



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MND MNR FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution made on May 6, 2020 (the "Application"). The Landlord applies for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession;
- a monetary order for damage caused by the Tenant, their pets, or guests to the unit;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing and was accompanied by R.S., her spouse. The Tenant attended the hearing and was accompanied by P.S., her father. All in attendance provided a solemn affirmation.

The Landlord testified that the Notice of Dispute Resolution Proceeding package and a subsequent documentary evidence package were served on the Tenant by registered mail. The Tenant acknowledged receipt of both packages. The Tenant did not submit documentary evidence in response to the Application. Neither party raised any issues with respect to service and receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The parties confirmed the Tenant vacated the rental unit on or about May 31, 2020, and that an order of possession is no longer required. This aspect of the Landlord's claim is dismissed.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental unit?
2. Is the Landlord entitled to a monetary order for unpaid rent?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties agreed there is no written tenancy agreement. The Landlord was unsure of when the tenancy began. However, the Tenant testified she moved into the rental unit on August 15, 2019. The parties agreed the Tenant moved out on or about May 31, 2020. During the tenancy, rent in the amount of \$500.00 per month was due on the 15th day of each month. The parties agreed the Tenant did not pay a security deposit or a pet damage deposit.

As further background, the parties did not dispute that the home was owned by the Tenant's grandfather. However, the Landlord testified the home is now owned by her brother, A.S. The Tenant testified rent payments were made to her grandfather in cash.

The Landlord's monetary claim was summarized in the Application. First, the Landlord claimed \$1,000.00 for damage done to the rental unit. The Landlord confirmed that this aspect of the claim is based on estimates and not on work completed. The Landlord testified the Tenant erected a barricade between the upper and lower units. A photograph was submitted in support. In addition, the Landlord testified the Tenant changed the lock for the entrance to the rental unit and did not return the keys.

In reply, the Tenant testified the barricade was in place when she moved into the rental unit and separated the upper and lower units. With respect to keys, the Tenant testified that the lock did not operate properly when she moved in. As a result, she changed it. However, as her grandfather did not reimburse her for the lock, she replaced the old lock when she moved out and took the replacement lock with her.

The Landlord also testified the Tenant did not pay rent for the months of November 2019, January 2020, April 2020, and May 2020.

In reply, the Tenant testified that all payments were made to her grandfather in cash, except the payment due on May 15, 2020. The Tenant testified that her grandfather was made aware of her intention to vacate the rental unit on or about May 31, 2020.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Application and requested that the Landlord be permitted to retain the security deposit in partial satisfaction of the claim.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or 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 what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim for \$1,000.00 for damage to the rental unit, I find there is insufficient evidence before me to grant the relief sought. The amount claimed is based only on the Landlord's estimate and the work has not been completed. In addition, I accept the evidence of the Tenant who testified the barricade was in place when the tenancy began. I also accept the Tenant's reasons for removing the lock she purchased at the beginning of the tenancy. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$2,000.000 for unpaid rent, I find there is insufficient evidence before me to grant all of the relief sought. The Landlord was uncertain with respect to some of the terms of the tenancy. I accept the Tenant's testimony regarding payment of rent to her grandfather in cash. I accept that she did not pay rent when due on May 15, 2020 for the period from May 15-June 14, 2020. However, I accept the Tenant vacated the rental unit on or about May 31, 2020 and that her grandfather was made aware of her intention to do so. Accordingly, I grant the Landlord a monetary award in the amount of \$250.00 for rent for the period from May 15-31, 2020.

Having been partially successful, I also find the Landlord is entitled to recover the filing fee paid to make the Application. Therefore, I find the Landlord is entitled to a monetary order in the amount of \$350.00, which is comprised of \$250.00 in unpaid rent and \$100.00 in recovery of the filing fee.

Conclusion

I find the Landlord is entitled to a monetary order in the amount of \$350.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: June 9, 2020

Residential Tenancy Branch