



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S

Introduction

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

- a monetary order 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
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

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. The tenant had legal counsel assist her.

Issue to be Decided

Is the landlord entitled to a monetary award for damage or 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 the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on November 1, 2016 and ended on October 31, 2018. The tenant was obligated to pay \$1100.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$550.00 security deposit and \$500.00 pet deposit which the landlord still holds. The landlord testified that the tenant left the unit dirty and damaged at move out. The landlord testified that written condition inspection reports were

conducted at move in and moves out. The landlord testified that the tenant took the move out report with her and did not provide a copy to him. The landlord testified that the unit was in such poor shape he was unable to rent it for the month of November 2018. The landlord testified that the tenant gave notice on October 1, 2018 by email that she will be moving out on October 31, 2018. The landlord is applying for the following; \$1100.00 in lost revenue, \$1399.06 for cleaning, repairs, replacement of several items including flooring and blinds, \$375.00 for loss of wages, and \$298.85 for travel and fuel costs.

The tenant gave the following testimony. The tenant testified that the unit was returned in better shape than when she received it. The tenant testified that the landlord was being unreasonable and was attempting to blame her for pre-existing damage. The tenant testified that she left the unit clean and even attempted to help rent the suite. The tenant testified that she referred a friend to the landlord but he was asking far more than what she was paying. The tenant testified that she asked the landlord to email her a copy of the move condition. The tenant testified that she disputes all of the claims and should be given her deposits back.

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 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 Cleaning – \$1399.06

The landlord submitted a long and detailed list of items including, cleaning supplies, parts, flooring, blinds etc. as part of this portion of his claim. The landlord testified that he had his realtor view the property in August 2018 before he purchased it in September 2018. The landlord had not seen the unit until early October 2018. The landlord provided some photos, however the photos provided by the landlord did not support the damage and uncleanness as alleged, quite the contrary. The landlords' testimony and his photos were at odds with one another.

The condition of the unit in the landlords' photos at move out is not as deficient as he alleges. It was explained in great detail to the landlord the vital and useful nature of the inspection report.

Without the condition inspection report or other sufficient supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. I find that the landlords' testimony and his documentation were contradictory to each other. For absolute clarity, the landlord failed to provide sufficient evidence to show what the condition of the unit was at the start of the tenancy versus the end of it and failed to show that the tenant caused the deficiencies as alleged. The landlord was unable to satisfy me that the tenant was responsible for any of these damages or that she was reckless or negligent and was in contravention of the Act, regulation or tenancy agreement. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

Loss of Wages, Ferry Costs and Gas – \$298.85

As the landlord was not successful in the above claim, he has failed to provide any justification for the time he took off of work to conduct the cleaning and repairs as alleged in this claim. In addition, it is reasonable for the landlord to expect transportation costs and lost time from work as this unit is on Vancouver Island and he lives on the mainland and does not have an agent, friend or property manager overseeing the property. Based on the above, I dismiss this portion of the landlords claim.

Loss of Revenue - \$1100.00

Initially the landlord testified that the tenant gave him notice by email that she would be moving out on October 1, 2018, but later changed his testimony and stated she gave him notice on September 29, 2018. The landlord testified that this was improper notice, but did acknowledge receiving it. The landlord testified that on October 5, 2018 he reached out to two friends if they were interested in the suite, but they declined. The landlord stated "I just left it" until the tenant moved out. The landlord acknowledged that he made no further attempts to rent the unit until the unit was vacant. The landlord had a responsibility to mitigate his losses, however, I find that the landlord did not make reasonable attempts to mitigate and therefore I must dismiss this portion of his claim.

Counsel for the tenant submits that the landlord had extinguished his right to make a claim for the security deposit as he did not provide a copy of the condition inspection report to the tenant and therefore the tenant is entitled to the return of double her deposits.

In addition, both parties testified that the other had the move out condition inspection report. I am unable to make a determination as to whether either party had extinguished their right to the deposit; however, even if the landlord had extinguished his right to the deposit for damages, Residential Tenancy Policy Guideline 17 addresses the issues as follows

9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, **retains the following rights:**

- to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
- to file a claim against the deposit for any **monies owing for other than damage to the rental unit;**
- to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy; and
- to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

The landlord sought cleaning, loss of revenue, transportation and fuel costs which are not claims for damages; I therefore find that the landlord had retained the right to make a claim, accordingly; the tenant is not entitled to the return of double the deposits

The tenant is entitled to the return of her original security and pet deposit.

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply. I order that the landlord return the security deposit and pet deposit back to the tenant. I grant the tenant an order under section 67 for the balance due of \$1050.00. 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: March 14, 2019

Residential Tenancy Branch