



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On September 5, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages to the rental unit, to apply the security deposit to the claim, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and the Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Sections 38 and 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord and the Tenants agreed on the following terms of the tenancy:

The one-year fixed term tenancy began on September 15, 2017 and was scheduled to continue as a month-to-month tenancy on September 30, 2018. The rent was \$1,600.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$800.00.

The Landlord testified that the tenancy ended on September 30, 2018; however, when questioned about the date, acknowledged that the Tenants provided vacant possession of the rental unit on August 31, 2018.

Landlord's Evidence:

The Landlord testified that the parties conducted a move-in inspection on September 16, 2017 and a written report was completed. The Landlord stated that the move-out inspection was conducted on August 31, 2018; however, the parties argued about damages and the Tenants' signatures were not obtained. The Landlord stated that she received the Tenants' forwarding address, in writing, on August 31, 2018.

The Landlord stated that the Tenants left the walls and carpet in the bedroom "dirty and stained" and that she doesn't know how much it will cost to clean and fix the damage but would like to keep the security deposit of \$800.00. The Landlord submitted photos and stated that the dirt was not there at move-in, but that there was dirt and stains on the bedroom wall and carpet at move-out.

The Landlord stated that the Tenants claimed that there was mold in the bedroom. The Landlord testified that she brought in a "professional specialist" the day after the Tenants moved out and that the specialist said there was no mold. The Landlord did not provide any documentation regarding the specialist's report nor did the Landlord have the specialist attend the hearing.

The Landlord testified that the Tenants lied to her about mold and that they should be penalized for a month's rent in the amount of \$1,600.00. The Landlord originally stated that she lost a month's rent because the Tenants moved out early; she later testified that the Tenants forced her to sign a Mutual Agreement to End a Tenancy for August 31, 2018. When questioned, the Landlord acknowledged that she prepared the Mutual Agreement to End a Tenancy. The Landlord stated the Tenants didn't want to pay the upcoming rent increase, so they wanted to move out early. The Landlord is claiming \$1,600.00 as compensation because the Tenants gave her "so much trouble".

Tenants' Evidence:

The Tenants testified that they noticed mold in their bedroom closet in July 2018 and that it had damaged some of their clothes. They brought the mold issue to the Landlord's attention and the Landlord stated that the Tenants could have the damaged clothes professionally cleaned and submit the bill to the Landlord.

The Tenant stated that the photos they submitted showed the large amount of mold on the walls, in the closet and along the baseboards in their bedroom at the time of move-out. The Tenants said that the beginning of the mold damage could even be seen in the Landlord's photos of the move-in inspection.

The Tenants stated that the Landlord suggested that they could end their tenancy early and presented a Mutual Agreement to End a Tenancy for August 31, 2018, to the Tenants. The Tenants agreed and signed the Mutual Agreement on July 29, 2018.

The Tenants testified that they made an effort to clean the bedroom walls, carpet and closet; however, they were unable to remove all the mold. The Tenants stated that the Landlord had acknowledged that there was an outside pipe that had been leaking and felt that the mold was likely as a result of the leaky pipe.

Analysis

Firstly, I will consider whether the Landlord is authorized to apply the security deposit to a claim of damages to the rental unit. Sections 23, 24, 35 and 36 of the Act speak to the requirements for condition inspection reports and the extinguishment of rights to claim against the security deposit. Although I heard conflicting testimony regarding the specifics of the condition inspection reports, I find that the Landlord showed diligence in participating in the inspections and completing written reports. I find that the Landlord is

authorized to make a claim against the security deposit regarding damages to the rental unit and property.

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

The Landlord claimed that the Tenants caused damage to the bedroom walls and carpet. The Landlord admitted that she does not know how the damage would have occurred and at one point during the hearing, suggested that the Tenants may have poured water on the walls. The Landlord testified that a specialist attended the rental unit and reported that there was no mold; however, the Landlord did not provide any documentary evidence to support her testimony.

The Tenants provided testimony and documentary evidence that indicated there was a large amount of mold located in the bedroom closet, along the walls, baseboards and carpet of the bedroom. The Tenants stated that the Landlord admitted that there was mold, offered to pay for the cleaning of the damaged clothes and even suggested ending the tenancy early because of the mold issue.

The Landlord contradicted herself when providing testimony regarding when the tenancy ended, the signing of the Mutual Agreement to End a Tenancy and, the reasons for her \$1,600.00 claim. The Landlord claimed that the Tenants lied about the mold and stated that they should be penalized for lying, in the amount of one month's rent.

As a result of the testimony and evidence provided, I find that the Landlord failed to provide sufficient evidence that there was any damage that stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the Tenants and furthermore, has not provided evidence that can verify the actual monetary amount of the monetary loss, pursuant to Section 67 of the Act. As a result, I dismiss the Landlord's Application for a Monetary Order for damages and to apply the security deposit to the claim.

The Landlord has held the Tenants' security deposit, regardless of verifying the actual monetary amount of her claimed loss or establishing that the Tenants were responsible for the damage. The Landlord has also claimed that the Tenants have lied about the mold, regardless of the documentary evidence that the Tenants have provided, which I find, on a balance of probabilities, indicates a large amount of mold present. The Landlord also made a \$1,600.00 claim based on a penalty she felt she was owed due to the Tenants lying to her and causing the Landlord so much trouble.

In consideration of the above, I find that the Landlord's Application is frivolous and an abuse of the dispute resolution process. In accordance with Residential Tenancy Branch Policy Guideline 17, I order the Landlord to return double the security deposit to the Tenants in the amount of \$1,600.00.

As the Landlord's Application was unsuccessful, I do not award the Landlord compensation for the filing fee.

Conclusion

I grant the Tenants a Monetary Order for the amount of \$1,600.00, in accordance with Section 67 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: January 07, 2019

Residential Tenancy Branch