



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNDCL-S, FFL, MNSDS-DR, FFT

Introduction

A hearing was convened on May 03, 2021 in response to cross applications. The hearing on May 03, 2021 was adjourned for reasons outlined in my interim decision on May 03, 2021.

The hearing was reconvened on November 08, 2021 and was concluded on that date. Residential Tenancy Branch records show that the interim decision was sent to the Tenant, by email, on May 07, 2021, however the Tenant was not represented at the reconvened hearing. The reconvened hearing proceeded in her absence.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage to the rental unit, to keep all or part of the security deposit, and to recover the fee for filing her Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which she applied to recover her security deposit and to recover the fee filing an Application for Dispute Resolution,

Service of documents was addressed in my interim decision of May 03, 2021. As stated in my interim decision, the Landlord was granted permission to re-serve the evidence package the Landlord submitted to the Residential Tenancy Branch on April 21, 2021.

The Agent for the Landlord stated that this evidence package was re-served to the Tenant on May 03, 2021, via email, and on May 18, 2021, via registered mail. The Agent for the Landlord cited a Canada Post tracking number to corroborate her testimony that the evidence was served by registered mail. On the basis of this

undisputed testimony, I accept that this evidence package was served to the Tenant and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid utilities, to compensation for late fees, to compensation for liquidated damages, and to keep all or part of the security deposit?

Is the Tenant entitled to the return of the security deposit?

Background and Evidence

The Agent for the Landlord stated that:

- the tenancy began on August 31, 2019;
- the Tenant and the Landlord signed a fixed term tenancy agreement, the fixed term of which began on September 01, 2019 and ended on August 31, 2020;
- the Tenant and the Landlord signed a second fixed term tenancy agreement, the fixed term of which began on September 01, 2020 and ended on August 31, 2021;
- rent for both fixed terms was \$1,770.00 per month;
- rent was due by the first day of each month;
- the Tenant paid a security deposit of \$887.50;
- the Tenant did not pay all of the rent that was due on November 01, 2021;
- on November 02, 2021 the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- the Landlord applied for an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- on December 03, 2021 an Order of Possession was granted to the Landlord, which required the Tenant to vacate the unit two days after the Order was served upon her;
- the rental unit was vacated on December 12, 2020; and
- the Tenant provided a forwarding address, in writing, on December 12, 2020.

The Landlord is seeking liquidated damages of \$400.00 as the tenancy ended because the Tenant did not pay rent on time.

The Landlord is seeking a late fee of \$25.00 because the Tenant did not pay the full rent when it was due on November 01, 2020.

The Landlord is seeking compensation, in the amount of \$156.45, for cleaning the carpet. The Agent for the Landlord stated that the carpet required cleaning at the end of the tenancy. The Landlord submitted an invoice to show that the Landlord incurred this expense.

The Landlord is seeking compensation, in the amount of \$112.50, for repairing holes in the wall. The Agent for the Landlord stated that there were two holes in the wall that needed repairing, which were not present at the start of the tenancy. The Landlord submitted invoices to show that the Landlord paid \$67.50 for supplies to repair the damage and the Landlord is seeking compensation for \$45.00 for time spent repairing the damage.

The Landlord is seeking compensation, in the amount of \$87.87, for hydro charges. The Agent for the Landlord stated that there is a private meter that measures the hydro used in the rental unit; the Tenant agreed to pay for hydro used during the tenancy; and that the Landlord calculated the Tenant owes \$87.87 of the most recent hydro bill of \$326.66, which is based on the readings provided by the private meter.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a fixed term tenancy agreement, the fixed term of which ended on August 31, 2021.

On the basis of the undisputed evidence, I find that the Tenant did not pay all the rent when it was due on November 01, 2020; that the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on November 02, 2020; that the tenancy ended on the basis of that Ten Day Notice to End Tenancy for Unpaid Rent or Utilities; and that the rental unit was vacated on December 12, 2020.

On the basis of the second tenancy agreement that was submitted in evidence, I find there is a clause in that agreement that requires the Tenant to pay liquidated damage of \$400.00 if the Tenant breaches a material term of the tenancy agreement that causes the Landlord to end the tenancy before the end of the fixed term of the tenancy.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount of liquidated damages agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I find that \$400.00 is a reasonable estimate given the expense of advertising a rental unit; the time a landlord must spend showing the rental unit and screening potential tenants; and the wear and tear that moving causes to residential property.

I find that a failure to pay rent is a breach of a material term of the tenancy. I find that this breach resulted in the tenancy as a result of the Landlord serving the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities . As such, I find the Landlord is entitled to collect liquidated damages of \$400.00.

In the second tenancy agreement, the Tenant agreed to pay a fee of \$25.00 whenever she is late paying rent. As the Tenant did not pay her full rent when it was due on November 01, 2020 and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to a late fee of \$25.00 for the month of November.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to clean the carpet at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the carpet, which was \$156.45.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair wall damage that occurred during the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of those repairs, in the amount of \$112.50.

On the basis of the undisputed evidence I find that the Tenant failed to pay \$87.87 in hydro charges and that she now must pay that amount to the Landlord.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

I find that the Tenant did not need to file an Application for Dispute Resolution seeking the return of her security deposit, as the amount returned would have been returned to the Tenant on the basis of the Landlord's Application for Dispute Resolution. I therefore find that the Tenant is not entitled to recover the fee for filing her Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$881.82, which includes \$400.00 in liquidated damages, \$25.00 for a late rent payment fee, \$156.45 for cleaning the carpet, \$112.50 to repair wall damage, \$87.87 in hydro charges and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$881.82 from the Tenant's security deposit in full satisfaction of this monetary claim.

As the Landlord has not established the right to retain the full amount of the Tenant's security deposit, I Order the Landlord to return the remaining security deposit, which is \$5.68. Based on these determinations I grant the Tenant a monetary Order for \$5.68. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: November 08, 2021

Residential Tenancy Branch