



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Native Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on January 14, 2022. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Tenant was represented at the hearing by her mother (referred to as the Tenant). The Landlord was represented at the hearing by an agent (referred to as the Landlord). All parties provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Notice of Hearing and evidence package. The Tenant stated she sent her evidence to the rental building a couple of days before the hearing. When asked why it was sent to the Landlord so late, despite having many months to prepare for this hearing, the Tenant did not present any compelling explanation about what why it was late. The Tenant also acknowledged that the evidence was not new and relevant. The Landlord stated she did not get the Tenant's evidence. As stated in the hearing, the Tenant was required to ensure her evidence was received by the Landlord no later than 7 days before the hearing. As this was not done, and since the evidence was not new and relevant, I find it is not admissible in the proceeding.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties agree that monthly rent was \$375.00, and was due on the first of the month. The Landlord holds a security deposit totalling \$451.00. The Tenant moved out of the rental unit on March 29, 2021, and the tenancy was month-to-month.

On the Landlord's application, she stated that she is seeking the following:

“Tenant failed to give proper notice to move out and did not participate in the move out condition inspection.”

The Landlord explained that she is seeking to retain the security deposit because the Tenant did not participate in the move-out inspection. The Landlord feels she should be entitled to keep the deposit because the Tenant did not come to the move-out inspection, and also because the Tenant failed to give a full month's notice that she would be moving out.

The Landlord acknowledged that the people who were dealing with the Tenant at the end of her tenancy last year no longer work for the Landlord, and so many of the details have been lost. The person at the hearing for the Landlord had limited knowledge of the specific details of the events surrounding the end of the tenancy but provided some basic statements about her understanding of what occurred.

The Landlord stated that the Tenant came to one of the Landlord's employees around March 11, 2021, and verbally informed them that she would likely be moving at the end of the month. The Landlord stated that the Tenant was told that she had to give written Notice of at least one month before it would be accepted. The Landlord stated that the Tenant gave written Notice on March 22, 2021, stating she would be leaving by March 31, 2021. The Landlord referred generally to some conversation she said some of her

ex-staff members had with the Tenant about trying to schedule a move-out inspection. However, the dates of these inspections were unclear and vague. The Landlord was unable to point to any written notice of either an initial inspection or a second and final opportunity to schedule the move-out inspection. No such written Notices were provided into evidence.

The Tenant denies having been made aware of any formal inspection at the end of the tenancy.

The Landlord stated that the Tenant moved out in the morning on March 29, 2021, and she left before a condition inspection could be arranged. The Landlord spoke generally to suffering rental losses, and to damage caused by the Tenant. However, the Landlord did not clearly explain what her actual rental losses were, and what, if any, damage was caused by the Tenant. The Landlord also failed to explain what any of the damage/loss was on the application.

The Tenant denied that there was any damage, and does not understand how the Landlord suffered any lost rent.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I note the Tenant provided short Notice that she would be moving out. I find that by giving Notice on March 22, 2021, that she would be moving out by the end of the month, she breached section 45(1) of the Act. Despite this breach of the Act by the Tenant, I find the Landlord failed to sufficiently explain and articulate what her actual loss was, due to the Tenant's short notice, and the fact that the Tenant moved out with short notice. The Landlord did not explain what the amount or value of their loss was such that I could be satisfied they have met part 3 of the above noted 4-part test. The Landlord also failed to lay out the specifics of her losses on the application. I find the Landlord's general claim for compensation is dismissed, in full, without leave, as it was poorly explained, and not sufficiently clear what the amount sought was based on.

I note the Landlord is also asking for the security deposit simply because the Tenant did not participate in the move-out inspection. I note that section 36(1) of the Act states the following:

36 *(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*

(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find the Landlord's testimony and evidence is unclear with respect to what, if any, opportunities for inspection were offered to the Tenant. The Tenant denies that the Landlord gave any Notices for the Move-out Inspection at the end of the tenancy. The Landlord loosely referred to trying to set up a "pre" move-out inspection after getting verbal Notice from the Tenant around March 11, 2021, but the Tenant denies this was done. Regardless of whether or not a "pre" inspection was offered, I find there is insufficient evidence that the Landlord offered at least 2 opportunities for the actual move-out inspection.

I note the Landlord expressed to the Tenant that she was to give written Notice before it would be accepted. The Tenant did not provide this Notice until March 22, 2021. Although there was not a lot of time between this Notice, and the date the Tenant moved out, on March 29, 2021, I find there is little to no evidence that any verifiable and proactive steps were taken to formally schedule a move-out inspection in the last week of the tenancy, despite the fact that the Landlord was aware the Tenant would be moving out at the end of the month. I find the Landlord should have been more proactive with respect to scheduling an acceptable date and time to perform the inspection. The Landlord also should have formally provided a second opportunity, in writing, if any initial attempts to schedule the move-out inspection were unsuccessful. There is insufficient evidence that any of this was done, in writing, such that I could find the Landlord complied with their obligations under section 36(2)(a) of the Act. I find the Landlord extinguished their right to claim against the deposit. I dismiss the Landlord's application, in full, without leave.

I order the Landlord return the security deposit, in full, to the Tenant. A monetary order will be issued to the Tenant for this amount.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$451.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: January 14, 2022

Residential Tenancy Branch