



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application filed August 9, 2018 wherein the Landlord sought monetary compensation from the Tenant for unpaid rent and utilities, damage to the rental unit and cleaning, authority to retain the Tenant's security deposit and recovery of the filing fee.

Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 2:05 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that she served the Tenant with the Notice of Hearing and the Application on August 15, 2018 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where

the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of August 20, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord 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.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent and utilities, and damage to the rental unit?
2. Should the Landlord be authorized to retain the security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began May 1, 2017. Monthly rent was payable in the amount of \$675.00. The Tenant also paid a security deposit of \$325.00. Pursuant to the agreement the Tenant was also responsible for paying the B.C. Hydro, Fortis and municipal water utility.

The Landlord testified that rent was to be increased to \$700.00 as of August 1, 2018, however the Tenant vacated the rental unit at the end of July 2018.

The Tenant gave notice to end her tenancy on June 28, 2018 with an effective date of July 31, 2018.

The Landlord testified that the Tenant failed to pay rent for July 2018 and as such she sought the sum of \$675.00 in unpaid rent.

In the June 28, 2018 letter, the Tenant references the Landlord's daughter moving into the rental unit. The Landlord confirmed that she did not issue a two month notice to end

tenancy (pursuant to section 49 of the *Act*) as she was waiting to confirm her daughter's intention to live in the rental unit.

The Landlord said the Tenant failed to return the keys to the rental unit such that she also sought their replacement cost.

The Landlord testified that the rental unit was freshly painted when the tenancy began. When the tenancy ended, the Tenant had put an excessive number of tacks into the walls, some of which had to be dug out of the walls, such that they required repainting. The Landlord confirmed that she only sought the material costs, not her labour to paint the rental unit.

The Landlord also stated that the Tenant failed to clean the rental unit or remove all of her garbage. She estimated that she and the cleaner cleaned the rental unit for six hours.

The Landlord filed a Monetary Orders Worksheet wherein she confirmed that she sought monetary compensation for the following:

July 2018 rent	\$675.00
Cleaning of the rental unit	\$75.00
Paint, supplies and a door lock	\$134.31
Disposal of Tenant's garbage	\$5.00
<i>B.C. Hydro April 6, 2018 (reconciliation) \$574.57 paid over four months at \$85.05 per month</i>	
B.C. Hydro April 16, 2018	\$85.05
Fortis April 25, 2018	\$14.00
B.C. Hydro May 7, 2018	\$85.05
Fortis May 1, 2018	\$11.55
Municipal water	\$18.10
B.C. Hydro June 6, 2018	\$85.05
Fortis June 1, 2018	\$15.65
B.C. Hydro July 6, 2018	\$85.05
Fortis July 21, 2018	\$15.65
<i>Less \$120.00 paid April, May and June</i>	<i>-\$120.00</i>
TOTAL CLAIMED	\$1,184.46

The Landlord also sought authority to retain the Tenant's security deposit of \$325.00 as well as recovery of the \$100.00 filing fee.

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) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord 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.

I accept the Landlord's evidence that the Tenant did not pay rent for July 2018. While a Tenant is entitled to a free month's rent when a Landlord issues a 2 Month Notice to End Tenancy for Landlord's Use pursuant to sections 49 and 51 of the *Act*, there is no evidence before me to show the Landlord issued such a notice. I therefore find the Tenant is responsible for the July 2018 rent in the amount of **\$675.00**.

I accept the Landlord's undisputed evidence that the Tenant also failed to clean the rental unit and remove her garbage as required by the *Act*. I therefore find the Landlord is entitled to recovery of the amounts claimed for cleaning and garbage removal.

The Landlord testified that the Tenant failed to pay utilities as required. The statements provided by the Landlord confirm the amounts outstanding at the end of the tenancy, which are recorded on the Landlord's Monetary Orders Worksheet. I therefore find the Landlord is entitled to the amounts claimed.

Having been substantially successful the Landlord is also entitled to recover the \$100.00 filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$1,284.46** for the following:

July 2018 rent	\$675.00
Cleaning of the rental unit	\$75.00
Paint, supplies and a door lock	\$134.31
Disposal of Tenant's garbage	\$5.00
<i>B.C. Hydro April 6, 2018 (reconciliation) \$574.57 paid</i>	

<i>over four months at \$85.05 per month</i>	
B.C. Hydro April 16, 2018	\$85.05
Fortis April 25, 2018	\$14.00
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Municipal water	\$18.10
B.C. Hydro June 6, 2018	\$85.05
Fortis June 1, 2018	\$15.65
B.C. Hydro July 6, 2018	\$85.05
Fortis July 21, 2018	\$15.65
<i>Less \$120.00 paid April, May and June</i>	<i>-\$120.00</i>
Filing fee	\$100.00
TOTAL AWARDED	\$1,284.46

The Landlord may retain the Tenant's \$325.00 security deposit towards the amounts awarded and is granted a Monetary Order for the balance due in the amount of **\$959.46**. The Landlord must serve the Monetary Order on the Tenant and may file and enforce it in the B.C. Provincial Court (Small Claims Division) 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 10, 2018

Residential Tenancy Branch