



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNSDS-DR, FFT, MNDCL, MNRL, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of double their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties participated in the teleconference and were given a full opportunity to present their claim, make submissions and argument. Both parties confirmed that they had exchanged their evidence in advance of this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for losses and damage arising out of this tenancy?

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

Is the tenant entitled to a monetary award equivalent double the amount of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

Background and Evidence

The landlord gave the following testimony. SM testified that this tenancy began on January 1, 2022 and was to run until December 31, 2022, however the tenant gave notice on August 30, 2022 that he would be moving out on September 30, 2022. The monthly rent of \$1350.00 was due on the first of the month. The tenant paid a security deposit of \$675.00 which the landlord returned to the tenant by e-transfer on December 14, 2022. SM testified that because of the tenant "breaking the lease", she incurred a loss of rent for the months of October and November and seeks \$2700.00.

SM testified that there was a condition inspection report done at move in with the tenant. SM testified that a move out condition inspection was scheduled for 1:00 p.m. on September 30, 2022. SM testified that the tenant was not done moving out and didn't finish cleaning, as a result, the landlord is seeking \$600.00 for overholding the unit for six hours. SM testified that she rescheduled the inspection for that same day at 6:00 p.m. but as the tenant brought two other people with him, she felt very intimidated and didn't do the inspection. SM testified that she decided to wait and see what he would do about the deposit. SM testified that she hired a cleaner to clean the suite on October 9, 2022 and seeks the cleaning cost of \$157.50. SM also seeks \$49.00 for a blue recycling bag that is provided by the City of Kamloops.

NY testified that he did not give the landlord permission to retain any of his deposit. NY testified that the deposit was returned on December 14, 2022. NY testified that the landlord didn't provide a second opportunity to schedule a condition inspection in writing. NY testified that he doesn't recall if he has the blue recycling bag and was surprised at the cost. NY testified that the landlord cleaned the unit without doing an inspection and not giving him a chance to address any deficiencies.

NY testified that the landlord emailed him in May 2022 and advised that the tenancy would not be extended beyond the fix term and that he was free to move out sooner provided that he gave one month's notice. NY testified that the emails sent by the landlord clearly gives him permission to end the tenancy early. NY testified that he should be entitled to the return of double the deposit plus the filing fee minus the original deposit amount that he has already received.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

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. **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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I first address the landlords claim as follows.

Loss of Rent for October and November 2022 \$2700.00

The tenant provided three emails that clearly show that the tenant was entitled to move out earlier than the end date of the fixed term provided he gave one months notice, which he did. The landlord stated in the email that if he took certain steps he would "be relieved of all obligations". I find that the landlord gave explicit consent to the tenant to end the tenancy early and therefore is not entitled to any loss of rent, accordingly; I dismiss this portion of the landlords claim.

Overhold \$600.00

The landlord did not provide sufficient evidence to show any loss that was incurred for the tenant "overholding the unit for six hours", accordingly; I dismiss this portion of the landlords claim.

Cleaning \$157.50

The landlord did not conduct the move out inspection report with the tenants participation. In addition, the landlord had the unit cleaned nine days after the tenant moved out. The tenant was not given an opportunity to participate in the move out inspection or be given an opportunity to correct any deficiencies, accordingly; I dismiss this portion of the landlords claim.

Recycling Bag \$49.00

The landlord did not provide sufficient evidence that the tenant took the bag or the actual out of pocket cost to the landlord, accordingly; I dismiss this portion of the landlords claim.

I now address the tenants application as follows.

Section 38 of the Act addresses the tenants claim as follows:

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days **after the later** of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I spent a considerable amount of time canvassing and confirming with both parties the timeline and chronology of events. The **tenant testified** that he sent the landlord his forwarding address on November 18, 2022 by registered mail and was received by the landlord on December 5, 2022. Both parties confirmed that there was a delay in the delivery of the tenants forwarding address as there was an issue with the correctness of the address which was rectified by the tenant. Both parties confirmed that the deposit was returned to the tenant on December 14, 2022, nine days after the landlord received the tenants forwarding address. As the landlord returned the deposit within 15 days of

receiving the tenants forwarding address, I find that they have complied with section 38 of the Act and that the tenant is not entitled to any further compensation.

As neither party was successful in their claim, neither is entitled to the recovery of the filing fee.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

The tenant's application is dismissed in its entirety without leave to reapply.

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: February 15, 2024

Residential Tenancy Branch