



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRL-S, MNDCL-S, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order under the *Residential Tenancy Act* (the Act) to recover loss of rent revenue and for damage and loss and inclusive of recovery of the filing fee associated with this application. The landlord indicates they hold the security deposit and seek an order to retain the tenancy deposit in partial satisfaction of the monetary claim.

Only the landlord appeared in the conference call hearing. I accept the landlord's testimony and evidence that the tenant was served with the application for dispute resolution and notice of hearing as well as the landlord's evidence of in accordance with Section 89 of the *Residential Tenancy Act* (the Act). The landlord testified they sent to the tenant all the evidence submitted to this proceeding and that they served the tenant with all their documents by *registered mail*, for which they provided proof as indicated on the style of cause page (the title page of this action). None the less, the tenant did not participate in the conference call hearing.

The landlord was given full opportunity to be heard, to present evidence and to make submissions. The hearing proceeded on the merits of the landlord's application and evidence. I have reviewed all oral, written and document evidence before me however only the evidence relevant to the issues in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed. I have benefit of a copy of the written tenancy agreement

stating the tenancy began January 14, 2018 for a *fixed term* ending September 30, 2019. Rent in the amount of \$2300.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit and a pet damage deposit from the tenant in the sum of \$1150.00 which the landlord retains in trust.

The tenancy ended September 01, 2019 subsequent to the landlord being informed in an email from the tenant on July 10, 2019, which stated they were vacating August 31, 2019. The landlord testified they acknowledged and accepted the tenant's information and responded that they would make effort to re-rent the unit and would soon advertise it. In addition, the landlord informed the tenant they would be held accountable for rent to the end of the fixed term (September 30, 2019) if they were unable to rent the unit for September 01.

The tenant vacated and notified the landlord by email that the rental unit was vacant and clean, and that the access devices of the rental unit were left inside the unit. In the same email of September 01, 2019, the tenant provided a forwarding address and requested return of their security deposit. In response the landlord and tenant agreed to, and scheduled a mutual condition inspection of the rental unit for September 07, 2019 at 11:00 a.m. The morning of the agreed inspection event the tenant cancelled via text. The landlord provided evidence they immediately communicated back to the tenant in effort to schedule a new inspection date, however the tenant. "never responded". The landlord testified they subsequently conducted an inspection on their own and determined there were deficiencies; however, of primary concern was the soiled carpeting, for which they provided photo images. The landlord testified that they had the carpeting professionally cleaned for which they provided a receipt (Citrus-O) indicating the cost for cleaning as \$294.00. The landlord highlighted that the contractual tenancy agreement required the tenant to have the carpeting professionally cleaned at the end of the tenancy and to further provide a receipt for the professional cleaning to the landlord, neither of which occurred.

The landlord's monetary claim is for loss of rent revenue representing rent for September 2019 in the amount of \$2300.00, and compensation for carpet cleaning of \$294.00, for a claim in the sum of \$2594.00.

Analysis

The full text of the Act, and other resources can be accessed via the RTB website: www.gov.bc.ca/landlordtenant .

It must be known that as applicant the landlord bears the burden of proving their monetary claims pursuant to the Act, on balance of probabilities.

Section 7 of the Act provides as follows in respect to the claims of the landlord.

Liability for not complying with this Act or a tenancy agreement

- 7(1)** If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2)** A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the landlord must satisfy each component of the test below:

1. *Proof the relevant loss exists*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*
3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

In this matter, I find that a tenant who signs a fixed term tenancy agreement is responsible for the rent to the end of the term. And, that an applicable landlord's claim for a loss of revenue is subject to their statutory duty pursuant to Section 7(2) of the Act to do whatever is reasonable to minimize the damage or loss. I find that the landlord testified they advertised the rental unit for September 2019 within days of being informed July 10, 2019 the tenant was vacating August 31, 2019. However, the landlord did not provide evidence to prove or establish, on a balance of probabilities, they made such efforts so as to mitigate losses in this situation. In the absence of sufficient evidence, I find the landlord has not met their burden as prescribed by Section 7 of the Act. As a result, I must **dismiss** this portion of their claim, without leave to reapply.

I find that the contractual tenancy agreement supports the landlord's claim for carpet cleaning. The agreement states that the tenant would have the carpets professionally cleaned when they vacated, however did not. I find the landlord has submitted sufficient

evidence in support of their claim for carpet cleaning, therefore I find the landlord is entitled to their respective claim for carpet cleaning in the amount of **\$294.00**. As the landlord was in part successful in their application, they are entitled to recover their filing fee of **\$100.00**.

In respect to the security deposit of this matter, **Residential Tenancy Policy Guideline #17**, in part, states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

I accept the parties did not agree as to the administration of the security deposit at the end of the tenancy, and which the landlord seeks it's offset in this matter. I find the undisputed evidence is that the parties scheduled a mutual inspection, however the tenant did not attend the scheduled inspection nor participated in a second opportunity to do so. I find that **Section 36(1)** of the Act states;

Consequences for tenant and landlord if report requirements not met

36 (1)The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
- (b) the tenant has not participated on either occasion.

Pursuant to the above, I find that the Act operates to *extinguish* the tenant's right to the return of the security deposit. Therefore, as further result,

I Order that pursuant to the Act and in full and final satisfaction of their compensable claims of their application in this matter the landlord may retain the security deposit of \$1150.00 in its entirety;

Conclusion

The landlord's application in part has been granted in the above terms. The balance of their application has been dismissed, without leave to reapply

This Decision is final and binding.

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: January 21, 2020

Residential Tenancy Branch