



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for damage to the rental unit pursuant to section 67;
- 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 the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony and present evidence.

The tenant acknowledged service of the landlord's application but testified that he had not received any evidence from the landlord. The tenant also brought up an issue about the matter previously being rescheduled and him not being notified about the new date and time as the document attached to the e-mail he received from the Residential Tenancy Branch ("RTB") was blank. The tenant also requested an adjournment and testified that medical issues have hindered him from being ready for this hearing. The tenant did not submit any supporting documents of the medical issues such as a doctor's note. The tenant repeatedly stated that he would like an adjournment so he could amalgamate his own application which he previously withdrew with the landlord's application.

A review of the file notes indicates that on September 29, 2022, the landlord contacted the RTB and requested the hearing be rescheduled from the original date of November 8, 2022, as the landlord had been scheduled two different hearings with the RTB on the same date and time. The hearing was rescheduled and new notices were sent out to the parties by the RTB. The file notes also indicate that the tenant called the RTB on

October 18, 2022, inquiring about the new hearing date and time at which time the tenant was advised of the new date and time and a hearing notice was also resent to him.

As such I find the tenant was aware of the new hearing date and time.

The landlord objected to the tenant's adjournment request and stated that the tenancy ended over 8 months ago, so they have already had to wait a long time for this hearing date.

The tenant did not provide any documents to support his grounds for requesting an adjournment. I find that any further delay would prejudice the landlord in obtaining closure to this matter. I also find the tenant's adjournment request to not be genuine and find his true motive was to delay the proceeding so he could amalgamate his own claim to the landlord's claim. For these reasons, the tenant's request for an adjournment were denied.

The landlord testified that on March 17, 2022 a copy of the Application for Dispute Resolution was sent to the tenant by registered mail and then on October 18, 2022 the landlord's evidence package was sent to the tenant by registered mail. The landlord provided registered mail receipts and tracking numbers in support of service. A search of the Canada Post track a package service confirms the packages as being delivered. The landlord testified the registered mail packages were sent to the forwarding address as provided by the tenant.

The tenant acknowledged the address was correct but stated that he has since moved back to B.C. so he did not receive the evidence package. The tenant testified that he did not notify the landlord of any change of address for service of documents. The tenant also stated that the address is a family home and that his nephew or niece may have received the package on his behalf. The tenant stated he was not advised by them that anything had been delivered.

Based on the above evidence, I find the tenant to be deemed served with the landlord's evidence package pursuant to sections 89 & 90 of the Act. The landlord sent the evidence package as required to the address provided by the tenant and did so at least 14 days prior to the hearing date as required. The tenant knew a hearing was coming up and he could have provided a new address of service to the landlord if he moved.

The tenant could have also had his mail forwarded. The tenant could also have inquired with his nephew or niece if they had received anything on his behalf.

For all the above reasons, the hearing proceeded as scheduled and the landlord's evidence was permitted.

Issues

Is the landlord entitled to a monetary award for compensation for loss and/or damage to the rental unit?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on November 15, 2020 and ended on February 28, 2022. The tenant paid a security deposit of \$562.50 at the start of the tenancy which the landlord continues to retain.

The landlord is claiming \$212.62 for painting of a few walls plus \$88.76 for paint supplies. The landlord submitted invoices as evidence of the loss as well as pictures of the walls containing various markings.

The landlord is claiming \$283.50 for carpet and drape cleaning. An invoice was submitted as evidence of the loss. The landlord submitted a copy of the tenancy agreement additional terms which state the tenant is responsible to have the carpets and drapes professionally cleaned at the end of the tenancy.

The landlord is also claiming \$30.00 to replace a laundry card not returned by the tenant.

The landlord also submitted a move-in and move-out condition inspection report in support of the above claims.

The tenant stated he could not respond to the landlord's claims as he was not served with any evidence.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 37 of the Act requires that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I find that the tenant did not leave the rental unit reasonably clean and undamaged and this is supported by the landlord's evidence consisting of pictures of the damaged walls and the move-in and move-out inspection reports. I also find that as per the tenancy agreement, the tenant was responsible to have the carpets and drapes professionally cleaned at the end of the tenancy and provide evidence of such to the landlord. The tenant did not provide any evidence that he had this done as such I accept the landlord's claim for these expenses. I also find the tenant failed to return the laundry card as this was not disputed by the tenant. I find that the landlord has established the existence of the damage or loss as claimed and that it occurred due to the actions or neglect of the tenant. The landlord has also submitted evidence in support of the actual amounts required to compensate for the loss or repair the damage.

I find the landlord has suffered a loss as claimed in the total amount of \$614.88.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$714.88.

The landlord continues to hold a security deposit in the amount of \$562.50. I allow the landlord to retain the security deposit and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$152.38.

Conclusion

Pursuant to section 38 and 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$152.38. Should the tenant fail to comply with this Order, this Order may be

filed in the Small Claims Division of the Provincial Court and 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: November 30, 2022

Residential Tenancy Branch