



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BCIMC REALTY CORP. O/A FRASER TOLMIE and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDL-S FFT MNDCT MNSD

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the Residential Tenancy Act.

The landlord applied for:

- A monetary award for damage and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- A return of the deposit for this tenancy pursuant to section 38;
- A monetary award for damage and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72..

Both parties were represented by their respective agents who attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

At the outset of the hearing the landlord withdrew their application in its entirety, seeking leave to reapply.

As both parties were represented service was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. The tenant confirmed receipt of the landlord's evidence. Based on the testimonies I find that each

party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to a return of the deposits for this tenancy?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

This periodic tenancy ended on May 14, 2019 when the parties prepared a condition inspection report and the tenant gave a forwarding address to the landlord. The monthly rent was \$1,810.00, payable on the first of each month. A security deposit of \$887.50 and pet damage deposit of \$887.50 were paid at the start of the tenancy and are held by the landlord. The tenant gave written authorization that the landlord may retain \$500.00 from the deposits.

The landlord filed their application for dispute resolution seeking authorization to retain the security and pet damage deposit on May 28, 2019. The landlord withdrew their application at the outset of the hearing and sought leave to reapply. The landlord submits that they have not had an opportunity to make repairs to the rental unit and as such, do not know the quantum of any damage claim. The landlord said that a new occupant is currently residing in the rental unit and repairs cannot be made until such time as this new tenancy ends. The tenant objects to the landlord being granted leave to reapply. The tenant submits that granting leave to reapply unfairly prejudices the tenant by allowing the landlord more time to prepare evidence for their own application.

The parties agree that the tenant paid rent for the month of May, 2019 in the amount of \$1,810.00. The tenant seeks a return of half the rent in the amount of \$905.00 for the period from May 15 – May 31, 2019.

The tenant seeks a return of the balance of the security and pet damage deposit for this tenancy in the amount of \$1,275.00.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing. If that does not occur, the landlord must pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the matter at hand I accept the evidence of the parties that this tenancy ended on May 14, 2019 and the tenant provided a forwarding address on that date. The landlord filed their application for dispute resolution seeking authorization to retain the security deposit on May 28, 2019. As such, I find that the landlord was within the 15 days of May 14, 2019 provided under the *Act*.

I accept the evidence of the parties that the landlord is holding the security and pet damage deposit for this tenancy in the amount of \$1,775.00. I accept the evidence of the parties that the tenant provided written authorization that the landlord may retain \$500.00 of the deposits. I accept the evidence that the tenant has not authorized any further deduction. Consequently, I find that the tenant is entitled to a monetary award in the amount of \$1,275.00, the balance of the security and pet damage deposit for this tenancy. No interest is payable over this period.

I accept the evidence of the parties that the tenant paid rent in the amount of \$1,810.00 on May 1, 2019 while the tenancy ended by way of an agreement between the parties on May 14, 2019. I therefore, issue a monetary award in the tenant's favour as against the landlord for \$905.00, the amount of overpayment for this tenancy.

As the tenant's application was successful the tenant may recover their filing fee from the landlord.

The landlord has withdrawn their application and seeks leave to reapply. The tenants object to allowing the landlord an opportunity to reapply saying that it unfairly prejudices the tenant, an argument I find has some merit.

I find that the landlord's attempt to withdraw and be granted leave to reapply is functionally similar to seeking an adjournment of their application. The landlord is not prepared to proceed with their application at this time and seeks additional time to prepare evidence and strengthen submissions. Residential Tenancy Rule of Procedure 7.9 deals with the criteria to be considered when granting an adjournment and I find it appropriate to consider these items for the present application seeking leave to reapply.

Rule 7.9 lists the following criteria to consider:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find that the landlord's failure to adequately prepare for their own application arises from the landlord's actions and neglect. The landlord claims for damages and loss and have provided an estimate of their losses on the condition inspection report. The landlord seeks additional amounts of unknown quantity based on potential work they say they may commission. The landlord has failed to undertake these repairs they say are necessary and instead have entered into a new tenancy agreement with another occupant for the rental unit. I find that allowing the landlord leave to reapply when they have failed to prepare their initial application would be prejudicial to the tenant. I find that it would be contrary to the principles of administrative justice and fairness to allow the landlord leave to reapply when they have brought this initial application, have failed to prepare their claim and seek additional time to gather evidence and incur costs for repairs they will attribute to the tenants. As such, I dismiss the landlord's application without leave to reapply.

Conclusion

The landlord's application is withdrawn and dismissed in its entirety without leave to reapply.

I issue a monetary award in the tenant's favour in the amount of \$2,280.00, which allows the tenant to recover the balance of the security and pet damage deposit for this tenancy, recover the overpaid rent for May 15-May 31, 2019 and recover the filing fee.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: August 26, 2019

Residential Tenancy Branch