



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRINCETON MOTEL and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT
 MNDL-S, MNDCL, FFL

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application, filed on January 28, 2021, the Tenant sought return of her security deposit and recovery of the filing fee. In the Landlord's Application, filed on June 2, 2021, the Landlord sought monetary compensation from the Tenant, authority to retain her security deposit and recovery of the filing fee.

The hearing of the parties' Applications was scheduled for teleconference at 1:30 p.m. on September 24, 2021. Only the Landlord's representative, L.T., the Manager, called into the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that L.T. and I were the only ones who had called into this teleconference.

Preliminary Matter—Service of the Landlord's Application materials and Notice of Hearing

As the Tenant did not call in, I considered service of the Landlord's hearing package. L.T. testified that she served the Tenant with the Notice of Hearing and the Application on June 7, 2021 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of June 12, 2021 and I proceeded with the hearing in their absence. I also accept L.T.'s testimony that she personally served the Notice of Hearing on the Tenant on June 30, 2021 such that the Tenant was served with notice of this hearing date on two separate occasions.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of L.T.'s submissions and or arguments are reproduced here; further, only the evidence specifically referenced by L.T. and relevant to the issues and findings in this matter are described in this Decision.

Tenant's Application—Analysis and Conclusion

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. *Rules 7.1, 7.3 and 7.4* address the requirement of a party to call into the teleconference hearing and read as follows:

7.1 Commencement of Hearing

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The Tenant bears the burden of proving her claim on a balance of probabilities. In the absence of any evidence or submissions from the Tenant and in the absence of the Tenant's participation in this hearing, I dismiss the Tenant's claim without leave to reapply. I make no findings on the merits of this matter.

Having dismissed the Tenant's claims, the only matter to be decided was the Landlord's Application.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

In support of the Landlord's claim, L.T. testified as follows. She stated that this tenancy began May 1, 2019. Monthly rent was initially \$725.00 and raised to \$800.00 during the tenancy. The Tenant paid a \$350.00 security deposit.

The tenancy ended December 17, 2020. L.T. testified that the Tenant failed to return the key to the rental unit and left the unit "filthy". She testified that the cost to replace the lock was \$100.00 and the cost to clean the rental unit was \$200.00. The Landlord also lost five days of rent as the unit required cleaning; accordingly, the Landlord sought the sum of \$160.00 for lost rent.

The Tenant failed to call into the hearing to dispute the Landlord's claims.

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 Landlord has 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.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I accept the Manager's undisputed testimony that the Tenant failed to return the keys to the rental unit. In doing so the Tenant breached section 37(2)b) of the *Act*. I also accept the Manager's testimony that the Landlord paid \$100.00 to replace the lock. I therefore award the Landlord the **\$100.00** claimed for lock replacement.

I also accept the Manager's undisputed testimony that the Tenant failed to clean the rental unit as required by section 37(2)(a) such that the Landlord incurred the cost to clean the unit as well as losing rent for five days while the unit was cleaned. I therefore award the Landlord the **\$200.00** claimed for cleaning costs and the **\$160.00** for loss of rent.

As the Landlord has been successful in their Application, I award them recovery of the **\$100.00** filing fee for a total award of **\$560.00**.

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain the Tenant's \$350.00 security deposit towards the amount awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$210.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Tenant failed to call into the hearing; as such, her claim is dismissed without leave to reapply.

The Landlord is entitled to recover the cost of cleaning, replacement of a lock, loss of rent for five days and recovery of the filing fee. The Landlord may retain the Tenant's security deposit towards the amounts awarded and is entitled to a Monetary Order for the balance due.

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: October 07, 2021

Residential Tenancy Branch