



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0855010 BC Ltd. dba Huntington
Court and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDL-S, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenants was provided.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on May 7, 2020 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on May 12, 2020.

The landlord provided the Canada Post Tracking Number and mailing receipts in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on May 12, 2020.

Further to the uncontracted testimony of the landlord supported by the evidence, I find the landlord served the tenant with the documents pursuant to the Act.

Issue(s) to be Decided

Is the landlord entitled to:

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

Background and Evidence

The landlord provided the following uncontradicted testimony as the tenant did not attend the hearing. The tenancy began on February 1, 2018 for monthly rent of \$998.00 payable on the first of the month. The tenant provided a security deposit of \$475.00 which the landlord holds. The landlord submitted a copy of the signed tenancy agreement.

The landlord testified that a condition inspection on moving in was conducted and signed by both parties; a copy of the report was submitted.

The landlord testified that that a condition inspection on moving out was scheduled by agreement at a certain time on the last day of the tenancy; the landlord attended, and the tenant did not. The tenant left the key on the counter and vacated the unit. The landlord attempted to call/text the tenant and the tenant did not respond. The landlord completed the inspection and report; a copy was submitted. The tenant promised by subsequent email to sign the report and return it to the landlord which he failed to do.

The inspection and the report on moving out indicated the unit needed general cleaning and carpet cleaning. The landlord testified the total cleaning was done at a reasonable cost of \$325.00 and a copy of the receipt was submitted as supporting evidence.

The landlord requested that the security deposit be applied to any monetary award and that he be granted reimbursement of the filing fee as follows:

ITEM	AMOUNT
Reimbursement of cleaning fees	\$325.00
Reimbursement of filing fee	\$100.00
(Security deposit)	(\$475.00)
Balance of security deposit to be returned	(\$50.00)

Analysis

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other

for damage or loss that results.

(2) 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.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Each of the tests are addressed below.

1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?

Under section 37(2) of the *Act*, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

In hearing the testimony of the landlord, supported by the receipts, I find the tenant failed in the tenant's obligation under section 37(2) with respect to cleaning.

I have considered the testimony and receipts submitted by the landlord and I find the landlord has met the burden of proof that the tenant failed to comply with their obligation under section 37(2).

2. Did the loss or damage result from non-compliance?

Having found that the tenant failed to comply with the *Act* and the tenancy agreement, I must next determine whether the landlord's loss resulted from that breach.

This is known as cause-in-fact, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach?

If the answer is “no,” the respondent’s breach of the Act is a cause-in-fact of the loss or damage.

If the answer is “yes,” indicating that the loss or damage would have occurred whether the respondent was negligent, their negligence is not a cause-in-fact.

Under section 37(2) of the *Act*, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

In hearing the testimony of the landlord, supported by the receipts, I find the tenant failed in the tenant’s obligation under section 37(2) and the Guideline with respect to cleaning.

I find that the landlord would not have incurred the expenses claimed for cleaning but for the tenant’s breach of their obligations.

3, Has applicant proven amount or value of damage or loss?

I find the landlord has established in the landlord’s testimony and evidence that the landlord incurred the expenses claimed.

I find the landlord has met the burden of proof that the cleaning costs were \$325.00. I find the landlord has proven the amount of the claim.

I accept the landlord’s testimony that the cleaning expense is reasonable in the circumstances and the landlord incurred the expense claimed.

Considering the above reasonable estimation and the invoices submitted, I find the landlord has met the burden of proof with respect to the amount of value of the damage or loss claimed.

4. Has applicant done whatever is reasonable to minimize damage or loss?

In considering the landlord’s testimony, I find that they took reasonable steps to minimize the damage or loss.

I find the landlord made reasonable efforts to have these matters attended to in a cost and time efficient manner.

Conclusion

Taking into consideration the testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving all four criteria in establishing entitlement to compensation in the amount claimed.

My award to the landlord is summarized as follows:

ITEM	AMOUNT
Reimbursement of cleaning fees	\$325.00
Reimbursement of filing fee	\$100.00
MONETARY ORDER	\$425.00

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the filing fee of \$100.00.

Further to section 72, the landlord is authorized to apply the security deposit to the award. The landlord is accordingly granted a monetary order as follows:

ITEM	AMOUNT
Reimbursement of cleaning fees	\$325.00
Reimbursement of filing fee	\$100.00
(Less Security deposit)	(\$475.00)
Balance of security deposit to be returned	(\$50.00)

Conclusion

I hereby grant the landlord a monetary order in the amount of **\$425.00 to be paid from the security deposit with the balance of \$50.00 to be returned forthwith to the tenant.**

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: July 21, 2020

Residential Tenancy Branch