



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E.T. Investments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL -S; MNDCL -S; FFL

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage and cleaning costs and other losses; and, authorization to retain or make deductions from the tenant's security deposit. The landlord's agents appeared at the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of hearing documents upon the tenant. The landlord's agent testified that the tenant provided his forwarding address to him in a text message on May 25, 2019. The landlord sent the hearing documents, including evidence, to the tenant via registered mail on June 26, 2019 using the forwarding address provided by the tenant on May 25, 2019 and the registered mail was successfully delivered on July 8, 2019. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant under the Residential Tenancy Act, as claimed?
2. Is the landlord authorized to retain or make deductions from the tenant's security deposit?

Background and Evidence

The tenancy started on March 1, 2018 and the rent was set at \$2,600.00 due on the first day of every month. The landlord collected a security deposit totalling \$1,300.00.

The tenant failed to pay rent for January 2019 when due and the landlord made an application for a Monetary Order and Order of Possession under the Direct Request procedure. On February 11, 2019 an Adjudicator provided the landlord with an Order of Possession and Monetary Order in the amount of \$100.00 for recovery of the filing fee paid for that Application.

On February 21, 2019 the landlord obtained a Writ of Possession from the Supreme Court of British Columbia. The landlord decided not to use the bailiff to enforce the Writ and changed the locks on the rental unit on February 25, 2019 even though the tenant remained in possession of the rental unit and had his personal property in the rental unit. The landlord's agent testified that he returned possession of the unit to the tenant a few days later.

The landlord's agent testified that the landlord continued to work with the tenant with respect to vacating the unit. The landlord's agent testified that the tenant had possession of the unit until May 25, 2019.

A move-in inspection report was done with the tenant on May 8, 2018. A move-out inspection was done May 25, 2019 and a move-out report prepared; however, the landlord's agent submitted that the tenant refused to sign the move-out report.

The landlord seeks to recover the following amounts from the tenant:

1. Filing fee paid for Direct Request application -- \$100.00

The landlord withdrew the request for an award for this amount since it was already awarded on February 11, 2019; however, the landlord's agent pointed out that the tenant did not satisfy this order.

2. Carpet cleaning -- \$294.00

The tenant did not have the carpets cleaned and the carpets were dirty at the end of the tenancy. The landlord paid to have the carpets cleaned and seeks to recover the cost from the tenant.

3. Locksmith – \$140.70

The landlord seeks to recover the cost of the locksmith that was incurred when the landlord decided to change the locks instead of getting the bailiff to execute the Writ of Possession.

4. Roller shade replacement -- \$322.00

The landlord submitted that the tenant damaged the blind in the bedroom. The landlord had to replace it at a cost of \$322.00 and seeks to recover this amount from the tenant.

5. Drywall patching and painting -- \$250.00

The tenant installed shelving, fixtures and a TV to the walls and created several large screw holes in the walls. The landlord hired a handyman to patch the holes and repaint the affected areas at a cost of \$250.00 and seeks to recover this amount from the tenant.

6. Loan to tenant -- \$600.00

The landlord's agent gave a personal loan to the tenant to help him move out and get storage facilities. The tenant promised to repay the loan but has not. The landlord's agent has obtained an order from the Civil Resolution Tribunal for this debt.

7. Move-out cleaning -- \$105.00

The landlord submitted that the tenant left the rental unit unclean when he returned possession of the unit to the landlord and the landlord hired a cleaning company to clean the unit for \$105.00. I noted that the move-out inspection report only described one area as needing cleaning. The landlord's agent acknowledged he failed to describe all the dirty areas on the move-out report and pointed to photographs he took that same day. The landlord's photographs showed dirty areas in the bathroom, kitchen and living room.

Analysis

Upon consideration of the unopposed evidence and everything before me, I provide the following findings and reasons with respect to each of the landlord's claims.

1. Direct request filing fee

The landlord has a Monetary Order for the filing fee paid for a previous Application and I cannot make another award; however, section 72 provides as follows:

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Having heard the Monetary Order of February 11, 2019 has not been paid by the tenant, I find the landlord entitled to deduct the amount of \$100.00 from the tenant's security deposit, leaving a balance of \$1,200.00 being the remainder held in trust when the landlord filed this application.

