



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDC
Tenant: MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application was made on February 26, 2018 (the “Landlord’s Application”). The Landlord applied for a monetary order for money owed or compensation for damage or loss, pursuant to the *Act*.

The Tenant’s Application was made on February 20, 2018 (the “Tenant’s Application”). The Tenant applied for an order that the Landlord return all or part of the security deposit or pet damage deposit, pursuant to the *Act*.

The Landlord and the Tenant attended the hearing at the appointed date and time. Both parties provided affirmed testimony.

The Landlord testified the Landlord’s Application package was served on the Tenant by registered mail. In support, the Landlord submitted a Canada Post document bearing the Tenant’s signature, confirming receipt on March 1, 2018. The Tenant acknowledged receipt.

The Tenant testified the Tenant’s Application package was served on the Landlord by registered mail only days after receipt from the Residential Tenancy Branch. The Landlord acknowledged receipt.

Neither party raised any issues with respect to service or receipt of the above documents during the hearing. Pursuant to section 71 of the *Act*, I find the parties have been sufficiently served for the purposes of the *Act*.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

The parties submitted a copy of the tenancy agreement into evidence. It confirmed that a one-year fixed-term tenancy began on August 1, 2017. The parties confirmed the tenancy ended on January 31, 2018, after the Tenant provided the Landlord with written notice of his intention to vacate dated December 30, 2017. During the tenancy, rent in the amount of \$850.00 per month was due on the first day of each month. The Tenant paid a security deposit in the amount of \$425.00, which the Landlord holds.

The Landlord's Claim

The Landlord claimed \$5,525.00 for unpaid rent from February 1 to July 31, 2018, less the security deposit held. However, the Landlord acknowledged during the hearing that the correct amount of the claim should be \$4,675.00 $(\$850.00 \times 6) - \425.00 . The Landlord also sought to recover the \$100.00 filing fee paid to make the Landlord's Application.

As noted above, the tenancy ended on January 31, 2018, at which time the Tenant vacated the rental unit. The Landlord claimed unpaid rent for the duration of the fixed-term tenancy. Although the Landlord was able to re-rent the rental unit as of March 1, 2018, the Landlord relied on the paragraph 7 of the addendum to the tenancy agreement, which stated:

If the tenant breaks the lease before the anniversary date they forfeit the damage deposit/pet deposit in lieu of the balance of rent due on the lease.

[Reproduced as written.]

The Landlord suggested this provision provided the Tenant with two options: forfeit the deposits held or pay rent to the end of the fixed term.

In reply, the Tenant testified that he had to move due to health issues, and to find accommodation where rent was more affordable.

The Tenant's Claim

The Tenant's claimed \$850.00 for the return of the security deposit and "costs". The Tenant also seeks to recover the filing fee paid to make the Application.

The Tenant testified he provided the Landlord with his forwarding address on January 31, 2018, which was recorded by the Landlord on a condition inspection report. Neither party submitted a copy of the condition inspection report into evidence.

In reply, the Landlord denied she received the Tenant's forwarding address in writing until she received the Tenant's Application package.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

The Landlord's Claim

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

The Landlord testified the Tenant vacated the rental unit on January 31, 2018, contrary to a fixed-term tenancy agreement. On receiving the Tenant's notice, she took steps to re-rent the unit on craigslist. The Landlord acknowledged she was able to re-rent the unit as of March 1, 2018. However, the Landlord claimed the addendum provided the Tenant with only two options: forfeit the security deposit or pay all rent due to the end of the fixed term. This is contrary to the *Act*. Section 5(1) of the *Act* confirms that landlords and tenants cannot contract out of the *Act*. Further, section 7 of the *Act* requires that a landlord or tenant who claims compensation under the *Act* must do

whatever is reasonable to minimize the damage or loss. That is, a landlord cannot rely on a provision in a tenancy agreement that is contrary to the Act. A landlord must take steps to minimize losses. That is what the Landlord did by re-renting the unit.

In this case, I find the Tenant breached the fixed-term tenancy agreement. I am satisfied the Landlord took reasonable steps to re-rent the unit and was able to do so as of March 1, 2018. As a result, I find the Landlord suffered a financial loss and has established an entitlement to receive unpaid rent in the amount of \$850.00 for the month of February 2018.

The Tenant's Claim

Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, the Tenant testified that he provided the Landlord with his forwarding address during a move-out condition inspection on January 31, 2018. The Landlord denied she received the Tenant's forwarding address at that time. Neither party submitted a copy of the condition inspection report.

In this case, I find there is insufficient evidence before me to conclude the Tenant provided the Landlord with his forwarding address in writing, as required under section 38(1) of the *Act*. There was no further evidence in support, most notably the condition inspection report described by the Tenant. Accordingly, the Tenant's Application is dismissed, without leave to reapply.

Summary of Claims

The Landlord has demonstrated an entitlement to a monetary award in the amount of \$850.00 for unpaid rent. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Landlord's Application. Further, I find it is appropriate to apply the security deposit held in partial satisfaction of the Landlord's claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$525.00, which has been calculated as follows:

Item	Amount
Unpaid rent:	\$850.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$425.00)
TOTAL:	\$525.00

The Tenant's Application is dismissed, without leave to reapply.

Conclusion

The Landlord is granted a monetary order in the amount of \$525.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenant's Application is dismissed, without leave to reapply.

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: September 11, 2018

Residential Tenancy Branch