



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on October 26, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (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 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 package 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 provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage compensation or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
3. Is the Landlord 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 that the tenancy began on August 1, 2019. During the tenancy, the Tenant was required to pay rent in the amount of \$1,250.00 to the Landlord on the first day of each month. The Tenant stated that he paid a security deposit in the amount of \$625.00 to the Landlord. The Landlord stated that due to the fact that the Tenant sent their security deposit from abroad, the Tenant's deposit was taxed before the Landlord received the remaining amount of \$590.00. The parties agreed that the Tenant vacated the rental unit on October 1, 2020 and provided the Landlord with their forwarding address on October 26, 2020.

The Landlord is claiming \$1,250.00 for loss of rent for the month of October 2020. The Landlord stated that the Tenant refused to allow the Landlord entry into the rental unit for the purpose of conducting showings to re-rent the rental unit for October 2020. The Tenant stated that that due to COVID-19 concerns, the Tenant was being cautious with respect to the Landlord's entry for showings.

The Landlord is claiming \$157.50 for cleaning as the rental unit was left dirty at the end of the tenancy. The Landlord provided photographic evidence demonstrating the condition of the rental unit at the end of the tenancy, as well as an invoice for cleaning in support. The Tenant responded by stating that the Landlord did not attend the rental unit to conduct a move out inspection. As such, the Tenants were unaware as to if any areas of the rental unit required further attention. The Tenants provided photographic evidence of the rental unit at the end of the tenancy which demonstrates that the rental unit was left clean.

The Landlord is claiming \$652.50 for painting and to repair wall damage caused by the Tenant during the tenancy. The Landlord provided photographic evidence of the condition of the walls in the rental unit at the end of the tenancy as well as two invoices in support. The Tenant responded by stating that the damage to the walls were present prior to the commencement of the tenancy. The Tenant provided a picture of the Landlord's rental advertisement which shows some shelving installed on the wall prior to the tenancy. The holes in the wall corresponds with the holes noted by the Landlord at the end of the tenancy, which the Landlord is claiming against the Tenant for repair.

The Landlord is claiming \$367.50 in relation to repairing some flooring in the rental unit. The Landlord provided photographic evidence of damaged flooring as well as a quote for the cost of repairing the flooring in support. The Landlord stated that this work has not yet been completed. The Tenant denied causing any damage to the flooring in the rental unit. The Tenant stated the floor was damaged at the start of the tenancy.

The Landlord is claiming for unpaid utilities. The Landlord stated that the Tenant was required to pay utilities to the Landlord every two months. The Landlord stated that the Tenant failed to pay utilities to the Landlord for July and August 2020 in the amount of \$70.47. The Landlord provided the utility bill in support. The Landlord stated that the

Tenant also failed to pay utilities for September 2020 which the Landlord estimates to be around \$25.00. The Landlord did not provide a utility bill for September 2020.

During the hearing, the Tenant agreed to the Landlord retaining \$95.47 to satisfy their claim for unpaid utilities.

Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results 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 or loss, 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.

The Landlord is claiming \$1,250.00 for loss of rent for October 2020. In this case, I find that the Landlord provided insufficient evidence to demonstrate that they advertised the rental unit and had potential occupants interested in renting the rental unit, however, was prevented from showing the rental unit as a result of the Tenant denying entry. As such, I dismiss the Landlord's claim for loss of rent without leave to reapply.

According to Section 23(1) of the *Act*; The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
 - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.

The Landlord has made several claims in relation to repairs made to the rental unit as well as for cleaning. The Landlord stated that the Tenant caused the damage to the rental unit which required repair. The Tenant stated that the damage was there prior to the start of the tenancy and that the rental unit was left reasonably cleaned. I accept that the parties agreed that there was no condition inspection completed at the start or at the end of the tenancy.

I find that without a condition inspection being conducted at the start or at the end of the tenancy, it is difficult to compare the condition of the rental unit prior to the commencement of the tenancy, to the condition at the end of the tenancy. As such, I find that the Landlord has provided insufficient evidence to demonstrate that the damage to the rental unit was caused by the Tenant during their tenancy. In light of the above, I dismiss the Landlord's claim for repairs and for cleaning without leave to reapply.

I accept that the Tenant agreed to compensate the Landlord \$95.47 in relation to unpaid utilities. As such, I find that Landlord is entitled to monetary compensation in the amount of **\$95.47**.

In relation to the security deposit held by the Landlord, I find that the Landlord provided insufficient evidence to demonstrate that they only received \$590.00 instead of \$625.00 which the Tenant stated was sent to the Landlord. I find the \$625.00 was required to be paid according to the tenancy agreement.

As the Landlord was partially successful with their Application, I find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application.

I find that the Landlord currently holds the Tenants' security deposit in the amount of \$625.00. I find the Landlord is entitled to compensation in the amount of \$195.47 which they may deduct from the Tenant's security deposit ($\$650.00 - \$195.47 = \$454.53$).

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of **\$454.53**, which represents the remaining balance of their security deposit less the previously mentioned deductions.

Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$195.47 which has been deducted from the security deposit. The Tenant is granted a monetary order in the amount of **\$454.53** which represents the remaining balance of the Tenants' security deposit. The order should be served to the Landlord as soon as possible and may be filed in 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: February 1, 2021

Residential Tenancy Branch