



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNRT, MNDCT, MNSD, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- for a monetary order for compensation for emergency repairs pursuant to section 33 of the Act
- for a monetary order for damage or compensation pursuant to section 67 of the Act
- For an order returning the security deposit pursuant to section 38 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord’s agent AC appeared. Tenant VS along with advocate JF appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord stated that she did not receive the tenant’s evidence in support of the application. The tenant testified that she sent her evidence to the landlord by registered mail but did not provide proof of service in evidence. I find that the landlord was not served with the tenant’s evidence pursuant to section 88 of the Act and I decline to consider the tenant’s documentary evidence.

The landlord acknowledged receiving the tenant’s dispute notice and the tenant acknowledged receiving the landlord’s evidence. Therefore, I find that the parties were properly served pursuant to sections 88 and 89 of the Act.

Preliminary Issue

The tenant advised that the request for compensation for emergency repairs was filed in error. I dismiss that portion of the tenant's application without leave to reapply.

The tenant stated that she would waive any amount of her claim over \$35,000.00 which is the upper limit of an award for compensation of section 67 of the Act.

Issue(s) to be Decided

1. Is the tenant entitled to a monetary order for compensation?
2. Is the tenant entitled to an order for return of the security deposit?
3. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced August 1, 2019. Rent was \$2,200.00 per month due on the first of the month. The landlord still holds the tenant's security deposit of \$1,100.00. The tenancy ended June 30, 2022.

The tenant testified that the landlord threw her personal property on the lawn outside the rental unit and much of her property was damaged. She is claiming compensation for the damage.

The tenant claims that the landlord illegally increased her rent to \$2,500.00 in March 2022. The tenant stated that she agreed to the rent increase because she was afraid the landlord would evict her.

The tenant stated that the landlord has not returned her security deposit. The tenant stated that she has not provided a forwarding address to the landlord.

The landlord denied throwing the tenant's property on the lawn. The landlord further stated that the tenant offered to pay \$2,500.00 for the rental unit. The landlord provided a text from the tenant in evidence showing that it was the tenant, not the landlord who suggested a rent increase. The landlord further stated that she did not raise the rent to \$2,500.00 and rent remained at \$2,295.00 throughout the tenancy. She stated the tenant was having difficulty paying the current rent and the landlord did not believe that the tenant could afford a rent increase. The tenant was consistently late paying rent and

did not pay any rent for May and June 2022. Utilities were not included in rent and the tenant was also responsible for reimbursing the landlord for the utilities.

The landlord stated that the tenant usually paid rent by electronic transfer. On occasion she paid in cash. The tenant has not provided the landlord with a forwarding address.

The tenant testified that in April 2022 she paid \$1,800.00 in rent by electronic transfer, and then paid another \$700.00 in cash to the landlord. She did not pay rent in May and June 2022, but she stated that she paid rent for two months when she first moved in and she was applying the extra month to the May 2022 rent. She never paid rent for June 2022. She confirmed that she had never received a Two Month notice to End Tenancy from the landlord.

The landlord testified that the tenant did not pay two months rent when she first took possession of the rental unit.

Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove their entitlement to a claim for a monetary award.

The tenant testified that the landlord threw all of her property on the lawn outside the rental unit and much of her personal property was damaged. I have not considered any of the tenant's documentary evidence as it was not served on the landlord, and I have no evidence showing the extent of the damage or the amount of the loss. I find that the tenant's evidence was lacking in detail on this point and did not provide oral evidence of the amount of the damage that would establish the value of the loss. I deny the tenant's claim for compensation on this ground.

The tenant did not apply for compensation for an illegal rent increase. I decline to make any finding on whether there was an illegal rent increase, and I do not award compensation on this ground.

It is undisputed that the tenant has not provided the landlord with her forwarding address. Section 38 of the Act requires the landlord to return the security deposit within 15 days of the tenant vacating the rental unit or providing her forwarding address, whichever is later. I find that the tenant is entitled to the return of her security deposit of \$1,100.00.

As the tenant is partly successful in her application she is entitled to recover the \$100.00 filing fee for the application.

Conclusion

The tenant is granted a monetary order for \$1200.00 in recovery of the security deposit and filing fee. The monetary order must be served on the landlord. The monetary order 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: April 11, 2023

Residential Tenancy Branch