



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL, FFL

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on March 15, 2021, wherein the Landlords sought monetary compensation from the Tenant for unpaid rent, the replacement cost of a refrigerator and recovery of the filing fee. The Landlords also sought an Order that they be permitted to retain the Tenants' security deposit towards any amounts awarded.

The hearing was conducted by teleconference at 1:30 p.m. on August 19, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. Both Landlords called into the hearing and the Tenant was represented by her legal counsel, C.K.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. Should the Landlords be authorized to retain the Tenant's security deposit?
3. Should the Landlords recover the filing fee paid for their Application?

Background and Evidence

At the outset of the hearing counsel for the Tenant stated that the parties attended a prior hearing on March 16, 2021. A copy of the Decision dated March 22, 2021 was provided in evidence before me. The file number for that matter is also included on the unpublished cover page of this my Decision. During the hearing before me, the Landlord, F.Y., confirmed the following information from the Decision dated March 22, 2021:

The evidence presented to me shows the parties entered into a fixed term tenancy agreement on February 20, 2020, ending on August 9, 2020. A second fixed term tenancy agreement was entered into on August 10, 2020, set to expire on August 10, 2021. Both tenancy agreements were provided as evidence. Currently, the tenant pays \$2,900.00 per month rent on the 10th day of each month.

The prior claim arose from a Tenant's request for monetary compensation based on her assertion that the Landlord's breached her right to privacy and quiet enjoyment. In this respect the Arbitrator found the Landlord had breached the Tenant's right to quiet enjoyment by installing video cameras in the rental unit which gave the Landlord, and others, video access to the Tenant's personal living space. The Tenant was awarded return of 15% of the rent paid for her mental anguish.

Both parties agreed the Tenant moved out March 29, 2021, shortly after the March 22, 2021 Decision was rendered.

In the hearing before me the Landlord sought monetary compensation for unpaid rent from March 28, 2021 to the end of the fixed term, to August 10, 2021.

In terms of the Landlords' attempts to re-rent the unit the Landlord testified that they advertised on Kijiji and Craigslist. They did not provide any evidence to support this testimony.

The Landlord F.Y. testified that the unit was re-rented as of April 10, 2021. She further confirmed that the new tenants paid \$3,350.00 in monthly rent, such that the Landlord received \$450.00 more per month in rent or \$1,800.00 over the course of the balance of the term.

The Landlord stated that they incurred other costs to prepare the rental unit for the new tenants. Notably, this was not part of the Landlord's claim.

The Landlord claimed the refrigerator was in working condition when the Tenant moved in and was broken when the tenancy ended. In this respect they sought \$1,335.00 representing the cost to replace the refrigerator. In terms of how it was "broken", the Landlord stated that they did not know what was wrong with the refrigerator, simply that it wasn't fixable. The Landlord did not provide any evidence to support their claim that the unit was not repairable.

In terms of the age of the refrigerator, the Landlord stated that it was five years old. She then testified that they purchased it in 2015; again, they did not provide any documentary proof of this.

For reasons which will be apparent in the next section, I did not hear submissions from the Tenant's counsel, save and except for her submission that the Tenant vacated the rental unit as a result of the Landlords' breach of her right to quiet enjoyment and that the refrigerator was broken during the tenancy at no fault of the Tenant.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case the Landlords sought monetary compensation for unpaid rent for the balance of the fixed term. The evidence before me confirms that the Landlords rented the unit out for \$3,350.00, some \$450.00 *more* than that which the subject Tenant was paying. As a result, the Landlords enjoyed a windfall of \$1,800.00 after this tenancy ended and therefore did not suffer a financial loss of rental income. Consequently, I find the Landlords have failed to prove the elements of the above test and I dismiss this portion of their claim.

The Landlord testified that they incurred costs to advertise, market and furnish the rental unit for the new tenants. They did not make a related claim before me such that I make no findings of fact or law with respect to this claim. Should the Landlords wish to pursue further compensation from the Tenant for these alleged losses, the Landlords may make a further claim, subject to any statutory limitations imposed by the *Act*.

The Landlords also claimed the replacement cost of the refrigerator, alleging the Tenant broke it during the tenancy. They did not provide any evidence to support a finding that the refrigerator was not repairable and had to be replaced. Further, they did not provide any evidence as to the age of the refrigerator, save and except for their oral testimony that they replaced it in 2015, some 6 years prior to the end of the tenancy.

I find the Landlords have submitted insufficient evidence to support a finding that the Tenant damaged the refrigerator during the tenancy; I further find they failed to provide sufficient evidence to support a finding that they attempted to repair the refrigerator or otherwise mitigated their losses. I therefore find they have failed to prove two elements of the above test and I dismiss this portion of their claim as well.

As the Landlords have been unsuccessful in their claim, they are not entitled to retain the Tenant's security deposit. These funds must be returned to the Tenant. The Tenant's counsel provided her mailing address during the hearing which is included on the unpublished cover page of this my Decision. The Landlord must send the Tenant's security deposit to the Tenant at this address.

In furtherance of the above I grant the Tenant a Monetary Order in the amount of **\$1,500.00**. This Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

The Tenants remain at liberty to seek return of double their deposit pursuant to section 38 of the *Act*, again, subject to the limitations imposed by section 60 of the *Act*.

Conclusion

The Landlords' claim is dismissed in its entirety, including their request to recover the filing fee as they have been unsuccessful.

The Tenant is entitled to return of their security deposit.

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: August 20, 2021

Residential Tenancy Branch