



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on July 2, 2021 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation, or loss.
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord, the Landlord's Agent J.H., and the Tenants attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find that the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?

3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The parties testified and agreed to the following; the fixed term tenancy began on May 16, 2021 and was meant to continue until August 31, 2021. During the tenancy, the Tenants were required to pay rent in the amount of \$1,000.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$500.00 which the Landlord continues to hold. The tenancy ended on May 31, 2021.

The Landlord is seeking monetary compensation in the amount of \$450.00 for loss of rent as a result of the Tenants ending their fixed term tenancy early on May 31, 2021. The Landlord's Agent stated that the Landlord made immediate efforts to re-rent the rental unit by advertising the unit for rent. Specifically, the Landlord stated that he advertised the rental unit for \$850.00 for one occupant, or \$1,000.00 for two occupants. The Landlord's Agent stated that they secured one occupant who commenced a new occupancy effective June 1, 2021 for \$850.00 a month.

The Landlord's Agent stated that the Landlord attempted to minimize his loss by accepting one occupant at \$850.00 per month as opposed to waiting for two occupants at \$1,000.00 per month to replace the Tenants. As such, the Landlord is seeking compensation of the loss of \$150.00 rent from June to August 2021.

The Tenants responded by stating that they felt entitled to ending the fixed term tenancy early as a result of silverfish being present in the rental unit. The Tenants stated that they notified the Landlord of the bugs in the rental unit. The Tenant confirmed that the Landlord took action and applied pest control treatments to the rental unit, which did not appear to be effective. The Tenants stated that the Landlord advertised the rental unit for \$850.00, therefore they should not have to pay the difference in rent.

The Landlord is also claiming \$95.00 for cleaning a stain on the mattress in the rental unit. The Landlord's Agent stated that at the end of the tenancy, the Landlord noticed a stain on the mattress, which was not there at the start of the tenancy. The Landlord's Agent referred to a witness statement from a previous occupant which indicates that the bed was not stained at the end of their tenancy. The Landlord provided a picture of a stained mattress in support. The Landlord's Agent stated that the Landlord received a quote to clean the mattress professionally, which was estimated to upwards of \$105.00.

The Landlord decided to clean the mattress himself and is seeking \$95.00 for his efforts.

The Tenants denied causing a stain on the mattress. The Tenants provided a picture of mattress without a stain. The Tenants stated that the Landlord did not complete a condition inspection report at the start, nor at the end of the tenancy.

The Landlord is also seeking the return of the filing fee.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or 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 Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

According to Section 45 of the *Act*, A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that;

- (a) *is not earlier than one month after the date the landlord receives the notice,*
- (b) *is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) *is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The Residential Tenancy Policy Guideline #30 states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation. Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

Policy Guideline #8 describes a material term as a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Furthermore, Policy Guideline #8 indicates that in order to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- (a) that there is a problem;*
- (b) that they believe the problem is a breach of a material term of the tenancy agreement;*
- (c) that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- (d) that if the problem is not fixed by the deadline, the party will end the tenancy.*

According to Section 45(3) of the Act, if a Landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In this case, I accept that the Tenants communicated their concerns regarding the silverfish to the Landlord. However, I find that the Tenants did not communicate that they believed these problems were a breach of a material term of the tenancy agreement, nor did they indicate that the problems needed to be fixed by a reasonable deadline or else the tenancy would end. For these reasons, I find that the Tenants did not provide adequate notice to the Landlord pursuant to section 45(3) of the Act.

I accept that the Landlord immediately placed advertisements in an attempt to re-rent the unit. I find that the Landlord did not mitigate their loss by advertising the rental unit for \$850.00 and accepting one occupant at a lesser rent than what the Tenants had been paying. As such, I find that they are not entitled to claiming for the difference in rental income from June to August 2021. I therefore dismiss this claim without leave to reapply.

The Landlord is claiming \$95.00 to clean a stained mattress. According to the Residential Tenancy Policy Guideline 1; The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

According to Section 23(1) of the Act; The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
 - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.

The Landlord stated that the Tenants caused the stain to the mattress in the rental unit and provided a picture of a stained mattress. The Tenants stated that they did not cause

a stain and provided a picture of an unstained mattress. I accept that the parties agreed that there was no condition inspection completed at the start of the tenancy.

I find that without a condition inspection being conducted at the start of the tenancy, it is difficult to compare the condition of the mattress prior to the commencement of the tenancy, to the condition at the end of the tenancy. As such, I find that the Landlord has provided insufficient evidence to demonstrate that the stain on the mattress was caused by the Tenants. In light of the above, I dismiss the Landlord's claim for mattress cleaning without leave to reapply.

Having been unsuccessful in the Application, I find that the Landlord is not entitled to the return of the filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$500.00, which represents the full return of their security deposit currently being held by the Landlord.

Conclusion

The Landlord's Application is dismissed without leave to reapply. The Tenants are granted a monetary order in the amount of \$500.00 which represents the return of the Tenant's security deposit. The order should be served to the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 20, 2022

Residential Tenancy Branch