



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was scheduled to convene at 1:30 p.m. on January 30, 2024 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 the security deposit or pet damage deposit, and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing, 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 tenants joined the call.

The landlord has provided a Proof of Service document indicating that each of the tenants was individually served with the Notice of Dispute Resolution Proceeding by registered mail on August 10, 2023. The landlord has also provided copies of the Xpresspost stickers, each containing a tracking number, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

The landlord also advised that the tenants have been provided with all of the landlord's evidence. I accept that, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the rental unit or property?
- Should the landlord be permitted to keep the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on July 1, 2022 and ended on July 31, 2023. Rent in the amount of \$1,400.00 was payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$700.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A written tenancy agreement exists, but a copy has not been provided for this hearing. The rental unit is a basement suite, and the landlord lives in the upper level of the home.

The landlord further testified that a move-in condition inspection report was completed by the parties on May 25, 2022, and a move-out condition inspection report was completed by the landlord on August 1, 2023, copies of which have been provided for this hearing. The landlord tried to give a copy of the move-out condition inspection report to the tenant, who refused to participate in the inspection and refused to sign it. He said he would sue the landlord for everything the landlord was worth, and was angry. Police were there, and the landlord attempted to give the tenant \$320.00 but the tenant refused it.

The landlord received the tenants' forwarding address in writing on July 25, 2023, and the landlord wrote it on the move-out condition inspection report on August 1, 2023.

The landlord had served a Two Month Notice to End Tenancy For Landlord's Use of Property effective August 31, 2023. However, on July 24, 2023 the tenants gave written notice to move out earlier, effective July 31, 2023. The free month would have been August.

The tenants had 2 fish tanks and condensation went up into the landlord's suite. The air vent system was overloaded and pooling, and went up the ceiling into the landlord's home. The landlord had both suites assessed. Photographs have also been provided for this hearing.

The landlord claims \$1,780.00 in damages, and has provided an Invoice dated July 17, 2023 charging \$60.00 per hour for 24 hours, or \$1,440.00 for labour, \$200.00 for a door, \$50.00 for screws, \$50.00 for mud, and \$40.00 for finish sandpaper, for a total of \$1,780.00.

The landlord has also provided a calculation sheet, crediting the tenants \$2,100.00 for compensation and return of rent for moving out early in the amount of \$1,400.00 and

\$700.00 for the security deposit. The calculation claims the damage amount of \$1,780.00, and \$320.00 is owed to the tenants.

The landlord also claims recovery of the \$100.00 filing fee.

Analysis

In order to be successful in a claim for damage or loss, 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* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, I have reviewed all of the evidence, and I am satisfied that the landlord has established all of the elements in the test for damages.

I have also reviewed the calculation sheet, which I find has been completed correctly.

The landlord testified that the tenants' forwarding address in writing was received by the landlord prior to the end of the tenancy. I also find that the tenancy ended on July 31, 2023, and the record shows that the landlord made the application on August 1, 2023 which is within the 15 days required by the *Act*.

A landlord is required to provide the tenants with compensation in the amount equivalent to 1 months rent at the end of a tenancy where the landlord ends the tenancy for the landlord's use of the property. I have no application from the tenants claiming the compensation and no application from the tenants seeking recovery of the security deposit.

I find that the landlord has established a claim of \$1,780.00 for damages, and crediting the compensation and security deposit totalling \$2,100.00, I find that the tenants are entitled to a refund of \$320.00. However, since the landlord has been successful with the application, the landlord is also entitled to recover the \$100.00 filing fee from the tenants.

I grant a monetary order in favour of the tenants as against the landlord for the difference of \$220.00. The landlord 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 grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$220.00.

This order is final and binding and may be enforced.

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 02, 2024

Residential Tenancy Branch