



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRG-THE RESIDENTIAL GROUP
REALTY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on November 27, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- a monetary order for rent;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on March 21, 2019 as a teleconference hearing. K.L. appeared on behalf of the Landlord and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 35 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that K.L. and I were the only persons who had called into this teleconference.

K.L. testified the Application package was served to the Tenant by registered mail on December 6, 2018. K.L. provided a registered mail tracking number in support. K.L. testified that the Landlord's documentary evidence package was also sent to the Tenant via registered mail on March 6, 2019. Based on the oral and written submissions of the Landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application on December 11, 2018 and documentary evidence on March 11, 2019, the fifth day after their registered mailings. The Tenant did not submit documentary evidence in response to the Application.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for damage, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to retain the security deposit, pursuant to Section 38 of the *Act*?
4. Is the Landlord entitled to recover the filing fee paid, pursuant to Section 72 of the *Act*?

Background and Evidence

K.L. testified that he was unsure as to when the tenancy actually started, however, states that the tenancy ended on October 8, 2018. During the tenancy, rent in the amount of \$2,550.00 was due to the Landlord each month. A security deposit in the amount of \$1,300.00 was paid, which the Landlord currently holds.

K.L. testified that the Landlord is seeking a monetary order in the amount of \$1,861.00 in relation to damage and cleaning to the rental unit, unpaid strata charges and fines, as well as for unpaid rent due to over holding the rental unit.

K.L. testified that the Landlord is seeking \$250.00 in relation to the following; Bike rack rental \$30.00, parking fine \$100.00, NSF charge back return fee \$30.00, bike room rental \$45.00, Rental fob \$30.00, work room fee \$15.00. The Landlord submitted a statement of account outlining the above mentioned unpaid charges in support.

K.L. stated that the Landlord is also claiming for \$200.00 in relation to a strata fine as a result of the Tenant disturbing others on June 16, 2018. The Landlord submitted a notice from strata stating that the Landlord may be assessed a fine in the amount of \$200.00. K.L. testified that the Landlord did in fact incur that fine.

K.L. testified that the Landlord is seeking \$731.00 for cleaning costs incurred by the Landlord following the end of the Tenancy. K.L. testified that the Landlord hired a cleaner to clean the stove, fridge, kitchen, laundry room, floor tiles, stains in the hallway, as well as the removal of items left behind by the tenant. The Landlord submitted two

cleaning bills in support. The first bill, dated November 2, 2018 in the amount of \$450.00. The second bill dated December 31, 2018 in the amount of \$281.00.

K.L. testified that the cleaner was hired to attend on November 2, 2018 to clean the rental unit. K.L. testified that the rental unit required some renovation due to damages caused by the Tenant; however, the Landlord was not seeking to recover those costs incurred. K.L. stated that following the renovations, the cleaner returned to the rental unit on December 31, 2018 to clean the debris from the renovation.

Lastly, K.L. stated that the Landlord is seeking rent of \$680.00 in relation to the Tenant over holding the rental unit from October 1 to October 8, 2018. K.L. stated that the tenancy between the parties was meant to end on October 1, 2018. K.L. testified that several attempts were made at contacting the Tenant to conduct a move out inspection and to collect the keys; however, it wasn't until October 8, 2018 that the Tenant returned the keys to the Landlord and did not take part in the move out inspection.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the unpaid charges, the Landlord is seeking the amount of \$250.00 in relation to unpaid bike room rental, work room rental, parking fine, fob rental and an NSF charge. The Landlord submitted a statement of account outlining the outstanding charges. I find that the Landlord has established an entitlement to \$250.00 for this claim.

The Landlord is seeking the amount of \$200.00 relating to a strata fine as a result of the Tenant disturbing others. While the Landlord submitted a notice from strata stating that the Landlord may be assessed a fine in the amount of \$200.00, I find there is insufficient evidence before me to indicate that the Landlord actually incurred this fine and therefore dismiss this portion of the Landlord's claim without to leave to reapply.

The Landlord is claiming \$731.00 for cleaning costs incurred by the Landlord following the end of the Tenancy. The Landlord submitted two cleaning bills as well as photos of the rental unit in support. The first bill, dated November 2, 2018 in the amount of \$450.00. The second bill dated December 31, 2018 in the amount of \$281.00. During the hearing, K.L. outlined the scope of the cleaning required to the rental unit. I find that the Landlord has established an entitlement to the return of the first cleaning bill for \$450.00.

In regards to the second bill, K.L. indicated that the rental unit required some repairs following the end of the tenancy, and therefore the rental unit required further cleaning on December 31, 2018. I find that there is insufficient evidence before me to indicate that the Tenant caused damage to the rental unit requiring repairs. As such, I dismiss the Landlord claim for the second cleaning bill in the amount of \$281.00.

Lastly, the Landlord is seeking the \$693.33 in relation to the Tenant over holding the rental unit for 8 days as he did not return the keys to the Landlord until October 8, 2018. In their Application the landlord indicated that they were unable to re rent the rental unit until the Tenant returned his keys.

During the hearing, K.L. referred to renovation taking place in the rental unit up until the time the rental unit was cleaned on December 31, 2018. I find that there is insufficient evidence before me to indicate that the Landlord intended to re rent the rental immediately following the tenancy ended, nor did the Landlord provide sufficient evidence that they suffered a loss as a result. I further find that if the Landlord required immediate possession of the rental unit, they failed to mitigate their loss by not using a spare key or have the rental unit lock changed in order to gain access to the rental unit prior to October 8, 2018. As a result, I dismiss the Landlord's claim for \$693.33.

Having been partial successful, I find the Landlord is entitled to recover the filing fee paid to make the Application. I also find it appropriate in this circumstance to order that the Landlord retain a portion of the security deposit held in satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$800.00, which has been calculated as follows:

Claim	Amount
Unpaid Charges:	\$250.00
Cleaning Costs:	\$450.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-\$1,300.00
TOTAL:	-\$500.00

I order that the Landlord return the remaining portion of their security deposit to the Tenant, in the amount of \$500.00.

Conclusion

The Landlord has been partially successful in proving some claims against the Tenant. The Tenant is granted a monetary order in the amount of \$500.00 for the remaining balance of their security deposit. The order should be served as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 28, 2019

Residential Tenancy Branch