



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FirstService Residential Ltd BC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-F, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Compensation for damage caused by the tenant, their pets or their guests to the rental unit, site or property;
- Recovery of the filing fee; and
- Authorization to withhold the security deposit towards amounts owed.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the Agent), who provided affirmed testimony. Neither the Tenant nor an agent for the Landlord attended. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Agent testified that the documentary evidence before me and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, were sent to the Tenant by registered mail on September 21, 2020, at the forwarding address provided in writing by the Tenant on their notice to end tenancy received July 30, 2020, and on the move-out condition inspection report completed on August 28, 2020. The Agent provided me with a copy of the move-out condition inspection report, which contains the forwarding address used by the Agent to send the registered mail, and the registered mail tracking number, which I have recorded on the

cover page for this decision. The Canada Post website confirms that the registered mail was sent as described above and delivered on September 23, 2020. As a result, I find that the Tenant was served with the above noted documents in accordance with the Act and the Rules of Procedure on September 23, 2020, I therefore accepted the documentary evidence before me from the Landlord for consideration in this matter. Based on the above, and as the hearing information contained in the Notice of Hearing served by the Landlord is correct, the hearing therefore proceeded as scheduled despite the Tenant's absence, pursuant to rule 7.3 of the Rules of Procedure.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage caused by the tenant, their pets or their guests to the rental unit, site or property?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to withhold the security deposit towards amounts owed to them by the Tenant?

Background and Evidence

Although a copy of the tenancy agreement was not submitted, the Agent stated that a written tenancy agreement was signed with the Tenant for a tenancy commencing February 1, 2009. The Agent stated that a copy of the written tenancy agreement was not provided to them by the previous management company when they took over management of the residential property, which is why a copy has not been submitted. The Agent stated that rent is geared to income and that rent in the amount of \$465.00 was due on the first day of each month at the end of the tenancy on August 30, 2020. The Agent also stated that a \$266.00 security deposit was paid by the Tenant, which the Landlord still holds in trust.

The Agent stated that the Tenant gave written notice on July 30, 2020, to end their tenancy effective August 30, 2020, and that a condition inspection was arranged between the Tenant and another agent for the Landlord for August 28, 2020. The Agent stated that the Tenant and the other agent for the Landlord attended for the move-out condition inspection as required, where it was determined that the rental unit had not been cleaned as required and that some work and repairs would be required to remove shelving installed on one wall, to remove blinds installed by the Tenant, to repair wall damage and remove sticky hooks affixed to several areas by the Tenant, and to remove some junk being left behind by the Tenant.

The Agent stated that although the condition inspection and report were completed with the Tenant as required, the Tenant refused to sign the condition inspection report. The Agent stated that the Tenant also verbally agreed to the withholding of the \$266.00 security deposit by the Landlord but would not put it in writing and would not agree to the additional amounts sought by the Landlord for cleaning and repairs.

The Landlord sought \$540.00 for cleaning, wall repair, the removal of shelving, blinds, and sticky hooks, and garbage disposal/junk removal. In support of the Landlord's claim, the Agent submitted photographs of the state of the rental unit at the end of the tenancy, a copy of the move-out condition inspection report, a copy of a suite cleaning checklist provided to the Tenant, and a copy of a tenant ledger showing the amounts charged for wall repairs (\$105.00), carpet cleaning (\$160.00) and general suite cleaning and garbage removal (\$275.00) by on-site contractors of the Landlord.

The Agent sought recovery of the filing fee, authorization to withhold the \$266.00 security deposit towards the above noted amounts owed and a monetary order in the amount of \$374.00 for the remaining balance owed.

No one appeared on behalf of the Tenant to provide and documentary evidence or testimony for my consideration.

Analysis

As there is no evidence before me to the contrary, I accept as fact that the tenancy ended on August 30, 2020, as the result of one months written notice to end the tenancy served on the Landlord on July 30, 2020, and that the Tenant provided their forwarding address in writing to the Landlord in their written notice to end tenancy and on the move-out condition inspection report completed on August 28, 2020.

Section 7 of the Act states that 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 for damage or loss that results. It also states that landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 37 of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Based on the uncontested documentary evidence before me from the Landlord and the affirmed testimony of the Agent in the hearing, I am satisfied that the Tenant breached section 37 of the Act by failing to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear, which is defined in Policy Guideline #1 as natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. I am also satisfied on a balance of probabilities that the Landlord incurred expenses in the amount of \$540.00 to clean and repair the rental unit, and that they acted reasonably to mitigate these costs by using on-site contractors to complete the work at a reasonably economic rate.

Based on the above, I grant the Landlord's Application for recovery of \$540.00 in cleaning and repair costs. As no argument with regards to extinguishment of the Landlord's right to claim against the security deposit was made, I find that the Landlord has not extinguished that right. In any event, I also find that the Landlord filed their Application seeking retention of the security deposit for more than just the cost of repairing damage to the rental unit, as they also sought compensation for the cost of general cleaning, carpet cleaning, garbage removal, and that the Application filed with the Branch on September 14, 2020, was filed in compliance with section 38(1) of the Act. As a result, I find that the doubling provisions set out under section 38(6) of the Act do not apply and that the Landlord was entitled to retain the Tenant's \$266.00 security deposit pending the outcome of the Application.

Pursuant to section 72(1) of the Act, I grant the Landlord recovery of the \$100.00 filing fee. Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to withhold the Tenant's \$266.00 security deposit as partial repayment of the above noted amounts owed, and I grant the Landlord a Monetary Order pursuant to section 67 of the Act for the remaining balance owed in the amount of \$374.00

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$374.00**. The Landlord is provided with this Order in the above terms and 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 5, 2021

Residential Tenancy Branch