



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFL, MNDL-S

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award equivalent to double the value of her security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on December 1, 2012 and ended on August 31, 2018. The tenant was obligated to pay \$1455.00 per month plus utilities in rent in advance and at the outset of the tenancy the tenants paid a \$600.00 security deposit. The landlord testified that the tenant left the unit dirty and damaged at move out. The landlord testified that the unit was in such poor shape it wasn't rentable until September 20, 2018. The landlord testified that she is seeking loss of rent for the twenty days plus damages, the filing fee, and the cost of cleaning the unit. The landlord testified that she is seeking \$4305.37.

The tenant gave the following testimony. The tenant testified that the unit was damaged before she moved in. The tenant agrees that she didn't clean the kitchen and agrees that the landlord should be allowed to retain \$100.00 for that. The tenant testified that since she moved out on August 31, 2018 and still has not yet received her deposit, she believes she should be entitled to the return of double the amount minus the \$100.00 for cleaning for an award of \$1100.00.

Analysis

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 arguments are reproduced here. The principal aspects of the each party's claim and my findings around each are set out below.

It is worth noting that the landlord was extremely disorganized when presenting her claim. She was unable to answer basic questions or provide answers' to the claim she put forth or able to explain the amount she noted on the application and what she was seeking on the day of the hearing. Much of her claim lack clarity or logic. The landlord presented her evidence in a very disjointed and vague fashion. In addition, the landlord would add and subtract items from her claim during the hearing and would alter the

amount she was seeking. The landlords' testimony and documentation were in conflict through much of the hearing, when it was; I considered the sworn testimony in coming to her monetary calculations. Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

Damages and Loss of Revenue-

The landlord testified that much of the damage has not yet been repaired as she was dealing with poor health and stress from this incident. In addition, the landlord lacked the receipts to support the actual out of pocket costs to her. Furthermore, it was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I

am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support their claim for damages and loss of revenue, and I therefore dismiss this portion of their application.

Cleaning -

The tenant agrees that she did leave parts of the suite dirty at move out. The landlord provided photos of the condition of the unit at move out. The tenant disputed the damage but not the lack of cleanliness. Residential Tenancy Policy Guideline 1 states that a tenant is required to leave a suite reasonably clean at the end of the tenancy. Based on the evidence before me, I find that the tenant did not leave the suite reasonably clean. I find that the appropriate amount for the cleaning based on the evidence before me is \$300.00. The landlord is entitled to retain \$300.00 from the security deposit.

As the landlord has been only marginally successful in their application I dismiss their request for the recovery of the filing fee.

I address the tenants' application and my findings as follows.

Return of Double the Security Deposit -

The tenant said she is applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Both parties agreed and confirmed that the tenant provided her forwarding address in writing to the landlord on September 12, 2018. The landlord filed their application on September 27, 2018; 15 days from which they received the tenant's forwarding address and in accordance with section 38 of the Act. The doubling provision does not apply in this matter.

Conclusion

The landlord has established a claim for \$300.00. I order that the landlord retain \$300.00 from the security deposit in full satisfaction of the claim and I grant the tenant an order under section 67 for the balance due of \$300.00. This order may be filed in the 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 25, 2019

Residential Tenancy Branch