



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted via teleconference and was attended by the landlord. No one was in attendance on behalf of the tenant. The landlord submitted documentary evidence that the tenants were served notice of this application and this hearing personally in the presence of a witness on February 16, 2018. Based on the undisputed submissions of the landlord, I find the tenants were served in accordance to section 89 of the *Act*. Therefore, I continued in the absence of the tenants.

Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's undisputed testimony is as follows. The tenancy began on September 1, 2014 and ended on January 31, 2018. The tenants were obligated to pay \$2500.00 per month in rent and at the outset of the tenancy the tenants paid an \$1150.00 security deposit which the landlord still holds. The landlord testified that the tenant left the unit dirty and damaged at move out. The landlord testified that the tenants participated in the move in condition inspection report. The landlord testified that the despite numerous efforts, one of which was in writing, the tenants chose not to attend the move out condition inspection. The landlord testified that they spent several days just cleaning all of the debris, garbage and belongings of the tenants out of the unit. The landlord had to repair a washing machine due to the tenants neglect.

The landlord is applying for the following:

1.	Just Junk Removal	\$606.90
2.	Metal and Ashes Removal	189.00
3.	City of Vancouver Dumping Fee	28.00
4.	Washing machine repair	315.00
5.	Filing Fee	100.00
6.	Minus Deposit	-1100.00
7.		
8.		
9.		
10.		
	Total	\$138.90

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or

damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and

(b) **the tenant has not participated on either occasion.**

Based on the undisputed testimony of the landlord I accept that the tenants did not participate in the move out condition inspection and therefore have waived their right to the deposit. In addition, the landlord provided extensive documentation, undisputed testimony, receipts and photos to support their application and to meet the test as outlined in section 67 of the Act. Based on the above, I find that the landlord is entitled to their entire claim as submitted.

Conclusion

The landlord has established a claim for \$1238.90. I order that the landlord retain the \$1100.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$138.90. This order may be filed in the 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: September 13, 2018

Residential Tenancy Branch