



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The landlord has applied for compensation pursuant to section 67 of the *Residential Tenancy Act* ("Act") and has applied for recovery of the application filing fee under section 72 of the Act. They initially applied for an order of possession under sections 45 and 55 of the Act, but no longer require this order, as the tenancy has ended.

The landlord, along with their legal counsel, and a witness, attended the hearing on January 12, 2021, which was held by teleconference. The tenant did not attend.

Landlord's counsel submitted evidence that the tenant was served with the Notice of Dispute Resolution Proceeding package, along with documentary evidence, in compliance with the Act and the *Rules of Procedure*. In addition, there is information contained in the Residential Tenancy Branch ("Branch") file indicating that the tenant had contacted the Branch and appeared to be aware of the hearing. Given this, I find that the tenant was served and was aware of today's hearing.

Issues

1. Is the landlord entitled to compensation?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy in this dispute began on December 1, 2018 and ended on or about October 31, 2020. Monthly rent was initially \$2,500.00 but lowered to \$2,250.00 during the time in question. The tenant paid a security deposit of \$2,500.00 which the landlord currently holds in trust pending the outcome of this application. A copy of the written tenancy agreement was submitted into evidence. The rental unit was furnished.

Also submitted into evidence was a copy of completed Condition Inspection Report ("Report"), which the landlord's witness testified to, and several photographs and videos. While the Report was not completed at the start of the tenancy, the landlord's witness testified, under oath, that there were "absolutely no problems" with the rental unit at the start of the tenancy.

The landlord claims a total of \$22,388.71. This comprises both unpaid rent and many costs related to the repair and cleaning of the rental unit. There are estimates and invoices for all of the individual amounts claimed, except for one claim of \$200.00 regarding a faucet, which I will not consider (except for a nominal amount). There is also in evidence documentary evidence supporting the landlord's claim for unpaid rent.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 37(2) 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.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The Condition Inspection Report, coupled with the undisputed testimony of the landlord's witness and the photographs and video of the rental, provides the evidentiary basis for me to find that the tenant breached section 37(2) of the Act. The landlord suffered losses due to that breach, and the landlord has proven those losses (minus the faucet claim of \$200.00, for which I shall award a nominal award of \$1.00).

The documentary and oral evidence, which was undisputed, provides the evidence necessary for me to find that the tenant did not pay rent on several occasions.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation as claimed. The amount thus awarded is \$22,189.71. (Original claim of \$22,388.71 - \$200.00 faucet claim + \$1.00 nominal award for faucet = \$22,189.71.)

As the landlord was successful in their application, I grant them recovery of the application filing fee of \$100.00 pursuant to section 72 of the Act. Therefore, the total award is \$22,289.71.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlord may retain the tenant’s security deposit of \$2,500.00 in partial satisfaction of the above-noted award.

A monetary order in the amount of \$19,789.71 is issued, in conjunction with this Decision, to the landlord.

Conclusion

I grant the landlord’s application.

I grant the landlord a monetary order in the amount of \$19,789.71, which must be served on the tenant. If the tenant fails to pay the landlord, the landlord may file and enforce the monetary order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: January 12, 2021

Residential Tenancy Branch