



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1177923 ALBERTA INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNRL-S

Introduction

This hearing dealt with an application by the landlord under the *Manufactured Homes Park Tenancy Act*, for the following:

- A monetary order for compensation for damage or loss under the *Manufactured Homes Park Tenancy Act*, or tenancy agreement, pursuant to section 60;
- Reimbursement of the filing fee pursuant to section 65 of the *Manufactured Homes Park Tenancy Act*.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution and the landlord's amendment of the Application for Dispute Resolution. The tenant did not raise any issues of service and the tenant did not object to landlords' amendment. I find that the landlord served the tenant in accordance with section 89 of the *Act* and I heard the landlord's application as amended.

Preliminary Matter: Application of the Manufactured Homes Park Tenancy Act

The landlord filed this application under the *Manufactured Homes Park Tenancy Act*. Section 4 of the *Manufactured Homes Park Tenancy Act* states that the *Manufactured Homes Park Tenancy Act* does not apply to "...a tenancy agreement under which a manufactured home site and a manufactured home are both rented to the same tenant." The landlord testified that the tenant rented both the manufacture home site and the manufactured home from the landlord. As such, based on the evidence submitted by the landlord, I find that the *Manufactured Homes Park Tenancy Act* does not apply to this tenancy.

Section 2 and 4 of the *Residential Tenancy Act* (the “*Act*”) states that the *Residential Tenancy Act* applies to residential tenancy agreements that are not subject to the *Manufactured Homes Park Tenancy Act*. Since this tenancy is not subject to the *Manufactured Homes Park Tenancy Act*, I find that this tenancy is subject to the *Residential Tenancy Act* and I shall consider the landlord’s application herein as an application for relief pursuant to the *Residential Tenancy Act*.

Preliminary Matter: Service of Tenant’s Evidence

The tenant testified that he did not serve his package of evidence to the landlord. The landlord testified that they did not receive any documents from the tenant and they have had no opportunity to review the tenant’s evidence.

Rule 3.17 of the Residential Tenancy Branch *Rules of Procedure* (the “*Rules*”) states that the respondent’s evidence must be received by the applicant at least seven days before the hearing. In this matter, the tenant admitted that he did not serve his evidence at all.

As such, I find that the tenant did not properly serve his evidence package on the landlords and I find that the acceptance of this evidence would prejudice the landlord pursuant to Rule 3.12 of the *Rules*. Accordingly, I exclude the tenant’s evidence from this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation for damage or loss under the *Act*, the regulations pursuant to section 67?

Is the landlord entitled to a monetary order to retain the security deposit pursuant to section 67 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision.

The parties agreed that the tenant started renting a mobile home from the landlord in May of 2017. The rent was \$1,100.00 payable on the first day of each month. The tenant paid a security deposit of \$550.00 and the tenant did not pay a pet damage deposit. The parties did not provide a copy of the tenancy agreement.

The parties agreed that they did not perform a condition inspection report either when the tenant moved into or moved out of the property.

The landlord testified that the tenant did not pay the November 2018 rent by the November 1, 2018 due date. The landlord testified that they issued a 10 Day for Unpaid Rent or Utilities (the "Ten-Day Notice") on November 2, 2018.

The landlord testified that the tenant did not dispute the Ten-Day Notice. However, the landlord testified that tenant remained on the property until approximately November 19, 2018.

The landlord testified that the tenant's dog severely damaged the bedroom carpet which needed to be replaced. The landlord also testified that the living room rug was very dirty and needed to be shampooed. The landlord also testified that there many marks on the walls and that they needed to paint the living room wall.

The landlord also testified that the plumbing in the rental unit was damaged.

The landlord did not provide any photographs of the interior of the rental unit. The landlord also did not provide any invoices, estimates or receipts for repairs.

The landlord also testified that the tenant left a shed in the yard which needed to be torn down and removed. In addition, the landlord testified that the tenant left garbage, appliances and building supplies in the yard which the landlord needed to clean. The landlord testified that it took two days to clean the yard. The landlord provided multiple photographs of garbage and debris in the yard.

