



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit and for 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 and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 12 minutes. The landlord's agent ("landlord") and the landlord's trainee attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the residential property manager for the landlord company named in this application and that she had permission to speak on its behalf. The landlord's trainee did not testify at this hearing, she only observed for training purposes.

The landlord stated that the tenant was served with the landlord's application for dispute resolution hearing package on July 16, 2020 and evidence package on October 14, 2020, both by registered mail to the forwarding address provided by the tenant in the move-out condition inspection report on July 3, 2020. The landlord provided a copy of this report. The landlord confirmed two Canada Post tracking numbers verbally during the hearing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on July 21, 2020 and evidence package on October 19, 2020, five days after each of their registered mailings.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenant's deposits?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2019 and ended on July 3, 2020. Monthly rent in the amount of \$1,700.00 was payable on the first day of each month. A security deposit of \$850.00 and a pet damage deposit of \$850.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties.

The landlord seeks a monetary order of \$7,346.06 plus the \$100.00 application filing fee. The landlord seeks \$1,700.00 for rent and \$25.00 for late fees, each month from April to June 2020, inclusive. She claimed that the late fees are provided for in the parties' tenancy agreement in section B on page 12. The landlord seeks \$367.50 for cleaning, \$153.56 for yard maintenance, \$1,050.00 for painting, and \$600.00 for door damage.

Analysis

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement. In this case, rent is due on the first day of each month. Section 7 of the *Act* requires the tenant to pay the landlord for any damage or loss that results from non-compliance with the *Act*, *Regulation* or tenancy agreement.

I award the landlord \$1,700.00 for rent each month from April to June 2020, totalling \$5,100.00. The tenant was living at the rental unit during the above months and failed

to pay rent to the landlord, according to the landlord's testimony and the parties' tenancy agreement.

Late Rent Fees

Non-refundable fees charged by landlord

7(1) A landlord may charge any of the following non-refundable fees:

(d)subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

I award the landlord \$25.00 for each month from April to June 2020 inclusive, for a total of \$75.00 in late fees, since the tenant failed to pay rent to the landlord for the above months while she was residing in the rental unit.

This is as per section 7(1)(d) of the *Regulation* above. The landlord indicated a fee in the parties' written tenancy agreement at section B, page 12.

Damages, Cleaning, Painting, Yard Maintenance

On a balance of probabilities and for the reasons stated below, I dismiss the remainder of the landlord's application for \$2,171.06 without leave to reapply.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the landlord did not sufficiently prove these claims, as she did not explain any of the evidence, including photographs and invoices, that the landlord submitted for this hearing. It is the landlord's burden of proof, on a balance of probabilities, to prove these claims. I provided the landlord with ample time and opportunity to present these claims and I asked her repeatedly during the hearing whether she had anything else to say or to add. I asked the landlord questions and referred to the tenancy agreement during the hearing, but she still failed to go through any of the landlord's other documents during the hearing.

I also note that the landlord did not provide any receipts for the damages or cleaning claimed, she provided invoices and estimates with balances due. She did not indicate when the work was done, when the landlord paid for the work, how the landlord paid for the work, or any other such information.

Therefore, the landlord's claims for cleaning of \$367.50, yard maintenance of \$153.56, painting of \$1,050.00 and door damage of \$600.00, are all dismissed without leave to reapply.

Deposits

The landlord continues to hold the tenant's deposits totalling of \$1,700.00. No interest is payable on the deposits during this tenancy. As the landlord applied to retain the deposits and in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain both deposits totalling \$1,700.00, in partial satisfaction of the monetary award. I issue a monetary order for the balance due of \$3,475.00.

As the landlord was only partially successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing from the tenant.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,475.00 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's application is dismissed without leave to reapply.

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: November 09, 2020

Residential Tenancy Branch