



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDL-S FFL

Introduction

The landlord seeks compensation from their former tenant pursuant to section 67 of the *Residential Tenancy Act* ("Act"). In addition, they applied to recover the cost of the filing fee under section 72 of the Act.

Preliminary Issue: Service of Notice of Dispute Resolution Proceeding

Only the landlord attended the hearing on January 6, 2022 at 1:30 PM. The landlord testified under oath that they served a copy of the Notice of Dispute Resolution Proceeding along with documentary evidence by way of email on July 9, 2021. A copy of the landlord's email, along with a drop box link, a list of the evidence, and three attachments (including the Notice of Dispute Resolution Proceeding) was submitted into evidence. There was no reply to the landlord's email of July 9, 2021.

However, there is in evidence a copy of an email exchange between the parties on June 2, 2021, in which the tenant voices their concern with the landlord's decision to retain the tenant's security deposit. In addition to this email exchange, the landlord testified that the parties frequently communicated by email throughout the tenancy; rent was also paid by way of e-transfer.

Based on the undisputed oral and documentary evidence before, it is my finding that the tenant was sufficiently served with the Notice of Dispute Resolution Proceeding package in a manner that complies with [section 89\(1\)\(f\)](#) of the Act and [section 43\(2\)](#) of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003.

(Given my finding above, it is unnecessary to issue an order for substituted service. The tenant regularly used their email address to communicate with the landlord, and for this reason the tenant is found to have been sufficiently served.)

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 specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began June 1, 2020 and ended May 31, 2021. Monthly rent was \$1,600.00 and the tenant paid a security deposit of \$800.00. A copy of the written tenancy agreement was submitted into evidence. The landlord made the application for dispute resolution within the fifteen-day requirement under section 38(1)(d) of the Act and as such lawfully holds the security deposit in trust pending the outcome of this dispute.

The landlord seeks compensation for various items which are listed in a monetary order worksheet. However, only supporting documentary evidence for three of these items was submitted. Only these items that will be considered; claims for compensation not supported by evidence cannot be considered and that portion of the landlord's application is dismissed. This was explained to the landlord, and an opportunity to adjourn for the purposes of collecting and submitting additional evidence was offered. The landlord declined, choosing to proceed with the three items.

Also submitted into evidence was a completed condition inspection report, numerous colour photographs, and video evidence.

First, \$628.95 is claimed for a hot water tank replacement. A receipt for this cost was in evidence. The landlord's monetary order worksheet describes the nature of this claim as follows: "Hot water tank leaking within days of tenant leaving, the plumber suggested it was tampered with due to leak being inconsistent with regular wear and tear - hot water tank was in the tenant's laundry room which was unkept and debris piled on top of utilities."

Second, \$426.18 is claimed for a broken oven handle replacement. An invoice for troubleshooting by an appliance repair technician and the replacement part is in evidence. Last, \$288.00 is claimed for cleaning costs of the rental unit. A receipt from the cleaner was submitted into evidence.

Analysis

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, when they vacate.

The landlord's undisputed oral and documentary evidence persuades me to find, on a balance of probabilities, that the tenant breached section 37(2) of the Act by damaging the hot water tank, by damaging the oven door handle, and by leaving the rental unit in a state of uncleanness that required a thorough cleaning. The landlord has established the dollar amount of their losses and the amounts claimed are reasonable.

Given that the tenant failed to attend the hearing to make any argument as to whether any of the damage was caused by reasonable wear and tear, I need not consider such a factor.

Pursuant to section 67 of the Act, the tenant is hereby ordered to pay the landlord the amount as set out below for not complying with section 37(2) of the Act.

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord succeeded in their application, I grant them \$100.00 in compensation to cover the cost of the filing fee. In total, the landlord is awarded \$1,443.13 in compensation.

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, the landlord is hereby authorized to retain the tenant's security deposit of \$800.00 in partial satisfaction of the above-noted award.

A monetary order in the amount of \$643.13 is granted to the landlord, and a copy of the order is issued in conjunction with this decision to the landlord. As explained during the hearing, the landlord must serve a copy of this monetary order to the tenant should the tenant refuse to pay. Further, should the tenant refuse to pay the landlord the amount owing then the landlord may enforce this order in Provincial Court.

Conclusion

The landlord's application is hereby granted.

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

Dated: January 6, 2022

Residential Tenancy Branch