



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL, MNDL-S

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on March 10, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss;
- a monetary order for unpaid rent or utilities;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord's Agent D.L., and the Tenant attended the hearing at the appointed date and time. D.L. testified that the Application and documentary evidence package was sent to the Tenant, which the Tenant confirmed as having received. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary Matters

During the hearing, the Tenant stated that she did not serve a copy of her documentary evidence to the Landlord. According to the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"), 3.16 Respondent's proof of service indicates; at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the *Act* and these Rules of Procedure.

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. I accept that

the Landlord did not receive the Tenant's documentary evidence; therefore, the only evidence I will consider from the Tenant is her oral testimony during the hearing.

The parties were given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
4. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed that the tenancy was a sublease tenancy in which the original tenant created a separate tenancy agreement with the sublease Tenant. The sublease tenancy started on November 15, 2019 and was a fixed term which ended on February 29, 2020. During the tenancy, the Tenant was required to pay rent in the amount of \$1,500.00 each month to the Landlord. The Tenant paid a security deposit in the amount of \$750.00 which the Landlord continues to hold.

The Landlord is seeking monetary compensation in the amount of \$1,357.60 in relation to an unpaid utility bill. The parties agreed that the Landlord collected an average cost of what the utility bill would be throughout the tenancy in the amount of \$1,080 at the start of the tenancy. D.L. stated this amount was only an estimate based on the previous year's utility consumption. D.L. stated that the Tenant used a lot more electricity, therefore the Tenant incurred a bill \$2,437.60. D.L. stated that the tenancy agreement between the parties indicates that electricity is not included in the rent, therefore, the Tenant is responsible for reimbursing the Landlord for the difference in the amount of \$1,357.60.

In response, the Tenant stated that the parties agreed that the Tenant would only be required to pay \$300.00 a month for utilities. The Tenant stated that the Landlord did not provide a copy of a utility bill in support of the costs. D.L. indicated that the Landlord provided an email which was from the Utility company outlining the utility costs between November 14, 2019 and February 29, 2020 totalling \$2,437.60. The Landlord submit photographic evidence in support.

The Landlord is also seeking \$3,270.00 in relation to the cost associated with replacing a bathtub that has a stain on it. D.L. stated that during the tenancy, the Tenant stained the bathtub with some type of product, which the Landlord has been unable to remove. D.L. stated that \$3,270.00 is only an estimate of the cost and that the bathtub has not yet been replaced. The Tenant denied causing any stains to the bathtub. The Tenant stated that it is an old bathtub and that there were other stains on the tub prior to her entering into the tenancy. The Tenant stated that the Landlord did not complete a move in inspection prior to the commencement of the tenancy. As such, the Tenant does not agree that she should pay for the replacement of the bathtub.

Analysis

Based on the 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.

The Landlord is claiming \$1,357.60 in relation to additional utility costs which were incurred by the Tenant during the sublease tenancy. I accept that the parties agreed that the Tenant paid \$1,080.00 at the start of the tenancy which was an estimate of the overall utility costs. D.L stated that the Tenant used a lot more electricity than was anticipated. The Tenant stated that she should not pay more than what was originally agreed upon. The Tenant stated that the Landlord did not provide any utility bills in support of the costs.

In this case, I find that the Landlord has provided an email that does not indicate which utility company it is from. The Landlord also provided a screen shot of an account summary which does not provided which address the charges are associated to. As such, I find that the Landlord has provided insufficient evidence to demonstrate to true cost associated to the rental unit for utilities during the tenancy. In light of the above, I dismiss the claim for utility charges without leave to reapply.

The Landlord is also claiming for \$3,270.00 in relation to the cost associated with replacing a bathtub that has a stain on it. During the hearing, D.L. indicated that the bathtub has not yet been replaced and that the monetary amount being sought was only an estimate of what it would cost to replace the bathtub. In this case, I find that the Landlord has provided insufficient evidence to demonstrate that they have suffered a loss, as the bathtub has not yet been replaced. Furthermore, I find that the Landlord has provided insufficient evidence to outline how they came to the value of \$3,270.00 to replace to bathtub, if it is in fact needing to be replaced. In light of the above, I dismiss the Landlord claim for the replacement of the bathtub.

As the Landlord was not successful in their Application, I find that they are not entitled to the return of the filing fee. I also order that the Landlord return the security deposit currently being held in the amount of \$750.00, to the Tenant.

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$750.00, which represents the full return of the security deposit from the Landlord to the Tenant.

Conclusion

The Landlord's Application is dismissed without leave to reapply. The Tenant is granted a monetary order in the amount of \$750.00 which represents the full return of the Tenant's security deposit from the Landlord. The order should be served to the Landlord as soon as possible and 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: July 13, 2020

Residential Tenancy Branch