



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-S

Introduction

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed; and
- authority to keep the tenant's security deposit to use against a monetary award.

The landlord's agent (agent) attended the hearing; however, the tenant did not attend.

The agent stated they served the tenant with their application for dispute resolution and Notice of Hearing by email and by registered mail on or about May 21, 2020. The agent said that the email address used was the email address commonly used by the parties during the tenancy. Further, the agent said he sent several test emails prior to delivering the landlords' application for dispute resolution, which showed a "delivered" and "read" message on email.

The agent said that the landlords/owners hired a skip tracer to locate the tenant's current physical address in order to send registered mail, as the tenant provided no forwarding address.

I accept the undisputed evidence of the landlords that the tenant was served notice of this hearing in a manner complying with section 89 of the Act and the service provisions for email in effect at that time under the Director's Order. The hearing proceeded in the tenant's absence.

The agent was provided the opportunity to present his evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, not all details of the submissions and/or arguments are reproduced here.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation from the tenant and to retain his security deposit to partially satisfy any monetary award?

Background and Evidence

The landlords submitted a written tenancy agreement showing a tenancy start date of September 1, 2016, a fixed term through April 30, 2018, monthly rent of \$1,375, due on the 1st day of the month, and a security deposit of \$675 being paid by the tenant to the landlords. The landlords also submitted a second written tenancy agreement, wherein the parties agreed to another fixed term tenancy, beginning May 1, 2018 through April 30, 2019.

The agent said the tenant had not yet signed the next tenancy agreement, but their evidence showed that he confirmed acceptance of the tenancy agreement.

The landlords retained the tenant's security deposit, having made this claim against it.

The landlords' monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Replacement of keys and fobs	\$300.00
2. Re-keying front door lock, door knob	\$141.82
3. Cleaning/carpet cleaning	\$1,127.70
4. Repairs	\$451.84
5. Replace damaged blinds	\$129.80
6. Microwave handle replacement	\$465.96
7. Unpaid rent, May 2020	\$1,430.00
TOTAL	\$4,047.12

In support of their application, the agent submitted that the tenant abandoned the rental unit without notice in May 2018, which was confirmed by him on May 22, 2018.

The agent said that the tenant failed to return the high-security keys and fobs for entrance to the strata building or the keys to the rental unit, necessitating the landlord to pay for their replacements. The landlord submitted copies of the receipts.

The agent submitted that the tenant damaged the rental unit beyond reasonable wear and tear and left the rental unit excessively dirty. For instance, according to the agent, every surface was covered and filthy and the drywall was damaged. The cleaning took 22 hours, according to the receipt. The carpet was filthy and had to be cleaned to remove the cat urine. The blind was damaged beyond repair and had to be replaced. The microwave door handle was replaced. The landlord submitted copies of the receipts for cleaning and carpet cleaning, repairs, costs and labour for each of the claimed items, as well as photographs of the state of the rental unit at the end of the tenancy.

As to the claim for unpaid rent for May, the agent submitted that although the original tenancy agreement was for a fixed term requiring the tenant to vacate on April 30, 2018, the parties had agreed to a new tenancy agreement, extending the tenancy for another fixed term and then, thereafter, the tenancy continued on a month-to-month basis. The tenancy agreement was sent to the tenant, but not returned. The landlord submitted a copy of both tenancy agreements and an email from the tenant confirming his intention to staying past April 30, 2018.

The agent said the tenant did not pay rent for May 2018, and despite requests made to the tenant about the rent, it remained unpaid. The agent said he served the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 7, 2018, listing an effective move-out date of May 22, 2018. The agent attended the rental unit and found it abandoned.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the

landlords here, has the burden of proof to substantiate their claim on a balance of probabilities.

I find the landlords submitted sufficient and uncontested evidence to support that the rental unit was not left reasonably clean and that the damage claimed was beyond reasonable wear and tear.

I have reviewed the landlords' receipts and invoices for the amounts claimed and the photographs of the rental unit at the end of the tenancy. Upon hearing from the agent, I find the costs claimed to be reasonable, considering the state of the rental unit.

I therefore find the landlords have submitted sufficient evidence to support their claim for cleaning, carpet cleaning, and repairs.

As to the landlords' claim for re-keying the rental unit and replacing the high-security keys and fobs to the residential property, the tenant was required to return these items at the end of the tenancy. I find the landlords substantiated that he failed to do so.

As to the landlords' claim for the unpaid rent, under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

I find the landlords submitted sufficient evidence to show the tenant owed, but failed to pay, the monthly rent for May 2018, prior to vacating the rental unit in May 2018. I find the landlord has established a monetary claim of \$1,430 for unpaid rent for May 2018.

Due to the above, I find the landlords have established a total monetary claim as described on the table contained on page 2 of this Decision, for a total amount of \$4,047.12.

At their request, I direct the landlords to retain the tenant's security deposit of \$675 in partial satisfaction of their monetary award of \$4,047.12.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$3,372.12.

Should the tenant fail to pay the landlords this amount without delay, the order must be served to the tenants for enforcement. Thereafter, the monetary order may be filed in

the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is cautioned that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlords' application for monetary compensation is granted, they have been authorized to retain the tenant's security deposit in partial satisfaction of their monetary award and they have been awarded a monetary order for the balance due, in the amount of \$3,372.12.

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 25, 2020

Residential Tenancy Branch