The landlord claims property damages of \$550.00, the amount of the security deposit. However, the landlord provided no itemization or explanation for the demand of \$550.00.

The tenant testified that he moved out of the rental by November 3, 2018 except for some garbage which he did not have a chance to remove.

The tenant testified that the inside of the property was clean when he left. The tenant testified that he washed the walls and he steam cleaned the carpet.

The tenant testified that the plumbing problems in the rental unit were pre-existing and the plumbing problems were the landlord's responsibility. The tenant testified that he complained about the plumbing issues multiple times during his tenancy. However, the tenant testified that the landlord did not repair the plumbing.

The tenant acknowledged that there was some debris left outside, including a mattress, but it was not nearly as bad as it looks in the landlord's photographs.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Each of the landlords' claims is addressed:

Unpaid Rent

Based on the agreed testimony of the parties, I find that the tenant owes rent of \$1,100.00 per month payable on the first of each month. I also find that the tenant continued to reside at the rental unit for a portion of the month of November 2018 and I find that did not pay the landlord the November 2018 rent. Accordingly, I award the landlord \$1,100.00 for unpaid rent for November 2018.

Property Damage

I find that the landlord has not provided sufficient evidence to prove that the tenant owes the landlord compensation for property damages. Without conducting a condition inspection report, it is extremely difficult to ascertain what damage, if any, was caused by tenancy as compared to the pre-existing condition of the property.

In addition, the landlord has provided no photographs of the interior of the property or estimates or invoices. Although the landlord testified that the tenant damaged the property, the tenant denied these claims and I do not have any evidence to resolve this conflict. I find that the landlord has failed to satisfy his burden of proof of establishing any of the elements of the above-stated four part test for damages.

Furthermore, the landlord did provide photographs of the exterior of the property which showed garbage and debris in this yard. However, this evidence is still inadequate to establish a claim for property damages since the landlord did not provide any estimate of the actual monetary amount of the damage or the clean up costs.

I find that the landlord has failed to prove its claim for damage to property and I accordingly dismiss this claim.

Security Deposit

Section 24 of the *Act* provides that the right to claim against a security deposit for damage to residential property is extinguished if the landlord did not properly conduct a move-in inspection. Based on the agreement of both parties that no move-in inspection was conducted, I find that the landlord's right to claim against the security deposit for damages to the property, was extinguished at move-in. However, even if the right to retain a security deposit is extinguished in relation to property damage, the landlord still has the right to retain the security deposit in regards to unpaid rent.

Accordingly, even though the security deposit is extinguished in regards to property damage, I find that the amount of the deposit held by the landlord can be deducted from the amount owed to the landlord for unpaid rent pursuant or section 72(2)(b) of the *Act*.

In addition, since the landlord has been partly successful this matter, I award the landlord \$50.00 for partial recovery of the filing fee.

The net award to landlords is accordingly \$600.00 as set forth below:

Item	Amount
Unpaid rent payable to landlord	\$1,100.00
Damages to property	\$0.00
Filing recovered by landlord	\$50.00
Less: deposit held by landlords	(\$550.00)
Net Award to landlords	\$600.00

Accordingly, I order the tenant to pay the landlords the sum of \$600.00.

Conclusion

I find that the landlord is entitled to a monetary award of \$1,100.00 for unpaid rent.

The landlord's claim for damages to the property is dismissed.

I find that the landlords are entitled to recover \$50.00 as partial reimbursement of their filing fee.

I find that the landlord's right to hold the tenant's security deposit is extinguished.

I find that the deposit of \$550.00 should be deducted from the amount owed to landlords.

The net award is the sum of \$600.00 payable by the tenant to the landlord.

The landlord is granted a monetary order in the amount of **\$600.00**. This order must be served on the tenant. If the tenant does not comply with this order, the landlords may enforce this order in the Small Claims Division of the British Columbia 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: February 06, 2019

Residential Tenancy Branch