



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

File #110067183: MNDCL, FFL
File #110075952: MNSDS-DR, FFT

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- a monetary order pursuant to s. 67 for compensation or other money owed; and
- return of the filing fee pursuant to s. 72.

The Tenant files his own application, seeking the following relief under the *Act*:

- an order pursuant to s. 38 for the return of the security deposit and/or the pet damage deposit; and
- return of the filing fee pursuant to s. 72.

This matter had been scheduled for hearing on February 13, 2023 but was adjourned due to issues with service.

S.D. appeared as the Landlord. A.P. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

At the reconvened hearing, the parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials. Based on the mutual acknowledgments of the parties, I find that pursuant to

s. 71(2) of the *Act* that the parties were sufficiently served with the other's application materials.

Preliminary Issue – Naming of the Landlord

The Landlord's application names C.Z. as the landlord, whereas the Tenant names S.D. as the landlord. Review of the evidence provided to me shows that the tenancy agreement lists S.D. as the landlord.

I enquired with the parties, who in fact, was the landlord. S.D. explained that she did not own the property and that she acted as a property manager for the owner C.Z.. The Tenant did not dispute this point, though highlights that he referred to the tenancy agreement.

Policy Guideline #43 provides guidance on the naming of parties, specifying that the correct legal names for the landlord and tenant be used in the tenancy agreement. Section 1 of the *Act* defines a landlord as the owner of the rental unit or the owner's agent who acts on their behalf.

Given the tenancy agreement and the definition of landlord under s. 1 of the *Act*, I find that S.D. is properly named within the Tenant's application. She is the Landlord under the tenancy. If the owner were the landlord, they could have been named in the tenancy agreement. They were not.

As such, I amend the Landlord's application such that S.D. is named as the landlord.

Issues to be Decided

- 1) Is the Landlord entitled to monetary compensation?
- 2) Is the Tenant entitled to his security deposit?
- 3) Is either party entitled to their filing fee?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

General Background

The parties confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit on April 1, 2019.
- The Tenant moved out of the rental unit on April 1, 2022.
- Rent of \$3,000.00 was due on the first day of each month.

I am provided with a copy of the tenancy agreement. The parties confirm that the Tenant vacated the rental unit pursuant to a settlement agreement entered following another dispute before the Residential Tenancy Branch. I was provided with the file number for the previous dispute by the Tenant, showing the hearing was held on March 31, 2022.

1) Is the Landlord entitled to monetary compensation?

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property.

The Landlord testified that when the Tenant left a great deal of mess in the rental unit at the end of the tenancy. The Landlord's evidence includes photographs of the rental unit, which she tells me were taken after the Tenant moved out. The photographs show various items and rubbish left in and around the rental unit.

The Tenant explained that he finished moving his personal belongings from the rental unit on March 31, 2022 and had planned on going back the following day to clean. The Tenant says that when he returned to the rental unit on April 1, 2022, the Landlord had changed the locks.

The Landlord denies changing the locks or even attending the rental unit on April 1, 2022. The Landlord further argued that the settlement hearing took place on March 31, 2022 at noon, such that it would not have been possible for the Tenant to have moved out as alleged by the end of day.

I do not believe that the Landlord changed the locks as alleged by the Tenant and find it far more likely that the Tenant failed to clean up the rental unit. He had only agreed to move out the day before April 1, 2022, such that I do not find it likely that he was finished moving out on March 31, 2022. Further, it does not seem rational for the Landlord to have changed the locks on April 1, 2022, thereby preventing the Tenant from cleaning the rental unit, given the state of uncleanliness in the rental unit.

I find that the Tenant breached his obligation to clean the rental unit at the end of the tenancy in contravention of s. 37(2) of the *Act*.

The Landlord submits invoices for junk removal at \$1,150.00 and cleaning \$189.00. I accept that the Landlord incurred these expenses and find that the cost could not have been mitigated given the level of uncleanliness. I find that the Landlord has established entitlement to \$1,339.00, which I order that the Tenant pay.

It was argued that the rental unit had been sold and the new owners were renovating such that it did not matter that the rental unit be cleaned. However, that argument would only be relevant if the Landlord did not incur the expense of cleaning the rental unit. The Tenant has a clear obligation under s. 37(2) of the *Act*. He breached that obligation. The Landlord had to clean up and incurred expenses in doing so. The Tenant is required to compensate the Landlord for those expenses.

2) *Is the Tenant entitled to his security deposit?*

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the

Residential Tenancy Branch. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

The Tenant says that he paid a security deposit of \$1,500.00 to the Landlord when the tenancy began. The Landlord denies that any security deposit had been paid and had, in fact, served a notice to end tenancy on due to the Tenant's failure to pay the deposit.

I was advised by the parties that the Tenant had acted as a realtor for the owner of the residential property but came to live in the rental unit to avoid the speculation tax. The Tenant says that the rental unit was in a poor condition when the tenancy started and that he organized work to fix and clean the various issues. He says that the security deposit of \$1,500.00 was not paid directly but is compensation for his work on behalf of the owner.

The Landlord confirms that some work was undertaken by the Tenant but clarified that the individual expenses incurred were deducted from rent owed by the Tenant. She says that it was never agreed that he forego payment of the security deposit in lieu of services provided.

Under the circumstances, I find that the Tenant did not pay the security deposit of \$1,500.00. If there was an agreement to the effect that the deposit was paid in lieu of services provided, I would expect that to be explicitly stated in the form of correspondence or the tenancy agreement itself. I have not been directed to evidence supporting such an agreement.

As no security deposit had been paid, I dismiss the Tenant's application for its return without leave to reapply.

3) *Is either party entitled to their filing fee?*

As the Tenant was unsuccessful in his application, I find he is not entitled to his filing fee. His claim under s. 72(1) of the *Act* is dismissed without leave to reapply.

As the Landlord was successful in her application, I find she is entitled to her filing fee. Her claim under s. 72(1) of the *Act* is granted and I order that the Tenant pay the Landlord's \$100.00 filing fee.

Conclusion

I grant the Landlord's monetary claim under s. 67 of the *Act* totalling \$1,339.00.

I dismiss the Tenant's claim for the security deposit without leave to reapply.

I grant the Landlord her filing fee and dismiss the Tenant's claim for his own.

Combined, I order under ss. 67 and 72 of the *Act* that the Tenant pay **\$1,439.00** to the Landlord (\$1,339.00 + \$100.00).

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the order, it may be enforced by the Landlord at the BC Provincial 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: July 10, 2023

Residential Tenancy Branch