



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

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 to be Decided

Is the landlord entitled to a monetary award for unpaid rent, losses and damages arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on March 1, 2016 and ended on December 1, 2019. The tenants were obligated to pay \$1865.50 per month in rent in advance and at the outset of the tenancy the tenants paid a \$847.50 security deposit. The landlord testified that the tenant did not provide proper notice to move out. The

landlord testified that he received notice on November 11, 2019 that the tenant would move out by the end of November. The landlord testified that he was able to re-rent the unit for December 15, 2019. The landlord testified that he seeks half a month rent for loss of revenue. The landlord also seeks \$75.69 for unpaid utilities as per their tenancy agreement. The landlord testified that the tenant left the unit and yard very dirty. The landlord testified that he and his son did much of the work and are seeking \$30.00 per hour for labour. The landlord testified that the tenant left excessive amounts of garbage inside and outside of the unit. The landlord testified that there were excessive nail holes in the walls requiring much filling, sanding, and painting. The landlord testified that the fridge drawers were damaged as well as the turf in the yard.

The landlord is applying for the following:

1.	Loss of Rent Dec 1-15, 2019	\$932.75
2.	Utilities	75.69
3.	Cleaning and Maintenance	1599.41
4.	Filing Fee	100.00
5.		
6.		
	Total	\$2707.85

The tenant gave the following testimony. The tenant testified that she left the home in much better condition than when she received it. The tenant agrees with the utility cost. The tenant testified that she feels it's a double standard that she had to give a formal notice to end the tenancy, but the landlord could give casual notice when coming to inspect the property. The tenant testified that she spent a lot of her own money on repairs and maintenance on this property. The tenant testified that any time that she brought something to the landlord's attention he would tell her to move out.

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 landlord's claim and my findings around each are set out below.

It is worth noting that the landlord was extremely disorganized when presenting his claim. He was unable to answer basic questions or provide answers to the claim he put forth or able to explain the amount he noted on the application and what he was seeking on the day of the hearing. Much of his claim lack clarity or logic. The landlord was given ample opportunity to present his claim however he would veer off into unrelated and

irrelevant items that had no bearing on the claim applied for. The landlord presented his evidence in a very disjointed and vague fashion. In addition, the landlord would alter the amount he was seeking. The landlords' testimony and documentation were in conflict through some of the hearing, when it was; I considered the sworn testimony in coming to her monetary calculations. Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

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.

I address the landlords claim and my findings as follows.

Loss of Revenue Dec 1-15, 2019 – \$932.75

Section 45 of the *Act* addresses the issue before me as follows.

Tenant's notice

45 (1)A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenant testified that she had sent a casual email advising the landlord that she was moving out at the end of November 2019. The landlord requested that the notice be in writing and in the proper form and content. The tenant testified that she was away on a retreat and was unable to provide the proper notice until November 11, 2019. Based on the landlord's documentary evidence and the tenant's own acknowledgement, I hereby find that the tenant was in breach of section 45 of the Act and did not provide proper notice to end the tenancy. I further find that the landlord mitigated his losses as per section 7(2) of the Act and re-rented it as soon as he reasonable could for December 15, 2019. Based on all the above, I find that the landlord is entitled to the loss of revenue of \$932.75.

Utilities - \$75.69-

The tenant accepts responsibility for this claim, accordingly; I find that the landlord is entitled to \$75.69.

Cleaning and Maintenance - \$1599.41

The landlord provided a list of items and alleged deficiencies that he was seeking compensation for. When asked what the actual "out of pocket costs" were, the landlord was unable to provide a concise answer. In addition, the landlord testified that he had receipts to support his claim however, the documents submitted in his evidence package were quotes and estimates; he did not provide confirmation that he spent those amounts. Furthermore, when asked how many hours of labour he and his son spent on the property the landlord began explaining unrelated repairs that have been conducted instead of presenting his claim or answering my direct questions.

As noted above, the landlord must satisfy the four factors to be given a monetary award under section 67. I find that the landlord has not provided sufficient evidence to show that the tenant was reckless or negligent, has failed to show the actual costs or losses

incurred and what if any steps were taken to mitigate, accordingly; I dismiss this portion of his application.

As the landlord has been partially successful in this application, they are entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$1108.44. I order that the landlord retain the \$847.50 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$260.94. This order may be filed in the 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: May 14, 2020

Residential Tenancy Branch