



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on February 11, 2019, (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Tenant as well as the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified that she served her Application and documentary evidence package to the Tenants by registered mail on February 26, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant confirmed that he did not submit any documentary evidence in preparation for this hearing.

The parties were given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

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

Background and Evidence

A tenancy agreement was submitted by the Landlord which confirms the testimony provided by the parties during the hearing that the tenancy began on December 1, 2016. Rent in the amount of \$1,200.00 was due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$600.00 which the Landlord continues to hold. The tenancy ended on February 1, 2019 and the Tenants provided their forwarding address to the Landlord in writing on February 12, 2019.

The Landlord testified that she is seeking to retain the Tenants' security deposit of \$600.00 in relation to cleaning, replacement of a stove, and removal of discarded items following the end of the tenancy.

The Landlord stated that the rental unit was left completely filthy. The Landlord testified that the oven was so dirty that it needed to be thrown out. The Landlord submitted a cleaning quote in the amount of \$490.00 for 16 hours of cleaning at \$30.00 an hour. The Landlord stated that she also had to pay an additional \$50.00 to vacuum the rental unit.

The Landlord stated that following the end of the tenancy she completed some renovations to the home; however, she insists that the cleaning was needed to be completed prior to the renovations taking place. During the hearing, the Landlord referred to several pictures included in her documentary evidence. Upon further review, it appears as though the Landlord only submitted one picture of a shower drain.

The Landlord also stated that the Tenant left several items in the yard including an old barbeque, metal weights, as well as an upright freezer.

In response, the Tenant stated that he cleaned the rental unit before the end of the tenancy and does not agree with the Landlord's assessment of cleanliness of the rental

unit. The Tenant stated that the oven was filthy at the start of the tenancy; therefore, the condition had not changed at the end of the tenancy. The Tenant stated that he did leave an upright freezer in the yard at the end of the tenancy and meant to have it removed once his security deposit was returned. As the Landlord did not return the deposit, the Tenant stated that he has been unable to have the freezer removed.

The parties agreed that there was no condition inspection report completed at the start or at the end of the tenancy.

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*. Pursuant to Residential Tenancy Policy Guideline #16 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.

Firstly, I will consider whether the Landlord is authorized to apply the security deposit to a claim of damages to the rental unit. Sections 23, 24, 35 and 36 of the Act speak to the requirements for condition inspection reports and the extinguishment of rights to claim against the security deposit. I accept that both parties agreed that no condition inspection report has been completed in accordance with Section 36(2)(c) of the Act. Therefore, I find the Landlord has extinguished their rights to claim against the security deposit for damage to the residential property.

The Residential Tenancy Branch Policy Guideline 17 states that unless the Tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the Landlord has claimed against the deposit for damage to the rental unit and the Landlord's right to make such a claim has been extinguished under the Act;

In this case, the Landlord has applied to retain the Tenants' security deposit in relation to cleaning and removal of items left in the yard, which is considered as damages under the Act. As I have found that the Landlord has extinguished their rights to claim against the security deposit for damage, I find that the Landlord was not entitled to retain the Tenants' security deposit. As such I find that the Tenants are entitled to the return of double their security deposit ($\$600.00 \times 2 = \$1,200.00$).

While the Landlord extinguished their right to claim for damages against the Tenant's security deposit, it does not prevent the Landlord from receiving monetary compensation relating to the damages claimed.

Section 37 of the Act states that when the Tenants vacate the rental unit, the Tenants must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The Landlord has applied to retain the Tenant's security deposit in relation to cleaning, replacement of a stove and debris removal of items left in the yard. The Landlord submitted a quote for cleaning in the amount of \$490.00 and one picture of a shower drain in support of her claim.

The Tenant stated that he cleaned the rental unit and disagrees that it needed further cleaning. The Tenant stated that the stove was filthy at the start of his tenancy, therefore doesn't feel he should have to replace it. The Tenant acknowledged leaving a freezer in the yard which he meant to dispose of.

I find that in absence of a condition inspection report which would indicate the condition of the rental unit at the start of the tenancy, the Landlord has provided insufficient evidence to demonstrate that the condition of the rental unit at the end of the tenancy was caused by the Tenant. I find that the Landlord provided insufficient evidence to demonstrate that further cleaning was required in the rental unit to support the quote provided in the amount of \$490.00.

The Landlord submitted insufficient evidence that the oven needed replacing and did not provide any evidence to support to cost of the replacement. The Tenant however stated that he left the oven unclean at the end of tenancy due to the fact that it was dirty when he moved in. I find that the Tenant should have addressed this with the Landlord at the start of the tenancy. According to Section 37 of the *Act*, it is the Tenant's responsibility to leave the rental unit reasonably clean. I accept that the parties agreed that the stove was not left reasonably clean.

I accept that the Tenant agreed that he left a freezer in the yard which he had intended on disposing of. The Landlord did not provide evidence as to how much it cost to dispose of the freezer.

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or 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 appropriate to award the Landlord with a nominal award of \$100.00 for the loss she incurred with the removal of the Tenants' freezer as well as \$100.00 for the cleaning cost to clean the stove.

As the Landlord was partially successful with her claim, I find that she is entitled to the recovery of the \$100.00 filing fee paid for the Application.

Set-off of Claims

The Tenants are awarded the return of double their security deposit as the Landlord extinguished her right to apply against it. The Tenants are entitled to a monetary amount of \$1,200.00.

The Landlord has established an entitlement to a monetary award in the amount of \$300.00

Setting of the parties' claims, and pursuant to section 67 of the *Act*, I grant the Tenants with a monetary order in the amount of \$900.00 (\$1,200.00- \$300.00).

Conclusion

The Tenants are granted a monetary order in the amount of \$900.00 which represents the doubling of their security deposit, less the amount awarded to the Landlord for damages. This order must be served on the Landlord as soon as possible. If the Landlord fails to comply the monetary order it 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: June 07, 2019

Residential Tenancy Branch