



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on March 13, 2020. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord and her two agents attended the hearing and provided testimony (collectively referred to as the "Landlord"). The Tenant attended the hearing on her own behalf. The Tenant confirmed receipt of the Landlord's application and evidence package. The Tenant stated she left her evidence in the Landlord's mailbox, but the Landlord stated she did not get this package. The Tenant was asked if she had any proof of service and she was unable to direct me to anything to corroborate that she served her evidence as she has asserted. I find the Tenant has failed to sufficiently demonstrate that she served the Landlord with her evidence. As such, I find the Tenant's evidence will not be considered.

Both parties were provided the 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 Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

In this application, the Landlord applied to claim against the security deposit. However, I note this issue was already decided upon at a hearing on June 24, 2019. Given a decision had already been made with respect to the return of the deposit, I find I have no jurisdiction to re-adjudicate this matter.

During the hearing, I explained to the parties that I cannot re-hear, change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

As such, I dismiss the Landlord's application to retain the security deposit.

Issues to be Decided

- Is the Landlord entitled to compensation for damage to the unit or for lost rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

Both parties agree that monthly rent was \$2,400.00 and was due on the first of the month. Both parties also agree that the Tenant vacated the rental unit on August 31, 2018.

The Landlord is seeking the following items:

1. \$5,000.00 – furniture, wall and cabinet damages

The Landlord stated that the Tenant had too many people living in the rental unit and did not use the fans to ventilate the unit. The Landlord stated that the Tenant caused mold growth in the rental unit, which destroyed many items. The Landlord also stated that the Tenant caused a lot of general damage, such as cabinet damage. The Landlord did not provide any receipts, invoices, or monetary worksheet detailing how this amount was calculated. During the hearing, the Landlord explained that this is a "rough estimate" because she did not have an exact amount. The Landlord did not elaborate any further on what this amount is comprised of.

The Tenant denied doing any damage to the rental unit and stated that the Landlord failed to do proper move-in and move-out inspection reports, and none of the damage was her fault.

2. \$1,200.00 – unpaid rent for August 16-31, 2018

The Landlord stated that the Tenant only paid \$1,200.00 in rent for August 2018. The Tenant acknowledged only paying \$1,200.00 in rent for August, but stated she had an agreement with the Landlord to only pay half the rent for that month because of the mold issues. The Landlord denies making any such agreement. The Tenant confirmed that she lived in the rental unit until August 31, 2018. The Tenant stated she has text messages from the Landlord and her agent saying that \$1,200.00 was all she had to pay for August 2018 rent, but the Tenant's evidence was not admissible for this hearing, as such, she did not have any corroborating evidence showing she was entitled to withhold half month's rent.

Analysis

The Landlord is seeking monetary compensation for two items, as laid out above. These items will be addressed in the same order for my analysis. A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/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 everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible 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.

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows:

1) \$5,000.00 – furniture, wall and cabinet damages

I note the Landlord is seeking this amount as a "rough estimate" for the damages. The Landlord did not complete a monetary order worksheet nor had she itemized or detailed the different items he was seeking. The Landlord provided a round figure estimate, without any breakdown as to how she arrived at the amount she is claiming.

The Tenant explicitly denied doing the alleged damage, and says the Landlord is only filing this application as retribution because she lost the previous hearing.

I have reviewed the statements from both parties, and I turn to the following rules of procedure:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- ***a detailed calculation of any monetary claim being made;***
- *a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- *copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].*

When submitting applications using the Online Application for Dispute Resolution, the applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application for Dispute Resolution.

I note the Landlord's claim is for a \$5,000.00, and is composed of many different items only generally mentioned on the application form. I also note the Landlord submitted very little documentary evidence to support what items were present when the Tenant moved in, what items were present when the Tenant moved out, what was damaged and what it cost to repair or replace the respective items.

I find it is prejudicial to the respondent to not have a monetary order worksheet, showing how the Landlord arrived at the amount she listed. I am also mindful that the Landlord has provided no evidence to support that the Tenant caused the damage. Without a monetary order worksheet, it is difficult for me to understand the nature and basis of the application.

In an application for monetary compensation, the burden of proof is on the applicant to prove that basis for their claim. In this case, I find the Landlord has not sufficiently done this. Further, the Landlord did not submit the required documents (monetary order worksheet detailing the monetary claim being made). I dismiss this part of her claim without leave to reapply.

2) \$1,200.00 – August 16-31 2018 rent

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent or unless the Landlord and the Tenant have come to an agreement that the amount of rent that is due is different from what is normally paid each month. In this case, the Tenant asserts she had an agreement with the Landlord to only pay half a month's rent for August 2018. However, she had no admissible documentary evidence supporting that this agreement was made. The Landlord specifically denies that this agreement was made.

It is undisputed that the Tenant only paid \$1,200.00 in rent for August 2018. It is also undisputed that monthly rent was set at \$2,400.00 and that the Tenant lived in the rental unit until August 31, 2018. In the absence of sufficient evidence to show the Landlord and the Tenant had agreed otherwise, I find rent was due, in full for August. As the Tenant has only paid \$1,200.00 for that month, I find \$1,200.00 is still due. As such, I award the Landlord \$1,200.00 for this item.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with her application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. In summary, the Landlord is granted a monetary order in the amount for \$1,300.00.

Conclusion

The Landlord is granted a monetary order in the amount of **\$1,300.00**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 13, 2020

Residential Tenancy Branch