



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, MNDL-S, FFL

Introduction

On November 15, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for the loss of rent/utilities, a Monetary Order for damages, to apply the security deposit to the claim, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged both the Notice of Dispute Resolution Hearing information and the documentary evidence that I have before 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.

Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent/utilities, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Sections 38 and 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

Both the Landlord and the Tenants agreed that the tenancy began in December 2013, that the rent was \$1,200.00 a month and that the Landlord collected a \$600.00 security deposit. All parties agreed that the Tenants, on March 1, 2018 via Messenger, provided notice to the Landlord that they would be moving out on April 1, 2018. The Tenants provided access to the rental unit on March 31, 2018.

The Landlord testified that the Tenants' did not pay the March 2018 rent of \$1,200.00 and stated that the rental unit was left in a condition that left it unrentable for the month of April 2018. The Landlord amended (lowered) her initial claim and indicated that she would like to claim a loss of two months rent for a total of \$2,400.00.

The Tenants acknowledged that they did not pay the March 2018 rent. The Tenants testified that they had plans to have neighbours clean the rental unit; however, this did not occur.

The Landlord stated that when she took possession of the rental unit, she found that it had not been cleaned and provided photographic evidence to show that the carpets and floors were stained, curtains were ripped, window screens were ruined and that appliances, fixtures and cupboards had not been cleaned. The Landlord testified that there had been garbage left behind in the rental unit, garage and in the yard.

The Landlord claimed utility and gas bills, totalling up to \$718.57, had not been paid.

The Landlord stated that the Tenants had changed the locks to the rental unit and had not supplied the Landlord any keys during the tenancy. The Landlord stated that the rental unit could be accessed by code and by key. The Landlord received two keys, with one appearing to be a copy, at the end of the tenancy. The Landlord provided a receipt and claimed a loss of \$115.00 as a result of having to change the locks to ensure the future security of the rental unit.

The Landlord stated the irrigation system had not been properly maintained and that regardless of the professional carpet cleaning, that the floors needed to be replaced. The Landlord submitted a claim, that included receipts and estimates, for a total loss of \$13,973.51.

The Landlord acknowledged that she did not complete a move-in inspection report with the Tenants and did not provide any testimony or supporting evidence as to the condition of the rental unit prior to the Tenants moving in.

The Tenants stated that they did not complete the cleaning of the rental unit, and that they took responsibility for some of the staining on the master bedroom carpet, stickers on walls, garbage throughout the house and yard and that they would compensate the Landlord for the outstanding utility and gas bills.

The Tenants testified that some of the damage to the floors had been there prior to their tenancy and that they were not responsible for damage to the irrigation system as the Landlord directed them to place a cutting board over one of the heads that ended up damaged.

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply.

Based on the agreement of all parties and the subsequent evidence produced, I find that the Landlord has established that she suffered a loss due to the Tenants failing to pay their March 2018 rent and the outstanding utility bills, contrary to section 26 of the Act.

Based on the testimony of all parties and the subsequent evidence produced, I find that the Landlord has established that she suffered a loss due to the Tenants failing to properly clean the rental unit, contrary to section 37 of the Act.

Before awarding a monetary claim to the Landlord, I must consider section 7(2) of the Act that states a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the Regulations or their Tenancy Agreement must do whatever is reasonable to minimize the damage or loss.

The Landlord claimed that because of the poor state of the rental unit, she was unable to collect rent for April 2018. I noted that the Landlord did not provide any evidence that she had attempted to find new tenants for the rental unit for April 1, 2018, nor did she testify if or when she ever did re-rent the rental unit. For this reason and in accordance with both sections 67 and 7(2) of the Act, I dismiss the part of the Landlord's claim of damages for April 2018 rent in the amount of \$1,200.00.

The Landlord admittedly did not conduct a move-in inspection report that would typically document the condition of the rental unit prior to the Tenants moving in. Although the Tenants took responsibility for some of the damages claimed by the Landlord, the Tenants did not accept full responsibility for the damage that would justify the complete replacement of the flooring throughout the rental unit. I find the Landlord failed to provide sufficient evidence to prove that the Tenants were responsible for the damage (beyond cleaning) for the floors and as such, I dismiss the part of the Landlord's claim for \$7,813.12, to replace the floors.

I find that there was conflicting evidence as to who was responsible for the irrigation system and that the Landlord failed to provide sufficient evidence to prove that the Tenants were responsible for the damage. I dismiss the \$87.71 claim by the Landlord for damages to the irrigation system.

I issue a Monetary Order in the Landlord's favour under the following terms, which allows the Landlord to recover unpaid rent and utilities, partial damages, the filing fee for this Application, and to retain the Tenant's security deposit:

Item	Amount
Unpaid March 2018 rent	\$1,200.00
Outstanding utilities and gas bills	718.57
Garbage/Dump fees	81.78
Fee to change locks	115.00
Professional carpet cleaning	80.00

185 hours of cleaning @ \$11.35/hr	2099.75
Cleaning supplies	125.00
Paint	107.50
Recovery of Filing Fee for this Application	100.00
Tenants' security deposit	-600.00
Total Monetary Order	\$4,027.60

The Landlord has established a monetary claim, in the amount of \$4,627.60, which includes \$4,527.60 in unpaid rent, utilities and damages and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenants' security deposit of \$600.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$4,027.60 in accordance with Section 67 of the Act.

Conclusion

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$4,027.60 in accordance with Section 67 of the Act. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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 *Residential Tenancy Act*.

Dated: April 08, 2020

Residential Tenancy Branch