



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOCKE PROPERTY MGMT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC-L, MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on August 20, 2018, wherein the Landlord requested monetary compensation from the Tenant for unpaid rent and cleaning of the rental unit, authority to retain her security deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on December 17, 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 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. Should the Landlord be authorized to retain the Tenant's security deposit?

3. Should the Landlord recover the filing fee?

Background and Evidence

The owner, P.L., testified as follows.

He confirmed that this tenancy began August 1, 2016. Monthly rent was payable in the amount of \$850.00 and the Tenant paid a \$425.00 security deposit. The rent was increased during tenancy such that at the end of the tenancy the rent was \$881.00.

The Tenant gave notice to end her tenancy on July 22, 2018. A copy of this document was provided in evidence. On this document the Tenant confirmed she intended to move from the rental unit on August 7, 2018.

The Tenant vacated the rental unit on or about August 7, 2018. P.L. confirmed that the Tenant did not pay rent for that month such that the Landlord seeks the sum of \$879.00 for the month of August (as the Tenant had a \$2.00 credit).

P.L. stated that the rental unit required cleaning at the end of the tenancy.

The Property Manager J.W. also testified. He confirmed that he performed the move out condition inspection. Introduced in evidence was a copy of the move in and move out condition inspection report indicating that cleaning was required at the end of the tenancy. J.W. confirmed that the condition inspection report accurately depicts the condition of the rental unit at the end of the tenancy.

J.W. testified that the Tenant did not attend the move out inspection, despite being served with a Notice of Final Opportunity to Schedule a Condition Inspection.

Also introduced in evidence was a copy of two invoices for general cleaning and appliance cleaning totalling \$360.00.

The Tenant responded as follows. The Tenant stated that she does not agree with the cleaning costs as she claimed to have left the rental unit clean. She also stated that she is a very clean person and she spent two hours cleaning it before she left. She confirmed that she did not provide any photos or other evidence to dispute the contents of the condition inspection report.

The Tenant further stated that she left her keys in the mail slot.

The Tenant stated that she did not receive anything in the mail about the move out inspection and only heard about it after it had been completed.

In response to the Landlord's claims regarding unpaid rent, the Tenant stated that she spoke with the resident manager and told the Landlord they could keep her security deposit towards her rent. The Tenant said she no longer felt safe in the rental home with her child due to the conflict from the neighbours fighting. She stated that she spoke to the previous property manager who stated that he would deal with the neighbours who were fighting but failed to do so.

The Tenant confirmed that she moved to the address noted on the Landlord's Application on August 1, 2018.

In reply to the Tenant's submissions, J.W. testified that he served the Notice of Final Opportunity to Schedule a Condition Inspection by mail sent on August 7, 2018 to the forwarding address provided by the Tenant. The inspection occurred on August 15, 2018.

The Landlord confirmed that the rental unit was re-rented as of September 1, 2018 for \$950.00.

Analysis

In this section reference will be made to the *Residential Tenancy Act, Regulation*, and *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at: 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.

After consideration of the evidence and testimony before me and on a balance of probabilities I find as follows.

I will first deal with the Landlord's claim for unpaid rent. A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice,
 - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
 - (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Pursuant to the above, the effective date of the Tenant's July 22, 2018 notice is August 31, 2018.

The Tenant submitted that she needed to leave the rental unit due to conflict from the neighbours. While a tenant may end a tenancy early when a landlord breaches a material term,

pursuant to section 45(3), the tenant must give the landlord written notice of the alleged breach as well as a reasonable period of time to correct the situation. Although not strenuously argued by the Tenant, I find she has failed to prove the Landlord breached a material term of the tenancy agreement justifying her desire to end the tenancy early.

I therefore find the Tenant is responsible for the August rent, and as such, I find the Landlord is entitled to the **\$879.00** claimed for unpaid rent for August 2018.

I will now address the Landlord's claim for cleaning costs.

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.

Section 21 of the *Residential Tenancy Regulation* affords significant evidentiary value to condition inspection reports and reads as follows:

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The importance of condition inspection reports is further highlighted by sections 24 and 36 as these sections provide that a party extinguishes their right to claim against the deposit if that party fails to participate in the inspections as required (in the case of the landlord this only relates to claims for damage; a landlord retains the right to claim for unpaid rent.)

I find the Landlord sent the Notice of Final Opportunity to Schedule a Condition Inspection to the Tenant by on August 7, 2018. Section 90 of the *Act* provides that documents sent by mail are deemed received five days later; therefore, I find the Tenant received the Notice as of August 12, 2018.

Additionally, I find the Tenant failed to participate in the Condition Inspection Report as required by the *Act*; consequently, her right to claim for return of her deposit is extinguished.

In any event, I accept the Landlord's evidence that the Tenant failed to clean the rental unit as required. The Condition Inspection Report indicates that cleaning was required at the end of the tenancy and pursuant to section 21 of the *Regulations* I accept the report as persuasive evidence of the condition of the rental unit at that time. The Tenant disputed the amounts claimed but also failed to provide any evidence to disrupt the evidentiary value of the report.

I am persuaded by the Landlord's testimony, the Condition Inspection Report, as well as the receipt for cleaning that the Landlord suffered a loss of **\$360.00** due to the amount paid to clean the rental unit. I therefore award the Landlord the amounts claimed.

The Landlord also claims recovery of the filing fee; section 72 of the *Act* provides for recovery of the filing fee and reads as follows:

- 72** (1) The director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.
- (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
- (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
- (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant

Having been substantially successful in their application, I award the Landlord recover of the **\$100.00** filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$1,339.00** calculated as follows:

August 2018 rent	\$879.00
Cleaning costs	\$360.00
Filing fee	\$100.00
TOTAL AWARDED	\$1,339.00

Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenant's \$425.00 security deposit towards the amounts claimed and I award the Landlord a Monetary

Order for the balance of **\$1,014.00**. This Order must be served on the Tenant and may be filed and enforced 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: January 15, 2019

Residential Tenancy Branch