



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL, MNDL-S

Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- monetary order for rent and/or utilities pursuant to section 67 of the *Act*;
- monetary order for damage or compensation pursuant to section 67 of the *Act*-security deposit applied to the claim.
- an application for the filing fee pursuant to section 72 of the *Act*.

The landlord CK attended the hearing via conference call. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions. The landlord testified that Vantage West Realty was her agent that had assisted with the application, but she was the owner of the property.

The tenant did not attend this hearing, the line remained open while the phone system was monitored for 13 minutes and no participant called into the hearing during this time. The Notice of Hearing was confirmed to provide the correct phone numbers and access codes to call into the conference call.

Rule of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I proceeded to conduct the hearing.

The landlord CK testified the tenant was served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail on December 23, 2019. I find that this satisfied the service requirements set out in sections 88, and 89 of the *Act*, and find the tenant was served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to a monetary order for damage or compensation, security deposit applied to the claim pursuant to section 72 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of her respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below:

This tenancy was a fixed term tenancy from November 3, 2018 to October 31, 2019 and then continued month to month. Monthly rent in the amount of \$1695.00 was payable on the first day of each month. A security deposit of \$847.50 was paid by the tenant to the landlord and continues to be held in trust.

The landlord testified that the tenant wrote to her November 15, 2019 informing her that she was moving out of the rental unit on December 15, 2019 and providing her forwarding address for the security deposit. A copy of the letter was filed in evidence.

The tenant did not attend the hearing to present any submissions in relation to the hearing and the tenant did not upload any evidence disputing the Notice of Dispute Resolution.

The landlord testified that she is unsure when the tenant vacated the rental unit but did attend the move-out inspection with the management company VR in December 2019. The landlord testified that the tenant did not pay any rent for December 2019 and

submitted a monetary worksheet as evidence and is seeking \$1695.00 for the December rent and \$100.00 for touch up paint to the drywall.

The tenant provided the landlord with written notice that she intended to vacate the rental unit on December 15, 2019 which was filed as evidence by the landlord.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish all of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. 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.

1. Landlord & Tenant – Responsibility for Residential Premises – Residential Policy guidelines states the following:

“If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes. 2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage. 3. The tenant is responsible for all deliberate or negligent damage to the walls.”

Residential Policy Guideline states that it is not the tenant's responsibility to fill in the holes and is not considered damage unless it is excessive, nevertheless the tenant has filled the small holes in the wall and cleaned the premises. Furthermore, the move out inspection report states "patched, but not painted" and does not mention any damage. I find that the damage is not "excessive" and the landlord is not entitled to further compensation in accordance with the requirements of Residential policy guideline 1.

The landlord testified that the tenant had filled the holes, but the wall required touch up painting. The landlord entered into evidence a monetary worksheet for the sum of \$100.00 for the paint touch up. The move-out condition inspection report states that the wall in the rental property requires painting.

I find in accordance with the Residential Policy guidelines that the tenant has filled the holes in the wall and is not responsible for the painting of the interior wall. The landlord is not entitled to further compensation for the painting of the wall. Therefore, I dismiss this portion of the landlord's claim.

Section 45 of the Residential Tenancy Act provides the following:

Tenant's notice

45 (1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a)is not earlier than one month after the date the landlord receives the notice, and

I find in accordance with section 45, the landlord is entitled to the one months rent owing for December 2019. The landlord holds the tenant's security deposit for the sum of \$847.50 in Trust.

Pursuant to sections 67 of the Act, I order that the tenant pay the landlord \$847.50 representing the rent owed for December 2019 deducting the security deposit of \$847.50 held in trust. As the landlord is successful in this application, she can recover the \$100.00 filing fee.

Conclusion

I grant a monetary order for the sum of \$947.50 for \$847.50 in unpaid rent and \$100.00 filing fee pursuant to section 67 and 72 of the *Act*.

Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court (Small Claims) 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 *Residential Tenancy Act*.

Dated: February 27, 2020

Residential Tenancy Branch