



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1150715 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN, FFL, MNDCT, RP, OLC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the Act). The landlord applied for:

- an order of possession pursuant to section 55;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32.

The landlord's agents (the landlord) and the tenant attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 13, 2021. Both parties also confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail and the tenant's subsequent submitted documentary evidence via Canada Post Registered Mail on January 27, 2021. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the Act.

At the outset, both parties referred to an order of possession that had been served upon the tenant 1 day prior to the scheduled hearing date. The landlord clarified that an order of possession was granted to the landlord regarding this tenancy for a difference application for dispute for unpaid rent. The tenant confirmed receipt of the order of possession. Discussions with both parties resulted in the landlord cancelling the application for an order of possession as an order had already been granted. As such, no further action is required for the landlord's application.

Further discussions clarified the tenant's application. The tenant confirmed that the request for an order for the landlord to comply was in error as it was a duplicate of the request for repairs. The tenant confirmed that as the tenancy was coming to an end that this request was no longer required and could be cancelled. The tenant stated that she wished to continue with her monetary claim.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on March 1, 2020 on a fixed term tenancy ending on February 28, 2021 as per the submitted copy of the signed tenancy agreement dated February 13, 2020. The monthly rent is \$1,200.00 payable on the 1st day of each month. A security deposit of \$600.00 and a pet damage deposit of \$600.00 were paid.

The tenant seeks a monetary claim of \$3,200.00 which consists of:

\$600.00	Return of Original Security Deposit
\$600.00	Return of Original Pet Damage Deposit
\$1,200.00	Compensation, 1 st months rent in new tenancy
\$800.00	Compensation, moving expenses

The tenant confirmed that she is still occupying the rental unit and has not entered into a new tenancy agreement nor has she paid any moving costs to move to a new tenancy.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receipt of the tenant's forwarding address in writing.

In this case, both parties confirmed that despite the tenant being served with an order of possession 1 day prior to the scheduled hearing, the tenant continues to occupy the rental unit. On this basis, the tenant's requests for return of the \$600.00 security deposit and the \$600.00 pet damage deposits are pre-mature as section 38(1) has not yet been satisfied by the tenant. Both parties were informed that the tenancy must end before a request for return of the deposits can be made. As such, this portion of the tenant's application is dismissed with leave to reapply as the tenancy has not yet ended. Leave to reapply is not an extension of any applicable limitation period.

On the remaining two claims for \$1,200.00 for the 1st months rent of a new tenancy and \$800.00 for moving expenses, I find that the tenant has failed to establish a claim. The tenant provided undisputed testimony that no new tenancy has been entered into nor has she paid any moving costs to move. I note that the tenant has also failed to establish what if any entitlement there is for these claims from the landlord. On this basis, this portion of the tenant's claim is dismissed without leave to reapply.

Conclusion

The tenant's application is dismissed.

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: April 20, 2021

Residential Tenancy Branch