



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On September 12, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenants did not attend at any time during the 38-minute hearing. The Landlord testified that she served each of the Tenants with the Notice of Hearing packages by sending them via registered mail on September 18, 2018. The Landlord supplied tracking numbers which, according to the Canada Post website, indicated that the Tenant’s signed for the packages on September 27, 2018. I find that the Tenants have been duly served with the Notices of Hearing in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenants did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

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

The Landlord provided the following undisputed testimony and evidence:

The one-year, fixed term tenancy began on August 28, 2017 and ended on August 31, 2018. The monthly rent was \$2,600.00 and due on the first of each month. The Landlord collected \$1,300.00 for the security deposit and \$1,300.00 for the pet damage deposit.

The Landlord testified that the Tenants were present for the move-in inspection on August 31, 2017 and the move-out inspection on August 31, 2018. The Landlord provided a copy of the written Condition Inspection Report as evidence.

The Landlord stated that the Tenants texted her on May 21, 2018, to notify the Landlord of damage to the door of the washing machine. The Landlord stated that the washing machine was in order and undamaged at the beginning of the tenancy. The Landlord stated that they attempted to set up a time to fix the washing machine with the Tenants; however, were unable to find an agreeable time before the end of the tenancy. The Landlord provided an invoice for the washing machine replacement parts for a total of \$491.97.

The Landlord stated that she did not notice significant damage to the wall and door jamb in a small room off the upstairs bedroom during the move-out inspection. The Landlord supplied a photo and indicated that the drywall looks like it was scratched by a pet and that the damage extended to the door jamb and door. The Landlord stated that the damage occurred during the tenancy. The Landlord stated that their handyman provided a verbal quote to repair the damage. The Landlord is claiming \$200.00 in compensation for the damage.

The Landlord testified that on September 5, 2018, she sent an email to the Tenants about the damages and advised that the total of \$691.97 would be deducted from their deposits. The Landlord said that the Tenants accepted an e-transfer for the balance of \$1,908.03, on September 15, 2018.

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. I heard undisputed testimony that the Landlord conducted condition inspections and provided a written report. Subsequently, I find that the Landlord showed diligence in participating in the inspections in accordance with the Act. I find that the Landlord is authorized to make a claim against the security deposit in regard to 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.

I accept the undisputed evidence of the Landlord that the washing machine was in good working order at the beginning of the tenancy and that the door of the machine was damaged during the tenancy. I also accept that the damage to the drywall and door frame was likely due to the Tenants' pet and occurred during the tenancy.

Section 37 of the Act states that Tenant's must vacate a rental unit and leave the unit reasonably clean and undamaged except for reasonable wear and tear. I find that the damaged washing machine and the damage to the wall and door frame is beyond reasonable wear and tear and that the Tenants breached Section 37 of the Act by vacating the rental unit without repairing the washing machine, wall and door frame. As a result, I find that the Landlord has established a monetary claim, in the amount of \$691.97.

Pursuant to Section 67 and 72, I authorize the Landlord's actions to retain \$691.97 from the Tenants' security and pet damage deposits, in compensation for the damages, and to return the balance of the deposits to the Tenants.

I find that the Landlord was successful with her Application and should be compensated for the cost of the filing fee, in the amount of \$100.00.

Conclusion

Pursuant to Section 67 and 72 of the Act, I authorize the Landlord's retention of \$691.97 from the Tenants' security deposit and pet damage deposit.

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$100.00, as compensation for the cost of the filing fee for this Application. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, 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 14, 2019

Residential Tenancy Branch