



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for unpaid rent or utilities, 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 tenant for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The tenant also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim 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 or pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed-term tenancy began on November 1, 2017 and reverted to a month-to-month tenancy after October 31, 2018, which ultimately ended

on January 31, 2023. Rent in the amount of \$1,500.00 was payable on the 1st day of each month. On November 1, 2017 the landlord collected a security deposit from the tenant in the amount of \$750.00 as well as a pet damage deposit in the amount of \$750.00, both of which are still held in trust by the landlord. The rental unit is a condominium apartment and a copy of the tenancy agreement and Addendum have been provided for this hearing.

The tenant gave notice to end the tenancy, and originally the landlord was prepared to accept it even though it wasn't served properly. The landlord claims \$1,500.00 for rent for February, 2023, and \$300.00 still outstanding from the COVID relief period. The landlord had verbally accepted a 50% reduction to the tenant for the overdue rent during COVID.

A move-in condition inspection report was completed by the parties at the beginning of the tenancy and a copy has been provided for this hearing. The landlord testified that he made a report at move-out, but destroyed it because as far as the landlord is concerned, the damage was extensive.

The landlord replied to the tenant that the damage was not something the landlord had been aware of and the parties needed to come to an agreement, but received no reply. There was an overwhelming cat urine smell in the carpet and underlay. The landlord also had to apply odour blocker to the concrete. The landlord was willing to accept basic stains and wear and tear. Photographs have been provided for this hearing showing yellow stains. An Invoice has also been provided for a total of \$1,062.55, however the landlord decided to do 2 rooms, and only claim half for the 1 spare bedroom. A text message from a contractor has also been provided for installation of \$430.00, for which the landlord claims half, or \$215.00.

The blinds were ripped at the end of the tenancy which wasn't noticed until after the landlord painted, and photographs have also been provided, as well as a Home Depot receipt.

The landlord testified that he received the tenant's forwarding address in writing on October 6, 2023.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$2,663.53:

- \$531.28 for carpet replacement;
- \$215.00 for carpet installation (half of \$430.00);
- \$117.25 for blinds;

- \$300.00 for unpaid rent from COVID; and
- \$1,500.00 for unpaid rent from February, 2023.

The tenant testified that an earlier application for return of the security deposit and pet damage deposit was dismissed with leave to reapply because the tenant didn't prove that the landlord received the tenant's forwarding address.

The tenant sent the landlord a notice to end the tenancy on January 1, 2023 by text message, effective January 30, 2023, which the landlord received on January 2, 2023. The landlord replied saying, "rec'd, thx." Also, in an email dated January 13, 2023 the landlord accepted the late notice. Therefore, the tenant continued to move out for the end of January, 2023.

With respect to the landlord's claim of \$300.00 for previous rent owed during COVID, the tenant testified that the parties had agreed to \$150.00.

At move-out the parties participated in a move-out condition inspection and the tenant provided a forwarding address on the form, on January 28, 2023. The landlord didn't notice any damage on the form, and during the inspection said he would scan it, but didn't. The tenant never received a copy.

The landlord gave the tenant a cheque for \$1,350.00 which was return of the deposits, less that \$150.00 agreed to for rent owed during COVID. However, the landlord cancelled the cheque. About 3 days later the landlord contacted the tenant. The tenant did not agree that the landlord could keep the deposits, and anyone could have been in there. The tenant didn't hear from the landlord until the tenant filed the application to recover the deposits.

The tenant provided the landlord the tenant's forwarding address in writing on January 28 and August 18 and again in October. The landlord acknowledged receiving it, and had no right to cancel the cheque.

The tenant's witness is the tenant's common-law partner and testified that he did not live in the rental unit with the tenant. The witness was at the rental unit with the tenant on January 28, 2023 packing up and completing a final tidy and patching any holes in the drywall as noted by the landlord. The tenant and witness left at approximately 3:30 p.m.

