



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on November 3, 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;
- a monetary order for unpaid rent or utilities;
- an order that the Landlord be permitted to retain all or part of the pet damage deposit or security deposit;
- an monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on her own behalf, as did the Tenants. All parties provided a solemn affirmation.

The Landlord testified the Application package was served on the Tenants by registered mail on November 8, 2016. In support, the Landlord submitted a Canada Post registered mail receipt. 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 Tenants are deemed to have received the Landlord's Application package on November 13, 2016.

The Tenants submitted documentary evidence in response to the Landlord's Application. K.B. testified the documentary evidence was served on the Landlord by registered mail on May 3, 2017. Pursuant to sections 88 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Tenants' documentary evidence is deemed to have been received by the Landlord on May 8, 2017.

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 history of this matter has not proceeded smoothly. The parties agreed the tenancy ended on or about March 31, 2016. The Tenants subsequently filed an application for dispute resolution at the Residential Tenancy Branch. In a decision dated September 19, 2016, an arbitrator at the Residential Tenancy Branch granted the Tenants a monetary order in the amount of \$4,100.00. The file number for the previous proceeding is referenced on the cover page for ease of reference. The Tenants subsequently made an application to the Provincial Court of British Columbia. In an Application Record/Order, dated November 15, 2016 (the "Provincial Court Order"), Gordon J.J. ordered the Landlord to pay \$2,050.00 to the Tenants, which she did. The balance of \$2,050.00 was to be held in abeyance pending the outcome of this Application. The parties confirmed that my summary accurately reflects the history of the proceedings.

The issue of the security deposit was dealt with in the arbitrator's decision referenced above. I find that due to section 77(3) of the *Act* and the legal principal of *res judicata*, I cannot grant the Landlord's request to retain all or part of the security deposit and pet damage deposit as this matter was already heard and decided upon at the hearing of September 19, 2016.

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 a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on April 1, 2015 and ended on March 31, 2016. Rent was due in the amount of \$2,000.00 per month. The Tenants paid a security deposit of \$1000.00 and a pet damage deposit of \$1,000.00.

The Landlord made a number of claims that were summarized on a Monetary Order Worksheet dated November 1, 2016. First, the Landlord claimed \$300.00 for general cleaning she completed in the rental unit. This was based on 10 hours of cleaning at \$30.00 per hour, which is the rate charged by her cleaner. The Landlord testified she had to clean cupboards, remove dust from vents, scrub appliances, and remove floor cleaner from the walls. The Condition Inspection Report, signed by K.B., also confirmed the Tenants were responsible for “exterior windows not cleaned...interior walls not cleaned”.

In reply, K.B. disagreed and testified that there were a number of items added to the condition inspection report after he signed it. These items were circled in the copy submitted into evidence by the Tenants. The Landlord acknowledged these were added after the Condition Inspection Report was completed. The additional items identified by the parties have not been considered part of the Condition Inspection Report for the purposes of this Decision.

In reply to the Landlord’s claim to recover cleaning costs, K.B. testified the Tenants cleaned the rental unit at the end of the tenancy.

Second, the Landlord claimed \$677.47 in unpaid utilities. She testified that late payment of utilities was a “chronic issue” throughout the tenancy. In support, I was referred to a Utility Bill for \$172.92, dated May 15, 2015. Although the Landlord’s documentary evidence included what appeared to be a receipt confirming payment of the balance of \$504.55, no invoice was submitted.

In reply, K.B. advised there was a leak in the sprinkler system that accounted for the higher usage. He agreed a more reasonable amount would be half of what the Landlord claimed, or \$338.74.

Third, the Landlord claimed \$1,230.00 to remove polish/wax from hardwood flooring in the rental unit. The Condition Inspection Report, signed by K.B., confirmed the Tenants were responsible for “hardwood floors – liquid polish put on eurothane flooring”. According to the Landlord, the floors had been re-finished two years before the Tenants moved into the rental unit. The Landlord submitted with her documentary evidence an email quote for the amount sought, dated October 20, 2016. However, she acknowledged the work has not yet been completed due to illness and financial issues.

In reply, K.B. testified they did not use polish/wax but applied a cleaner called Rejuvenate Restorer. Submitted with the Tenants' documentary evidence was an information sheet providing instructions for the removal of the product. It suggests the use of an ammonia free glass cleaner, to be applied in 4 foot by 4 foot sections. K.B. did not dispute that the product should be removed.

Fourth, the Landlord claimed \$550.00 for furniture removal and storage while the polish/wax is being removed. Again, the Landlord acknowledged this expense has not been incurred.

In reply, K.B. disagreed with this aspect of the Landlord's claim as the expense has not been incurred.

Fifth, the Landlord claimed \$57.25 to have a professional carpet cleaner remove stains from the bedroom carpet. The Landlord confirmed this expense has not been incurred, but that she used a steam cleaner. There was no reference to carpet stains on the Condition Inspection Report signed by K.B.

In reply, K.B. testified there were no stains on the bedroom carpet, referring me to a photographic image depicting the bedroom. Although the image presented a limited view of the bedroom, no stains are apparent.

Sixth, the Landlord claimed \$188.10 to clean and sanitize mold in the shower stall. A copy of a photographic image of the shower stall was submitted with the Landlord's documentary evidence. The Condition Inspection Report, signed by K.B., confirmed the Tenants acknowledged responsibility for "tiles in bathroom".

In reply, K.B. testified during the hearing that he didn't believe there was mold in the shower stall.

Seventh, the Landlord claimed \$150.00 for damage to aging drapes that she believed to be pet urine. In support, the Landlord submitted a copy of a photographic image of the drapes. The Landlord stated she cannot clean the drapes due to their age, but that she needs to spend thousands of dollars to replace them.

