that the Landlord failed to provide sufficient evidence that they incurred a loss, in relation to the dryer, as a result of the Tenants' violation of the Tenancy Agreement or the Act. I dismiss the Landlord's claim for compensation in the amount of \$89.25 as referred to in item #1.

I dismiss the Landlord's claim for compensation for \$69.39 in damages to the closet door as referred to in item #2 as the Landlord failed to provide sufficient evidence, including condition inspection reports, to prove that the Tenants were responsible for the damage.

I accept the Landlord's evidence that the Landlord incurred expenses as a result of the Tenants leaving behind garbage and furniture in and around the rental unit, contrary to Section 37 of the Act. Accordingly, I find that Landlord has established a monetary claim of \$100.00 as referred to in item #3.

Although the Landlord extinguished their rights to claim against the security deposit for damages to the unit, they did not extinguish their right to claim for other losses such as utilities.

Based on the Landlord's testimony and evidence, I find that the Landlord has established that the Tenants were responsible for 50% of the utilities as referred to in items #4, 5 and 6. I find that the Tenants failed to pay the gas and hydro utilities for a total of \$132.76, contrary to a term contained in the Tenancy Agreement.

After considering all of the above testimony, evidence and findings, I find the Landlord has established a monetary claim for a total of \$232.76. As the Landlord was successful with their Application, I find that they should also be compensated for the filing fee of \$100.00.

Conclusion

The Landlord has established a monetary claim, in the amount of \$332.76, which includes \$232.76 in compensation for losses and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, and because the

Landlord is currently holding the Tenants' security deposit, I authorize the Landlord to retain \$332.76 from the security deposit of \$650.00, in full satisfaction of the Landlord's monetary award.

Based on these determinations, I grant the Tenants a Monetary Order for the balance of their security deposit in the amount of \$317.24 in accordance with Section 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: October 22, 2018

Residential Tenancy Branch