



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE NANAIMO REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on September 27, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by B.G., an agent. The owner of the property also attended the hearing as a witness. The Tenants attended the hearing. All in attendance provided affirmed testimony.

On behalf of the Landlord, B.G. testified that the Notice of Dispute Resolution Hearing documents were served on the Tenants by registered mail on September 27, 2019. The Tenants acknowledged receipt. Pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

The Tenants did not submit documentary evidence in response to the Application.

The parties were in attendance and were prepared to proceed. The parties were provided with a full opportunity to present 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 and to which I was referred. 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?
2. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The tenancy agreement submitted into evidence by the Landlord confirms the tenancy began on December 1, 2017. The parties agreed the tenancy ended on September 16, 2019. During the tenancy, rent was due in the amount of \$1,250.00 per month. The Tenants paid a security deposit in the amount of \$600.00, which the Landlord holds.

The Landlord's claim was supported by a Condition Inspection Report. The move-in condition inspection was completed on November 29, 2017. The move-out condition inspection was completed on September 17, 2019. A.M. signed the move-out condition inspection indicating it fairly represented the condition of the rental unit at the end of the tenancy.

The Landlord's claim was set out in a Monetary Order Worksheet dated September 25, 2019. First, the Landlord claims \$2,622.00 for painting required in the rental unit. B.G. testified the walls of the rental unit were left with scuffs, gouges and nail holes. She submitted that the damage was beyond reasonable wear and tear. A number of photographs were submitted into evidence depicting the damage. This aspect of the Landlord's claim was supported by a quotation, but B.G. advised the amount claimed reflects 2/3 of the actual cost to the Landlord as described in the quotation to reflect the condition of the rental unit at the beginning of the tenancy. B.G. testified the unit was last painted about 3-1/2 years before the Tenants moved in.

In reply, the Tenants referred to the move-in condition inspection which refers to scuffs and nail holes on the walls. She submitted that most of the damage referred to was pre-existing. The Tenants acknowledged that a gouge referenced during the move-out condition inspection was caused during the tenancy but that most of the alleged damage was normal wear and tear.

Second, the Landlord claims \$378.00 for repairs and cleaning. In support, the Landlord submitted an estimate for the cost to install a towel rack and shower rod (\$60.00 + GST), clean the rental unit (\$150.00 + GST), replace lock for patio door (\$50.00 + GST), and to replace a smoke alarm (\$100.00 + GST).

With respect to the Landlord's claim for \$60.00 + GST to replace a towel rack and shower curtain rod, B.G. testified the original shower curtain rod was removed during the tenancy and replaced with a rusty shower curtain rod. B.G. did not refer to photographs depicting the damage. In reply, the Tenants testified the shower curtain rod was rusty at the beginning of the tenancy, as reflected in the move-in condition inspection, and was replaced during the tenancy.

With respect to the Landlord's claim for \$150.00 + GST for the cost to clean the rental unit, the Tenants agreed with this aspect of the claim.

With respect to the Landlord's claim for \$50.00 + GST for the cost to replace the patio door lock and a broken door stopper, B.G. testified the lock and the stopper were broken at the end of the tenancy. However, M.W. confirmed she paid only \$25.00 + GST for the lock replacement. B.G. acknowledged this was not reflected on the move-out condition inspection because M.W. noticed additional issues after the move-out condition inspection was completed. In reply, the Tenants acknowledged the door stopper came off during the tenancy but testified the patio door lock was broken when they moved into the rental unit.

With respect to the Landlord's claim for \$50.00 + GST for the cost to replace a smoke detector, B.G. testified that the actual cost to replace the smoke detector was \$35.00 + GST. In reply, the Tenants acknowledged that a family member removed the hard-wired device during the tenancy.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee, and an order permitting the Landlord to retain the security deposit held in partial satisfaction of the claim.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

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 the Landlord to prove the existence of the damage or 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 what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim for \$2,622.00, I find there is insufficient evidence before me to grant the relief sought. Specifically, I note the move-in condition inspection report refers to pre-existing scuffs and nail holes. Further, Policy Guideline #40 confirms the useful life of interior paint is 4 years. While I accept that some damage likely occurred during the tenancy, the amount of time that has passed since the walls were last painted (3-1/2 years before the tenancy began) and the documented pre-existing damage suggest it is more likely than not that the interior paint was beyond its useful life and the Tenants are not liable for the expense. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$60.00 + GST to replace a towel rack and shower rod, I find there is insufficient evidence before me to grant the relief sought. The undisputed testimony is that a rusty shower rod was replaced during the tenancy and that the replacement shower curtain rod also became rusty. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$150.00 + GST to clean the rental unit, the Tenants agreed with this aspect of the claim. I find the Landlord is entitled to a monetary award in the amount of \$157.50.

With respect to the Landlord's claim for \$50.00 + GST to replace a patio lock and door stopper, I find there is insufficient evidence before me to grant the relief sought. I note this aspect of the Landlord's claim was observed by M.W. after the move-out condition inspection report was completed. The Tenants testified the lock was damaged when they moved in which was not disputed by B.G. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$100.00 + GST to replace a smoke alarm (which was reduced to \$35.00 + GST during the hearing), the tenants agreed that a family member removed the smoke alarm. I find the Landlord is entitled to a monetary award in the amount of \$36.75.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also order that the Landlord is entitled to retain the security deposit in partial satisfaction of the claim.

Policy Guideline #17 confirms that an arbitrator will return any balance remaining on a security deposit when a landlord makes an application to retain the security deposit. Therefore, pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$305.75, which has been calculated as follows:

Claim	Allowed
Cleaning:	\$157.50
Smoke detector:	\$36.75
Filing fee:	\$100.00
LESS security deposit:	(\$600.00)
TOTAL:	(\$305.75)

Conclusion

In accordance with Policy Guideline #17, the Tenants are granted a monetary order in the amount of \$305.75. The 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: January 28, 2020

Residential Tenancy Branch