



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, MNDC-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenant;
- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The landlord attended the hearing; however, the tenant did not attend.

The landlord stated he served the tenant with his application for dispute resolution and Notice of Hearing by registered mail on September 21, 2020. The landlord provided the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. That number is listed on the style of cause page in this Decision.

I accept the landlord's evidence that the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions are reproduced here; further, only the evidence specifically referenced by the landlord and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of March 1, 2020, a fixed term through August 31, 2020, monthly rent of \$4,000, due on the 1st day of the month, and a security deposit of \$2,000 being paid by the tenant to the landlord.

The landlord retained the tenant's security deposit, having made this claim against it.

The landlord's monetary claim is \$1,900. The landlord submitted that he returned \$100 to the tenant from his security deposit and his claim is to keep the balance of the security deposit of \$1,900. The landlord submitted that his actual loss would exceed \$1,900; however, due to constraints on his time, he elected to seek retention of the balance of the security deposit.

The landlord provided a monetary order worksheet, dated September 14, 2020, listing the following claims:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning by a cleaning service	\$63.00
2. Cleaning by a cleaning service	\$252.00
3. Garbage disposal	\$99.75
4. Kitchen sink leak fix	\$264.86
5. Faucet, kitchen sink	\$267.68
6. 2 late rent payments, \$100 each	\$200.00
7. Hydro bill, plus estimate	\$166.38
8. Gas bill, plus estimate	\$40.45
9. Water/sewer/garbage bill	\$475.00
10. Dishwasher repair	\$210.25
TOTAL	\$2,039.37

The landlord also submitted another monetary order worksheet, also dated September 14, 2020, in which he listed dishwasher repair for \$304.50.

The landlord said that the tenant did not leave the rental unit reasonably clean when he vacated. The landlord said that it did not appear that the tenant cleaned the rental unit at all prior to his departure and then it became necessary to hire a cleaning company to perform cleaning services and to have the garbage removed. The landlord submitted photographs of the rental unit and invoices for the expenses incurred.

As to the unpaid utilities, the landlord said that the written tenancy agreement required the tenant to pay 80% of utilities, including, electricity, water/sewer, natural gas and garbage collection. The landlord said that the tenant did not pay the amounts owed and is requesting the full balance, plus an estimated balance through the end of the tenancy. The landlord explained that he would not have known the full amount, as there was no billing cycle ending on the last day of the tenancy, and his estimate was based upon the average bills. Filed into evidence were copies of the utilities bills.

The landlord said that the tenant caused some damage to the rental unit, which became necessary to repair. The landlord said that there was a leaking kitchen sink faucet that was not reported, and that leak caused water damage to the countertop. The landlord claims the cost of the plumber to fix the leak and for a new faucet. Filed into evidence were the invoices for the costs.

The landlord said that the dishwasher door could not be locked, and that the tenant failed to report this issue. The landlord submitted that the claim is an estimated cost from a repair company.

The landlord submitted that the tenant was late in paying rent two times and is obligated under the tenancy agreement to pay \$100 for each late payment. The landlord claims \$200.

In response to my inquiry, the landlord confirmed that there was no move-in or move-out inspection or condition inspection report (CIR) with this tenancy and tenant.

Analysis

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Cleaning; garbage removal –

As to the costs claimed by the landlord associated with cleaning and garbage removal, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

As such, the tenant is required to remove all belongings including garbage and to clean the rental unit to a reasonable standard.

I have reviewed the landlord's photographic evidence and find them to be persuasive and compelling. I find the photos show that the tenant did not clean the rental unit to a reasonable standard, which required cleaning by the landlord. I also find the photographic evidence showed large amounts of debris and garbage which had to be removed.

Therefore, on a balance of probabilities, I find the landlord submitted sufficient evidence to prove his claim for cleaning and garbage removal. I therefore find the landlord has established a monetary claim of **\$414.75**, comprised of cleaning for \$315.00 and garbage removal of \$99.75.

Kitchen sink faucet repair, replacement; dishwasher repair –

As to the landlord's claims against the tenant for damage to these building elements, I find a critical component in establishing a claim for damage, and the resulting expenses, is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Under sections 23(3) and 35(3) of the Act, a landlord **must** complete a condition inspection report in accordance with the Residential Tenancy Regulations and both parties must sign the report.

In the circumstances before me, I find the landlord failed in his obligation under the Act of conducting an inspection of the rental unit and completing the inspection reports at the beginning and the end of the tenancy.

I therefore could not assess the condition at the end of the tenancy compared with the beginning of the tenancy. Consequently, I could not determine whether any alleged damage by the tenant was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenant. I also found that the landlord's photographs taken at the end of the tenancy did not prove the tenant caused the alleged damage as there were no corresponding photographs from the beginning of the tenancy.

Due to the above, I find the landlord submitted insufficient evidence to support his monetary claim against the tenant for damage to these building elements and I therefore **dismiss** these claims.

Late rent payment fees –

Section 7 of the Residential Tenancy Regulations addresses non-refundable fees a landlord is allowed to charge. Under this section, a landlord may not charge more than \$25 for a late payment of rent, and only if the tenancy agreement provides that fee.

In this case, I have reviewed the written tenancy agreement submitted by the applicant and find the requirement of a payment of \$100 for a late fee violates the Regulations.

I therefore **dismiss** the landlord's claim for \$200 for two late payment fees.

Unpaid utility charges –

I find the landlord submitted sufficient evidence that under the written tenancy agreement the tenant owed 80% of the utilities, and failed to pay that portion prior to

vacating the rental unit. I find the landlord's claim to be proven and the estimated balance to be reasonable. I find the landlord has established a monetary claim of unpaid utilities of **\$681.83**, which includes hydro for \$166.38, natural gas for \$40.45, and water/sewer/garbage for \$475.00.

As the landlord has been at least partially successful with his application, I award him recovery of the filing fee of **\$100**.

Information for the landlord –

After a review of the written tenancy agreement, I find it necessary to provide cautions to the landlord. The agreement allowed for automatic and discretionary deductions from the tenant's security deposit, for inspections of the rental unit without following the notice requirements for the same, and for an arbitrary requirement in order to provide the tenant with quiet enjoyment, among other things, all of which are in contravention of the Act.

If the landlord has any questions about his legal obligations under the Act, he is informed he may speak with staff of the Residential Tenancy Branch (RTB), whose contact information is included with this Decision on the final page.

Conclusion

The landlord has established a monetary claim of **\$1,196.58**, for cleaning and garbage removal of \$414.75, unpaid utility charges for \$681.83, and the filing fee of \$100.

I direct the landlord to retain the amount of \$1,196.58 from the remaining tenant's security deposit of \$1,900.00.

Pursuant to section 62(3) of the Act, I order the landlord to return the balance of the tenant's security deposit, or \$703.42, immediately.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount **\$703.42**, which is included with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

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: January 7, 2021

Residential Tenancy Branch