



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNRL-S

Introduction

In this dispute, the landlord sought compensation against their former tenant for cleaning costs and loss of rent, and, for recovery of the filing fee, pursuant sections 67 and 72, respectively, of the *Residential Tenancy Act* (the “Act”).

The landlord applied for dispute resolution on August 14, 2019 and a dispute resolution hearing was held on December 9, 2019. The landlord’s agent, the tenant, and a family member for the tenant, attended the hearing, and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application.

Issues

1. Is the landlord entitled to compensation against the tenant for cleaning costs in the amount of \$80.00?
2. Is the landlord entitled to compensation against the tenant for loss of rent for August 2019 in the amount of \$2,200.00?
3. Is the landlord entitled to recovery of the filing fee in the amount of \$100.00?
4. Is the landlord entitled to retain all or some of the tenant’s security deposit in partial or full satisfaction of any monetary award?

Background and Evidence

The landlord's agent (hereafter "landlord" for brevity) testified that the tenancy started on February 1, 2019 and ended on August 4, 2019. A written tenancy agreement, a copy of which was submitted into evidence, indicates that it was a fixed-term tenancy which ended January 31, 2020. Monthly rent was \$2,200.00 and the tenant paid a security deposit of \$1,100.00 which the landlord currently retains.

A revised Monetary Order Worksheet submitted by the landlord stated that the landlord seeks \$80.00 for cleaning costs related to cleaning inside a stove and oven, cleaning behind the stove, and behind the fridge, after the tenant moved out. The costs represent two hours of cleaning that the landlord submits were required as a result of the tenant not cleaning. A copy of an e-transfer confirmation was submitted into evidence as proof of that cost.

The landlord testified that a Condition Inspection Report was completed at the start of the tenancy, but that no report was "officially" completed when the tenancy ended. However, the landlord submitted photos of the rental unit as evidence of the state of the rental unit at the end of the tenancy (but none pertaining to the oven, stove or refrigerator). He explained that his focus was on finding a new tenant rather than completing a report.

On August 4, 2019, the tenant sent a text message to the landlord stating that she was unable to pay the rent for August 2019 and that she would be moving out that same day. She did not provide formal written notice and did not pay rent for August.

Later that same day, the rental unit was listed on Craigslist, Kijiji, Facebook, and "other places," according to the landlord's agent. It took the landlord three weeks to find a new tenant, who eventually moved in for September 2019. The monthly rent was \$2,200.00.

The tenant denied that any cleaning was necessary, and that she left the rental unit "immaculate" and "move-in ready." In support of her argument she took, and submitted, ten photographs depicting the rental unit; the photographs were taken on August 4. There was, she argued, simply "nothing to clean." Further, she argued that the e-transfer does not substantiate that there was a cleaning business that did the cleaning, and that an e-transfer is "not a proper receipt." In rebuttal, she argued that the landlord did not submit any evidence (such as photographs) of the state of the oven, stove, or behind the fridge and stove, that might substantiate the cleaning claim.

Regarding the rent, the tenant admitted that she was unable to pay the rent due to difficulties with an ever-decreasing income. Nearing the date on which she gave notice, she was down to working two days a week, and thus "didn't have any money" to afford the rent. She knew that she would not have the money, and, trying to "make the best in a

bad situation” gave notice and moved out quickly to at least give the landlord a chance to re-rent as soon possible.

The tenant questioned the timeliness of the landlord re-renting the rental unit and asked why no copies of any listing advertisements were submitted into evidence. She argued that there is no proof that the landlord re-rented as quickly as was claimed. “Why did it take them three weeks?” she inquired.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with this Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for any damage or loss that results. In this case, the landlord claims that the tenant did not comply with the Act, and that they should be compensated for this non-compliance.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria to be awarded compensation:

1. that the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement;
2. that the loss or damage resulted directly or indirectly from non-compliance;
3. that the applicant has proven the amount or value of the damage or loss; and,
4. that the applicant did whatever was reasonable to minimize their damage or loss.

1. Claim for Cleaning Costs

Subsection 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In this case, the landlord claims that the tenant did not leave the rental unit – specifically the oven, the stove, and behind the fridge – reasonably clean. As a result, according to the landlord, they had to call in the cleaners who took two hours to clean the above-noted items. However, the tenant disputes that the rental unit required any cleaning, commenting that it was left “immaculate.”

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to provide any evidence that the tenant left the rental unit in a condition requiring the incurring of two hours of cleaning.

The tenant correctly pointed out that, without photographs to substantiate the landlord's claim, the landlord has not met the onus of proving their claim. Moreover, in the absence of a completed Condition Inspection Report which may have accurately reflected the condition of the rental unit and its constituent parts at the end of the tenancy, I am left with very little (if any) evidence.

Taking into consideration the oral testimony and (lack of) documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of his claim for cleaning costs. This aspect of their claim is dismissed without leave to reapply. Having found no breach of the Act I need not consider the remaining factors in the above-noted four-part test.

2. Claim for Loss of Rent for August 2019

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement.

The written tenancy agreement required rent to be paid on the first of the month in the amount of \$2,200.00. Rent was due on August 1, 2019. On August 4, 2019, the tenant advised the landlord that she was ending the tenancy and moving out. Notwithstanding that the tenant's notice to end tenancy was not in compliance with section 45 of the Act, the tenant owed rent for August. While I empathize with the tenant's plight of being underemployed and the difficulties that are ever-present in the expensive rental market that is Vancouver, the Act (and the tenancy agreement) is rather unwavering as to a tenant's legal obligation to pay rent. Finally, there is very little that a landlord can do to mitigate the loss of rent in these circumstances; he had less than a month to find a new tenant, and, as pointed out, prospective tenants must give their landlords proper notice. Taking into consideration the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for rent in the amount of \$2,200.00.

3. Claim for Recovery of Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the applicant was predominately successful in their application for dispute resolution, I grant their claim for reimbursement of the filing fee in the amount of \$100.00

Summary of Monetary Award and Order

I grant the landlord a total monetary award of \$2,300.00, comprising \$2,200.00 in rent for August 2019 and \$100.00 in filing fee costs. I order the landlord to retain the tenant's security deposit of \$1,100.00 in partial satisfaction of the award, and I grant the landlord a monetary order in the amount of \$1,200.00 for the balance.

Conclusion

I grant the landlord a monetary order in the amount of \$1,200.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 11, 2019

Residential Tenancy Branch