



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1080824 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDL-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 and for damage to the rental unit, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for its application, pursuant to section 72.

The landlord's agent ("landlord") and the tenant 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 he was the supervisor and manager for the landlord company named in this application and that he had permission to speak on its behalf. This hearing lasted approximately 45 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package and the landlord confirmed receipt of the tenant's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application and the landlord was duly served with the tenant's evidence.

During the hearing, I explained the hearing and settlement process to both parties. Both parties confirmed that they were ready to proceed with the hearing, they did not have any objections, and they did not want to settle this application.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage to the rental unit?

Is the landlord entitled to retain the tenant's security deposit?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, 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 February 1, 2020 for a fixed term to end on January 31, 2021. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$1,370.00 was payable on the first day of each month. A security deposit of \$685.00 was paid by the tenant and the landlord continues to retain this deposit. A move-in condition inspection report was completed but a move-out condition inspection and report were not completed. The landlord did not serve the tenant with an RTB-approved form to perform a move-out condition inspection. The landlord did not have written permission to keep any amount from the tenant's security deposit. The landlord's application to retain the tenant's security deposit was filed on January 8, 2021.

According to the landlord's application and evidence, the tenant provided a written forwarding address to the landlord on January 2, 2021, by way of email. The landlord claimed that this tenancy ended on January 2, 2021. The tenant claimed that he moved all of his belongings out of the rental unit on November 30, 2020, but he returned to talk to the landlord and buy cleaning products according to the landlord's requests, until January 30, 2021.

The landlord seeks a monetary order of \$1,949.92 plus the \$100.00 application filing fee. The landlord seeks \$1,370.00 for January 2021 rent and \$579.92 for cleaning, as per a monetary document submitted by the landlord. The tenant disputes the landlord's application.

The landlord testified regarding the following facts. On November 16, 2020, the landlord posted an advertisement for the rental unit and another unit because another occupant abandoned a different unit. The tenant told the landlord that there were photographs missing in the landlord's rental unit advertisement on December 8, 2020. The landlord provided a copy of the advertisement to show the dates it was submitted

and renewed. The tenant did not pay January 2021 rent to the landlord and the tenant was required to vacate at the end of January because he signed a fixed term tenancy agreement. The tenant did not clean, it took the landlord two weeks to personally clean the unit for 2 hours per day. The dirt was not swept on the balcony, there was caked up dirt in the bathtub and sink, the windows were dirty, the drapes were wrinkled, the carpet was stained, the landlord had to spot clean and spray the carpet, and the refrigerator was dirty. The tenant just took his stuff and left without cleaning and when he offered to return 16 days later to clean, it was too late, since the landlord had to claim for the security deposit by the 15-day deadline. The landlord is claiming for the security deposit and the missing rent.

The tenant testified regarding the following facts. He told the landlord that he was leaving on November 30, 2020, the landlord told him he posted an advertisement right away, but when the tenant checked the online sites he could not find any, although the landlord provided an old advertisement for this hearing. On December 8, 2020, the tenant told the landlord that he did not post any photographs of the rental unit on the advertisements. The landlord advertised a different suite, not the tenant's rental unit. The rental unit sat vacant, the landlord did not cooperate to re-rent the unit, he said it was his priority to rent the other suite, and he posted a generic advertisement for the rental unit. The tenant could have cleaned the rental unit in one hour and when he met the landlord at the unit, he was told to buy specific items to clean the unit. The tenant could not return the next day to clean since he had work and there were covid-19 pandemic concerns, so he emailed the landlord to do it later, but the landlord refused to let him so do. The landlord did not give the tenant two opportunities to do a move-out condition inspection.

Analysis

During the hearing, I notified the landlord that as the applicant, he was required to present the landlord's application, as per the RTB *Rules of Procedure*. The following rules are applicable and state, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

I find that the landlord did not properly present his evidence, as required by Rule 7.4 of the RTB *Rules of Procedure*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules of Procedure*. During the hearing, the landlord failed to properly go through specific claims and the amounts for each claim. When I asked the landlord about the amounts being claimed, he then went through some limited information on a monetary document that he created.

This hearing lasted 45 minutes, so the landlord had ample opportunity to present this application. During the hearing, I repeatedly asked the landlord a number of questions about the application. The landlord was more focussed on asking me what information he needed to provide for this hearing, claiming that he did not provide a receipt or proof of payment because he obtained it after he filed this application.

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. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 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.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The above provision states that a tenant cannot give notice to end the tenancy before the end of the fixed term. If he does, he may have to pay for rental losses to the landlord.

In this case, the tenant ended the tenancy, prior to the end of the fixed term on January 31, 2021. I find that the tenant breached the fixed term tenancy agreement. As such, the landlord may be entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

I dismiss the landlord's application of \$1,370.00 for January 2021 rent, without leave to reapply. I accept the tenant's testimony that he provided notice to vacate the rental unit and that he removed all of his belongings by November 30, 2020. The landlord stated that he posted an advertisement on November 16, 2020, so he was well aware of the tenant's notice to vacate the rental unit. I find that the tenant did not live in the rental unit during January 2021. I find that one month of December 2020, is a reasonable period of time for the landlord to clean the rental unit, answer rental inquiries, show the unit and re-rent to new tenants. I find that two months is an unreasonable period of time.

I find that the landlord did not indicate if or when the unit was re-rented, or when or if any showings were done. The landlord did not indicate why it took so long to clean the rental unit after the tenant vacated on November 30, 2020, or why the landlord was unable to re-rent the unit for January 2021. Although the landlord provided advertisements for the rental unit, they indicate a monthly rent of \$1,395.00, which is

higher than the \$1,370.00 that the tenant was paying during his tenancy, which may have detracted potential tenants. The landlord also failed to include photographs in the advertisement, which may have detracted potential tenants. The tenant had to remind the landlord to include photographs, when he noticed it on December 8, 2020.

I dismiss the landlord's application of \$579.92 for cleaning, without leave to reapply. The landlord did not provide a receipt for carpet shampoo of \$224.00, even though he said he had it in front of him during the hearing. The landlord did not even know when the shampooing was done, claiming that it was either late January or early February 2021. The landlord failed to show that it cost \$30.00 for him to personally vacuum the rental unit, as he could not explain how he arrived at that number. He said that he charged it to other tenants when they moved out before, despite the fact that he is not a professional cleaner. The landlord also failed to show that it cost him \$325.92 to personally clean the rental unit, as he said that he got the number from an estimate for two professional cleaners to clean at \$97.00 per hour for three hours, despite the fact that he is not a professional cleaner.

The landlord did not complete a move-out inspection or report with the tenant, to show the condition of the rental unit at the end of the tenancy. The landlord only submitted photographs, which he did not indicate when they were taken, without the tenant present.

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

The landlord continues to hold the tenant's security deposit of \$685.00. Over the period of this tenancy, no interest is payable on the deposit.

The landlord's right to retain the security deposit for damages was extinguished for failure to complete a move-out condition inspection report, as required by section 36 of the *Act*, and failure to provide the tenant with the approved RTB form to complete a move-out condition inspection. However, the landlord applied for unpaid rent and cleaning, not damages, in this application.

In accordance with section 38 of the *Act*, I find that the tenant is entitled to the return of his full security deposit of \$685.00 from the landlord. The tenant is provided with a monetary order for same. Although the tenant did not apply for its return, I am required to consider it on the landlord's application to retain it, as per Residential Tenancy Policy Guideline 17.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$685.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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 *Residential Tenancy Act*.

Dated: March 05, 2021

Residential Tenancy Branch