



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: MNDL-S MNRL-S MNDCL-S

Introduction

The landlord seeks compensation from her former tenants pursuant to section 67 and 72 of the Residential Tenancy Act ("Act"). In addition, she seeks recovery of the cost of the application filing fee under section 72 of the Act.

This matter was first heard at a dispute resolution hearing on March 10, 2022. Service of evidence issues led to my adjourning the matter. (Details of these issues are outlined in my Interim Decision of March 10, 2022.)

A new Notice of Dispute Resolution Proceeding was emailed by the Residential Tenancy Branch to both the landlord and the respondents on March 14, 2021. The next dispute resolution hearing then occurred on June 21, 2022 at 11:00 AM. The landlord dialled into the hearing at 11:03 AM and briefly gave evidence. None of the tenants attended the hearing, which ended at 11:07 AM.

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

The tenancy began on September 1, 2020 and ended on August 13, 2021. Monthly rent was \$2,000.00 and the tenants paid a \$1,000.00 security deposit. The security deposit is being held in trust pending the outcome of the landlord's application. On August 23, 2021 the landlord filed their application for dispute resolution.

The landlord seeks \$1,974.46 in compensation comprising (as per the landlord's Monetary Order Worksheet) \$1,330.00 in unpaid rent for August 2021, \$187.71 for unpaid utilities bills, \$120.00 for cleaning (4 hours at \$30.00 per hour), and \$336.75 for painting (supplies and labour). In addition, the landlord seeks \$100.00 in compensation to pay for the cost of the application filing fee.

The landlord gave evidence that she only seeks to retain the tenants' \$1000.00 security deposit and expressly waives the remainder of her claim.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent. In this case, the landlord gave undisputed evidence that the tenants did not pay the full rent for August 2021, and that they owe \$1,330.00.

Taking into consideration all undisputed oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that she is entitled to this amount. As noted above, because the landlord only seeks to retain the amount of the security deposit, the remainder \$330.00 of the unpaid rent is waived.

Section 38(4)(b) of the Act permits an arbitrator to authorize a landlord to retain a tenant's security deposit after the end of a tenancy. As such, the landlord is permitted to retain the tenants' security deposit of \$1,000.00 in full satisfaction of the amount awarded.

All amounts claimed beyond the \$1,000.00 awarded are hereby waived, at the landlord's direction, and as such the landlord is barred from making any further monetary claims in respect of this tenancy or the respondents. The claims for the amounts outside the unpaid rent are therefore dismissed without leave to reapply.

Conclusion

The application is granted, subject to the amount awarded and amount waived.

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: June 21, 2022

Residential Tenancy Branch