



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MNRL-S, FFL
Tenant: MNSD, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application for Dispute Resolution was made on March 28, 2019, (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

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

The Tenant’s Application for Dispute Resolution was made on April 2, 2019, (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit; and
- an order granting recovery of the filing fee.

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

The Landlords testified that they served their Application and documentary evidence package to the Tenant by registered mail near the end of March 2019. The Tenant confirmed receipt on April 1, 2019. The Tenant testified that she served the Landlords with her Application and documentary evidence by registered mail on April 2, 2019. The Landlords 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 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. Are the Landlords entitled to a monetary order for unpaid rent or utilities, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to retain the Tenant's security deposit pursuant to Section 38 and 72 of the *Act*?
3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
4. Is the Tenant entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?
5. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the periodic tenancy began on December 15, 2018. The Tenant paid rent for a downstairs basements suite in the amount of \$800.00 on the first day of each month to the Landlords. The Tenant paid a security deposit in the amount of \$400.00 which the Landlords continue to hold. The Tenancy ended on February 15, 2019 and the Tenant provided the Landlords with her forwarding address on March 12, 2019.

Landlords' Claim

The Landlords are seeking to retain the Tenant's security deposit in the amount of \$400.00 as the Tenant failed to provide the Landlords with one month notice to end her tenancy. The Landlords stated that they received a letter from the Tenant on January 11, 2019 which indicated that she wished to end her tenancy on February 15, 2019. The Landlords stated that they advertised the rental unit on January 13, 2019 and secured a new occupant who moved in shortly after the Tenant moved out of the rental unit.

The Tenant stated that she provided the Landlords with her notice to end tenancy on January 11, 2019 as a result of a disagreement surrounding the payment of utilities. The Tenant stated that the Landlords accepted her notice and indicated that she was only required to pay rent in the amount of \$400.00 for the month of February as she was only intending to occupy the rental unit for half the month. The Tenant submitted a copy of a text message from the Landlords asking for \$400.00 payment for rent in February 2019.

The Landlords are also claiming \$215.41 for unpaid utilities. The Landlords stated that the parties agreed at the start of the tenancy that the utilities were not included in the rent. Both the parties provided a copy of the tenancy agreement which offered conflicting information. The Landlords' copy stated that the Tenant is responsible for paying 1/3 of the utilities. The Tenant's copy did not contain this information. The Landlords submitted copies of the utility bills in support.

The Tenant stated that once she moved in, she attempted to have the utilities put into her name; however, was informed by the utility company that the utilities were in the name of the occupants who live upstairs and they were unable to split the services. As such, the Tenant was unable to pay for her utilities in her name.

The Tenant stated that on January 5, 2019 she was approached by the occupant who lives in the upstairs rental unit who indicated that she owes him \$60.00 for utilities. The Tenant stated that she was intimidated by this occupant and refused to pay him. The Tenant stated that she was given a notice by the Landlords shortly thereafter which indicated that she owed the Landlords money for utilities which should be paid as soon as possible. The Tenant stated that there was no agreement surrounding the payment of utilities at the start of the tenancy. The Tenant stated that the Landlords were trying to enforce a \$60.00 charge for utilities each month in addition to the rent.

The Landlords are also claiming \$105.00 for carpet cleaning. The Landlords testified that at the end of each tenancy, the carpets need to be professionally cleaned. The Landlords stated that the Tenant did not have time at the end of the tenancy, therefore, the Landlords decided to have the carpet cleaned at a cost of \$105.00. The Landlords submitted a copy of the receipt in support.

The Tenant responded by stating that the carpets had not been cleaned prior to her tenancy and that she did not dirty the carpets during the short amount of time that she occupied the rental unit. The parties agreed that there was no condition inspection report completed between the parties at the end of the tenancy.

The Tenant stated that she is seeking the return of her security deposit as she did not agree to Landlords' deducting any amount from her deposit.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Tenant's Claim

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, the parties agreed that the Tenant vacated the rental unit on February 15, 2019 and provided the Landlords with her forwarding address by mail on March 12, 2019.

I find that the Landlords confirmed receipt of the Tenants forwarding address on March 12, 2019. As there is no evidence before me that that the Landlords were entitled to retain all or a portion of the security deposit under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlords had until March 27, 2019 to repay the deposit or make an application for dispute resolution. The Landlords did not apply to retain the security deposit until March 28, 2019 which is outside of the 15 days permitted under the *Act*.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenant is entitled to an award of double the amount of the security deposit paid to the Landlords, or \$800.00 ($\$400.00 \times 2 = \800.00).

Landlords' Claims

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 Landlords 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 Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

The Landlord has applied for \$400.00 which represents half a month of rent. The parties agreed that the Tenant moved out of the rental unit on February 15, 2019 after giving the Landlord notice on January 11, 2019.

Section 45(1) of the Act authorizes a Tenant to end a periodic tenancy by giving the Landlords notice to end the tenancy effective on a date that is not earlier than one month after the date the Landlords receive the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

In this case, I find that the Tenant has breached Section 45 of the Act, however, during the hearing the Landlords were unable to recall when the new occupant took possession of the rental unit. The Landlords later stated that it was shortly after the Tenant moved out. In light of the above, I find that the Landlords have provided insufficient evidence to demonstrate that they incurred any damages or loss as a result of the Tenant breaching the Act and moving out early. As such, I dismiss this portion of the Landlords' claim without leave to reapply.

The Landlords are also claiming for unpaid utilities in the amount of \$215.41. While the Landlords testified that the Tenant was required to pay 1/3 of utilities, I find that the Tenant's copy of the Tenancy agreement does not contain this information. I accept that the parties agreed that utilities were not included in the Tenant's rent. While the Tenant made efforts to put the utilities in her own name, she was unable to as the account had been created with the occupants of the upstairs suite.

In this case, I find that that the Landlords provided insufficient evidence that that Tenant breached the Act by not paying utilities. The Landlords provided insufficient evidence to demonstrate that the parties had an agreement around how much of the utilities the Tenant is responsible for paying, as well as to who the Tenant should be paying utilities to. I find that expecting the Tenant to pay another occupant in the residence is an unconscionable term, pursuant to Policy Guideline 8. As such, I dismiss this portion of the Landlords' claim without leave to reapply.

Lastly, the Landlords are seeking \$105.00 for carpet cleaning in the rental unit. The Landlords stated that the carpets need cleaning at the end of each tenancy. The Tenant stated that she did not dirty the carpets in the short during of her tenancy. In this case, the parties did not complete a condition inspection report together at the end of the tenancy. I find that the Landlords provided insufficient evidence to demonstrate that the carpets were dirty at the end of the tenancy which required cleaning. As such, I dismiss this portion of the Landlords' claim without leave to reapply.

As the Landlords were unsuccessful with their Application, I find that they are not entitled to the return of their filing fee.

I find that the Tenant has established an entitlement to a monetary order in the amount of \$800.00. As the Tenant was successful in their Application, I find that they are entitled to the return of the \$100.00 filing fee. Pursuant to section 67 of the Act, I find the Tenant entitled to a monetary order in the amount of \$900.00.

Conclusion

The Landlords were unsuccessful in their claims against the Tenant, and have breached Section 38 of the *Act*. The Tenant is granted a monetary order in the amount of \$900.00. The order may be filed in and enforced as an order of the Provincial Court of BC (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 11, 2019

Residential Tenancy Branch