



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL, MNDCL-S

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on November 13, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenants attended the hearing at the appointed date and time. The Landlord stated that he served the Application and documentary evidence package to the Tenants by registered mail on November 26, 2019. The Tenants confirmed receipt on November 27, 2019. The Tenants stated that the Landlord should have served the Application within three days after submitting his Application. Regardless, the Tenants confirmed that they had time to review the Application, consider, and respond to the Application and evidence they received from the Landlord. As such, I find that the Landlord's Application and documentary evidence was sufficiently served to the Tenants pursuant to Section 88 and 89 of the Act.

The Tenants stated that the parties had a previous hearing and that they intended to rely on the same documentary evidence that they had served to the Landlord in the previous hearing. The Tenants confirmed that they did not re-send their documentary evidence to the Landlord in response to the Landlord's Application.

According to the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure"), 3.16 Respondent's proof of service indicates; at the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that

each applicant was served with all their evidence as required by the Act and these Rules of Procedure.

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. I accept that the Landlord did not receive the Tenant's evidence in response to the Landlord's Application; therefore, the only evidence I will consider from the Tenants is their oral testimony during the hearing.

The parties 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 to the rental unit, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on October 15, 2018. The Tenants were required to pay rent in the amount of \$1,200.00 to the Landlord each month. The Tenants paid a security deposit in the amount of \$750.00 which the Landlord continues to hold. The tenancy ended on April 15, 2019 when the Tenants vacated the rental unit.

The Landlord stated that he is seeking monetary compensation in the amount of \$12,500.00 to repair damage and to clean the rental unit following the end of the tenancy. The Landlord did not provide a monetary worksheet in preparation for the hearing.

The Landlord stated that he is seeking \$6,100.00 to repaint and repair drywall in the rental unit at the end of the tenancy. The Landlord stated that the cabinets were

damaged in the kitchen, the fridge had been scratched, the kitchen sink was clogged, damage to cabinets, raw chicken placed in the walls, a broken towel hanger, a broken laundry machine, as well as loss of rental income. The Landlord provided a receipt in the amount of \$6,100.00 in relation to painting the rental unit. The Landlord did not provide any further evidence to support the costs amounting to \$12,500.00.

In response, the Tenants denied causing any damage to the rental unit beside what could be considered reasonable wear and tear. The Tenants stated that they did not thoroughly clean the rental unit and felt as though \$300.00 would be a reasonable amount to compensate the Landlord for cleaning. The Tenants stated that they did not damage the walls or cabinets in the kitchen. The Tenants acknowledged that their young child scratched the floor in the kitchen, however the rest of the flooring throughout the rental unit was in good condition. The Tenants stated that the Landlord did not conduct a move in or move out condition inspection report with the Tenants. The Landlord stated that he had offered to do a move out condition inspection, but that the Tenants did not appear.

Analysis

Based on the 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.

The Landlord is claiming \$12,500.00 in relation to damage caused to the rental unit as well as for cleaning the rental unit following the end of the tenancy.

The Landlord provided a copy of an invoice in the amount of \$6,100.00 in relation to painting the rental unit and repairing the drywall in the kitchen and laundry room. In this case, I find that the Landlord provided insufficient evidence to support that the rental unit required repainting and that drywall required repairing. The Landlord did not provide a copy of a condition inspection report outlining the condition of the rental unit at the start of the tenancy, therefore, I am unable to determine that the Tenant caused damage to the walls and drywall. As such, I dismiss the Landlord's claim for \$6,100.00. without leave to reapply.

During the hearing, the Landlord stated that the fridge and floor had been scratched, the kitchen sink was clogged, damage to cabinets, raw chicken placed in the walls, a broken towel hanger, a broken laundry machine, as well as loss of rental income. I find that the Landlord provided insufficient evidence to support these claims. The Landlord failed to provide a monetary worksheet outlining the costs associated with repairing these items, or evidence to support the value of the loss. As such, I dismiss the above-mentioned claims without leave to reapply.

The Landlord stated that the rental unit was left dirty, however, the Landlord did not provide any evidence to support the value of the loss. The Tenants acknowledged that they did not clean the rental unit thoroughly and felt as though \$300.00 would adequately compensate the Landlord for cleaning costs associated to cleaning the rental unit. As such, I award the Landlord a monetary amount of \$300.00 for cleaning costs.

Having been partially successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain \$400.00 from the \$750.00 security deposit held in satisfaction of the claim ($\$750.00 - \$400.00 = \$350.00$)

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$350.00, which represents the remaining balance of their security deposit less the previously mentioned deductions.

Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$400.00 which has been deducted from the security deposit. The Tenants are granted a monetary order in the amount of \$350.00 which represents the remaining balance of the Tenants' security deposit. The order should be served to the Landlord as soon as possible and 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: April 03, 2020

Residential Tenancy Branch