



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing convened as the Landlord's Application for Dispute Resolution, filed on June 12, 2018, wherein the Landlord requested monetary compensation from the Tenant, authority to retain the Tenant's security deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on November 9, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant was also assisted by an Advocate.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?

2. What should happen with the Tenant's security deposit?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord testified as follows. He confirmed that he resides in the rental unit as the main tenant and has the authority from the Landlord to sublet.

V.S., began renting a room from the Landlord on April 1, 2018. She paid monthly rent of \$600.00 and a security deposit in the amount of \$300.00.

In the within action the Landlord claimed the sum of \$240.00 for the following:

Deadbolt replacement	\$40.00
Key replacement	\$6.00
Cleaning costs	\$60.00
Replacement of pan (estimate)	\$34.00
Filing fee	\$100.00
Total claim	\$240.00

The Landlord testified that he replaced the deadbolt as the Tenant would not return the keys. He claimed that he had a receipt for the key, but not the deadbolt as he misplaced it. Neither were provided in evidence.

In terms of the cleaning costs, the landlord claimed \$60.00.

He also claimed \$34.00 as the estimated replacement cost of replacing the pot. The Landlord claimed that he could not clean the pot and it was damaged beyond repair when the Tenant burned noodles. He also stated that as it was part of a set, he was not able to replace just one component.

In response to the Landlord's claim the Tenant confirmed that she was happy to return the keys but she did not want to leave the key in the mailbox. She confirmed that she was willing to exchange the key for the security deposit and offered to meet with the landlord for this purpose but they refused. Documentary evidence of text communication between the parties confirms this was her position at the end of the tenancy.

The Tenant confirmed that her tenancy ended at the end of May 2018. She stated that the Landlord entered her room and moved her items onto the street without her permission.

The Tenant stated that she cleaned her room and disputed the \$60.00 claimed by the Landlord.

The Tenant also stated that she did not damage the pot; rather it was merely “normal use”. She also noted that it was not a new pot, likely two years old, such that she would be willing to pay \$17.00 for the pot.

The Tenant also disputed the \$100.00 filing fee claimed by the Landlord.

Analysis

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2)(b) provides that a tenant must provide the landlord with all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property at the end of the tenancy.

The Tenant testified that she was willing to return the key, but only in the event the Landlord returned her security deposit at the same time.

As noted during the hearing, security deposits are dealt with by way of section 38 of the *Act* and the Tenant is not permitted to withhold the keys to the rental unit as collateral.

However, the Landlord failed to submit any documentary evidence, such as a receipt, to support a finding that he paid \$40.00 to replace the deadbolt and \$6.00 to replace the key. I therefore dismiss his claim for related compensation as I find the Landlord has failed to prove that he replaced the lock and failed to provide proof of the actual amount required to compensate him for the claimed loss.

The Landlord claimed the Tenant did not clean her room as required. The Tenant disputes this claim.

While it is often the case that testimony of the parties conflicts, where such a discrepancy exists, and without supporting evidence, I am unable to prefer the Landlord's testimony over that of the Tenant's. Further, I note that the Landlord failed to submit any photos or receipts to support the amounts claimed for cleaning. I therefore find he has failed to prove he incurred the \$60.00 cost to clean the rental unit.

The photos submitted by the Landlord show that his pan was slightly damaged. The Tenant stated that she was agreeable to compensating the Landlord \$17.00, noting that it was not in new condition.

A monetary award is intended to put the claiming party in the position they would have been had the damage not occurred, not in a better position. As the pan was not new to provide the Landlord the full replacement cost would put him in a better position; I therefore award the Landlord **\$17.00** for the cost of the pan.

The Tenant stated that the Landlord removed her items from her room and put them on the street. The Landlord is reminded that a Tenant has the right to exclusive possession of the rental unit pursuant to section 28 of the *Act*. Further, the Landlord must not enter a rental unit unless entry is pursuant to section 29 of the *Act*. Finally, the Landlord is reminded that, pursuant to section 26(3) of the *Act* he may not seize the Tenant's personal property, or restrict the Tenant's right to access to their personal property, and must follow Part 5 of the *Residential Tenancy Regulation* should any property be abandoned.

Conclusion

The Landlord's claim for compensation for replacing the deadbolt and keys, as well as cleaning is dismissed.

The Landlord is entitled to the sum of \$17.00 for damage to his pan.

Having been substantially unsuccessful in his claim, I find the Landlord should bear the cost of his filing fee.

The Landlord may retain \$17.00 of the Tenant's \$300.00 security deposit as compensation for his pan and must return the \$283.00 balance to her.

In furtherance of this, I award the Tenant a Monetary Order in the amount of **\$283.00**. The Tenant must serve his Order on the Landlord and may file and enforce it in the B.C. Provincial Court (Small Claims Division).

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: November 16, 2018

Residential Tenancy Branch