



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING CHARITABLE
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was scheduled to convene at 1:30 p.m. on November 10, 2023 concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property, an order permitting the landlord to keep all or part of a security deposit, and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord's agent submitted that the tenant was served with the Notice of Dispute Resolution Proceeding by registered mail on April 28, 2023 to the forwarding address provided by the tenant in the tenant's notice to end the tenancy. The landlord has provided a Proof of Service document and a Canada Post Registered Domestic Customer Receipt stamped with that date by Canada Post. The landlord has also provided another registered mail receipt stamped by Canada Post on September 29, 2023, and the landlord's agent submitted that was for evidence served, which was sent to the tenant by registered mail on that date. I am satisfied that the tenant has been served with the hearing package and all of the landlord's evidence in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established a monetary order as against the tenant for damage to the rental unit or property?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Should the landlord recover the \$100.00 filing fee from the tenant?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on December 15, 2010 and reverted to a month-to-month tenancy after the first 5 months, which ultimately ended on March 31, 2023. Rent was subsidized, and the tenant's share was \$370.00 payable on the 1st day of each month, in addition to \$26.00 for cable. A new tenancy agreement was also signed by the parties for a tenancy commencing May 5, 2011 for the same amount of rent. At the outset of the first tenancy the landlord collected a security deposit from the tenant in the amount of \$200.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment suite, and copies of the tenancy agreements have been provided as evidence for this hearing.

The tenant gave notice to end the tenancy by email on March 1, 2023 effective at the end of March, 2023 which contained a forwarding address of the tenant. The notice was accepted by the landlord, and the rental unit has been re-rented. A copy of the tenant's notice has also been provided for this hearing.

Move-in and move-out condition inspection reports were completed at the beginning and end of the tenancy, and copies have been provided for this hearing. The move-out portion was not signed by the tenant, and the landlord has provided copies of numerous emails exchanged between the parties as well as a Notice of Final Opportunity to Schedule a Condition Inspection. The tenant did not attend.

The landlord's agent also testified that the tenant owes \$14.00 for the cable fee for the month of May, 2022, as well as \$12.00 rent for each of the months of September, 2022 and October, 2022. Rent at that time was \$512.00, and the tenant paid \$500.00 for each of those months. A copy of a letter to the tenant has been provided for this hearing indicating that effective July 1, 2022 the tenant's rent contribution is \$512.00, after an annual review, which does not include any additional fees that may be charged as per the tenancy agreement. A copy of a Tenant Arrears Details document dated March 10, 2023 has been provided for this hearing.

A copy of a Notice to all tenants has also been provided by the landlord which states that the landlord had decided not to renew the contract for cable, and as of July 1, 2022

the tenants would not be obligated to pay an extra \$36.00 for cable services. Also provided is a notice to the tenants dated June 9, 2020 indicating that the cable amount is \$36.00.

The rental building had a key entry at the beginning of the tenancy, and the landlord had it changed to a fob entry during the tenancy. When giving out fobs to tenants, they were given a note indicating that replacements were \$20.00.

Similarly, the tenants were advised that replacement keys cost \$5.00, and the tenant failed to return the suite key and the mail key, for which the landlord claims \$10.00.

The tenant did not leave the rental unit reasonably clean at the end of the tenancy and photographs have been provided for this hearing, which the landlord's agent testified were taken on April 3, 2023. Timesheets for work completed have also been provided. With respect to cleaning, the first Timesheet shows 4 hours at \$25.00 per hour and is claimed at \$35.00 per hour, or \$140.00. The second Timesheet shows 4 hours at \$25.00 per hour and is claimed at \$35.00 per hour, or \$140.00. The third Timesheet shows 4 hours of cleaning at \$25.00 per hour and is claimed at \$35.00 per hour, or \$140.00. The landlord has also provided a copy of a document entitled Extra Maintenance Rates as of July 2022, showing a charge of \$35.00 per hour.

The tenant did not remove all debris, garbage or furniture from the rental unit at move-out. Another Timesheet has been provided for 4 hours at \$25.00 per hour for garbage removal. The landlord has also provided an Invoice dated April 6, 2023 for removal and disposal of junk from the rental unit for a total of \$84.00, and another Invoice dated July 17, 2023 totaling \$315.00 for removal and disposal of junk from a storage room. The landlord's agent testified that the larger items were removed to storage, but the tenant did not return to retrieve them and did not contact the landlord. The Invoice shows 2 different service addresses, one of which is the address of the rental building, and the other containing a different address.

The landlord has provided a Monetary Order Worksheet setting out the following claims totaling \$1,087.00:

- \$14.00 for outstanding cable;
- \$24.00 for outstanding rent;
- \$20.00 for fob – not returned;
- \$10.00 for 2 keys – not returned;
- \$420.00 for cleaning 12 hours/\$35;
- \$100.00 for removal – belongings/junk;

- \$399.00 for removal – belongings/junk; and
- \$100.00 for the filing fee.

Analysis

I have reviewed all of the evidence provided by the landlord, and I accept that the tenant failed to pay the full amount of the cable service, leaving a balance outstanding of **\$14.00**. I also accept the undisputed testimony of the landlord's agent that the tenant failed to pay rent in full for the months of September and October, 2022, leaving a balance outstanding of **\$24.00**.

I accept the landlord's claim of \$20.00 for a fob not returned and \$10.00 for keys not returned, for a total of **\$30.00**.

Where a party makes a claim for damage or loss as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate the damage or loss suffered.

The law also states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at move-in and move-out.

I have reviewed the email of the tenant giving notice to end the tenancy, and I am satisfied that the landlord has served the documents at the forwarding address provided by the tenant in that email.

I have also reviewed all of the landlord's evidence, including the tenancy agreements, emails, letters, photographs and condition inspection reports, and I agree that the tenant did not leave the rental unit reasonably clean at the end of the tenancy. The landlord relies on the Timesheets which show \$25.00 per hour, not \$35.00 per hour. The landlord's Extra Maintenance Rates as of July 2022 shows proposed hourly rates of \$20.00 for general cleaning, \$22.00 for General Maintenance, Basic tenant charges (e. cleaning at move out) of \$25.00 and a "Charge out rate to tenant of \$35.00." However, a claim for damage or loss is meant to put the landlord in the same position the landlord would be if the damage had not occurred. Claiming an additional \$10.00 per hour than the landlord paid is contrary to that common law. I am not satisfied that the landlord has

established that the cost is \$35.00 per hour, but has satisfied element 3 in the test for damages in the amount of \$25.00 per hour. Therefore, I find that the landlord has established a claim of \$100.00 for each of the 3 Timesheets, totaling **\$300.00**.

The landlord has also provided copies of 2 Invoices for removal of the tenant's items. I accept the first Invoice totaling **\$84.00**, and I find that the landlord has established that amount. However, the second Invoice obviously involves another rental unit, and does not indicate how much of each rental unit was charged. I accept the Timesheet showing 4 hours for garbage removal at \$25.00 per hour, and I find that the landlord has established a claim of **\$100.00**.

Since the landlord has been partially successful with the application the landlord is also entitled to recover the **\$100.00** filing fee from the tenant.

The landlord has applied for an order permitting the landlord to keep the \$200.00 security deposit, which I have calculated to \$203.36 including interest from December 15, 2010 to the date of this hearing. Having found that the landlord has established claims totaling \$652.00, I order that the landlord keep the \$203.36 security deposit and interest, and I grant a monetary order in favour of the landlord for the difference of **\$448.64**. The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$203.36 security deposit and interest, and I grant a monetary order in favour of the landlord in the amount of \$448.64.

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 16, 2023

Residential Tenancy Branch