



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDL-S, FFL, CNC, OLC

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy, pursuant to section 47; and
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62.

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

- an Order of Possession for Cause, pursuant to sections 47 and 55;
- a Monetary Order for damages, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant testified that the landlord was served the notice of dispute resolution package by express mail on October 18, 2018. The landlord confirmed receipt of the dispute resolution package between October 20-21, 2018. I find that while the landlord was not served in accordance with section 89 of the *Act*, he was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*.

The landlord testified that he left a copy of the notice of dispute resolution package in the tenant's mailbox on October 10, 2018. The tenant confirmed receipt of the dispute resolution package on October 10, 2018. I find that while the tenant was not served in accordance with section 89 of the *Act*, she was sufficiently served for the purposes of this *Act*, pursuant to section 71 of the *Act*.

At the outset of the hearing both parties agreed that the tenant had already moved out of the subject rental property. The tenant testified that she moved out of the subject rental property on November 11, 2018. The tenant withdrew her application to cancel the One Month Notice to End Tenancy for Cause. The landlord withdrew his application for an Order of Possession for Cause.

Amendment

At the hearing the landlord requested to amend his application to include a claim for unpaid rent, in the amount of \$1,600.00 pursuant to section 67 of the *Act*. The tenant testified that she did not pay rent for November 2018.

Section 4.2 of the Residential Tenancy Rules of Procedure state that in circumstances that can reasonably be anticipated, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that since the tenant did not pay rent for November 2018, it could reasonably be anticipated that the landlord would seek to recover November 2018's rent from the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for unpaid rent for the month of November 2018.

Issue(s) to be Decided

1. Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damages, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
5. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2018 and is currently ongoing. Monthly rent in the amount of \$1,600.00 was payable on the first day of each month. A security deposit of \$800.00 was paid by the tenant to the landlord. The subject rental property is an apartment within a strata apartment building. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord submitted that he was contacted by a restoration company because the unit below the subject rental property complained of water damage on their ceiling. The restoration company requested access to the subject rental property to check for a leak. The landlord testified that he texted the tenant and asked her if she had noticed a water leak and that she texted back and told the landlord that she had not noticed a water leak. The aforementioned text messages were entered into evidence. The tenant did not dispute the landlord's testimony or evidence.

The landlord testified that on September 20, 2018 the restoration company inspected the subject rental property and discovered that the water leak may have occurred from the front of the washing machine, which was evidenced by damaged laminate flooring in front of the washing machine. The landlord entered into evidence the "Job Contact Log" from the restoration company which states in part:

"Attended new flood. In [unit number] washing machine may have leaked, tenant found water on the tile floor below washing machine front load door. Category 2. Affected laminate floor in

hallway outside laundry room. Found no wet drywall. No water stains on ceiling, drywall in hallway is dry, just laminate floor affected.”

The tenant did not dispute the landlord’s testimony or evidence.

The landlord testified that in subsequent text messages from the tenant she admitted to seeing water on the floor and postulated that the draw string from a pair of her pants may have got caught in the door, causing the leak. Text messages establishing same were entered into evidence. The tenant did not dispute the landlord’s testimony or evidence.

The landlord submitted that on September 25, 2018 he tested the washing machine and it leaked. The landlord testified that he then inspected the washing machine and found that the washing machine was clogged with hair and had a metal spoon lodged in the rubber bellows. The landlord testified that after he removed the hair and the spoon, he tested the washing machine again and it didn’t leak. The landlord entered photographs of the spoon into evidence. The landlord testified that the washing machine was cleaned prior to the tenant moving in.

The tenant testified that the spoon was a spoon smaller than a tea spoon and that it was from her work and likely was in her work apron when she washed the apron.

The landlord testified that the flood caused over \$10,000.00 in damage to the building and that the strata insurance policy has a \$10,000.00 insurance deductible which was charged to him. The landlord testified that he had insurance which covered the \$10,000.00 charge; however, his insurance carried a \$1,000.00 deductible. The landlord entered insurance documentation evidencing the above facts. The tenant did not dispute the landlord’s testimony or evidence.

The landlord testified that the tenant acknowledged fault for the flood over text messages and the tenant agreed to pay the landlord the \$1,000.00 insurance deductible in two \$500.00 installments. The landlord entered text messages into evidence showing same. The tenant did not dispute the landlord’s testimony or evidence. Both parties agree that the tenant paid the landlord \$500.00.

The tenant’s agent testified that the tenant only agreed to take the blame and to pay the landlord the \$500.00 because she was bullied by the landlord. The tenant’s agent testified that the landlord has not proved that the tenant caused the leak as the restoration report states that the washings machine “may” have leaked. The tenant’s agent testified that the amount of water the tenant found on the floor was small enough to be wiped up with a small sponge, not enough to cause flooding to units below.

When asked what section of the *Act* the tenant wanted the landlord to comply with, the tenant’s agent testified that they wanted the landlord to return the \$500.00 the tenant paid him and for the tenant’s security deposit to be returned.

Analysis

Monetary Claim for Insurance Deductible

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32(3) of the *Act* states that a tenant of a rental unit 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.

Upon review of all the evidence and testimony from both parties, I find that, on a balance of probabilities, the tenant, through her actions or neglect, caused the water leak in the subject rental property. I find that the tenant has not repaired that damage, pursuant to section 32(3) of the *Act*.

I note that the onus on the landlord is a balance of probabilities, not beyond a reasonable doubt. I find it unlikely that the amount of water leaking on the floor, as described by the tenant, was small enough to be wiped up by a small sponge when the restoration company noted that the laminate flooring in front of the washing machine was damaged. I find it more likely than not, that the foreign objects put in the washing machine, whether with intent or by accident by the tenant, caused the water leak in question. Therefore, I find that the tenant is obligated to reimburse the landlord an additional \$500.00 for the \$1,000.00 insurance deductible.

Monetary Claim for Unpaid Rent

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,600.00 on the first day of November 1, 2018 which she failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$1,600.00 in unpaid rent.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$800.00 in part satisfaction of his monetary claim against the tenant.

I decline to make an Order that the landlord comply with the *Act* as the tenant has not established, on a balance of probabilities that the landlord breached the *Act*.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Remainder of insurance	\$500.00

deductible	
November rent	\$1,600.00
Filing Fee	\$100.00
Less security deposit	-\$800.00
TOTAL	\$1,400.00

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: November 22, 2018

Residential Tenancy Branch