



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, MNR-S, FF

Introduction

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

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 9, 2018. Both parties confirmed the tenant served the landlord with his submitted documentary evidence via Canada Post Registered Mail on January 15, 2019. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 1, 2015 on a fixed term tenancy ending on September 31, 2016 as per the submitted copy of the signed tenancy agreement dated September 9, 2015. The monthly rent is \$2,050.00 payable on the 1st day of each month. A security deposit of \$1,025.00 was paid. A condition inspection report for the move-in (undated) and the move-out (September 28, 2018) were completed by both parties.

The landlord seeks a monetary claim of \$1,757.41 which consists of:

\$1,657.41	Recovery of Plumbing Chargeback costs
\$100.00	Unpaid Rent, August 2018

The landlord claims that during the tenancy the tenant reported a clogged bathtub and a sink backing up on two separate occasions which resulted in a plumber being called which the landlord incurred a cost of \$184.80 for the clogged bathtub and \$1,472.61 for the sink backing up. The landlord claims that the tenant had installed a garburator without permission of the landlord which has resulted in grease and food debris causing the blockage. The landlord also claims that the clogged bathtub was the result of a hair clog.

The tenant disputes the landlord's claims stating that the tenant did not cause the clogged bathtub or the backed up sink and that it was the result of inadequate maintenance by the landlord. The tenant further argued that the garburator was present at move-in and was not installed by the tenant. The tenant provided a copy of email exchanges between the tenant and landlord dated in January 2016 in which the tenant has notified the landlord of an ongoing garburator issue.

The landlord was unable to confirm if the garburator was installed by the previous landlord or tenant, but the landlord noted that there is no mention of a garburator in the completed move-in or the move-out inspection.

The landlord relies upon the submitted plumbing invoices which states in part,

“Unplugged & removed a lot of hair from the bathtub drainage line.”

“Blockage was grease and food debris...Technician noticed that sink had garburator. It is highly recommended that garburator be removed as food ground by garburator builds up.”

The landlord seeks recovery of unpaid rent of \$100.00 for August 2018. The landlord claims that monthly rent is \$2,148.00 and the tenant paid \$1,998.00 by cheque.

The tenant confirmed that \$1,998.00 was paid for August 2018, but that \$100.00 was removed as compensation for recovery of an RTB Filing Fee of \$100.00 from a previous RTB Decision dated July 12, 2018.

The landlord argued that a credit for recovery of the \$100.00 filing fee was made to the tenant's account on July 17, 2018 and that the tenant still owed an additional \$100.00 as outlined in the landlord's tenant ledger.

The tenant referred to a second previous RTB Decision dated October 24, 2016 in which the tenant was awarded recovery of the \$100.00 filing fee from the landlord. The landlord provided no comment on this claim.

In support of these claims the landlord has submitted:

A copy of the plumbing invoice dated January 22, 2018

A copy of the plumbing invoice dated February 19, 2018

Analysis

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the affirmed testimony of both parties and find on the landlord's first item of claim, \$1,657.41 for plumbing charges of \$1,472.61 (backed up sink due to grease and food debris) and \$184.80 (clogged bathtub with hair) that the landlord is partially successful. I accept the undisputed affirmed evidence from the landlord that his plumbing contractor found a tub clog consisting of hair in the drain. I also find that the plumbing contractor found grease and food debris in the kitchen plumbing.

I find based upon the evidence provided by the tenant that the landlord has failed to provide sufficient evidence of negligence on the part of the tenant for the backed up kitchen sink. The tenant provided email evidence between the landlord and the tenant from January 2016 which deals with notification to the landlord of a garburator issue in the sink. A response from the landlord indicated that a plumber was dispatched to make repairs. I also note in this case that the landlord's plumbing contractor has indicated that removal of the garburator was recommended as food ground by a garburator builds up. I find in this case that this claim is dismissed as I find that improper maintenance has occurred on the part of the landlord. On the landlord's claim for recovery of \$184.80, I find that the landlord has established a claim. In this case, hair was found clogged in the drain. This was noted in the plumbing contractor's invoice. The tenant provided insufficient evidence of improper maintenance or care in this case. As such, I find on a balance of probabilities that the hair build up was naturally caused by the tenant. This is not to say that the tenant wilfully caused the clog, but that it more probably than not through normal usage by the tenant. As such, the landlord has established a monetary claim for \$184.80.

On the landlord's claim for unpaid rent of \$100.00 for August 2018, I find on a balance of probabilities that the landlord has failed to establish a claim. The tenant provided undisputed affirmed evidence confirming the deduction of \$100.00 from August 2018 rent in compliance with the tenant's award from a decision dated July 12, 2018 by the RTB. This was further confirmed from the landlord's testimony regarding a credit of \$100.00 for the July 2018 RTB Decision. The tenant provided further evidence that an additional \$100.00 was previously awarded in another RTB Decision dated October 24, 2016. The landlord did not respond or dispute this claim. As such, the landlord's request for \$100.00 in unpaid rent has failed.

The landlord has established a total monetary claim of \$184.80. Having been partially successful, I grant the landlord partial recovery of the filing fee for \$50.00.

I authorize the landlord to retain \$234.50 in satisfaction of this claim and grant the tenant a monetary order for the balance of \$790.50 due for the security deposit.

Conclusion

The tenant is granted a monetary order for \$790.50.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia.

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 11, 2019

Residential Tenancy Branch