



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on August 23, 2016 (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 permitting the Landlord to retain all or part of the security deposit or pet damage deposit in partial satisfaction of the Landlord's claim;
- an order for money owed or compensation for damage or loss under the *Act*, Regulations or a tenancy agreement;
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf and was accompanied by a witness, J.F. The Tenant attended the hearing on her own behalf. All parties giving evidence parties provided a solemn affirmation.

The Landlord testified that the Application package and documentary evidence were served on the Tenant by registered mail and in person. Although neither party could confirm dates for service or receipt, the documents received at the Residential Tenancy Branch were described and the Tenant acknowledged receipt of them. I find the Tenant was duly served with the Landlord's Application package and documentary evidence in accordance with the *Act*.

The Tenant testified that her documentary evidence package was served on the Landlord by registered mail on January 27, 2017. A Canada Post registered mail receipt was provided in support. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to have been received five days later. I find the Tenant's documentary evidence is deemed to have been received by the Landlord on February 1, 2017.

Both parties were represented at the hearing and were prepared to proceed. No issues were raised with respect to service or receipt of the packages described above. The parties were provided with 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.

Preliminary and Procedural Matters

The Landlord applied for an order permitting him to retain all or part of the security deposit and pet damage deposits in partial satisfaction of the claim. However, following a hearing on August 24, 2016, the Tenant was granted a monetary order in the amount of \$1,300.00. This amount represented a doubling of the security deposit and pet damage deposit pursuant to section 38 of the *Act*. Accordingly, pursuant to section 77(3) of the *Act* and the legal principal of *res judicata*, I decline to hear this aspect of the Landlord's claim. The deposits were dealt with at the hearing of August 24, 2016. This aspect of the Landlord's claim has not been considered further in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the unit, site or property?
2. Is the Landlord entitled to an 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 with his documentary evidence a copy of the tenancy agreement between the parties. It confirms the tenancy began on January 1, 2014. The parties agreed the tenancy ended on or about March 1, 2016, when the Tenant vacated the rental unit.

The Landlord claimed compensation in the amount of \$4,095.00 for damage to the rental unit. In support, he submitted a Monetary Order Worksheet which particularized the claim. Each of the items for which a claim was made was addressed in turn.

The Landlord claimed \$60.00 for three hours of labour to repair chips in the bathtub enamel. He testified that some of the chips were large, although no photographic evidence was submitted into evidence. The Tenant's witness testified that she saw the chips in the bathtub.

In reply, the Tenant disagreed with this aspect of the Landlord's claim. She testified that the bathtub was immaculate when she moved out of the rental unit, stating "I have no idea what he is talking about."

The Landlord claimed \$10.00 for labour to repair a bent ceiling fan. The Landlord testified he had to remove the fan, bend it into shape, and replace it. A photograph of the bent ceiling fan was submitted with the Landlord's documentary evidence.

In reply, the Tenant disagreed with this aspect of the Landlord's claim. She stated the ceiling fan was already loose and broken when she moved in and that she never used it.

The Landlord claimed \$2,500.00 for cleaning and painting of the interior of the house. He testified that three coats of paint were required to mask the smell of cigarette smoke and animals from the rental unit. He stated that cigarette smoke from the Tenant and a guest who stayed with her from December 2015 to the end of the tenancy smoked regularly in the rental unit. The Landlord testified the rental unit was last painted in 2011.

In support of the Landlord's claim for cleaning and painting costs, he submitted a type-written letter from M.W., a realtor, dated June 25, 2016. In it, M.W. describes a visit to the rental unit on January 27, 2016, during which she noted "a strong smell of pet odours and cigarette smoke." The letter goes on to confirm there "were three cats, one dog, and a rabbit pen" in the rental unit. In addition, the Landlord submitted a hand-written letter from S.H., in which she described the smell of tobacco smoke and urine during a walk-through with the Landlord on March 5, 2016. Finally, a receipt from the painter, dated April 27, 2016, was also provided in support.

In reply, the Tenant disagreed with this aspect of the Landlord's claim. She advised that she does not smoke and provided several written statements to that effect. However, she confirmed that friend stayed with her from December 2015 to January 2016, but that the friend never smoked inside the rental unit.

The Landlord claimed \$65.00 for labour to clean rat feces and urine from around a hot water tank. A photograph of the hot water tank was submitted with the Landlord's documentary evidence. The Landlord stated he had to purchase a vacuum, which he threw away after cleaning the rat feces, but has not made a claim for this expense. He testified he had never before been advised of a rat problem in the rental unit.

In reply, the Tenant disputed this aspect of the Landlord's claim. She testified that the Landlord was made aware of the rat problem months before the tenancy ended, and that the Landlord was aware of steps she had taken to resolve the problem which included poison, traps and a sonar device. The Tenant also testified that the rental property has no foundation suggesting this contributed to a rat problem.

