



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNR, MNSD

Introduction

This hearing convened as a result of the Landlords' Application for Dispute Resolution wherein the Landlords requested monetary compensation pursuant to sections 38 and 67 and to recover the filing fee.

Only the Landlords appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord, L.F., testified that the Tenant provided written notice of the forwarding address to which to send her security deposit on January 5, 2016. The Landlords filed for Dispute Resolution on January 8, 2016 and served the Tenant with the Notice of Hearing and their Application on January 15, 2016 by registered mail to the address provided by the Tenant. L.F. testified that the Tenant signed for the registered mailing package.

Under the *Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of January 20, 2016 and I proceeded with the hearing in her absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this my Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. Should the Landlords be authorized to retain the Tenant's security deposit?

3. Should the Landlords recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began July 1, 2015. Monthly rent was payable in the amount of \$1,100.00 per month payable on the first day of the month. The Tenant paid a security deposit in the amount of \$550.00.

L.F. testified that the Landlords served a 1 Month Notice to End Tenancy for Cause on October 8, 2015. L.F. testified that the Tenant vacated the rental unit on November 1, 2015 after informing the Landlords on October 31, 2015 that she intended to leave the next day. Introduced in evidence was a copy of the Tenant's Notice.

L.F. testified that immediately prior to the tenancy beginning the rental unit was completely renovated. L.F. further testified that the Tenant did not clean the rental unit or the carpets as required by the *Residential Tenancy Act* and the tenancy agreement and that the rental unit was left in a condition requiring cleaning and repairs. Introduced in evidence were digital photos of the rental unit as well as the move out condition inspection report confirming the condition it was left by the Tenant.

L.F. testified that the Tenant self-cleaned the oven with the racks in place causing burning and warping of the metal which in turn required their replacement.

The Landlords also claimed \$1,100.00 in rent for November 2015 as they were not able to re-rent the unit until December 2015.

Introduced in evidence was a copy of the Monetary Orders Worksheet confirming the Landlords sought compensation for the following:

14 ³ / ₄ hours of cleaning at \$15.00 per hour	\$221.00
17 hours at \$20.00 per hour for sanding, repainting and repairing holes in walls	\$340.00
Replacement of oven racks	\$89.25
Loss of rent for November 2015	\$1,100.00
TOTAL CLAIMED	\$1,750.00

The Landlords also sought compensation for the \$50.00 filing fee for a total of \$1,800.00 as well as authority to retain the Tenant's security deposit.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim. In the case before me, I find the Landlords have met this burden.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the *Act* as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The Landlords submitted considerable documentary and digital evidence to support their claims that the rental unit was not cleaned as required by the *Act* and left damaged by the Tenant. L.F. also testified as to the condition of the rental. Based on the Landlords' undisputed testimony, I find they have met the burden of proving this portion of their monetary claim as follows:

14 $\frac{3}{4}$ hours of cleaning at \$15.00 per hour	\$221.00
17 hours at \$20.00 per hour for sanding, repainting and repairing holes in walls	\$340.00
Replacement of oven racks	\$89.25

I also grant the Landlords' request for loss of rent for November 2015 in the amount of \$1,100.00. I accept the Landlords' undisputed testimony that they were not able to re-rent the rental unit until December 2015. I find that the Tenant vacated the rental unit on November 1, 2015 providing the Landlords' only one day's notice; this, combined

with the need to clean and repair the rental unit, resulted in a loss of one month's rent to the Landlords.

The Landlords, having been successful in their application are also granted recovery of the \$50.00 filing fee paid for a total of \$1,800.00 in compensation.

I grant the Landlords authority, pursuant to section 38 of the *Residential Tenancy Act* to retain the Tenant's security deposit in the amount of \$550.00 and I grant them a Monetary Order for the balance due in the amount of **\$1,250.00**. The Landlords must serve the Monetary Order on the Tenant and may file and enforce the Order in the B.C. Provincial Court (Small Claims Division) if necessary.

Conclusion

The Landlords are granted compensation for the amounts claimed for cleaning and repairs of the rental unit as well as recovery of loss of rent for November 2015 and the filing fee. They may retain the Tenant's \$550.00 security deposit and are granted a Monetary Order for the balance due in the amount of **\$1,250.00**.

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: August 22, 2016

Residential Tenancy Branch