



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNR, MNSD, FF

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the security deposit and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of the security deposit and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance, I confirmed that there were no issues with service of the tenant's application for dispute resolution, the landlord's application for dispute resolution or the respective evidentiary materials. The parties confirmed receipt of each other's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the respective applications and evidence.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for damages as claimed?

Are the landlords entitled to retain the security deposit and pet damage deposit? If not is the tenant entitled to a monetary award equivalent to double the value of the security deposit and

pet damage deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?

Is either party entitled to recover the filing fee for this application from the other?

Background and Evidence

The parties agreed on the following facts. The tenant began residing in the rental unit in December, 2015. The landlords purchased the rental unit including the existing tenancy agreement from the previous owner in July, 2016. The tenancy ended on January 15, 2017, the date when the tenant vacated the rental unit. The monthly rent at the end of the tenancy was \$1,600.00. The tenant was also responsible for paying half of the utilities for the building. A security deposit of \$800.00 and a pet damage deposit of \$800.00 were paid by the tenant at the start of the tenancy and are still held by the landlords. The parties were uncertain if a condition inspection report was prepared at the start by the previous landlord and the tenant. The parties agreed that no condition inspection report was prepared at the end of the tenancy.

The tenant testified that she was made to vacate the rental unit on January 15, 2017 without an opportunity to clean the unit or perform a condition inspection. The tenant said that she hurried out of the rental unit on that day and was unable to retrieve her patio furniture cushions from the rental unit. The tenant submitted into written evidence a copy of a letter dated January 19, 2017 where she provides her forwarding address to the landlords. The tenant claims \$80.00 for the replacement of the patio furniture cushions as well as a return of the security and pet damage deposits.

Both landlords testified that the tenant was invited to participate in the inspection of the unit on January 15th but she declined to do so. The tenant testified that she felt bullied by the landlords as they demanded she vacate the rental unit that day and she chose to remain in her vehicle outside of the rental unit while the landlords inspected the rental unit. The tenant said that the landlords invited her into the rental unit a second time to inspect the damage they found but she chose not to engage in further communication with the landlords.

The landlords seek a monetary award in the amount of \$1,668.94 under the following heads of damage:

Item	Amount
50% of BC Hydro and Fortis BC Utility Bills	\$448.79
Carpet Cleaning	\$403.15
Kitchen Cleaning	\$317.00
Repairs to Rental Unit	\$400.00
Replacement of Burnt Out Lightbulbs	\$100.00
Total	\$1,668.94

The parties agreed that the amount of \$448.79 is owed by the tenant for payment of half of the utilities for the tenancy.

The landlords said that the rental unit required considerable cleaning and repairs. In addition to cleaning themselves, the landlords hired a third party cleaning company to perform work on the unit. The landlords said that a team of two professional cleaners took approximately 4.5 hours to clean for a total cost of \$317.00. The landlords provided a record of an e-transfer to the cleaning service as evidence in support of their claim. The landlords said that the tenant left trash on the rental premises which cost \$50.00 to have it removed. The landlords testified that the garbage box lid was broken and the cost of repair was \$50.00. The landlords said that the tenant's cat damaged the walls of the rental unit, particularly around the windows, as well as to the screen window and the cost of repairs is \$300.00. The landlords testified that the carpets were damaged and would require professional carpet cleaning. The landlord submitted into written evidence an estimate provided by a carpet cleaning company in the amount of \$403.15. The landlords said that several lightbulbs in the rental unit had burnt out and needed to be replaced. The landlords said that the lightbulbs in the hallway and half of the bulbs in the chandelier were burnt out and required replacement.

The tenant disagreed with the landlords' assessment of the damage to the rental unit. The tenant testified that while there had been some spills on areas of the carpet during the tenancy, she disagreed that it required carpet cleaning. The tenant said that the lightbulbs in the rental unit were burnt out at the start of the tenancy and not caused by the tenant. She disagreed that there was any damage to the walls of the rental unit and disputed the photographs submitted into written evidence by the landlords as showing a different unit. She said that the cleaning costs are excessive. The tenant said that the rental unit was left in a clean condition and the landlords prevented her from additional cleaning by forcing her out on the agreed upon tenancy end date.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage deposit in full or file for dispute resolution for authorization to retain the deposits 15 days after the later of the end of a tenancy and or upon receipt of the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit and pet damage deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a).

