



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on September 11, 2019 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- an order permitting the Landlords to retain all or part of the security deposit held; and
- an order granting recovery of the filing fee.

The Landlords were represented at the hearing by T.K. and J.L. The Tenants were represented at the hearing by S.D. All in attendance provided affirmed testimony.

On behalf of the Landlords, T.K. confirmed that the Notice of Dispute Resolution Hearing package was served on each of the Tenants by registered mail on September 18, 2019. A Canada Post registered mail receipt was submitted in support. S.D. confirmed receipt on behalf of the Tenants. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Tenants are deemed to have received these documents on September 23, 2019.

The Tenants submitted documentary evidence in response to the Application. S.D. testified it was served on the Landlords' property manager by email on January 7, 2020, seven days before the hearing. Although not served in a manner described in the *Act*, T.K. acknowledged receipt. Pursuant to section 71 of the *Act*, I find the one-page document was sufficiently served for the purposes of the *Act*.

No further issues were raised during the hearing with respect to service or receipt of the above documents. 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. Are the Landlords entitled to a monetary order for damage?
2. Are the Landlords entitled to an order permitting them to retain all or part of the security deposit held?
3. Are the Landlords entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on August 1, 2015 and ended on August 31, 2019. During the tenancy, rent was due in the amount of \$2,495.00 per month. The Tenants paid a security deposit in the amount of \$1,150.00, which the Landlords hold.

The claims were supported by a Condition Inspection Report (the "Report"). The Report confirms the move-in condition inspection occurred on August 1, 2015. The move-in condition inspection report is signed but does not indicate whether the Tenants agreed the report fairly represented the condition of the rental unit at the beginning of the tenancy.

The move-out condition inspection took place on August 31, 2019. The Tenants indicated they did not agree the move-out condition inspection report fairly represented the condition of the rental unit at the end of the tenancy.

The Landlords' claim was summarized in a Monetary Order Worksheet dated September 11, 2019. The claim was further particularized on a spreadsheet submitted into evidence. First, the Landlords claim \$27.97 for light bulbs that were not replaced by the Tenants at the end of the tenancy. On behalf of the Tenants, S.D. agreed with this aspect of the claim.

Second, the Landlords claim \$33.60 to repair damage to the kitchen blinds. T.K. testified the blinds were new at the beginning of the tenancy and did not function properly at the end of the tenancy. An email dated August 3, 2015 appears to support the assertion that the kitchen blinds were new at the beginning of the tenancy. This aspect of the claim was supported by a quotation dated September 3, 2019, and photographs of the blinds.

In reply, S.D. testified the Tenants lived in the rental unit for four years. She questioned the quality of the blinds and suggested that any damage was a result of reasonable wear and tear. S.D. also testified that other blinds in the rental unit did not operate properly at the beginning of the tenancy.

Third, the Landlords claimed \$196.00 to replace the guest bathroom sink. Although there is no reference to a crack in the move-in condition inspection report, T.K. and J.L. testified that a "hairline" crack was identified during the move-out condition inspection. Photographs of the bathroom and sink were submitted in support, but no crack was visible. T.K. acknowledged the crack did not result in a leak but that it had to be replaced to avoid future issues. This aspect of the claim was supported by a quotation dated September 3, 2019.

In reply, S.D. testified that she never noticed a crack during the tenancy. She also questioned the need to replace the sink when there was no evidence of any leak.

Fourth, the Landlords claim \$35.78 to replace a missing door chime cover. On behalf of the Tenants, S.D. agreed with this aspect of the claim.

Fifth, the Landlords claim \$201.60 to replace a garage door fob. K.T. testified it was not returned until October 23, 2019, more than six weeks after the tenancy ended. Although the Tenants returned the fob to the Landlords' property manager, the Landlords did not want it back citing security concerns. K.T. confirmed the Landlords have not replaced the garage door fob due to the expense. This aspect of the claim was supported by an email quotation dated September 9, 2019.

In reply, S.D. acknowledged the garage door fob was inadvertently packed with the Tenants' belongings and was not discovered until some time later. S.D. testified it was returned to the Landlords' property manager as soon as it was discovered. J.L. acknowledged receipt on October 23, 2019.

Sixth, the Landlords claim \$72.80 to replace a mailbox lock. The Landlords testified the Tenants lost the key 3 times during the tenancy and received replacements. T.K. testified the Tenants were advised during the tenancy that the lock would have to be replaced at the end of the tenancy for security reasons. However, the text message relied upon by the Landlords appears to have been sent to the property manager only. This aspect of the claim was supported by a quotation dated September 3, 2019.

