



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNDC MNSD OLC FF O

For the landlord: MND MNR MNSD MNDC FF SS

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (the “Applications”) under the *Residential Tenancy Act* (the “Act”).

The tenants applied for a monetary order in the amount of \$2,700.00 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for the return of all or part of the security deposit or pet damage deposit, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, for the recovery of the cost of the filing fee and other unspecified relief.

The landlord applied for a monetary order for \$3,700.00 for unpaid rent or utilities, for damages to the unit, site or property, to keep all or part of the security deposit or pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to serve documents in a different way than required by the *Act*, and to recover the cost of the filing fee.

The landlord provided supporting registered mail information that confirms that the tenants both signed for and accepted their respective registered mail packages on December 14, 2015. The registered mail tracking numbers are provided on the cover page of this Decision for ease of reference. The landlord stated that his updated claim in the amount of \$5,049.05 was served on the tenants however the landlord neglected to amend his Application in accordance with the Rules of Procedure which will be addressed below.

Preliminary and Procedural Matters

On July 5, 2016 I adjourned this matter to allow for the tenant to reserve her documentary and digital evidence and issued an Interim Decision dated July 6, 2016 with four orders which should be read in conjunction with this Decision.

The reconvened hearing was scheduled for Thursday, August 18, 2016 at 9:00 a.m., Pacific Time. The landlord attended the reconvened hearing, while the tenants did not attend the reconvened hearing. As the tenants did not attend the reconvened teleconference hearing to present the merits of their application, the tenants' application was **dismissed, without leave to reapply**, after the 10 minute waiting period had elapsed.

The hearing process was explained to the landlord and the landlord was given an opportunity was to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, was provided the opportunity to present his relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all 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.

I will now address the amount of the landlord's monetary claim. The landlord's Application states \$3,700.00 and he failed to properly amend his Application in accordance with Rule 4 of the Rules of Procedure. Even though the landlord testified that he served an updated monetary breakdown of his claim on the tenants, it does not change the fact that his Application was not properly amended and served on the tenants and as a result, I find the landlord's attempt to increase the amount of his monetary claim between the date he applied on December 9, 2015 and the date he served his evidence on December 11, 2015 is prejudicial to the tenants who have the right to rely on the landlord's Application. For the landlord to have successfully have amended his Application, he should have amended the monetary amount on the Application and re-served that on the tenants which he failed to do. As a result, I find the landlord's maximum monetary claim will be limited to \$3,700.00 as a result. The landlord is cautioned in the future not to attempt to claim more compensation than what is stated in the Application for Dispute Resolution.

As the landlord did not raise any issues related to his request to serve documents in a different way than required than the *Act*, that portion of the landlord's claim is dismissed.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

The landlord testified that a verbal month to month tenancy began on October 1, 2014 and ended on April 12, 2015 when the tenants vacated the rental unit. Monthly rent during the tenancy was \$900.00 per month and due on the first day of each month. The tenants paid a security deposit of \$60.00 which the landlord continues to hold.

As mentioned above, while the landlord's monetary claim below totals \$5,049.05, I am limiting the amount of the landlord's claim to the amount specified on this Application which is \$3,700.00.

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Labour bill for cleaning and re-grouting calculated at 85 hours at \$25.00 per hour	\$2,125.00
2. Chemical costs	\$120.00
3. Grout	\$79.05
4. Loss of rent for April 2015 due to extensive cleaning	\$900.00
5. 7 hours of time for dealing with emergency issue and the police and restoration	\$175.00
6. 1 hour of cleaning yard of dog feces	\$25.00
7. Grout sealer	\$125.00
8. Remove broken dishwasher and plumb sink	\$250.00
9. Sealing the walls covered with cat urine and repainting suite calculated at 35 hour at \$25.00 per hour, plus materials	\$1,250.00
TOTAL	\$5,049.05 which is reduced to <u>\$3,700.00</u> to reflect the amount claimed on the landlord's Application.

Regarding item 1, the landlord testified that without his permission, the tenants brought in a male unneutered cat that urinated throughout the rental unit during the tenancy which is supported by the texts, photos and witness statements submitted in evidence by the landlord. The landlord stated that the urine soaked into the tile grout and was also on the walls of the rental unit. The landlord stated that it took a total of 85 hours at \$25.00 per hour to clean, re-grout, re-seal the tiles, clean, treat and re-paint the walls to repair the damage cause by the tenants' cat. The landlord referred to two witness statements submitted in evidence in support of this claim from witness G.S. and witness E.B., but of which indicate that the landlord was working for weeks to clean the damage caused to the rental unit by the tenants' cat and the extent of the repair due to the large amount of cat urine in the rental unit.

Regarding item 2, the landlord stated that he was charging \$120.00 for the cost of chemicals to treat the cat urine in the rental unit. The landlord stated that the chemical is a decontamination fluid that is an anti-bacterial spray that contains live bacteria that eats urine (the "chemicals"). The landlord referred to his various credentials submitted in evidence as a master restoration technician. The landlord stated that as he has pre-purchased the chemicals for his employment, he was able to reduce the total cost to the tenants as he already had a five gallon container of the chemicals and is only charging the tenants for the amount used to clean and treat the rental unit.

