



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENDALL PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on August 16, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order allowing the Landlord to keep all or part of the security deposit or pet damage deposit;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by J.M., who provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, J.M. testified that the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Tenant by regular mail on August 18, 2016. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to have been received five days later. I find the Tenant is deemed to have received the Landlord's Application package on August 23, 2016.

The Landlord was provided the 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. 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 an order allowing him to keep all or part of the security deposit or pet damage deposit?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlord submitted into evidence a copy of the written tenancy agreement between the parties. The agreement confirms a month-to-month tenancy began on February 1, 2016. Rent in the amount of \$1,250.00 per month was due on the first day of each month. The Tenant paid a security deposit to the Landlord in the amount of \$625.00, which the Landlord holds pending the outcome of this hearing.

On behalf of the Landlord, J.M. testified that the cleaning and repairs required at the end of the tenancy prevented the Landlord from re-renting the rental unit until August 3, 2016. Accordingly, the Landlord claimed \$89.00 for two days rent on a pro-rated basis. During the hearing, the calculation of pro-rated rent was discussed. It appeared that correct amount of pro-rated rent for the first two days in August should have been \$80.65 ($\$1,250.00 / 31 \text{ days} \times 2 \text{ days} = \80.65). J.M. agreed.

The Landlord also claimed for a number of expenses related to cleaning and minor repairs to the rental unit. Receipts and photographic evidence were provided in support of the following claims:

First, the Landlord claimed \$98.50 for general repairs that included replacing a lock that had been placed on a bedroom door, replacing a bi-fold door, and cleaning a stained toilet.

Second, the Landlord claimed \$25.00 to remove food from the fridge and garbage from the rental unit.

Third, the Landlord claimed \$183.75 for carpet cleaning. Referring to section 5(j) of the tenancy agreement, J.M. testified that carpet cleaning was required at the end of the tenancy. He also noted the poor condition of the rental unit at the end of the tenancy.

Fourth, the Landlord claimed \$150.00 for general cleaning. J.M. testified the Tenant left food in the fridge and garbage in the rental unit, did not clean the floors, and left old tires and a box of cat litter behind.

Fifth, the Landlord claimed \$46.80 to replace a deadbolt lock.

Finally, the Landlord wished to recover the \$100.00 filing fee paid to make the Application, and asked that the security deposit held be applied in satisfaction of the Landlord's claim.

Analysis

Based on the unchallenged and 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 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 whatever was reasonable to minimize the damage or loss.

In this instance, 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, they must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the claiming party did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 32 of the *Act* confirms that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout a rental unit, and must repair damage to the rental unit caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. However, a tenant is not required to make repairs for reasonable wear and tear.

J.M. testified the amounts claimed were actual expenses that have been incurred by the Landlord to clean and make repairs to the rental unit. I find that the claims described above are not reasonable wear and tear for which the Tenant would not be responsible. The Landlord's total claim, supported by affirmed testimony, documentary and photographic evidence, was for \$584.70. Accordingly, I find the Landlord is entitled to a monetary award in that amount.

Having been successful, I also find the Landlord is entitled to a monetary award of \$100.00 in recovery of the filing fee. The Landlord has requested that he be allowed to apply the security deposit (\$625.00) in satisfaction of the claim, which I allow.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$59.70, which has been calculated as follows:

Claim	Amount
Landlord's claim:	\$584.70
Filing fee:	\$100.00
<i>LESS</i> deposits:	(\$625.00)
TOTAL:	\$59.70

Conclusion

The Landlord is granted a monetary order in the amount of \$59.70. This 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: February 17, 2017

Residential Tenancy Branch