In reply, K.B. testified that the stain depicted in the photograph does not appear to be caused by a pet. Further, he noted there was no reference to a stain on the drapes in the Condition Inspection Report he signed. The Landlord agreed that the reference to drapes was added to the Condition Inspection Report after it was signed.

Eighth, the Landlord claimed \$100.00 for an oil stain on the driveway made up of aggregate. She testified that the oil stain appears where the Tenants parked their vehicle. Although she has tried to clean the stain, she cannot remove it. She seeks \$100.00 as a contribution to her costs.

In reply, K.B. referred to having power washed moss from around the rental unit at the beginning of the tenancy but did not otherwise dispute this aspect of the Landlord's claim.

Ninth, the Landlord claimed \$2,347.64 to re-sand the hardwood floors because of "substantial scratches" she submitted were caused by the Tenants' pet. In support, the Landlord submitted an email quote that suggested the cost would be much higher if the flooring had to be replaced. The Landlord acknowledged there was no reference to the scratches in the Condition Inspection Report signed by K.B.

Tenth, the Landlord claimed \$131.50 for window cleaners to remove pet nose prints from the interior windows. A receipt was provided in support. The Condition Inspection Report signed by K.B. makes no reference to pet nose prints on windows.

In reply, K.B. disagreed with this aspect of the claim and testified that the rental unit was cleaned when the Tenants vacated.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Application.

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 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 \$300.00 for cleaning the rental unit, I find this is a reasonable expense. The Tenant disputed only the items added to the Condition Inspection report after it was signed by K.B.

With respect to the Landlord's claim for \$677.47 in unpaid utilities, I find there is insufficient evidence before me that the amount claimed was due as a result of the Tenants' consumption. The Landlord did not dispute a leak in the sprinkler system that may have contributed to increased use. However, K.B. agreed a more reasonable amount would be half of what the Landlord claimed, or \$338.74, and I grant the Landlord and award in that amount.

With respect to the Landlord's claim to recover \$1,230.00 to remove polish/wax from hardwood flooring in the rental unit, I find the Landlord is entitled to an award in this amount. Although the work has not been done, the Landlord indicated this was due to illness and finances. Further, K.B. did not dispute applying a product to the floor, and his own evidence confirmed a time-consuming process for removal. K.B. did not dispute that the product should be removed.

With respect to the Landlord's claim to recovery \$550.00 for furniture removal and storage while the polish/wax is being removed, I find there is insufficient evidence to confirm the Landlord is entitled to this amount. There was insufficient evidence that furniture that needs to be removed to complete the work.

With respect to the Landlord's claim to recover \$57.25 to have a professional carpet cleaner remove stains from the bedroom carpet, I find there is insufficient evidence before me to conclude the Landlord is entitled to recover this amount. Indeed, the Landlord confirmed that this modest expense has not been incurred more than a year after the tenancy ended. I also note there was no reference to carpet stains on the Condition Inspection Report signed by K.B.

With respect to the Landlord's claim to recover \$188.10 to clean and sanitize mold in the shower stall, I find there is sufficient evidence before me to grant the Landlord this amount. Specifically, the Condition Inspection Report, signed by K.B., confirmed the Tenants acknowledged responsibility for "tiles in bathroom".

With respect to the Landlord's claim to recover \$150.00 for damage to aging drapes, I find there is insufficient evidence before me to conclude the Landlord is entitled to this amount. There was insufficient evidence before me of attempts to clean the drapes, or of the reason the drapes could not be cleaned in a traditional manner. I also note that the reference to drapes is an item that was added to the Condition Inspection Report after it was signed by K.B.

With respect to the Landlord's claim to recovery \$100.00 for an oil stain on the driveway, I find there is insufficient evidence of the amount of the loss incurred by the Landlord. Indeed, the Landlord testified she was seeking a contribution to cleaning costs.

With respect to the Landlord's claim to recovery \$2,347.64 to re-sand the hardwood floors because of "substantial scratches", I find there is insufficient evidence of the scratches to grant an award in this amount. I also note that the Landlord acknowledged there was no reference to the scratches in the Condition Inspection Report signed by K.B.

With respect to the Landlord's claim to recover \$131.50 for window cleaners to remove pet nose prints from the interior windows, I find there is insufficient evidence to satisfy me the Landlord is entitled to this amount. The Landlord has already been compensated for cleaning in the amount of \$300.00, above. Again, the Condition Inspection Report signed by K.B. makes no reference to pet nose prints on windows.

Having been partially successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Accordingly, pursuant to section 67 of the *Act*, I grant the Landlord a monetary award in the amount of \$2,156.84, which has been calculated as follows:

Claim	Allowed
Cleaning:	\$300.00
Unpaid utility charges (as agreed by K.B.):	\$338.74
Remove cleaner from flooring:	\$1,230.00
Clean shower stall:	\$188.10
Filing fee:	\$100.00
TOTAL:	\$2,156.84

However, pursuant to the Provincial Court Order, dated November 15, 2016, the Landlord is already in possession of \$2,050.00, which represents half of the amount awarded to the Tenants in a Residential Tenancy Branch order dated September 19, 2016. I order that the Landlord may retain the \$2,050.00 held pursuant to the Provincial Court Order in partial satisfaction of the Landlord's claim. Accordingly, I find the Landlord is entitled to a monetary order for the difference in the amount of \$106.84, which has been calculated as follows:

Claim	Amount
Amount awarded to Landlord by RTB:	\$2,156.84
LESS amount retained by Landlord pursuant to Provincial Court Order:	\$2,050.00
TOTAL:	\$106.84

Conclusion

The Landlord is granted a monetary order in the amount of \$106.84. 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: July 19, 2017

Residential Tenancy Branch