



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNDL-S, MNRL-S, FFL
For the tenant: MNSDS-DR

Introduction

The tenant filed an Application for Dispute Resolution (the “tenant Application”) on March 5, 2020 seeking an order for the return of the security deposit retained by the landlord since the end of the tenancy.

The landlord filed an Application for Dispute Resolution (the “landlord Application”) on February 10, 2020 seeking an order for compensation for damage caused by the tenant, and compensation for unpaid rent. The landlord applies to use the security deposit towards compensation on these two claims. Additionally, the landlord seeks to recover the filing fee for the Application.

The landlord stated that they delivered notice of this dispute hearing to each tenant via Canada Post registered mail on March 2, 2020. The tenant attending the hearing confirmed receipt of the Application and evidence package via registered mail.

The matter proceeded by way of a hearing pursuant to section 74(2) of the Residential Tenancy Act (the “Act”) on April 16, 2020. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and make oral submissions during the hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and damage to the rental unit, pursuant to section 67 of the Act?

Is the tenant entitled to a monetary order for the return of the security or pet damage deposit pursuant to section 38(1)(c) of the Act?

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

Preliminary Matters

The landlord presented their claim for \$1,820.00 for unpaid rent. This amount appears on the landlord's application for dispute resolution form completed on February 10, 2020. In the hearing, the landlord stated that they were not claiming for rent and reducing their claim accordingly. The tenant agreed to this reduction in the claim amount. I therefore find there was mutual agreement on the resolution of this issue. Accordingly, I dismiss the landlord's claim for unpaid rent.

The tenant stated they made their application on March 5, 2020 yet they were unable to put their evidence package together through the Residential Tenancy Branch case management system. They stated that "nothing would go through." The landlord stated they did not receive any information or notice of the tenant Application by any other means.

Section 89(1) of the Act stipulates that an application for dispute resolution, when required to be given to one party by another, must be given in a set manner. This can be, in these circumstances prior to emergency measures in place across B.C., registered mail or leaving a copy with the landlord or agent directly.

I find that the tenant has not fulfilled the service provisions under section 89 of the Act. The attending tenant stated they did not send information of the tenant Application to the landlord and did not pursue service of the notice for dispute in any other manner. For this reason, I dismiss the tenant's application for return of the security deposit, without leave to reapply.

Background and Evidence

I have reviewed the landlord evidence and written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement and spoke to the terms therein. The agreement was duly signed on September 21, 2019, with the tenancy starting on October 1, 2019. The monthly rent was \$1,650.00 and payable on the first day of each month. The tenant paid a security deposit amount of \$825.00. A pet deposit amount was not paid at that time; however, a provision was added to have a payment agreement in place for staggered payments and the tenant made no payments. A two-page document entitled 'Conditions of Tenancy' forms part of the agreement, initialled by both parties.

The tenancy ended by way of the Order of Possession granted through a dispute resolution process. The landlord provided a copy of the order which gave possession two days after its service on the tenant. The landlord stated that on February 2, 2020 the tenant was still moving out of the unit; the latest time for their move-out was February 4.

The landlord did not complete a condition inspection meeting with the tenant. They tentatively scheduled a meeting for February 3, 2020. In a written submission they provided reasons for not doing so: the tenant refusing to remove belongings from the unit; an attempt at theft of appliances; the verbally aggressive actions of the tenant to the landlord and other residents, leading to an arrest. The landlord submitted a Condition Inspection Report that bears their notations on the end of tenancy condition, noting details throughout.

The landlord applied for a monetary order for \$1,946.06 in damages that occurred from the start of the tenancy through to the end. A 'Monetary Order Worksheet' completed by the landlord on February 10, 2020 and updated on April 1, 2020 shows the details of this claim. The landlord's submission lists the details for each piece of the claim for damages, totalling \$1,746.06.

The landlord added the filing fee for a previous dispute resolution, yet unpaid, and that of the current hearing, totalling \$200.00.

