



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDCL-S, FFL
Tenant: MNSDS-DR, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on September 14, 2020 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for damage, compensation, or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on September 16, 2020 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- the return of the Tenant’s security deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary for damage, compensation or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retain the Tenant's security deposit pursuant to Section 38 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
4. Is the Tenant entitled to the return of the security deposit, pursuant to Sections 38 and 67 of the *Act*?
5. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2017. Rent in the amount of \$1,550.00 was due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,000.00 which the Landlord currently holds. The Tenancy ended on August 31, 2020.

Landlord's Claim

The Landlord is seeking monetary compensation in the amount of \$3,300.00 in relation to the Tenant having a weekend guest stay with the Tenant in the rental unit almost every weekend from November 2018 until the end of the tenancy on August 31, 2020. The Landlord stated that the parties had agreed to a term in their first tenancy agreement that was effective from July 1, 2017 to June 30, 2018 in which the Tenant would pay the Landlord an extra \$150.00 in addition to the monthly rent if the Tenant's guest stayed more than one weekend every 4-6 weeks.

The parties agreed that they entered into two tenancy agreement after June 30, 2018 which did not contain a term surrounding additional charges for the Tenant having a guest attended the rental unit on weekends. The Landlord felt as though the Tenant side swiped her with the removal of the term.

The Tenant responded and confirmed that he had his guest attend the rental unit on most weekends throughout the tenancy, however, stated that his guest was named as a Tenant in the first tenancy agreement, and that each subsequent agreement lacked the guest policy term. As such, the Tenant doesn't feel as though the Landlord should be entitled to any monetary compensation.

Tenant's Claim

The Tenant is seeking the return of his security deposit in the amount of \$1,000.00. The parties agreed that the tenancy ended on August 31, 2020 and that the Tenant provided

the Landlord with his forwarding address in writing on August 31, 2020. The Landlord submitted her Application to retain the Tenant's security deposit on September 14, 2020.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Landlord's Claim

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage resulting from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 this case, the burden of proof is on the Landlord to prove the existence of the damage, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

Section 13 of the *Act* requires that a Landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004, and a tenancy agreement must comply with any requirements prescribed in the regulations and must set out the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies.

Section 5(1) of the Residential Tenancy Regulations states that a landlord must not charge a guest fee, whether or not the guest stays overnight.

Section 14 of the *Act* provides that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the Landlord and Tenant agree to the amendment.

I find the original tenancy agreement contains a term that specifies how the rent will vary depending upon if the Tenant's guest who was named on the tenancy agreement stays at the rental unit more than one weekend in a 4 to 6 week period. During the hearing, the Tenant confirmed that he agreed to this term and that the Tenant's guests did stay in the rental unit during most weekend. As such, I find that the Landlord is entitled to monetary compensation in the amount of \$150.00 for each month from November 2017 until June 30, 2018 ($\$150.00 \times 7 = \mathbf{\$1,050.00}$).

I accept that the parties entered into two additional tenancy agreement between June 2018 and the end of the tenancy on August 31, 2020. I accept that these two tenancy agreements did not contain any terms relating to additional charges based on the number of occupants staying in the rental unit. As such, I find that the parties did not renew their agreement around additional charges and find that the Landlord is not entitled to any additional compensation from the Tenant.

Tenant's Claim

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later.

The parties agreed that the tenancy ended on August 31, 2020 and that the Tenant provided the Landlord with his forwarding address in writing on the same date. I find that the Landlord submitted her Application on September 14, 2020 which is within the appropriate timeline outlined in Section 38(1) of the *Act*.

Having been partially successful, I find that the Landlord is entitled to the return of her **\$100.00** filing fee. I further find it appropriate to order that the Landlord retain the Tenant's security deposit in partial satisfaction of the monetary award.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$150.00, which has been calculated as follows:

Claim	Amount
Compensation($\$150.00 \times 7$ Mos):	\$1,050.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	- (\$1,000.00)
TOTAL:	\$150.00

Conclusion

The Landlord is granted a monetary order in the amount of \$150.00. The order should be served to the Tenant as soon as possible and can be filed and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 05, 2021

Residential Tenancy Branch