The Landlord claimed \$180.00 for window coverings he says were removed by the Tenant. He stated that in the past, Tenants have replaced the existing coverings but usually left them behind when they moved on. In this case, the Landlord stated no window coverings were left by the Tenant.

In reply, the Tenant disagreed with this aspect of the Landlord's claim. She stated that the previous tenant, a former co-worker, told the Tenant the window coverings were hers and that the Tenant could do what she wanted with them. Accordingly, The Tenant removed them and gave them to a charitable organization, replacing them with her own. The Tenant acknowledged she took her window coverings with her when the tenancy ended.

The Landlord claimed \$290.00 from the pet damage deposit. However, as noted above in "Preliminary and Procedural Matters", this aspect of the Landlord's claim has not been addressed pursuant to section 77(3) of the *Act* and the legal principal of *res judicata*.

Finally, the Landlord claimed \$890.00 for loss of rent for one month. He testified that he should have claimed for two months but did not. In any event, the Landlord confirmed he did not take any steps to re-rent the property, having made the decision to sell the property in June 2016. According to the Landlord, the rental property sold in late 2016.

In reply, the Tenant disputed this aspect of the Landlord's claim. She testified that the Landlord always intended to sell the rental property, as evidenced by the notice to end tenancy for landlord's use of property, described above, which was followed by a notice to end tenancy for cause dated January 30, 2016.

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 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.

With respect to the Landlord's claim for \$60.00 for labour to repair chips in the bathtub enamel, I find the Landlord has not provided sufficient evidence – such as photographs or a move-in condition inspection report – to establish the Tenant caused damage to the bathtub as claimed, which damage the Tenant denied.

With respect to the Landlord's claim for \$10.00 for labour to repair a bent ceiling fan, I find there is insufficient evidence before me to conclude the Tenant caused the damage to the ceiling fan as claimed, which was denied by the Tenant.

With respect to the Landlord's claim for \$2,500.00 for cleaning and painting of the interior of the house, I find the cigarette smoke and other odours in the rental unit were caused by the Tenant and/or her guest. Although the Tenant denied she has smoked in the rental unit, the letters submitted with the Landlord's documentary evidence confirm a strong smell of smoke, animals and urine during inspections in January and March 2016. Further, the Landlord submitted an invoice in support of this aspect of the claim. Although the Landlord testified that the rental unit had not been painted since 2011, I am satisfied that the smells in the rental unit were caused by the Tenant and her guest, and that three coats of paint were required to eliminate the odours. Accordingly, I grant the Landlord a monetary award of \$2,500.00.

With respect to the Landlord's claim for \$65.00 for labour to clean rat feces and urine from around a hot water tank, section 32 of the *Act* states: "A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access." In this case, the Landlord submitted photographic evidence of feces around the hot water tank, left behind after the Tenant vacated the rental unit. Although the Tenant testified she advised the Landlord of a rat problem, I find she did not maintain reasonable health, cleanliness and sanitary standards. Accordingly, I find the Landlord is entitled to the amount sought.

With respect to the Landlord's claim for \$180.00 to replace window coverings removed by the Tenant, I find the Landlord provided the Tenant with a rental unit that included window coverings, but that the Tenant removed the window coverings when she vacated the rental unit. However, the Landlord provided no receipt with his documentary evidence. Accordingly, I find the Landlord has not demonstrated the value of the loss he incurred. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim to recover \$290.00 from the pet damage deposit, this aspect of the Landlord's claim has not been addressed pursuant to section 77(3) of the *Act* and the legal principal of *res judicata*, as noted above.

With respect to the Landlord's claim for \$890.00 for loss of rent for one month, I am not satisfied the Landlord did what he could to mitigate his losses, if any. This is because the tenancy ended as a result of a notice to end tenancy that he issued. In addition, he testified he did not make any attempt to re-rent the property. Accordingly, he did not take steps to mitigate his loss. This aspect of the Landlord's claim is dismissed.

Having been partially successful, I grant the Landlord recovery of the \$100.00 filing fee paid to make the Application. Accordingly, pursuant to section 67 of the Act, I grant the Landlord a monetary order in the amount of \$2,665.00, which has been calculated as follows:

| Item | Amount |
|------------------------|-------------------|
| Cleaning and painting: | \$2,500.000 |
| Cleaning rat feces: | \$65.00 |
| Filing fee: | \$100.00 |
| TOTAL: | \$2,665.00 |

Conclusion

The Landlord is granted a monetary order in the amount of \$2,665.00. 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: March 9, 2017

Residential Tenancy Branch