



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAVID FEHR (ESTATE)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC-S, MNR-S, MND-S, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord clarified that the tenant was deceased and that all documents were served upon the tenant's sister, E.N. who the landlord was informed by was his executor.

The landlord stated that the tenant was served with the notice of hearing package and the two submitted documentary evidence package(s) via Canada Post Registered Mail on October 25, 2019. The landlord provided a copy of the Canada Post Customer Receipt Tracking number as confirmation.

I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served. Although the tenant did not attend or submit any documentary evidence, I find that the tenant is deemed served as per section 90 of the Act.

Preliminary Issue(s)

At the outset, the landlord clarified that the tenant was deceased and that the claim was filed against the tenant's estate via the tenants' sister noted as E.N. as per the application for dispute. The landlord stated that upon the tenant "passing away" E.N. was the primary contact regarding the tenant's rental unit for all of the tenant's personal property and rent. The landlord stated that E.N. had stated that she was the executor of the tenant's estate.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation, for unpaid rent, for damages and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord stated that there was a signed tenancy, but that a copy was not provided.

The landlord seeks a clarified monetary claim of \$6,274.33 which consists of:

\$708.89	Unpaid Rent, October 2019
\$1,738.75	Flooring Installation Costs
\$896.01	Flooring Materials
\$225.81	Baseboard Replacement
\$1,575.00	Drywall Replacement, shower wall
\$321.03	Bathroom liner Replacement
\$1,500.00	Painting labour by new tenant
\$137.56	Painting
\$571.28	Miscellaneous materials, re: damage
\$100.00	Filing Fee

The landlord confirmed that this amount was lowered during the hearing as she is only seeking 50% of the total items claimed based upon her monetary worksheet dated October 24, 2019. The exception noted is that item #10 from the monetary worksheet was for the \$100.00 filing fee and \$10.00 for postage. The landlord was advised that litigation costs (postage) was not recoverable under section 7(2) of the Act. Extensive

time was spent clarifying the landlord's monetary claim for which the above listed claims were the result. The hearing proceeded on this basis.

The landlord stated that the tenant passed away in October 2019 and claims that upon gaining possession of the rental unit, the landlord found extensive water damage throughout the bathroom, kitchen and dining room areas. The landlord claims that because of the damage, the landlord incurred expenses to replace the flooring and baseboards, replace water damaged drywall and painting. The landlord also stated that the tenant's rent cheque was returned by the bank as "drawer deceased".

In support of these claims, the landlord has submitted copies of:

Returned October 2019 Rent Cheque with notation
Invoices/Receipts for Paint, Materials, Flooring, Ceiling Repairs, light fixture,
plumbing fixtures, cleaning materials.
Buyers Home Inspection Report, prior to start of tenancy

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlord and find that the landlord has provided sufficient evidence of damage and loss as a result of the tenant's actions or neglect. The landlord has established a monetary claim of \$6,174.33.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

I note that although the landlord applied to offset any claim against a security deposit held, the landlord failed to provide any details of the security deposit in the application,

evidence or submissions during the hearing. On this basis, I decline to make any order for the security deposit.

Conclusion

The landlord is granted a monetary order for \$6,274.22.

This order must be served upon the tenant, should the tenant fail to comply, the order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of that Court.

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: March 24, 2020

Residential Tenancy Branch