



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0840403 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

- a monetary order 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
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard. 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 losses 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 the recovery of the filing fee?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on September 1, 2019 and ended on May 1, 2020. The landlord testified that the monthly rent of \$2265.00 was due on the first of each month and that the tenant paid a security deposit of \$1100.00 which the landlord still holds. The landlord testified that the tenant left numerous items and

garbage behind and didn't clean the suite at move out. The landlord testified that she emailed the tenant on May 1, 2020 to advise of the condition but didn't get a response until May 7, 2020. The landlord testified that the tenant did come to clean the suite or remove the rubbish or debris. The landlord testified that she and her parents spent two days cleaning the suite. The landlord testified that she and her parents spent 6 hours each day in the unit. The landlord testified that she had to hire a junk removal company to remove all the items and garbage left by the tenant. The landlord also seeks a "service fee" for facilitating and arranging the suite cleaning and junk removal as per the addendum in their tenancy agreement.

The landlord is applying for the following:

1.	Junk Removal	\$628.95
2.	Suite Cleaning	300.00
3.	Service Fee	100.00
4.	Filing Fee	100.00
5.		
6.		
7.		
8.		
9.		
10.		
	TOTAL	\$1128.95

The tenant gave the following testimony. The tenant testified that the landlord didn't provide her an opportunity to go back to clean the suite or remove some of the items. The tenant testified that the unit was left in a much cleaner state than when she took over the suite. The tenant testified that many of the items left behind were from the person she sub-leased the unit from and that she should not be responsible for those costs. The tenant testified that the relationship with the landlord is an acrimonious one and that they have had difficulty in communicating with one another.

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 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.

Junk Removal and Suite Cleaning

The tenant testified that she was not given an opportunity to rectify the condition of the suite as the landlord did not advise her of such. However, in the tenant's own documentation there is email correspondence that clearly shows that on May 1, 2020 the landlord advised the tenant of the deficiencies. The tenant responded that she would address the issues and that the landlord could take it off the deposit, however, the tenant did nothing. After this email was pointed out to the tenant by the landlord, the tenant changed her testimony and stated that the landlord only informed her of the condition of the unit and that does not constitute an opportunity to remedy the situation. I do not agree with the tenant and find she was given ample opportunity to clean the suite and remove the items. Based on the above and the tenant's own documentation, I find that the landlord is entitled to the \$628.95 for rubbish removal and \$300.00 for suite cleaning for an amount of \$928.95.

Service Fee

The landlord submits that as this is part of the tenancy agreement, she should be entitled to this amount for facilitating the cleanup and rubbish removal. I find that the "service fee" is too vague and that it does not clearly address what the fee will cover, scope of work, hours of labour, or what the cost incurred to the landlord is; accordingly, I dismiss this portion of the landlord's application.

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

Conclusion

The landlord has established a claim for \$1028.95. I order that the landlord retain that amount from the \$1100.00 security deposit in full satisfaction of the claim and return the remaining \$71.05 to the tenant. I grant the tenant an order under section 67 for the balance due of \$71.05. 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: September 17, 2020

Residential Tenancy Branch