



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KILLAM INTERNATIONAL LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on January 22, 2019, as amended on April 11, 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
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by E.T., an agent. The Tenant attended the hearing and was accompanied by K.M., who spoke on the Tenant's behalf. S.B. also attended the hearing on behalf of the Tenant but did not participate during the hearing. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, E.T. testified the Application package was served of the Tenant by registered mail on January 23, 2019. The Tenant acknowledged receipt. The Landlord also submitted a Canada Post customer receipt 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 on January 28, 2019.

The Landlord also submitted an amendment to the Residential Tenancy Branch on April 11, 2019. E.T. testified it was served of the Tenant by registered mail on April 11, 2019. The Tenant acknowledged receipt. In support, the Landlord submitted a Canada Post registered mail receipt. 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 on April 16, 2019.

In addition, the Landlord submitted documentary evidence to the Residential Tenancy Branch on May 6, 2019. E.T. testified it was served on the Tenant in person on the same date. The Tenant acknowledged receipt. No issue was raised with respect to the timing of service of this documentary evidence. Pursuant to section 71 of the *Act*, I find this documentary evidence was sufficiently served for the purposes of the *Act*.

The Tenant testified that the documentary evidence to be relied upon was served on the Landlord by leaving a copy at her post office box on April 30, 2019. No issue was raised with respect to the timing of service of this documentary evidence. Pursuant to section 71 of the *Act*, I find the Tenant's documentary evidence was sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were asked to refer me to documentary evidence upon which they wished to rely. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was specifically 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 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 tenancy began on September 1, 2002. Although the parties initially agreed the tenancy ended when the Tenant vacated the rental unit on January 6, 2019, E.T. subsequently testified she did not receive keys to the rental unit until January 7, 2019. The parties were also unable to remember the precise amount of rent due. The tenancy agreement confirms the Tenant paid a security deposit of \$647.00, which the Landlord holds.

The Landlord's monetary claim was described on type-written documents submitted into evidence. These documents, including the Landlord's written submissions, have been considered. E.T. was adamant during the hearing that the Landlord's evidence was reliable, and that the Tenant's evidence was false.

First, the Landlord claimed \$11.31 for registered mail charges incurred to serve the Tenant with documents related to this proceeding. A Canada Post registered mail receipt was submitted in support. E.T. was advised during the hearing that these charges are generally not recoverable in dispute resolution proceedings and that this aspect of the Landlord's claim would not be considered further.

Second, the Landlord claimed \$166.88 to replace "missing closet bi-fold doors in upper bedroom". In support, E.T. referred to a receipt in the amount claimed.

In reply, K.M. testified that the door was not present at the beginning of the tenancy. With respect to this and other aspects of the Landlord's claim, he noted that the Landlord did not submit a copy of the condition inspection report completed at the beginning of the tenancy, which E.T. acknowledged was missing.

Third, the Landlord claimed \$225.19 to replace a ceiling light fixture in the kitchen. In support, the Landlord submitted a photograph of a fluorescent kitchen light with a missing cover, and a receipt in the amount claimed.

In reply, K.M. testified the light depicted in the photograph appeared as it always had throughout the tenancy. E.T. described this testimony as "rubbish". Further, K.M. submitted that the amount claimed, even if proven, was excessive for a fluorescent light cover.

Fourth, the Landlord claimed \$125.00 to remove kitchen sink tiles and labour for the repair of 3 window sills. In support, the Landlord submitted a photograph of tiles behind the kitchen sink, which E.T. testified were installed by the Tenant. The Landlord also submitted a hand-written receipt for 5 hours of labour at \$25.00 per hour.

In reply, K.M. testified the tiles were present as a backsplash at the beginning of the tenancy and that the Tenant did not install the tiles.

Fifth, the Landlord claimed \$367.00 to replace missing drapes in the living room and master bedroom. The Landlord submitted photographs taken in September 2018 and included a receipt for the purchase.

In reply, K.M. testified that the curtains were removed in favour of drapes that were preferred by the Tenant, and that the old drapes were returned when the Landlord took over management of the rental property. This was denied by E.T.

Sixth, the Landlord claimed \$55.55 to clean “small drapes”. She submitted cleaning the drapes was the Tenant’s responsibility under the terms of the tenancy agreement. A receipt for the cleaning expense was submitted into evidence.

In reply, K.M. testified that the Tenant cleaned the drapes twice but their condition is a reflection of their age.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee.

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 \$11.31 for registered mail charges, I find these cost are generally not recoverable in dispute resolution proceedings. This aspect of the Landlord's claim is dismissed.

With respect to the remainder of the Landlord's claims, I find there is insufficient evidence before me to conclude the Landlord is entitled to the relief sought. While I accept that the Landlord incurred the expenses claimed, I am not satisfied on a balance of probabilities that the losses were caused by the Tenant's breach of the *Act*, regulation, and/or the tenancy agreement. In particular, I note the Landlord was unable to support the claims made by providing a condition inspection report to confirm the condition of the rental unit at the beginning of the tenancy. Further, the Tenant denied the presence of the closet door and light cover at the beginning of the tenancy, and advised she did not install the tile backsplash. I also note the tenancy continued for more than 16 years and find it is reasonable for a landlord to anticipate that some items – such as drapes in this case – will become worn during a lengthy tenancy through reasonable wear and tear, or may have reached the end of their useful life. Accordingly, I find that the Application is dismissed, without leave to reapply.

On behalf of the Tenant, K.M. submitted that the Tenant is entitled to the return of the security deposit held by the Landlord. Policy Guideline #17 provides some assistance. It requires an arbitrator to order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on a landlord's application to retain all or part of the security deposit, unless the tenant's right to the return of the deposit has been extinguished under the *Act*. In this case, the Landlord applied to retain the security deposit in partial satisfaction of the claim. However, the Landlord's claim has been dismissed, without leave to reapply. I find there is insufficient evidence before me to conclude that the Tenant extinguished her right to the return of the security deposit. Therefore, in accordance with Policy Guideline #17, I grant the Tenant a monetary order in the amount of \$647.00, which is the amount of the security deposit held by the Landlord.

Conclusion

The Landlord's Application is dismissed, without leave to reapply.

In accordance with Policy Guideline #17, the Tenant is granted a monetary order in the amount of \$647.00. 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 15, 2019

Residential Tenancy Branch