2. and 7. Carpet cleaning and move-out cleaning

Section 37 of the Act provides that a tenant is required to leave a rental unit reasonably clean at the end of the tenancy. Residential Tenancy Branch policy guideline 1 provides that, in general, a tenant is responsible for carpet cleaning where a tenancy is greater than one year in duration. Upon review of the condition inspection report, the invoices, the photographs, and considering the tenant had possession of the rental unit greater than one year, I find the landlord has satisfied me that the tenant is responsible for carpet cleaning and move out cleaning costs in the amounts claimed of \$294.00 and \$105.00 respectively.

3. Locksmith

Section 26 prohibits a landlord from changing the locks to a unit as follows:

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

- (a) seize any personal property of the tenant, or
- (b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

- (a) the landlord has a court order authorizing the action, or
- (b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

[My emphasis underlined]

Section 57 of the Act contemplates situations where a tenant does not leave when the tenancy has ended and provides as follows, in part:

What happens if a tenant does not leave when tenancy ended

57 (1) In this section:

"overholding tenant" means a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

[My emphasis underlined]

In this case, the landlord obtained a Writ of Possession on February 21, 2019. The Writ of Possession directs the sheriff (bailiff) to take possession of the rental unit and seize the tenant's possessions. The Writ did not authorize the landlord to change the locks to the rental unit or otherwise prevent the tenant from accessing the rental unit and his possessions. The landlord chose not to use the bailiff and had the locks changed itself

which is a violation of the court's direction contained in the Writ and a violation of the Act. I decline to award the landlord the costs associated to circumventing the legal procedure for regaining possession of the rental unit and this claim is dismissed.

The landlord's agent was cautioned that the landlord's actions (changing the locks) were highly illegal and such actions may subject the landlord to administrative penalties.

4. and 5. Replace roller shade and drywall repairs

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Upon review of the condition inspection report, the photographs and the invoices, I find I am satisfied that the tenant caused damage beyond reasonable wear and tear with respect to the roller shade and causing several large screw holes in the walls. I find the landlord entitled to recovery the costs incurred to rectify this damage. Therefore, I award the landlord the amounts requested of \$322.00 and \$250.00 respectively.

6. Personal loan to tenant

My jurisdiction is provided to me by the Director of the Residential Tenancy Branch and is limited to disputes between a landlord and a tenant concerning a tenancy agreement, a rental unit or residential property that is provided under the tenancy agreement. I do not have jurisdiction to resolve disputes concerning other types of contracts or agreement even if the contract is between the same parties, except where the other contract may influence a term of the tenancy agreement. In this case, I heard the landlord's agent and the tenant entered into a personal loan agreement so that the tenant may move out of the rental unit. I find such an agreement is not part of the tenancy agreement and there is no violation of the tenancy agreement, the Residential Tenancy Act or the Residential Tenancy Regulations that would give rise to an award being made under the Residential Tenancy Act for the personal loan. Further, I also received evidence that this loan agreement was pursued through the Civil Resolution

Tribunal, which I find to be the appropriate jurisdiction. Therefore, I decline to consider this claim further and the landlord's agent remains at liberty to enforce the order already provided to him by the Civil Resolution Tribunal.

Filing fee, Security deposit and Monetary Order

The landlord's claims against the tenant for damage and cleaning costs had merit and I award the landlord recovery of the \$100.00 filing fee paid for this application.

Based on all the above, I authorize the landlord to deduct the following amounts from the tenant's security deposit and I provide the tenant with a Monetary Order for the balance remaining, as follows:

Security Deposit collected	\$1,300.00
Less: Monetary Order issued Feb 11, 2019	(100.00)
Balance of security deposit remaining	\$1,200.00
Less: amounts awarded to landlord with this decision –	
Carpet cleaning	(294.00)
Move out cleaning	(105.00)
Roller shade replacement	(322.00)
Drywall repairs	(250.00)
Filing fee	<u>(100.00)</u>
Security deposit to be refunded to tenant	\$ 129.00

The landlord is ordered to return the balance of the deposit to the tenant in the amount of \$129.00. In keeping with Residential Tenancy Branch policy guideline 17, the tenant is provided a Monetary Order in the amount of \$129.00 to serve and enforce upon the landlord.

Conclusion

The landlord has been awarded \$1,071.00 and may deduct this amount from the remainder of the tenant's security deposit. The landlord is ordered to return the balance of the deposit to the tenant in the amount of \$129.00. The tenant is provided a Monetary Order in the amount of \$129.00 to serve and enforce upon the landlord.

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: October 02, 2019

Residential Tenancy Branch