



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDCT

Introduction

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

- 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; and
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to a monetary award for compensation for loss or damage under the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant gave the following testimony. The tenant testified that the tenancy began on May 1, 2015 and ended on October 31, 2019. The tenant testified that his rent at move out was \$834.00 and that he provided a security deposit of \$372.50 at move in which the landlord still holds. The tenant testified that the landlord did not conduct a written

condition inspection report at move in but did a walk through at move out. The tenant testified that he signed the move out inspection but was under the belief that he would be getting his deposit back. The tenant testified that he believes he is entitled to the return of double his deposit as the landlord has held it without justification. The tenant testified that he was charged \$35.00 for a metal key to enter through a security gate that he was never refunded for. The tenant testified that the “Ministry” paid his rent for him automatically. The tenant testified that the landlord was paid for November 2019 rent despite the tenant no longer living there. The tenant seeks a monetary order for the following:

1.	Return of Double the security deposit	\$745.00
2.	Return of November 2019 Rent	834.00
3.	Security Gate Key Deposit	35.00
4.		
5.		
6.		
	Total	\$1614.00

The landlord’s agents provided the following testimony. RC testified that written condition inspections were done at move in and move out. RC testified that the tenant left the unit damaged and insufficiently clean. RC testified that the total amount of cleaning and repair costs charged to the tenant was \$380.00; which both tenants signed off on at the move out inspection. JS testified that there isn’t a \$35.00 charge for keys but do have a \$35.00 charge for tenants wishing to purchase an extra garage door opener.

GB testified that the landlord does not have any “automatic” payment system and that the tenants control the payment of rent. RC testified that he could not confirm if the tenant paid rent for the month of November 2019. RC testified that even if a payment was made for November 2019, that payment did not come from the tenant and that the landlord would be required to return the amount to the Ministry.

Analysis

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 arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Return of Double the Security Deposit

The tenants advocate submits that the landlord was seeking costs that they would not be entitled to based on the length of the tenancy. In the tenant's own documentation, it reflects a move in and move out inspection report. In addition, both tenants signed off on the damages and cleaning and the related costs. The landlord testified that the issues exceeded normal wear and tear. The landlord provided documentation to show that the actual costs far exceeded the security deposit but were content with retaining the deposit. RC stated several times during the hearing that the tenants signed off on the charges and as far as the landlord was concerned the matter was closed.

When a tenant signs off on a condition inspection report and agrees to damages, the parties act in good faith. The tenant cannot decide several weeks later that they regret signing the document and then file an application seeking the return of double the deposit. I find that both tenants knowingly and willingly signed the document and gave authorization for the landlord to retain it, accordingly; I dismiss this portion of the tenant's application.

November Rent 2019

The tenant has not provided sufficient documentation that the landlord was paid rent for November 2019. In addition, the tenant has not provided sufficient evidence to show how he incurred the loss that he is seeking. Despite the advocates' numerous efforts to have the tenant clarify the payment of rent; the tenant provided a different version each time she asked. Based on the above and as noted under section 67, the tenant has not met the four factors required to be successful in this claim, accordingly; I dismiss this portion of his application.

Security Gate Key

The tenant provided a bank draft for \$35.00 that he alleges is for the security gate key deposit. The landlord testified that they do not have such a cost for keys but do have an option for tenants to buy additional garage openers if they choose but do not charge a deposit for those items. As noted in the previous claim, each time the tenants advocate asked him to provide details about this cost, he provided a different version of events. I find the tenants testimony to be contradictory and unreliable. In addition, other than the tenants bank draft; he did not provide sufficient supporting documentation to show that this was a refundable deposit. Based on the insufficient evidence before me, I dismiss this portion of the tenant's application.

The tenant has not been successful in his claim.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: April 16, 2020

Residential Tenancy Branch