



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: FFL, MNDCL-S, MNDL-S, MNRL-S

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$2029.94 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served on the Tenants by mailing, by registered mail to where the Tenants reside on June 8, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a fixed term written tenancy agreement that provided that the tenancy would start on May 23, 2018 and end on April 30, 2019. The tenancy agreement provided that the tenant(s) would pay rent of \$4200 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$2100 at the start of the tenancy. The term of the tenancy was extended to May 23, 2019 by agreement between the parties.

Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Policy Guideline #16 includes the following:

"C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss."

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord is entitled to \$380.94 for the cost of the tenant's share of Hydro and Fortis bills. The Tenants agreed to this claim.
- b. The landlord claimed the sum of \$770 for the cost of having an additional occupant in the premises for 21 days. The tenancy agreement included a clause that named the tenants and stated that they would be the only occupants of the unit. The tenancy agreement further stated "No other occupants without prior consent. Up to an additional \$1100 per month will be charged per month for an additional occupant." The landlord testified this prohibition was necessary as an additional occupant would void his insurance. The tenancy agreement also contained the standard clause that dealt with guests. The landlord testified the tenants had converted the dining room into a bedroom to house his additional occupant.

The tenants are UBC students. They acknowledged they had another student staying over for a period of time in April so that they could work together studying for exams. They further testified that when the landlord told them about the clause they immediately ensured the other student did not stay over. The tenants objected to the landlord taking photos without their permission. They further stated the friend stayed over for about 15 days as he went home on weekends.

I determined the tenants breached the tenancy agreement in permitting another occupant to stay over. This was a situation that amounted to more than just being a guest. However, the landlord failed to prove he stayed over the 21 days. I determined based on the evidence of the tenant that he stayed over for 15 days and the landlord is entitled to \$550 for this additional occupant for that period.

- c. I dismissed the landlord's claim of \$100 for the cost of removing the water stopper to free hair. The landlord failed to tell the Tenants that he intended to charge them for this work. The tenants testified they would not have used him had he told them. The landlord failed to prove that he is legally entitled to this claim.
- d. I determined the landlord is entitled to \$157 for the cost of a plumber to unclog the drain. The landlord incurred this expense and it was caused by the negligence of the Tenants.
- e. I dismissed the landlord's claim of \$100 for the cost of cleaning the dishwasher. The landlord failed to tell the Tenants that he intended to charge them for this work. The tenants testified they would not have used him had he told them. The landlord failed to prove that he is legally entitled to this claim.
- f. The landlord claimed the sum of \$241.50 for the cost of plumber to unclog the dishwasher drain. The tenants testified they seldom used the dishwasher. Further the actions of the previous tenants may have contributed to it. The landlord testified the dishwasher was only 2 years old and alleged the tenants failed to properly rinse their dishes before putting them in the dishwasher. The landlord has the burden of proof. After carefully considering all of the evidence I determined the landlord is entitled to \$150 of this claim as the landlord failed to prove the tenants were the parties that were completely responsible.
- g. The landlord claimed the sum of \$280 for his labor for the cost of setting up a blow dryer to dry the floor around the toilets. One of the tenants inadvertently knocked the water container at the back of the toilet causing a flood. The tenants have paid for the cost of the plumber to fix this. The landlord borrowed the blow dryer from a friend. The tenants were responsible for turning the blow dryer on and off. The landlord checked it

occasionally. I determined the landlord failed to prove this claim and as a result this claim is dismissed. .

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$1237.94 plus the \$50 filing fee (reduced to reflect the limited success of the landlord) for a total of \$1287.94.

Security Deposit

I determined the security deposit totals the sum of \$2100. I determined the landlord is entitled to retain this sum of \$1287.94 from the security deposit. I ordered the landlord pay the balance of the security deposit in the sum of \$812.06 to the Tenants.

It is further Ordered that this sum be paid forthwith. The parties are given a formal Order in the above terms and the Applicant must be served with a copy of this Order as soon as possible.

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

This decision is final and binding on the parties.

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: September 16, 2019

Residential Tenancy Branch