The tenant contacted the landlord and the move-out condition inspection report was completed. The witness watched the tenant sign it and write a forwarding address on the form. The witness heard the landlord mention that he would send a copy of it, but

the tenant didn't get a copy. The tenant asked the witness for the address because the tenant was moving to the witness' address. The witness also saw the landlord make out the cheque for return of the deposits, and the parties left on good terms and shook hands.

The landlord said that the tenant was a good tenant, and the parties amicably agreed to split the difference by 50% for the unpaid rent during COVID.

SUBMISSIONS OF THE LANDLORD:

The landlord prides himself of being a good landlord, having good relationships with tenants and is accommodating, having rented for several years. The landlord was willing to work things out with the tenant. The landlord contacted the tenant right away after noticing the damage hoping to come to an agreement.

SUBMISSIONS OF THE TENANT:

The tenant was also fair and a willing tenant up for discussion, but at a certain point, that should go through a proper process.

Analysis

Firstly, a landlord must return a security deposit and pet damage deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make a claim against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount(s).

The law also requires a landlord to ensure that the move-in and move-out condition inspection reports are completed in accordance with the regulations and give the tenant a copy of the move-out condition inspection report within 15 days. If the landlord fails to comply, the landlord's right to claim against the deposit(s) for damages is extinguished. The landlord does not deny that the tenant didn't receive a copy, but testified that after it was completed, the landlord destroyed it. Therefore, I find that the landlord's right to make a claim against the security deposit and pet damage deposit for damages is extinguished.

However, the landlord's right to make a claim against the security deposit for unpaid rent is not extinguished, and the landlord's right to make a claim for damages is not extinguished.

The law also sets out how legal documents may be served, and a notice to end a tenancy may not be served by text message or email unless the parties have agreed to

that in writing, which is usually accomplished by a notation on the tenancy agreement. I have reviewed all of the evidence, and there is no such agreement. Agreements are legal documents and must be served and received in accordance with the law.

The landlord testified that the tenant's forwarding address was received by the landlord, in writing on October 6, 2023. However, the tenant and the tenant's witness both testified independently that the tenant wrote her forwarding address on the move-out condition inspection report when it was completed on January 28, 2023, and even testified that the tenant asked the witness for the address because the tenant was moving to the witness' home. The landlord testified that he destroyed the move-out condition inspection report, and did not dispute that the forwarding address was written thereon by the tenant. Therefore, I find that the landlord received the tenant's forwarding address in writing on January 28, 2023, and made this application on October 20, 2023, well beyond the 15 days permitted by law. As a result, I find that the landlord must repay the tenant double the amount of the deposits, or **\$3,000.00**.

A tenant must give the landlord notice to end the tenancy before the day rent is payable under the tenancy agreement. The tenant did not do so in this case, and therefore, I find that the landlord is entitled to recover 1 month of rent from the tenant, or **\$1,500.00**.

The evidence also shows that the landlord agreed to reduce the amount of rent owed during COVID from \$300.00 to \$150.00 by email. However, the landlord also agreed in an email to accept the tenant's short notice to end the tenancy. Neither of those documents was given in the manner described in the *Act*, and therefore, I find that the landlord is entitled to recover the **\$300.00** arrears of rent during COVID.

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.

I have reviewed the move-in condition inspection report in comparison with the photographs provided by the landlord. I accept that there was damage to the carpet, and the landlord has satisfied the test for damages for carpet replacement of **\$531.28** and installation of **\$215.00**. Similarly, I find that the landlord has also satisfied the 4-part test with respect to blinds, and has established a claim of **\$117.25**.

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

Having found that the landlord has established claims of \$1,800.00 for unpaid rent and \$863.53 for damages and \$100.00 for recovery of the filing fee, and the tenant is entitled to recovery of the security deposit and pet damage deposit of \$3,000.00, I set off those amounts and I grant a monetary order in favour of the tenant for the difference of \$236.47. 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 tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$236.47.

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 19, 2024

Residential Tenancy Branch