



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

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

Is the landlord entitled to the recovery of the filing fee for this application from the tenant?

Background and Evidence

The parties agreed to the following: The tenancy started on November 15, 2017 for a fixed term of one year. The end date of the fixed term was November 30, 2018. The monthly rent was \$2,350.00 due on the first day of each month.

The landlord testified that the tenant “broke the lease” by moving out early on July 12, 2018 and seeks \$10,575.00 for the remaining months of the tenancy agreement. The landlord testified that despite the fact that she sold the unit and that the buyer received vacant possession of the unit on August 2, 2018, the landlord feels that she is still entitled to the rent for the remainder of the term. The landlord also seeks \$2350.00 for the month of August 2018 as she had to re-imburse the buyer that amount as the tenant left early. The landlord also seeks \$341.13 as part of a strata by law fine imposed against her as a result of the tenant leaving a toilet bowl cover in the garbage room on July 13, 2018 and damaging the exterior door to the building when she move out. The landlord also seeks the recovery of the filing fee of \$100.00. The landlord is seeking a total claim of \$13,366.13.

The tenant gave the following testimony. The tenant testified that much of the landlords claim was dealt with in a previous hearing and that the landlord was not successful in that claim. The tenant testified that she and the landlord had an agreement to end the tenancy early and that the landlord was aware of her final move out date well in advance. The tenant denies the toilet bowl issue as she moved out the day prior and didn't have access to the building. The tenant testified that the landlord has not provided any evidence of damage to the exterior door. The tenant testified that she wasn't informed of those issues at any time until the landlord filed this application. The tenant submits that the landlords claim should be dismissed in its entirety.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here.

It is worth noting that the landlord was extremely disorganized when presenting her claim. She was unable to answer basic questions or provide answers' to the claim she put forth or able to explain the amount she noted on the application and what she was seeking on the day of the hearing. Much of her claim lacked clarity or logic. The landlord presented her evidence in a very disjointed and vague fashion. In addition, the landlord would add and subtract items from her claim during the hearing and would alter the amount she was seeking. The landlords' testimony and documentation were in conflict through much of the hearing, when it was; I considered the sworn testimony in coming to her monetary calculations. Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible. The principal aspects of the landlords claim and my findings around each are set out below.

Balance of Fixed Term \$10,575.00 & \$2350.00 for rent past July 12, 2018

The landlord made numerous references to a previous hearing the parties had on October 30, 2018 before another Arbitrator. The tenant submitted a copy of that decision as she felt much of the landlords claim was dealt with at the previous hearing. I find it relevant and poignant to reproduce a portion of the Arbitrators analysis and findings in regards to the balance of the fixed term claim of \$10, 575.00 and rent beyond July 12, 2018. I note it as follows:

"Based on the documentary evidence of the tenant, I find that the landlord requested the tenant to move out prior to the end date of the fixed term. Even if I accept the landlord's testimony that eventually the new buyer wanted the tenant to continue to reside in the rental unit, the landlord had already asked the tenant to move out as late as May 18, 2018 which is 13 days before the completion of sale of the rental unit. In addition the tenant had already made arrangements for alternative accommodation.

As stated above, in an email dated May 18, 2018, the landlord offered the tenant \$5,000.00 to move out in early June or \$3,000.00 for a move out date in July. Based on the above, I find that the tenant moved out at the request of the landlord and therefore the landlord is not entitled to collect rent for the remainder of the term. In addition, the rental unit sold on May 31, 2018 and the tenant paid rent until the last day of tenancy which was July 12, 2018."

It is clear to me that this matter was dealt with in a very clear and concise manner at the hearing of October 30, 2018; as a result, I find that Res Judicata applies. Black's Law Dictionary defines *res judicata*, in part as follows:

Rule that a final judgement rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Therefore based on the definition of *res judicata* I must dismiss this portion of the landlord's application.

\$341.13 Strata fine and Damage to Entrance Door of the building

The landlord has failed to provide sufficient evidence to satisfy me on a balance of probabilities that the tenant was responsible for these damages. The landlord did not provide a photo of the damage doorway and was very unclear about the strata's findings in regards to the toilet seat. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

The landlord was not successful in any part of her application.

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

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 18, 2019

Residential Tenancy Branch