These include:

- \$161.06, representing 30% of total gas utility as per the tenancy agreement
- \$1000 for cleaning and painting – the evidence of which is the enclosed photos
- \$200 for blinds – the evidence of which is the enclosed photo

- \$300 removal of furniture and other items
- \$50 broken door
- \$35 replace bathroom outlet

The landlord applies for an order authorizing the withholding of the security deposit amount of \$825.00 as compensation for these damages.

The landlord provided photos to show the damages in detail. The landlord described the extent of damage and the work this necessitated in the hearing.

The tenant responded to the issue of damages to the unit to say that they did the best job that they could in attending to the cleaning prior to move out. The tenant stated they “did not take issue with anything in the photos” and tried to clean the unit “to the best of [their] abilities.”

The tenant did not provide documentary evidence. There are three videos submitted by the tenant for this hearing. These depict the tenant walking through the unit prior to move out to show the state of the unit.

Analysis

The relevant portion of the Act regarding the return of the security deposit is section 38:

- (1) . . .within 15 days after the later of
- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant’s forwarding address in writing;
- The landlord must do one of the following:
- (c) repay . . .any security deposit. . .to the tenant. . .;
 - (d) make an application for dispute resolution claiming against the security deposit. . .

Subsection 4 sets out that the landlord may retain an amount from the security deposit with either the tenant’s written agreement, or by a monetary order of this office.

In this hearing, I find the landlord properly applied for dispute resolution within the 15 days set out in the Act. The issue then is the assignment of responsibility, if at all present, for the damages to the rental unit.

In the hearing the tenant stated that they took no issue with what was presented in the photos. They did not provide any objections to specific items of damage which the landlord presented in an itemized fashion.

I weigh the video evidence the tenant made of the unit immediately prior to vacancy against the photos provided by the landlord. I find the tenant video depiction is haphazard and offers a cursory glance at the details that the landlord claims. The landlord's photos, by contrast, offer more detail to the level of damage sustained to miscellaneous areas of the unit. Additionally, the tenant's video captures a number of items left behind in the unit. I find this verifies the landlord's claim for the expenses associated with moving out old furniture and other items out of the unit after the tenant had vacated.

The tenant stated they took no issue with anything presented in the photos. On my examination, the photos accurately depict significant damage requiring repair. The issue of paint is significant: where the move-in condition inspection report makes no mention of damage to the walls or interior, within one year the unit is needing all walls repainted and a significant amount of other work undertaken by the landlord. Based on the photos provided, I find the landlord's submission on the need for wall maintenance throughout is valid and deserving of compensation.

The issue now becomes the right of the landlord to make a claim against the security deposit that they have retained. Section 35 of the Act sets out the requirement for a condition inspection meeting and report. Section 36(2) sets out the consequences for the landlord if the requirements for a report are not met. This is an extinguishment of the right to make a claim against the security deposit.

The landlord did not complete a Condition Inspection Report with the tenant present prior to the move out. There was no inspection meeting; however, the landlord provided reasons for this that involved immediate threats to their security. By application of section 36(2) of the *Act*, the landlord does not have the right to claim against the security deposit. This is because of no completed inspection report, and no record of the landlord having offered 2 opportunities for inspection with the tenant.

I also consider section 67 of the *Act* which grants me the authority to determine the amount of compensation one party pays to the other. I give weight to the evidence the landlord presents and find the costs they present on the monetary worksheet are a representation of a fair determination by the landlord of the cost to make repairs and refurbish the rental unit, placing the landlord in the same position they were in prior to the start of this tenancy.

The landlord has extinguished the right to claim against the security deposit – they did not comply with the inspection requirements. However, section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$1,746.06. After setting off the security deposit, there is a balance of \$921.06. I am authorizing the landlord to keep the security deposit amount and award the balance of \$921.06 as compensation for damage to the rental unit.

As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. The landlord's claim for a previous dispute filing fee of \$100.00 was provided in a previous monetary order in a separate hearing.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$ 1,021.06 for repair amounts and a recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Act*.

Dated: April 29, 2020

Residential Tenancy Branch