



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	MND MNDC FF
	Tenant:	MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application was made on October 13, 2017 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for damage to the unit, site, or property;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants’ Application was made on December 9, 2017 (the “Tenants’ Application”). The Tenants applied for the following relief pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by K.B., an agent. The Tenant A.M. attended the hearing on behalf of both Tenants. Both K.B. and A.M. provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, K.B. testified the Landlord's Application package was served on the Tenants by registered mail on October 19, 2017. A.M. acknowledged receipt on behalf of the Tenants. In addition, A.M. testified the Tenants' Application package was served on the Landlord by registered mail in November 2017. However, K.B. testified that it was received on December 14, 2017. Neither party raised any issues with respect to service or receipt of these documents. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served for the purposes of the *Act*.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the unit, site, or property?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to recover the filing fee?
4. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
5. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
6. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties confirmed the tenancy began on July 1, 2016, and ended when the Tenants vacated the rental unit on September 30, 2017. During the tenancy, rent in the amount of \$1,100.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$550.00 and a pet damage deposit of \$550.00. However, the Landlord returned \$476.75 to the Tenants on October 12, 2017. The Landlord continues to hold \$623.25.

The Landlord's Claim

The Landlord's monetary claim was set out in a Monetary Order Worksheet, dated October 18, 2017. First, the Landlord claimed \$75.90 for BC Hydro charges from June 16 to August 16, 2017. A.M. agreed with this aspect of the Landlord's claim.

Second, the Landlord claimed \$21.05 for Fortis BC gas charges from August 16 to September 17, 2017. An invoice with a billing date of September 14, 2017, was submitted in support. A.M. agreed with this aspect of the Landlord's claim.

Third, the Landlord claimed \$55.10 (estimated) for BC Hydro charges from August 17 to September 30, 2017. The actual expense was later determined to be \$51.85. A.M. agreed with this aspect of the Landlord's claim.

Fourth, the Landlord claimed \$11.20 (estimated) for Fortis BC gas charges from September 15 – 30, 2017. The actual expense was later determined to be \$18.05. A.M. agreed with this aspect of the Landlord's claim.

Fifth, the Landlord claimed \$150.00 (estimated) for costs incurred to repair a window handle. Although the actual cost turned out to be greater, K.B. confirmed the Landlord wished to withdraw this aspect of the claim.

Sixth, the Landlord claimed \$105.00 to clean carpets in the rental unit at the end of the tenancy. A.M. agreed with this aspect of the Landlord's claim.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee paid to make the Landlord's Application.

The Tenants' Claim

The Tenants submitted a monetary claim. First, the Tenants claimed \$655.54 for the cost they incurred to replace the "old unhealthy outdated carpet" with laminate flooring. A.M. acknowledged the Tenants agreed to replace the carpet at their own expense, but that the Tenants felt "stabbed in the back" when the Landlord submitted an application for dispute resolution.

In reply, K.B. submitted that the Landlord should not have to pay for the flooring replacement as the Tenants agreed to bear the cost.

Second, the Tenants claimed for the return of the balance of the security and pet damage deposits. The Tenants submitted into evidence a copy of a Notice to Vacate document, dated August 15, 2017, which included the Tenants' forwarding address in writing. On behalf of the Landlord, K.B. acknowledged receipt of the Tenants' forwarding address on that date. K.B. also confirmed that \$476.75 was returned to the Tenants on October 12, 2017, and that the Landlord's Application was made on October 13, 2017.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. An applicant must prove 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 what was reasonable to minimize the damage or loss.

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

The Landlord's Claim

As noted above, the Tenant agreed with the following aspects of the Landlord's claim:

Claim	Amount
BC Hydro:	\$75.90
Fortis BC:	\$21.05
BC Hydro (updated):	\$51.85
Fortis BC (updated):	\$18.05
Carpet cleaning:	\$105.00
TOTAL:	\$271.85

In addition, K.B. confirmed the Landlord's desire to withdraw the one remaining claim for costs associated with a broken window. I find the Landlord has demonstrated an entitlement to a monetary award of \$271.85.

The Tenants' Application

With respect to the Tenants' claim for \$655.54 for the cost to replace carpeting with laminate flooring, I find the Tenants agreed to pay for the flooring replacement at their own cost, and that the primary motivation for making the claim was in response to the Landlord's Application. This aspect of the Tenants' Application is dismissed.

With respect to the Tenants' claim for the return of the balance of the security deposit and pet damage deposits, section 38 of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. In this case, the later of these dates was when the tenancy ended on September 30, 2017. Accordingly, the Landlord had until October 15, 2017, to repay the deposits or make an application for dispute resolution. The Landlord did both. That is, the Landlord paid \$476.75 to the Tenants on October 12, 2017, and made the Landlord's Application on time on October 13, 2017.

Set-off of Claims

I find the Tenants are entitled to the return of the security deposit and pet damage deposits held (\$623.25), less the amounts to which the Landlord is entitled (\$271.85). In other words, I find the Tenants have demonstrated an entitlement to monetary award in the amount of \$351.40 (\$623.25 - \$271.85).

Section 72 of the *Act* empowers me to grant recovery of a filing fee to a successful party. However, as both parties had some success, I decline to award recovery of the filing fee to either party.

Conclusion

The Tenants are granted a monetary order in the amount of \$351.40. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 16, 2018

Residential Tenancy Branch