



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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; and,
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security and pet damage deposits in partial satisfaction of the monetary order requested pursuant to section 38?

If not, is the tenant entitled to a return of all or a portion of the security and pet damage deposits in partial pursuant to section 38?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The tenancy started in August 2014. The landlord testified that the tenants paid \$1,150.00 security deposit and \$350.00 pet damage deposit. These deposits were also referenced in the tenancy agreement. The tenant testified that he thought that he had paid a \$1,125.00 security deposit and a \$1,125.00 pet damage deposit.

The landlord issued a notice to end tenancy for the stated reason that the property was being sold. This notice to end tenancy was disputed by the tenant. The file number for the previous application for dispute resolution is reference on the first page of this decision. The arbitrator in the prior hearing upheld the notice to end tenancy and granted the landlord an order of possession, effective two days after service upon the tenants, on December 4, 2019. The landlord testified that he served the order of possession on the tenants on December 5, 2019.

The landlord testified that the sale of the property completed on December 11, 2019 and the purchasers obtained possession of the property on December 12, 2019. The landlord testified that the purchasers contacted him and they were very upset because the property was not vacant.

The landlord testified that he went to the property and found that the tenants' possession had not been removed. The landlord provided numerous photographs showing extensive personal possession in the property.

The landlord testified that the purchasers threatened legal action against him if he did not get property cleaned. The landlord told the tenants that they needed to remove their possessions from the property.

The landlord retained a junk removal company to remove and discard all of the tenant's possession on December 15, 2019. The landlord provided a receipt and proof of payment for the junk removal fees of \$1,500.00.

The tenants testified that they were still in the process of moving out when their possessions were removed. The tenants were even at the property when the junk

removal company was taking away the tenant's property. The tenants testified that they objected to the removal of their possessions but the junk removal company took their possessions anyway. The tenants testified that many of their personal possessions were disposed of including shelves, wood, vacuum parts and electric equipment.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The landlord claimed that he sustained a loss for the cost of removing the tenants' personal possession. The procedures for disposing of tenant possessions left in a rental unit at the end of a tenancy are described in Residential Tenancy Regulations as follows:

Abandonment of personal property

24(1) A landlord may consider that a tenant has abandoned personal property if

- (a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

Landlord's obligations

25 (1) The landlord must

(a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,

(b) keep a written inventory of the property,

- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
- (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

- (a) the property has a total market value of less than \$500,
- (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
- (c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

In this matter, I find that the landlord has not provided sufficient evidence to establish that, on a balance of probabilities, the tenants have abandoned the rental unit. The tenants testified that they were still regularly going to the rental unit to slowly move out their possessions. The landlord's testimony did not refute these claims. Further, the tenants were even at the property when the junk removal company was removing their possessions.

I find that the tenants were still using the rental unit and they had not abandoned the rental unit or their possessions. As such, the landlord did not have authority under the Act to unilaterally remove and discard of the tenant's possessions. The landlord could have taken the order of possession to the British Columbia Supreme Court for enforcement. However, the landlord did not have the authority to enforce the order of possession himself unilaterally.

Since the landlord did not have authority under the *Act* to remove the tenants' personal possession, I dismiss the landlord's application for a monetary order for compensation under the *Act*.

I find that the landlord holds a \$1,150.00 security deposit and a \$350.00 pet damage deposit. Since the landlord is not entitled to a monetary order for compensation under the Act, I find that the landlord is not entitled to retain any portion of the tenants' security and pet damage deposits. Accordingly, pursuant to section 38(1) of the *Act*, I find that the landlord is obligated to return the \$1,150.00 security deposit and \$350.00 pet damage deposit. Accordingly, I grant the tenants a monetary order in the amount of \$1,500.00.

Since the landlord has been not successful this matter, I dismiss the landlord's request for reimbursement of the filing fee.

Conclusion

I dismiss the landlord's application for a monetary order for compensation under the *Act*.

I dismiss the landlord's request for reimbursement of the filing fee.

I grant the tenants a monetary order in the amount of **\$1,500.00**. If the landlord fails to comply with this order, the tenants may file the order in the Provincial Court to be 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: May 31, 2019

Residential Tenancy Branch