Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NVISION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MND MNDC MNR MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on January 9, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for damage to the unit, site, or property; and
- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by K.P., an agent. The Tenant attended the hearing on his own behalf. Both K.P. and the Tenant provided affirmed testimony.

On behalf of the Landlord, K.P. testified that the Application package was served on the Tenant by registered mail on January 10, 2019. A screen print of Canada Post registered mail delivery information was submitted in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Application package is deemed to have been received by the Tenant on January 15, 2019. The Tenant acknowledged receipt of the Application package but did not submit documentary evidence in response to the Application.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental unit?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to a monetary order for unpaid rent?
4. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the fixed-term tenancy began on November 1, 2016. The parties agreed the Tenant vacated the rental unit on January 1, 2019. During the tenancy, rent in the amount of $1,324.00 per month was due on the first day of each month. The Tenant paid a security deposit of $650.00, which the Landlord holds.

The Landlord's claims were set out in the Application. First, the Landlord claimed $1,324.00 for unpaid rent due on January 1, 2019. K.P. testified the Tenant was issued a One Month Notice to End Tenancy, dated December 13, 2018 (the "One Month Notice"). Although the Tenant initially disputed the One Month Notice, he vacated the rental unit voluntarily as noted above. However, the Tenant did not pay rent when due on January 1, 2019. The Landlord also submitted a bank statement in support of the missed payment on January 1, 2019.

In reply, the Tenant testified that he vacated the rental unit on January 1, 2019, because has children and could not wait to find out if the effective date indicated on the One Month Notice, January 13, 2019, would be enforced. The Tenant did not dispute that rent was not paid on January 1, 2019.

Second, the Landlord claimed $400.00 for several repairs. Specifically, the Landlord submitted photographic evidence of damage to the corners of walls, an oven located in the corner of a room, a door with a missing knob, a burned kitchen countertop, and a washer and dryer located in the corner of a room. On behalf of the Landlord, K.P. noted that the damage depicted was not referenced in a Condition Inspection Report dated October 31, 2016.

In reply, and with respect to the Landlord's claim of damage to the walls, the Tenant testified the damage was caused by agents of the Landlord when a new fridge was being installed. With respect to the stove, the Tenant testified that the stove in the rental unit was replaced during the tenancy but that the old stove was not removed. As a result, it remained in the unit. With respect to the missing door knob, the Tenant testified it was not functioning properly and fell off just before the end of the tenancy. With respect to the burned countertop, the Tenant testified it was already there when he moved in and that he was told by the previous landlord to cover it with a doily. With respect to the washing machine and dryer depicted in the Landlord's documentary evidence, the Tenant testified they did not belong to him and do not show damage in any event. The Tenant also noted there was no receipt for the repairs submitted with the Landlord's documentary evidence. The Tenant also testified he returned to the rental unit to collect mail and observed that the repairs had not been completed.

Third, the Landlord claimed $150.00 for cleaning required in the rental unit at the end of the tenancy. K.P. relied on the photographic evidence described above in support.

In reply, the Tenant testified that he spent 3 days cleaning the rental unit, and that the photographic evidence does not demonstrate a need for cleaning. The Tenant also noted there was no receipt for the cleaning service submitted with the Landlord's documentary evidence.

Finally, the Landlord sought to recover the $100.00 filing fee paid to make the Application, and to retain the security deposit in partial satisfaction of the claim.

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 Landlord's claim for $1,324.00 for unpaid rent, I find there is sufficient evidence before me to conclude the Landlord is entitled to the amount claimed. Section 26 of the *Act* confirms that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. In this case, the parties agreed the Tenant was served with the One Month Notice on December 13, 2018. Notwithstanding the incorrect effective date indicated on the One Month Notice, section 53 of the *Act* confirms that incorrect effective dates are automatically corrected. In this case, the correct effective date was January 31, 2019. The Tenant remained obligated to pay rent to that date. Therefore, I find the Landlord is entitled to a monetary award for unpaid rent in the amount of $1,324.00.

With respect to the Landlord's claims for $400.00 for repairs and $150.00 for cleaning, I find there is insufficient evidence before me to grant the full amount of the relief sought. Although the Landlord provided photographic images depicting damage, there were no receipts submitted to confirm the value of the losses claimed. However, Policy Guideline #16 confirms that an arbitrator may award compensation in situations where establishing the value of the damage or loss is not as straightforward. It states that "nominal damages" may be awarded when no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. In this case, I find it is more likely than not that the damage to the wall, door knob, and kitchen counter occurred during the tenancy. None are reflected on the move-in condition inspection report submitted into evidence. Therefore, I grant the Landlord a nominal damages award in the amount of $100.00 for repairs and cleaning.

Having been successful, I find the Landlord is entitled to recover the $100.00 filing fee paid to make the Application. Further, I order that the security deposit held be applied to the Landlord's monetary award in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of $874.00, which has been calculated as follows:

Claim	Amount awarded
Unpaid rent:	$1324.00
Nominal damages (repairs and cleaning):	$100.00
Filing fee:	$100.00
LESS security deposit:	($650.00)
TOTAL:	**$874.00**

Conclusion

The Landlord is granted a monetary order in the amount of $874.00. The order 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: May 3, 2019

Residential Tenancy Branch