



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on September 29, 2016 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Tenants attended the hearing on their own behalves, as did the Landlord. All parties giving testimony provided a solemn affirmation.

The Tenants testified that the Application package, which included the Notice of a Dispute Resolution Hearing and documentary and digital evidence, was served on the Landlord by registered mail on October 2, 2016. The Landlord confirmed she had received the Tenants' Application package and had been able to view the digital evidence. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Landlord was served with the Tenants' Application package on October 7, 2017. The Landlord did not submit any documentary evidence in response to the Tenants' Application.

No issues were raised with respect to service or receipt of the Tenants' Application package. The parties were given an 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. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order compelling the Landlord to return all or part of the security deposit or pet damage deposit?
3. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The Tenants submitted into evidence copy of the tenancy agreement between the parties. The tenancy began on March 1, 2010. It ended on February 29, 2016, after the Tenants provided the Landlord with a written notice to end the tenancy, dated January 31, 2016. Rent in the amount of \$1,931.25 per month was due on the first day of each month. The Tenants paid deposits totalling \$1,800.00.

The Tenants seek compensation from the Landlord, which was summarized on a Monetary Order Worksheet, dated September 29, 2016. First, the Tenants claimed \$900.00 from the Landlord, alleging she returned only \$900.00 from the security and pet damage deposits after they provided the Landlord with their forwarding address in writing on February 29, 2016. In support, the Tenants submitted a digital image of an envelope with the forwarding address written on it. The Tenants confirmed they recently received the balance of the security deposit and that this amount is no longer outstanding.

In reply, the Landlord testified she did not return the full amount of the deposit until recently because she was unsure of the total amount the Tenants had paid as a deposit. She thought it unusual that the Tenants were requesting \$1,800.00, which was the amount of monthly rent paid at the beginning of the tenancy, and she knew that the security deposit should only be half a month's rent. However, she confirmed that the balance of the security deposit, or a further \$900.00, has very recently been returned to the Tenants.

Second, the Tenants sought \$800.00 for moving costs. The Tenants testified that problems with the rental unit resulted in the decision to end the tenancy. In a letter dated January 31, 2016, the Tenants stated:

We, [the Tenants]...hereby give out one month Notice to End Tenancy for said property. This is due to the dangerous disrepair of the deck railing, the leaky roof over the garage, the water damages associated with that and the unsuccessful repair. We find our living space reduced too much and have decided to move.

[Reproduced as written.]

In reply, the Landlord testified to her belief that she should not be responsible for the Tenants' moving costs. She advised that the tenants left the property voluntarily while their concerns were being addressed.

Third, the Tenants claimed \$800.00 in property damage and loss as a result of a water leak, and that the losses were a result of the Landlord's failure to deal with their concerns. Further, the Tenants claimed some of their losses were a result of the poor quality of the work performed by the Landlord's contractor. A list of items already submitted to the Tenants' insurer was provided with their documentary evidence. The list includes, but is not limited to, a replacement dehumidifier, phones, a winch, prototypes, memorabilia, clothes, and archived client counselling records.

The Tenants also provided copies of receipts for various items including a dehumidifier, tarp, tarp straps, a tape measure, and tubing. Some of these items were used to address the water leak. Also included were screen prints confirming the retail price to replace other items the Tenants say were damaged. In addition, the Tenants advised that mice in the rental unit became a problem and that the Tenants were running out of space to store their belongings. Further, the Tenants confirmed there is an open file with their insurance company, but they have not yet been reimbursed for their losses.

In reply, the Landlord testified that the issues raised by the Tenants were being addressed by a contractor and the rental property was not being neglected as alleged. The Landlord also submitted that the Tenants are not qualified to make an assessment of the quality of the work completed by the Landlord's contractor.

Finally, the Tenants sought to recover rent for the month of February 2016 because of the difficulties they claim to have experienced.

In reply, the Landlord submitted that the Tenants submitted written notice and left voluntarily. She testified that the repair work was completed and that she still owns the rental property.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, 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 Tenants 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 Landlord. Once that has been established, the Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Tenants' claim to recover \$900.00 withheld by the Landlord, the parties agreed the outstanding amount was recently paid to the Tenants. However, the parties also agreed the Tenants provided the Landlord with their forwarding address in writing on February 29, 2016. Pursuant to section 38(1) of the *Act*, the Landlord had until March 15, 2016, to return the deposit to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlord did neither. Rather, the Landlord retained half of the deposit, or \$900.00, because she was unsure of the amount of the deposit paid by the Tenants.

Section 38(6) of the *Act* stipulates that, if a landlord does not comply with section 38(1), the landlord may not make a claim against the security deposit, and *must* pay the tenant double the amount of the security deposit. This is repeated in Residential Tenancy Branch Policy Guideline 17(B)(11), which states:

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

Policy Guideline 17(C)(5) provides examples to illustrate the ways in which a security deposit may be doubled. In these circumstances, I find that "Example A" is the most appropriate. Based on this example, I find the Tenants are entitled to an award of \$1,800.00, which has been calculated as follows:

	\$3,600.00	(\$1,800.00 x 2)
<u>LESS</u>	<u>\$1,800.00</u>	(amount already returned to Tenants)
TOTAL:	\$1,800.00	

With respect to the Tenants' claim to recover moving costs, I find that this aspect of the claim is not compensable. The Tenants voluntarily chose to vacate the rental unit and gave the Landlord written notice of their intention to do so while their concerns were being addressed.

With respect to the Tenants' claim to recover \$800.00 in property loss, I find there is insufficient evidence before me to conclude they are entitled to recover this amount. There is insufficient evidence of the damage claimed and which confirms such damage was a result of the Landlord's violation of the *Act*, regulations or the tenancy agreement. Indeed, the parties confirmed the Landlord sent someone to deal with the water leak, although not to the Tenants' satisfaction.

In addition, the Tenants acknowledged an open insurance claim with respect to the property they claim was damaged. To compensate the Tenants for these losses would amount to double recovery.

With respect to the Tenants' claim to be reimbursed \$1,931.25 for rent paid for the month of February 2017, I am not satisfied the Tenants have demonstrated an entitlement to this amount. The Tenants voluntarily vacated the rental unit after giving the Landlord written notice of their intention to do so.

Having been partially successful, I find the Tenants are also entitled to recover \$100.00 from the Landlord in satisfaction of the filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$1,900.00, which is comprised of \$1,800.00 on account of the security deposit withheld by the Landlord, and \$100.00 as recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$1,900.00. 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: April 18, 2017

Residential Tenancy Branch