



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX OF NANAIMO PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL, FFL

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

"Tenant CS" did not attend this hearing, which lasted approximately 24 minutes. The landlord's two agents, landlord BA ("landlord") and "landlord LO," and tenant IM ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord and landlord LO both confirmed that they were the property managers for the landlord company named in this application and that they had permission to represent it at this hearing. The tenant confirmed that he had permission to represent tenant CS at this hearing (collectively "tenants").

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's application.

The tenant stated that he did not serve the tenants' written evidence to the landlord. The landlord confirmed that he did not receive any evidence from the tenants. I notified both parties that I could not consider the tenants' evidence at this hearing or in my decision because the tenants did not serve it to the landlord, as required. The tenant confirmed that he was fine with that, as he did not need to reference the tenants' written evidence.

Issues to be Decided

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

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

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 18, 2016 and ended on April 30, 2019. Monthly rent of \$1,300.00 was payable on the first day of each month. A security deposit of \$650.00 was paid by the tenants and the landlord continues to retain this deposit in full. Both parties signed a written tenancy agreement. Move-in and move-out condition inspection reports were completed for this tenancy. The landlord did not have written permission to keep any amount from the tenants' security deposit. The tenants provided a written forwarding address to the landlord by way of the move-out condition inspection report on April 30, 2019.

The landlord seeks a monetary order of \$735.48 plus the \$100.00 application filing fee. The landlord seeks \$300.48 for hydro utilities, which the tenant agreed to pay during the hearing.

The landlord seeks \$360.00 for cleaning the rental unit. The landlord explained that the tenants failed to properly clean the unit when he vacated, so the landlord hired a cleaner to do so. The landlord provided an invoice checklist for this cost, indicating that the landlord had a receipt somewhere but had not provided it. The landlord stated that the amount would have been paid by cheque two days after the invoice date. He said that he changed the cost of the cleaning from an estimated \$200.00 to \$360.00 after the tenant signed the move-out condition inspection report, since the landlord obtained the actual cost after. He confirmed that he noted the dirty areas of the rental unit on the back of the last page of the move-out condition inspection report, since there was not enough room on the main page.

The tenant agreed to pay \$100.00 of the \$360.00 claimed for cleaning. He said that the landlord changed the cost on the move-out condition inspection report after he signed it.

He maintained that the landlord failed to justify the 12 hours of cleaning for minor issues like baseboards, so the tenants were not prepared to pay the original \$200.00 estimated on the move-out condition inspection report.

The landlord seeks \$75.00 for garbage removal. The landlord provided an invoice for this cost, indicating that the landlord had a receipt somewhere but had not provided it. The landlord stated that the amount would have been paid by cheque two days after the invoice date. He said that he added the cost of the garbage removal after the tenant signed the move-out condition inspection report.

The tenant disputed the landlord's garbage removal cost of \$75.00. He stated that nothing was indicated in the landlord's invoice, as to what garbage was removed. He explained that the previous owners of the rental unit left items on the property so that may have been what the landlord removed. The tenant maintained that the landlord added this cost on the move-out condition inspection report after the tenant signed it.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord \$300.48 for hydro utilities, as the tenant agreed to pay this cost during the hearing.

I award the landlord \$100.00 of the \$360.00 claimed for cleaning. The tenant agreed to pay this amount during the hearing. I find that the landlord failed to provide sufficient documentary evidence for this claim, as only an invoice with a balance due, was given. No receipt, method of payment, or date of payment was provided by the landlord. The

landlord did not provide any photographs of the unit, showing the alleged dirty condition when the tenants moved out. During the hearing, the landlord failed to review the dirty areas of the unit, did not go through the invoice, and did not provide specific details of what cleaning was done. Although the tenant signed for an estimate of \$200.00 for cleaning in the move-out condition inspection report, this was just an estimate, and I find that the landlord failed to justify the \$360.00 claimed.

I dismiss the landlord's claim for \$75.00 for garbage removal. The tenant disputed this cost. I find that the landlord failed to provide sufficient documentary evidence for this claim, as only an invoice with a balance due, was given. No receipt, method of payment, or date of payment was provided by the landlord. No details were provided on the invoice, as to what work was done, what rate was charged, or how many people completed the work. The landlord did not provide any photographs of the unit, showing what alleged garbage removal required. The landlord failed to provide specific details of what garbage removal was done and whether it was the tenants' garbage removed, as the tenant confirmed that the previous owners of the rental unit left items behind and this may have been the garbage removed by the landlord. I also find that the landlord did not indicate that garbage removal was required, until after the tenant signed the move-out condition inspection report.

The landlord continues to hold the tenants' security deposit of \$650.00. Over the period of this tenancy, no interest is payable on the tenants' security deposit. Although the landlord did not apply to retain the tenants' security deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$400.48 from the tenants' security deposit of \$650.00, in full satisfaction of the monetary award. I order the landlord to return the remainder of the security deposit in the amount of \$249.52 to the tenants within 15 days of receiving this decision. I issue a monetary order to the tenants for the above amount.

Since the landlord was only successful in this application, based on what the tenant agreed to pay during the hearing, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$249.52 against the landlord. The landlord must be served with this Order as soon as possible. Should the

landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's application is dismissed 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: August 22, 2019

Residential Tenancy Branch