I accept the tenant's evidence that the tenant provided the landlords with a forwarding address in writing by the letter dated January 19, 2017. Pursuant to section 88 and 90 of the *Act* I find

that the forwarding address was deemed received by the landlords on January 22, 2017, three days after posting. I find that the landlords made their application claiming against the security deposit and pet damage deposit on February 6, 2017, during the 15 day time frame granted under section 38(1)(c) of the *Act*.

Section 35 of the *Act* outlines the requirement for the landlord and tenant to inspect the condition of the rental unit at the end of the tenancy. The *Act* provides that the landlord must offer the tenant at least 2 opportunities for the inspection. Regulations 16 and 17 provide that the parties must attempt in good faith to agree on a date and time for a condition inspection. I accept the parties' evidence that the tenant was given an opportunity to participate in a condition inspection on January 15, 2017 and she chose not to do so. I find that the tenant failed to attempt in good faith to propose an alternative time for an inspection. I find that the landlords made reasonable efforts to provide the tenant with two opportunities to participate in a condition inspection. Consequently, pursuant to section 36(1) of the *Act* I find that the tenant has extinguished any right to claim against the security deposit and pet damage deposit by failing to participate in a condition inspection at the end of the tenancy.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Pursuant to section 7(2) of the *Act* the claimant must take reasonable steps to attempt to minimize the damage or loss.

Based on the undisputed testimony of the parties I find that the tenant was obligated to pay 50% of the BC Hydro and Fortis BC utility bills. I accept the parties' evidence that the total amount payable is \$448.79. I issue a monetary award in the landlord's favour in the amount of \$448.79 for the utility bills.

I accept the evidence of the landlord that the carpets required cleaning. The tenant testified that there were spots where her family spilled some liquids on the carpet. Based on the evidence I find that the carpets required cleaning and I issue a monetary award in the landlord's favour in the amount of \$403.15.

I accept the landlord's evidence that the kitchen required cleaning. The tenant testified that due to the sudden demand that she vacate the rental unit she did not have the opportunity to clean. Based on the evidence including the testimony of the parties and the photographs submitted into written evidence I find that the rental unit required cleaning and issue a monetary award in the amount of \$317.00 in the landlord's favour.

I find that there was damage to the rental unit caused by the tenant's pet. I do not find the tenant's position that the photographs submitted into written evidence are not of the rental unit to be particularly credible. I accept the landlord's evidence that the rental unit was damaged and required repairs and issue a monetary award in the amount of \$400.00 in the landlord's favour under this head of damages.

I do not find the tenant's testimony that the lightbulbs in the rental unit were burnt out at the start of the tenancy to be credible. This was a tenancy that lasted over a year. I do not find it credible that the tenant would have accepted the condition of the rental unit and lived in partial darkness throughout the tenancy. I accept the landlord's evidence that the lights required replacement and issue a monetary award in the amount of \$100.00 under this head, accordingly.

Section 37(1) of the Act provides that unless the parties otherwise agree, the tenant must vacate the rental unit by 1 pm on the day the tenancy ends. I find that the tenancy end date was agreed upon by the parties and find insufficient evidence in support of the tenant's position that she was bullied out of the rental unit without sufficient opportunity to clean the rental unit herself. Furthermore, I find that there is insufficient evidence in support of the tenant's claim for \$80.00 for the cost of the patio furniture cushions that she did not remove from the rental property. I find there is insufficient evidence showing why the tenant was unable to move the items prior to the tenancy end date, on the date the tenancy ended, or to make arrangements to retrieve them from the landlords. The tenant did not provide any written evidence in support of the value of the furniture cushions. Consequently, I dismiss this portion of the tenant's claim.

As the landlords were primarily successful in their application, they are entitled to recovery of the \$100.00 filing fee. As the tenant was not successful in her application, I find she is not entitled to recovery of the filing fee.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain \$1,600.00 of the tenant's security deposit and pet damage deposit in partial satisfaction of this monetary award.

Conclusion

The tenant's application is dismissed.

I issue a monetary award in the landlord's favour in the amount of \$168.94 under the following terms, which allows the landlords to recover the damage and loss suffered and the filing fee for their application:

Item	Amount
50% of BC Hydro and Fortis BC	\$448.79

Utility Bills	
Carpet Cleaning	\$403.15
Kitchen Cleaning	\$317.00
Repairs to Rental Unit	\$400.00
Replacement of Burnt Out Lightbulbs	\$100.00
Filing Fees	\$100.00
Less Security Deposit	-\$1,600.00
Total	\$1,68.94

The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: June 7 2017

Residential Tenancy Branch