



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for a monetary order in the amount of \$1,325.75 for damages to the unit, site or property, to retain the tenants' security deposit towards any amount owing, for money owing or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

An agent for the landlord RF (agent) and the tenant attended the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed that they had received documentary evidence from the other party and also had the opportunity to review that evidence prior to the hearing, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing. The parties were also advised that the decision would be emailed to the parties. The monetary order will be emailed to the landlord for service on the tenant.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of a tenancy agreement was submitted in evidence. A fixed-term tenancy began on June 1, 2017 and reverted to a month to month tenancy after May 31, 2018. By the end of the tenancy, monthly rent was \$1,945.00 per month and rent was due on the first day of each month. The tenant paid a security deposit of \$925.00, which the landlord continues to hold.

The parties agreed the tenant vacate the rental unit and returned the keys to the landlord on April 30, 2020. The landlord filed their application on May 11, 2020. The landlord's monetary claim for \$1,325.75 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Suite cleaning and carpet cleaning	\$225.75
2. Strata fine - short-term rental bylaw violation	\$1,000.00
3. Filing fee	\$100.00
TOTAL	\$1,325.75

Regarding item 1, the landlord has claimed \$225.75 for suite cleaning and carpet cleaning and referred to an invoice dated May 7. According to the invoice, the suite cleaning was 2.5 hours at \$64.00 per hour, which included two cleaners for the amount of \$160.00 plus carpet cleaning of \$55.00 and \$10.75 in GST for a total of \$225.75.

The agent referred to many colour photos of laundry area, carpet, washing machine, stove and oven, cabinets, microwave, floors, bathroom, bathtub, toilet and sink. The tenant's response to the photos was that they are a single mom with a child, aged 6 and that they hired someone to do professional cleaning and submitted a receipt in support of that cleaner that was hired.

The tenant testified that the photos show a reasonably clean rental unit and that the landlord has unreasonable expectations on what a reasonably clean condition is at the end of the tenancy. The photos were reviewed during the hearing and the parties were advised that I agreed with the tenant as I find the photos support that the rental unit was left reasonably clean and I find the photos do not support that 2.5 hours of cleaning for two cleaners was required, which I will address later below.

Regarding item 2, the landlord has claimed \$1,000.00 for a fine imposed on the landlord by the strata due to the tenant renting out the rental unit as a short-term rental, contrary to the tenancy addendum and Strata Rules. In support of this portion of their claim was a court summons demanding the payment of \$1,000.00 and the landlord's receipt for the payment of \$1,000.00. During the hearing, the tenant confirmed that they did signed the tenancy agreement and Form K acknowledging that no short-term rentals were permitted in the building and that any resulting fines are the responsibility of the tenant. The tenancy agreement addendum #1 states the following:

Tenants and occupants are not allowed to do short term rental with the property, all resulting fines from short term rental will be the responsibility of the tenant. This clause survives the expiry and termination of the tenancy agreement.

In addition, the tenant admitted that they rented out their unit on a short-term basis at least four times, including the time period of August 26 to September 6, for which the landlord was issued the \$1,000.00 fine. The landlord is seeking reimbursement of that cost through the tenant.

Analysis

Based on the documentary evidence presented, the testimony of the parties and on the balance of probabilities, I find the following.

Test for damages or loss

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 in sections 7 and 67 of the Act. Accordingly, 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 the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Firstly, I find the landlord filed their application within 15 days of the end of tenancy, claiming against the tenant's security deposit, in accordance with section 38 of the Act. I have reached this finding as the tenancy ended on April 30, 2020 and the landlord filed their claim on May 11, 2020, claiming against the tenant's security deposit.

Item 1 – As noted above, I find the landlord's photographic evidence does not support that 2.5 hours with two cleaners was required and I find the landlord's versions of clean to be unreasonable. In fact, I find the photographic evidence shows a reasonably clean rental unit and that the landlord has failed to provide sufficient evidence for all four parts of the test for damages or loss described above. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item 2 – As the tenant admitted to renting their unit on at least 4 occasions, including the time period for which the landlord was fined \$1,000.00 by the strata, I find the landlord has provided sufficient evidence to support that the tenant breached the tenancy agreement addendum and the Strata Rules by renting their unit on a short-term basis. Therefore, I find the tenant is liable for the full \$1,000.00 strata-imposed fine incurred by the landlord and I grant the landlord **\$1,000.00** as claimed for this portion of their claim. I caution the tenant not to violate short-term rental rules in the future.

As the landlord's claim was mostly successful, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

Based on the above, I find the landlord has established a total monetary claim of **\$1,100.00**, comprised as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
1. Suite cleaning and carpet cleaning	Dismissed
2. Strata fine - short-term rental bylaw violation	\$1,000.00
3. Filing fee	\$100.00
TOTAL	\$1,100.00

Pursuant to sections 38 and 67 of the Act, I grant the landlord authorization to retain the tenant's security deposit of \$925.00, which has accrued \$0.00 in interest in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the Act, I grant the landlord a monetary order for the pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of **\$175.00**.

Conclusion

The landlord's claim is partially successful.

The landlord has established a total monetary claim of \$1,100.00. The landlord has been authorized to retain the tenant's full security deposit of \$925.00, which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the Act.

The landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenant to the landlord in the amount of \$175.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenant is reminded that any costs associated with enforcing the monetary order may be the responsibility of the tenant.

The tenant has been cautioned as noted above.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 16, 2020

Residential Tenancy Branch