Regarding item 3, the landlord testified that he used \$79.05 in grout he already had on hand to reduce the cost to the tenants which he used to repair the tile grout. The landlord stated that he had to chip the grout out of the tiles by hand as it was soaked with urine and that the tenants actually made the problem worse by attempting to clean the cat urine which resulted in spreading the cat urine over the entire tile surface which then soaked into the grout. The landlord testified that while he used over one box of grout, he is only charging the tenants for one box of grout and that the amount listed is what he pays at a popular home improvement store for a box of grout.

Regarding item 4, the landlord stated that he was unable to re-rent the rental unit for April 2016 due to the condition that the tenants left the rental unit in when they vacated and the amount of cleaning and repairs required. The landlord testified that he was not able to re-rent the rental unit until May 15, 2015. The landlord is seeking \$900.00 for the loss of April 2016 due to the damages caused by the tenants.

Regarding item 5, the landlord testified that he is claiming \$175.00 for 7 hours of his time spent troubleshooting an allegation by the tenants regarding a sewer problem when in fact the smell the tenants were complaining about was cat urine caused by the tenants' cat. Furthermore, the landlord stated that the police were called when the

tenants refused the landlord access after the landlord claims the tenants threatened to “rip the wall down” due to the alleged sewer problem. The landlord referred to a text submitted in evidence for this portion of his claim and stated that there was no problem with the sewer.

Regarding item 6, the landlord testified that he spent one hour cleaning dog feces from the yard after the tenants vacated the rental unit without cleaning up after their dog. The landlord referred to texts submitted in evidence in support of this portion of his claim. The amount claimed for this portion of the landlord’s claim is \$25.00.

Regarding item 7, the landlord testified that he is claiming \$125.00 for grout sealer used to re-seal the tiles after they were repaired and re-grouted. The landlord stated that in an effort to reduce the costs to the tenants, he estimated that he used 20% of a 5 gallon bucket of tile sealer that he had on hand and that \$125.00 reflects the 20% of his cost for a 5 gallon bucket of tile sealer.

Regarding item 8, the landlord reduced his original claim of \$250.00 for this portion of the landlord’s claim down to \$175.00 which represents a total of 7 hours at \$25.00 per hour comprised of three hours to remove the tap sets to remove the tenants’ broken dishwasher and four hours to load the broken dishwasher and for the return trip to transport the broken dishwasher to the dump.

Regarding item 9, the landlord testified that it took a total of 35 hours to repaint the rental unit at \$25.00 per hour and that the rental unit had just been repainted when the tenants moved into the rental unit. The landlord stated that the amount of \$1,250.00 was comprised of \$875.00 in labour, plus \$375.00 in material which included \$300.00 in paint designed as a paint sealer due to the cat urine, plus \$75.00 for paint rollers, drop sheets, and sandpaper.

Analysis

Based on the documentary evidence, the undisputed testimony of the landlord, and on the balance of probabilities, I find the following.

Test for damages or loss

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 in sections 7 and 67 of the *Act*. Accordingly, 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.

As the tenants were served with the Notice of Hearing, Application and documentary evidence and did not attend the adjourned hearing, I consider this matter to be unopposed by the tenants. As a result, and taking into account the landlord's undisputed testimony and documentary evidence I find the landlord's application is fully successful in the amount of **\$3,700.00** which as mentioned above, I find to be the maximum amount of the landlord's claim due to the landlord failing to properly amend his Application as required by Rule 4 of the Rules of Procedure. The remainder of the difference of the landlord's claim is dismissed without leave to reapply as Rule 2.9 of the Rules of Procedure does not permit the dividing of a claim.

I find the tenants breached section 37 of the *Act* which states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear**, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[my emphasis added]

As the landlord's application has merit, I grant the landlord the recovery of the filing fee in the amount of **\$50.00**. As a result, the landlord's total monetary claim is **\$3,750.00**.

The landlord continues to hold the tenants' security deposit of \$60.00 which has not accrued any interest to date. **I authorize** the landlord to retain the tenants' full security deposit of **\$60.00** in partial satisfaction of the landlord's monetary claim. I grant the

landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$3,690.00**. This amount is comprised of \$3,700.00, plus the \$50.00 filing fee, less the \$60.00 security deposit.

I caution the landlord to ensure all future tenancy agreements are in writing and comply with the *Act* and regulations.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord's application is successful to the maximum amount of the landlord's monetary claim listed on his Application which is \$3,700.00. The remainder of the difference of the landlord's claim is dismissed without leave to reapply.

The landlord has been authorized to retain the tenants' full security deposit of \$60.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$3,690.00 as described above. The landlord must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: September 6, 2016

Residential Tenancy Branch