



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S

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;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. 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 damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background, Evidence

The landlord's testimony is as follows. The tenancy began on June 27, 2019 and ended on March 31, 2019. The landlord testified that on March 15, 2019 the tenant gave him notice that she would be moving out by March 31, 2019. The landlord testified that he advised the tenant that he would take all necessary steps to rent the unit out. The landlord testified that he advertised in a newspaper as well as posting advertisements online. The landlord testified that the tenant did not pay her share of her utilities for February and March. The landlord testified that the tenant left the unit dirty and with some minor damage. The landlord testified that a written condition inspection report was conducted at move in. The landlord testified that the parties spent about an hour at the move out inspection but the parties were at odds as to the condition of the unit. The landlord testified that he attempted many times to resolve the matter but the tenant refused.

The landlord is applying for the following:

1.	AAA Blinds	\$318.15
2.	Home Depot – Pneumatic door closer	32.65
3.	Canadian Tire Cleaning Supplies	14.71
4.	Sherwin-Williams	49.88
5.	Dollarama – Cleaning Supplies	32.05
6.	BC Hydro	107.62
7.	Fortis BC	63.05
8.	Cabinet Repair	25.00
9.	Cleaning services	80.00
10.	Advertisement	81.90
11.	Filing Fee	100.00
	Total	\$3205.01

The tenant gave the following testimony. The tenant testified that she endured “hell for two years” by living in this home. The tenant testified that her family was consistently sick because of the mold, so bad so that her young child developed pneumonia. The tenant testified that she had made many requests of the landlords to address the issues only to be ignored. The tenant testified that the landlord gave her verbal approval to move out on short notice. The tenant testified that the landlord tried to sabotage her by giving her bad reference to potential new landlords. The tenant testified that the landlord was disrespectful and didn't care about her family's health and didn't maintain the

property as required. The tenant testified that she has spoken to the mayor about this issue.

Analysis

The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were in a highly charged screaming match with each making allegations of “liar” to each other. The parties were more intent on arguing with each other than answering questions. The tenant spoke uninterrupted for almost 40 minutes of the 60 minute hearing, however; the tenant continually referred to non-related or irrelevant issues.

The tenant was given numerous opportunities to address the landlords’ claims but chose not address them. I explained the process, the possible outcomes, the options available to both parties in terms of a hearing or settlement options, and the items that I could address in this decision on five separate occasions. Both parties confirmed that they understood all of the above, but despite that confirmation, the tenant continually spoke of non-related items. The tenant only briefly touched on the landlords claim in regards to the replacement of blinds which she disputed in its entirety and that she agreed with the utilities cost and was prepared to pay for that.

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.

Firstly I address the landlords claim for the loss of revenue for the month of April 2019. The tenant stated that she moved out because the house was full of mold and that her family and her health were severely impacted by it. The tenant testified that the landlord gave her verbal confirmation that short notice was acceptable. The landlord testified that he advised the tenant at all times that he would try his best to rent the suite as soon as he could but did not waive any right to claim for loss of revenue. The landlord testified

that he at no time agreed to the short notice. The landlord testified that the mold issue was addressed whenever the tenant advised him however the tenant did not follow the instructions of how to maintain the home mold free. The landlord testified that he cannot control how the tenant lives and feels it's unfair to for her to accuse him of causing the problems when she is in control of the unit and refused to mitigate any potential issues.

Section 45 of the Act addresses the issue before me as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenant acknowledged and confirmed that she only gave two weeks' notice to move out but felt that the landlord had not met his responsibilities under the Act to provide a safe home that she was free to leave on short notice. Although there were some issues during the tenancy the tenant has not provided sufficient evidence to support her position. In addition, I find that the landlord addressed the issues in a reasonable manner. Based on the above, the evidence before and after considering both parties testimony I am satisfied that the landlord has provided sufficient evidence that the tenant gave him short notice to move out without justification or cause, and that despite his best efforts, he was unable to re-rent the unit for April 1, 2019 and incurred one month's loss of revenue. I find that the tenant is in breach of Section 45(1) of the Act and I find that the landlord is entitled to \$2300.00.

During the hearing the landlord advised that he is content with being granted the right to retain the security deposit and will abandon the rest of his claim despite his feeling that he was entitled to all of it. . The landlord testified that he has found this entire process very stressful and that he did not want to deal with any further anxiety in attempting to collect funds and did not want to impose any stress on the tenant. Based on the landlords request to reduce his claim, I need not consider the remainder of his claim as I have already found that he is entitled to more than he is asking for.

I find that the landlord is entitled to retain the security deposit.

Conclusion

The landlord has established a claim for \$1150.00. I order that the landlord retain the \$1150.00 security deposit in full satisfaction of the claim.

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 08, 2019

Residential Tenancy Branch