



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOWNTOWN SUITES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S FFL

Introduction

The landlord seeks compensation pursuant to sections 67 and 72 of the *Residential Tenancy Act* (“Act”).

An agent for the landlords (hereafter the “landlord” for brevity), and the tenant, attended the hearing on November 26, 2021. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Issue

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

According to the landlord, the tenancy (which was assigned from a previous tenancy) began in April 2019. The tenant disputed this and testified that she assumed the tenancy in October 2018. It is noted that this dispute on the tenancy start date will not be a factor in this decision.

Near to the end of April 2021 the tenant gave notice to end the tenancy mid-May 2021. While not in compliance with the Act, the landlord (or owner of the rental unit) agreed to the notice and that the tenancy would end on May 15, 2021. The tenant vacated the rental unit on May 17, 2021.

Monthly rent was \$2,600.00 and it was due on the first day of the month. The tenant paid security and pet damage deposits, most of which was returned to the tenant except for \$596.32. This amount is currently held in trust pending the outcome of this application and is the amount the landlord seeks in compensation, other than for the \$100 filing fee reimbursement.

The landlord testified that the tenant decided to withhold \$596.32 for various improvements and repairs that the tenant believed she was entitled to. It is this unpaid rent that the landlord seeks to be compensation for.

The tenant acknowledged that she withheld this amount for rent. Over the years that she was a tenant, she made various repairs and improvements to the property. None of the repairs or improvements were cosmetic. Repairs included such things as a loose toilet seat, closet door handles, lightbulbs, a doorknob with lock, and a dimmer switch. Correspondence between the parties includes references to these items.

In her final submissions the tenant reiterated that, had the landlord (acting for the property owner) been prompt and diligent in responding to the tenant's previous claims for reimbursement, she would not have had to ultimately compensate herself through the withholding of rent.

Analysis

Section 26 the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulation or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

Under the Act there are only four instances where a tenant has a right to deduct (that is, not pay) some or all of the rent. These sections essentially act as legal defenses for a tenant facing eviction, or a monetary claim, for unpaid rent.

First, section 19 of the Act permits a tenant to deduct an overpayment from rent or otherwise recover the overpayment when a landlord requires, or collects, a security or pet damage deposit in excess of the Act.

Second, [section 33\(7\)](#) of the Act permits a tenant to deduct an amount from rent that the tenant expended on emergency repairs and where the landlord has failed to reimburse the tenant for those expenses. In order to determine whether a tenant has a right to deduct from rent under this section, it is necessary to apply section 33 to the facts.

Third, section 43(5) of the Act states that, where a landlord collects a rent increase that does not comply with the Act (section 43(1)), the tenant may deduct the increase from rent, or otherwise recover the increase.

Fourth, under sections 65(1)(b) and (c), and section 72(2)(a) of the Act, a tenant may deduct an amount from rent when ordered by an arbitrator.

Based on the evidence before, none of the repairs or improvements for which the tenant ultimately ended up seeking compensation (through a withholding of \$596.32 in rent) fall within the definition of “emergency repairs” as defined in [section 33\(1\)](#) of the Act. No argument or submission was made by the tenant in respect of whether the loose toilet seat, the lightbulbs, the loose handles, and other various matters, were urgent (subsection 33(1)(a) of the Act) or necessary for the health or safety of anyone or for preserving the use of the property (subsection 33(1)(b)). In short, while the various repairs and improvements were undoubtedly important for the tenant’s use of the rental unit, they were not, with respect, emergency repairs. Given that they were not emergency repairs, the tenant was not entitled to retain a portion of the rent as a means of paying for what are considered regular repairs.

Given this finding and taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant was not entitled to make a deduction from rent, and that the landlords are to be awarded \$596.32 in compensation for unpaid rent.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlords succeeded in their application, I grant them \$100.00 in compensation to cover the cost of the filing fee. The total award is \$696.32.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlords may retain the \$596.32 of the tenant’s security deposit held in trust in partial satisfaction of the above-noted award. The balance of the award, \$100.00, is granted to the landlords by way of a monetary order.

A copy of this monetary order is issued in conjunction with this decision, to the landlords. The landlords are required to serve this order on the tenant.

Conclusion

The application is granted.

Pursuant to section 38(4)(b) of the Act the landlords are authorized to retain the \$596.32 security deposit.

The landlords are granted a monetary order in the amount of \$100.00, which must be served on the tenant. If the tenant fails to pay the landlords the amount owed, the landlords may file and enforce the order in the Provincial Court of British Columbia.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: November 26, 2021

Residential Tenancy Branch