



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his 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;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via email. Both parties also confirmed the landlord served the tenant with the notice of hearing package and the submitted

documentary evidence via email. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 71 of the Act.

Extensive discussions over 77 minutes caused the hearing to be adjourned due to a lack of time. Both parties were advised of the adjournment process and neither party had any questions. Both parties were advised that a new notice of adjournment letter detailing the adjournment date, time and the relevant telephone numbers and new access codes will be sent with the interim decision. Both parties are advised that no new evidence is to be submitted nor will it be accepted.

On November 22, 2021 the hearing resumed with both parties. At the outset the tenant requested that she be allowed to amend her monetary claim to \$7,213.93 which consists of:

\$1,400.00	Return of Security Deposit
\$4,385.47	Compensation, Return of Rent/Utilities paid over 3 months
\$1,428.46	Compensation, costs of footing and wood

The tenant cancelled the remaining listed claims and confirmed that she only wished to proceed on the above noted 3 items. The landlord did not object. On this basis, I accept the tenant's request to amend her monetary claim to \$7,213.93.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation and recovery of the filing fee?

Is the tenant entitled to a monetary order for money owed or compensation, for return of all or part of the security deposit and recovery of the filing fee?

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.

Both parties confirmed this tenancy began on December 1, 2020 on a fixed term tenancy ending on December 1, 2021 as per the submitted copy of the signed tenancy

agreement dated September 5, 2020. The monthly rent was \$2,800.00 payable on the 1st day of each month and a security deposit of \$1,400.00 was paid.

Both parties confirmed in their direct testimony that the landlord would build a tiny house and provide as part of the rental:

a barn, fields, and turnouts on the property...

The landlord seeks a monetary claim of \$508.33 which consists of:

\$408.33	Unpaid Utilities, Fortis/Hydro (2 months)
\$100.00	Filing Fee

The landlord seeks a monetary claim for unpaid utilities (Fortis/Hydro) for the last two months of tenancy. The landlord provided details that \$176.09 in unpaid Fortis Utilities and \$232.24 for Hydro Utilities. The tenant stated that the landlord was correct that these utilities were unpaid by the tenant.

The tenant seeks an amended monetary claim of \$7,313.93, which consists of:

\$1,400.00	Return of Security Deposit
\$4,385.47	Compensation, Return of Rent/Utilities paid over 3 months
\$1,428.46	Compensation, costs of footing and wood
\$100.00	Filing Fee

The tenant seeks return of her \$1,400.00 security deposit, compensation of \$4,385.47 for return of all rent and utilities paid for a 3 month period. The tenant also seeks compensation of \$1,428.46 for the costs incurred by the tenant to install footings for the horse areas. The tenant stated that the compensation consists of \$511.26, \$283.00 and \$634.20 for material costs for footing installation.

The tenant stated that the signed tenancy agreement provides for the rental of a tiny house, barn, fields and turnouts on the property. The tenant stated that no tiny house was provided and the remaining property was not delivered in a safe or useable state. The tenant state that the landlord provided a 3 bedroom unfurnished mobile home instead. The tenant was forced to live sleeping on the floor and bags and boxes for a 3 month period. The tenant clarified that she had a mattress that she was sleeping on. The tenant stated that the landlord was provided via email her forwarding address for return of the security deposit on March 10, 2021. The tenant stated that the footing was

installed without telling the landlord and the costs requested are for material costs as shown in the submitted copies of the receipts. I note for the record the two additional receipts submitted by the tenant were unreadable for their contents. The only thing viewable were the credit authorization slips.

The landlord disputed the tenant's claim arguing that a barn and field were provided and confirmed that no tiny house was. The landlord stated that instead of a tiny house he provided a mobile home. The landlord stated that the tenant made it a priority for the landlord to complete the paddock and other areas for the horses safety over completing the tiny house. However, the landlord stated that because the tiny home was not completed due to all of the additional work requested by the tenant, monthly rent was reduced from \$2,800.00 to \$1,400.00 per month. The landlord stated that she provided a "like new" condition mobile 3 bedroom home. The landlord argued that the tenant agreed to this new rent amount in lieu of a tiny house until the tiny house was completed. The landlord also argued that the tiny house was not being provided furnished. The landlord disputed the claim arguing that a new paddock was completed for the tenant's use and there was no need for the installation of the footing for drainage as the landlord had already made all necessary upgrades.

The tenant seeks return of the \$1,400.00 security deposit paid to the landlord. Both parties provided affirmed testimony and agreed that the tenancy ended on February 28, 2021 and that the tenant provided her forwarding address in writing for return of the security deposit via email on March 10, 2021.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find based upon the undisputed affirmed evidence of the landlord and the tenant that the landlord has established a claim for unpaid utilities totalling, \$408.33. The tenant confirmed in her direct testimony that these utilities were owed. I also find that the landlord is entitled to recovery of the \$100.00 filing fee. The landlord has established a

total monetary claim of \$508.33. I authorize the landlord to retain \$508.33 from the \$1,400.00 security deposit leaving a balance of \$891.67. I order that the landlord return this amount to the tenant forthwith.

I find on a balance of probabilities that the tenant has failed to establish a claim for return of all rent and utilities paid for a 3 month period for \$4,385.47. While the tenant's argument is that she was not provided a "tiny house" as part of the agreed tenancy, the landlord stated that the tenant's priority and requests were for the horses/animals over completing the tiny house. The landlord provided undisputed affirmed evidence that the tenant made numerous requests to make improvements to the rental property over that of completing the tiny house. The landlord stated that the in lieu of completing the tiny house the landlord provided the tenant with a 3 bedroom "like new" mobile home temporarily and the rent was reduced from \$2,800.00 per month to \$1,400.00 until the tiny house was completed. The landlord stated that the tenant accepted this arrangement and moved in. The tenant confirmed in her testimony that she did move in and did use the utilities for the mobile home. I find on this basis this portion of the tenant's claim has failed.

On the tenant's claim for compensation of \$1,428.46 in costs incurred to install footings, I find that the tenant has failed. Despite both parties confirming that the tenant did install the footings, the tenant confirmed that the landlord was not notified in advance of this installation. The landlord has argued that this expense was not needed and that adequate drainage was provided by the landlord as part of the tenant's requests. These "repairs" were not essential and could not be considered an emergency repair. In any event, the tenant failed to give notice to the landlord that this was an issue and would require attention. On this basis, this portion of the tenant's claim is dismissed.

Conclusion

The landlord is authorized to retain \$508.33 from the held \$1,400.00 security deposit. The tenant is granted a monetary order for \$891.67 for return of the remaining portion of the security deposit. The landlord is to return this forthwith. In the event the landlord fails to return the \$891.678, the tenant may file the monetary order in the Small Claims Division of the Provincial Court of British Columbia and seek enforcement.

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: November 26, 2021

Residential Tenancy Branch