In reply, S.D. testified it was never communicated to the Tenants that replacement of the mail box lock would be their responsibility. S.D. also testified that the Tenants never agreed to pay for the lock replacement.

Seventh, the Landlords claim \$100.80 for 4 hours of professional cleaning services. Several items are listed on the spreadsheet prepared by the Landlords including dust, scuffs, and stains. T.K. confirmed this expense was incurred by the Landlords.

In reply, S.D. testified the rental unit was professionally cleaned on August 30, 2019, the day before the move-out condition inspection. S.D. acknowledged that a few cleaning items were noted during the move-out condition inspection and that her mother, a professional cleaner, offered to address immediately. However, S.D. testified that the Landlords did not want her to clean them at that time. T.K. and J.L. agreed that S.D.'s mother offered to clean any outstanding items but that T.K. refused. In support, the Tenants submitted a receipt for cleaning dated August 30, 2019 in the amount of \$160.00.

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 Landlords 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 Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlords' claim for \$27.97 to replace light bulbs, S.D. agreed with this aspect of the claim on behalf of the Tenants. I grant the Landlords a monetary award in the amount of \$27.97.

With respect to the Landlords' claim for \$33.60 to repair damage to the kitchen blinds, I find there is insufficient evidence to grant the relief sought. Policy Guideline #1 confirms that a tenant may be liable for replacing internal window coverings when he or she has damaged the internal window coverings deliberately or has misused them. While I accept that the blinds were replaced by the Landlords at the beginning of the tenancy, I find there is insufficient evidence before me to conclude they were damaged deliberately or were misused. As a result, I find it is more likely than not that the damage described occurred as a result of normal wear and tear during the four-year tenancy. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim for \$196.00 to replace a sink in the guest bathroom, I find there is insufficient evidence of damage to grant the relief sought. The photographic evidence did not depict the "hairline" crack in the sink described by T.K. and J.L., and the S.D. testified that she never noticed a crack before it was pointed out

during the move-out condition inspection. I also find there is insufficient evidence before me that any damage was caused by the intentional or negligent act of the Tenants. I also note that T.K. agreed the sink did not leak and that it was replaced preventively. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim for \$35.78 to replace a missing door chime cover, S.D. agreed with this aspect of the claim on behalf of the Tenants. I grant the Landlords a monetary award in the amount of \$35.78.

With respect to the Landlords' claim for \$201.60 to replace a garage door fob, I find there is insufficient evidence to grant the relief sought. Specifically, I find it was unreasonable for the Landlords to decline the fob that was returned to the Landlords' property manager on October 23, 2019. There is no evidence before me to suggest the fob did not function properly. I also note the fob had not been replaced at that time. Indeed, T.K. testified the fob has not been replaced more than four months after the end of the tenancy. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim for \$72.80 to replace a mailbox lock, I find there is insufficient evidence to grant the relief sought. While I accept that the Tenants lost the mailbox key on three occasions during the tenancy, I was referred to no provision of the tenancy agreement, the *Act*, or the Policy Guidelines that obligates a tenant to replace a mailbox lock if a key is lost during the tenancy. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim for \$100.80 for 4 hours of professional cleaning services, I find there is insufficient evidence before me to grant the relief sought. The parties agreed that S.D.'s mother offered to address minor cleaning concerns during the move-out condition inspection but that the offer was refused. I find this was an unreasonable position for the Landlords to take and that by doing so the Landlords failed to minimize their damage or loss. This aspect of the Landlords' claim is dismissed.

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

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary award in the amount of \$163.75, which has been calculated as follows:

Claim	Allowed
Replace light bulbs:	\$27.97
Replace door chime cover:	\$35.78
Filing fee:	\$100.00
TOTAL:	\$163.75

Policy Guideline #17 confirms that an arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the *Act*, on a landlord's application to retain all or part of the security deposit, unless the tenant's right to the return of the deposit has been extinguished under the *Act*. In this case, no evidence was put before me to suggest the Tenants' right to the return of the security deposit had been extinguished. The Landlords hold a security deposit in the amount of \$1,150.00 and have established an entitlement to a monetary award in the amount of \$163.75. Setting off these amounts, and in accordance with section 67 of the *Act* and Policy Guideline #17, I find the Tenants are entitled to a monetary order in the amount of \$986.25 (\$1,150.00 - \$163.75).

Conclusion

The Tenants are granted a monetary order in the amount of \$986.25. 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 15, 2020

Residential Tenancy Branch