



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: FFL, MNDCL-S, MNDL-S

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$2621.82
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served on the Tenant by mailing, by registered mail to where the Tenant resides on July 18, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a fixed term written tenancy agreement that provided that the tenancy would start on January 15, 2018, end on January 31, 2019 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$2950 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1475 and a pet damage deposit of \$1475.

The landlord testified he had a number of complaints from the Strata Corporation and neighbors about the Tenant. The complaints included complaints that the Tenant moved in belongings without making appropriate arrangements with the strata, noise, his dog urinating and defecating on common property, the installation of a Jacuzzi without obtaining permission.

The Tenant testified he felt harassed by the neighbors, the strata corporation and the landlord. At the end of May the tenant gave the landlord notice in writing that he was vacating the rental unit at the end of June. The tenant vacated at that time.

The tenant reserved the elevator for his move. During the process the elevator did not work and an emergency call out for an elevator repair person was necessary. It was determined that a rock had been lodged which prevented the closing of the door.

Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord has established a claim in the sum \$417.38 for the cost of the emergency repair call out to fix the elevator. The landlord has paid this sum to the strata corporation. I do not accept the evidence of the tenant that the problem pre-existed his use of the elevator. The tenant and his movers had reserved the elevator at this time. I accept the evidence of the landlord that damage was caused by the negligence of the tenant and/or his movers.
- b. I determined the landlord has established a claim in the sum of \$56.44 for damage to the ceiling panel in the elevator. I accept the evidence of the landlord that damage was caused by the negligence of the tenant and/or his movers.
- c. The landlord withdrew the claim of \$700 to fix a cracked window. The tenant repaired that item.
- d. At the hearing the landlord claimed the sum of \$1572 for the cost of paying an agent to re-rent the rental unit. However, the Application for Dispute Resolution claims the sum of \$1475 pursuant to a liquidated damage clause. The landlord did not amend the application to include the cost to pay an agent to re-rent the rental unit. I determined I am limited to considering the claim for liquidated damages.

The tenant did not upload any documents to the website as required by the Rules of Procedure.. However, the landlord included the photograph of a letter where the tenant is giving the landlord notice he is vacating alleging the landlord breached a material term of the tenancy agreement. The letter states that

“The reason for breaking the lease is for breach of material term primarily as it applies to quiet enjoyment of the premises. Unfortunately I have been ‘targeted’ using Mr. R own words and a small group of aggressive and passive aggressive individuals have accused me of having 2 to 4 cats (late explained by Mr R as his error. He then read the e-mail through and automatically assigned the blame to me. Then I was accused of renovating in the suite. Again this was found to be another false story...”

Section 45(3) of the Act provides as follows:

45(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I determined the tenant failed to establish cause to end the tenancy under section 45(3). That section requires the Tenant to give written notice of the landlord’s failure to comply with a material term and a reasonable period to correct the situation. The letter given by the tenant fails to give a reasonable period to correct the situation. Secondly, the tenant failed to prove that his complaints amount to the landlord’s breach of a material term.

I determined the landlord is entitled to recover the sum of \$1475 pursuant to the liquidated damage clause. I am satisfied the amount set out in the tenancy agreement is a genuine pre-estimation of the loss and is recoverable in accordance with Policy Guideline #4.

- e. The landlord claimed \$100 for the cost of a 2nd move-in fee which the landlord paid to the strata corporation. This claim was not made in the original Application for Dispute Resolution. The landlord did not amend the Application for Dispute Resolution. The inclusion of a claim in the monetary order work sheet does not amount to an amendment of an Application for Dispute Resolution. Rule 2.2 of the Rules of Procedure provide that a claim is limited to what is included in the application. There is no basis for awarding the additional \$100 for the second move-in fee.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$1948.82 plus the \$100 filing fee for a total of \$2048.82.

Security Deposit

I determined the security deposit and pet damage deposit totals the sum of \$2950. I determined the landlord is entitled to retain the sum of \$2048.82 from the security deposit/pet damage deposit. I ordered the landlord pay to the Tenant the balance of the security deposit/pet damage deposit in the sum of \$901.18.

It is further Ordered that this sum be paid forthwith. The parties are given a formal Order in the above terms and the applicant must be served with a copy of this Order as soon as possible.

Should the applicant fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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 25, 2018

Residential Tenancy Branch