



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR-S, FF

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlords served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on August 13, 2018. The tenant stated two evidence documents were submitted to the Residential Tenancy Branch, but the tenant left each at the door of the landlord's residence and has "no idea" if the landlord received them. The landlord confirmed receipt of the tenant's copy of a signed tenancy agreement, but states that no other documents have been received from the tenant. Neither party raised any other issues.

I accept the undisputed affirmed testimony of both parties and find that the tenant has been properly served as per sections 88 and 89 of the Act. The tenant is unable to provide specifics on the evidence being served to the landlord as this is partially disputed by the landlord. On this basis, I find that the landlord's written "Argument" is excluded as the landlord has confirmed not receiving it and the tenant is unable to provide sufficient evidence of service. On the second items, the copy of a tenancy agreement, the landlord confirmed receiving. Although service by the tenant was not

conducted properly, I accept that this document is a duplicate of the copy provided by the landlord and is not prejudicial to accept.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for money owed or compensation for damage or loss, for unpaid rent and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2017 on a fixed term tenancy ending on July 31, 2018 as per the submitted copy of the signed tenancy agreement dated June 24, 2017. The monthly rent was \$1,350.00 payable on the 1st day of each month. A security deposit of \$625.00 was paid on June 24, 2017. The landlord claims that the tenant vacated the rental unit and possession was gained on August 9, 2018.

The landlord seeks a clarified monetary claim of \$10,000.00 which consists of:

\$3,200.00	Floor/Cabinet Damage Repair/Replacement
\$3,125.00	Countertop Damage Replacement
\$425.00	Plumbing Repair/Replacement
\$550.00	General Cleaning
\$2,700.00	Unpaid Rent, 2 Months, September and October 2018

The landlords claim that the tenant vacated the rental unit without notice on August 9, 2018 making the landlords suffer a loss of rent/rental income for a two month period. The landlord stated that the tenant moved out without written notice and the landlord discovered this on August 9, 2018. The tenant provided testimony that she had already moved out and into a new tenancy on July 25, 2018. The tenant stated that she thought there was a mutual agreement to end the tenancy after an altercation with the landlord. The tenant stated that the landlord would no longer rent to her and the tenant responded that she would no longer rent from him. The landlords also claim that the tenant vacated the rental unit leaving it damaged and dirty requiring repairs and cleaning. The landlord has submitted 28 photographs of the condition of the rental unit showing the condition at the end of tenancy showing water damage to the flooring, a

hole in the countertop, cut plumbing from the tenant's installation of a water filter without permission and the dirty refrigerator and stove. The landlord has provided a copy of an estimate dated August 7, 2008 which details floor replacement of \$3,200.00, countertop replacement of \$3,125.00, and plumbing repairs of \$425.00. The landlords claim that these repairs were made, but that at the time of application only an estimate was available as the work was not yet completed.

The tenant disputes the landlords' claims stating that there was no water damage to the flooring or cabinets. The tenant states that the pipes were not cut and that at the beginning of the tenancy, the landlord was notified of the water filter installation that required the drilling of a hole in the countertop. The tenant argued that the landlord never told the tenant that the water filter installation that required the drilling of a hole in the countertop was prohibited. The tenant gave direct testimony that the friend who removed the water filter at the end of tenancy "forgot to re-connect the cold water line" after removal. The tenant argued that landlord's claim of damaged flooring is normal wear and tear or it was present during at the beginning of the tenancy. The tenant stated that she performed basic cleaning, but that the refrigerator and stove were not cleaned.

The landlords clarified that the installation of the water filter was not known until after the fact and that at no time was the tenant given any permission for the installation. The landlords further stated that the tenant had just confirmed that at the end of tenancy, the water filter was removed without properly re-connecting a water line. The landlords stated that this caused water to spill out onto the countertop and down through the drilled hole. The water caused damage to the inside of the cabinet and leaked out on the flooring. The landlord re-iterated that the leaking water on the flooring shows damage as shown in the submitted photographs.

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 44 of the Act states in part that a tenancy only ends when one or more of the following applies, in the case of a tenant, the tenant gives notice to end the tenancy pursuant to section 45 of the Act. Section 44 (3) of the Act states that if on a date specified at the end of a fixed term tenancy that does not require the tenant to vacate the unit on that date, the landlord and tenant have not entered into a new tenancy agreement, both parties are deemed to have renewed the tenancy agreement as month to month tenancy on the same terms.

In this case, the tenant claimed that the fixed term ended on July 31, 2018, but vacated the rental unit on July 25, 2018. The landlords claim that the tenant ended the tenancy without providing proper 1 month notice to end the tenancy. The tenant confirmed and clarified that no actual notice was given to end the tenancy, but that she claims that due to an incident in which both parties agreed to not continue renting the tenant presumed that this was notice to end. I find on based upon the above noted testimony of both parties that although an incident took place in which both parties discussed ending the tenancy, the tenant failed to provide proper notice to end the tenancy on a specified date as per section 44 of the Act. As such, the landlords have established a claim for unpaid rent of \$1,350.00 for August 2018. However, on the landlord's claim for loss of rent (September 2018) the landlord has failed to establish a claim. The landlord provided no details of when the unit was or if it was re-rented. The landlord provided no details of any efforts to mitigate any possible losses.

On the landlords' claims for compensation of \$6,750.00 for flooring, cabinet, countertop and plumbing damage repair and replacement, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The landlord has been successful in providing sufficient evidence that the tenant installed a water filter without permission. The tenant confirmed that a hole was cut into the countertop during installation. The tenant's assertion that the landlord did nothing to dispute its installation is without merit as it was done after installation. Although the landlord relies upon an estimate provided, I find that this is sufficient based upon the undisputed evidence that all of the repair/replacement work was done after the application had been filed. The landlord provided undisputed affirmed testimony that as a result of removal of the water filter at the end of tenancy, the tenant failed to re-connect a water line which caused water to seep through the cut hole into the cabinet and leak out onto the flooring. The landlords are entitled to this portion of the claim.

The landlords' last item of claim for cleaning of \$550.00 has been successful. Although the tenant disputed this claim, the tenant did confirm in her direct testimony that she failed to clean the stove and fridge. I find that this in conjunction with the submitted

photographs of the refrigerator and stove show that cleaning was required after the tenant vacated the unit. The tenant challenged the authenticity of the estimate, but provided no basis to question it. As such, I accept the landlords' estimate of cleaning for \$550.00 and find that the landlord has been successful.

The landlords have established the monetary claim of \$8,650.00. The landlords having been successful are also entitled to recovery of the \$100.00 filing fee.

I authorize the landlords to retain the \$625.00 security deposit in partial satisfaction of the claim and grant a monetary order to the landlord for the balance of \$8,125.00.

Conclusion

The landlords are granted a monetary order for \$8,125.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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: December 11, 2018

Residential Tenancy Branch