



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL, MNDL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- an order authorizing the landlord the recovery of the filing fee for this 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 tenants were represented by legal counsel and the landlord was represented by her son who appeared as agent for the landlord. 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 to be Decided

Is the landlord entitled to a monetary award for damages or loss arising out of this tenancy?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's agent testimony is as follows. The tenancy began on December 1, 2012 and ended on April 1, 2019. The tenant was obligated to pay \$1200.00 per month in rent in advance on the first of each month. The agent testified that no security deposit

was paid. The agent testified that the tenant left the unit dirty and damaged at move out and left the unit in an “un-rentable” condition. The agent testified that written condition inspection reports were not conducted at move in or move out. The agent testified that the tenants did not give notice that they were moving out. The agent testified that when he attended to collect the April rent the tenants handed him the keys and left. The agent testified that the tenants purchased movies on the landlords account while they were away in India from February 6-28, 2019. The agent testified that the tenants damaged flooring, drywall and paint.

The landlord is applying for the following:

1.	Loss of Revenue	\$1200.00
2.	Telus TV	396.90
3.	Damages to Unit	3750.00
4.	Filing Fee	100.00
5.		
6.		
7.		
8.		
9.		
10.		
	Total	\$5446.90

Counsel gave the following submissions. Counsel submits that the tenants gave notice to the landlord on February 28, 2019 and personally served the agent at this hearing. Counsel submits that the tenants did not cause any of the damaged alleged as the unit was in the same condition at move out as it was given to them at move in. Counsel submits that many people reside in the landlords’ suite including children who most likely ordered the movies, but not her clients.

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 parties continually referred to and argued about irrelevant and inconsequential matters such as the exact move in date and issues about the laundry. Despite several requests by me to explain its relevance, neither party was able to illuminate the basis or value of those issues. Both parties spent the majority of the hearing arguing over many irrelevant issues but only briefly of the ones before me in

this application. The principal aspects of the landlord's claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

Loss of Revenue April 2019- \$1200.00

Counsel submits that the landlords' documentation showing that they were not in the country when the tenant served them notice to move out is not sufficient and that a summons for their passport should be issued to prove it. I disagree with counsel. The landlord submitted a document that reflects that the landlords and their son were in India from February 6-February 28, 2019 and that they did not arrive at the Vancouver airport until 8:40 p.m. on that evening. The tenants submit that they personally served the agent at 6:00 p.m. on February 28, 2019. I do not accept the tenants' version of the events. I find that the landlord has provided sufficient evidence on a balance of probabilities; that they were not served notice by the tenants that they were ending the tenancy. As a result, I find that the landlord is entitled to \$1200.00.

Telus TV – 396.90

Although the landlord submitted the bills to reflect the cost incurred, they have not provided sufficient evidence to show that the tenants were in fact responsible for ordering movies or programs, accordingly; I dismiss this portion of the landlords claim.

Damages to unit - \$3750.00

The landlord provided an estimate that was higher than the amount claimed but chose to provide a more economical option. The agent testified that the work has not been

conducted at this point as they don't have the money to do so. It was explained in great detail to the landlords agent the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

As the landlord has been partially successful in their application they are entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$1300.00. I grant the landlord an order under section 67 for the balance due of \$1300.00. This order may be filed in the Small Claims Court and enforced as an order 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 06, 2019

Residential Tenancy Branch