



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDLS, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on September 18, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss;
- to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on January 23, 2020 as a teleconference hearing. The Landlord and the Landlord's Agent appeared at the appointed date and time of the hearing and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 25 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord, the Landlord's Agent, and I were the only persons who had called into this teleconference.

The Landlord testified that she served the Tenant with the Application package and documentary evidence on September 25, 2019 by Registered Mail to the Tenant's forwarding address. The Landlord submitted a copy of the registered mail receipt in support. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. As such, I find that Tenant is deemed to have been served with the above-mentioned documents on September 30, 2019.

The Landlord and the Landlord's Agent were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for damage, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?
3. Is the Landlords entitled to retain the security deposit, pursuant to Section 38 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy began on July 1, 2018. The Landlord stated that during the tenancy, the Tenant was required to pay rent in the amount of \$2,900.00 to the Landlord by the first day of each month. The Landlord stated that the Tenant paid a security deposit in the amount of \$1,475.00 which the Landlord continues to hold.

The Landlord stated that the parties came together on August 30, 2019 to conduct a move out condition inspection of the rental unit. The Landlord stated that the parties agreed that the Tenant caused damage to the laminate floor throughout the rental unit, damage to several doors, as well as damage to a bathtub. The Landlord stated that the Tenant agreed that the Landlord could retain the security deposit held by the Landlord, as well as an additional \$1,000.00 to be paid by the Tenant to the Landlord which was due on or before September 15, 2019. The Landlord stated that she has not yet received the additional \$1,000.00 from the Tenant.

The Landlord provided a copy of the condition inspection report which is signed by both parties and indicates that the Tenant agreed to the damages mentioned above. The condition inspection report states that the Tenant agreed to the Landlord retaining the \$1,475.00 security deposit as well as an additional \$1,000.00. The Landlord also provided photographic evidence of the damage noted on the condition inspection report.

If successful, the Landlord is seeking the repayment for the filling fee in relation to the Application. As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

The Landlord is seeking to retain the Tenant's security deposit in the amount of \$1,475.00 and is claiming for a further \$1,000.00 relating to damages caused by the Tenant to the rental unit. I accept that the parties came together on August 30, 2019 to conduct a move out condition inspection of the rental unit.

I find that the Landlord provided sufficient evidence to demonstrate that the parties agreed that the Tenant caused damage to the laminate floor throughout the rental unit, damage to several doors, as well as damage to a bathtub. I further find that the Landlord provided sufficient evidence that the parties agreed that the Landlord could retain the security deposit held, as well as an additional \$1,000.00 to be paid by the Tenant to the Landlord which was due on or before September 15, 2019. I accept that the Landlord has not yet received the additional \$1,000.00 from the Tenant.

I find that the Landlord is entitled to retaining the Tenant's \$1,475.00 security deposit and has also established an entitlement to a further \$1,000.00 in relation to repair the damage caused by the Tenant to the rental unit, as agreed by the parties during the move out condition inspection on August 30, 2019.

As the Landlord was successful with her Application, I find that she is entitled to the return of the \$100.00 filing fee.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$1,100.00.

Conclusion

The Landlord is granted a monetary order in the amount of \$1,100.00. This order must be served on the Tenant as soon as possible. If the Tenant fails to comply the monetary order it may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 28, 2020

Residential Tenancy Branch