



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, dated March 9, 2017 (the "Application"). The Landlord 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 allowing the Landlord to keep all or part of the pet damage deposit or security deposit; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by C.M., an agent. The Tenants attended the hearing in person. However, they did not participate in the hearing directly because of their proficiency in English. Accordingly, they were represented at the hearing by S.A., a friend who provided translation services. All parties giving oral testimony provided a solemn affirmation.

On behalf of the Landlord, C.M. testified the Application package was served on each of the Tenants by registered mail on March 13, 2017. The Tenants acknowledged receipt. Pursuant to section 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. I find the Tenants are deemed to have received the Application package on March 18, 2017. The Tenants did not submit any documentary evidence in response to the Landlord's Application.

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 Application discloses a claim to recover \$640.00 for damage to the rental unit. The claim was also summarized on a Monetary Order Worksheet, dated March 13, 2017, which describes a slightly higher monetary claim of \$682.83. As the Tenants have been deemed to have received the Application package on March 18, 2017, I find the Tenants have been provided with full particulars of the Landlord's claim, in accordance with section 59 of the *Act*, and are not prejudiced by considering the amount claimed on the Monetary Order Worksheet. Accordingly, I amend the Application to reflect the higher amount, pursuant to section 64 of the *Act*.

Issue to be Decided

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

Background and Evidence

The Landlord submitted a copy of the tenancy agreement between the parties into evidence. It confirmed the fixed-term tenancy began on March 1, 2016. The tenancy ended when the Tenants vacated the rental unit on February 28, 2017. During the tenancy, and pursuant to a Rental Incentive Agreement, submitted with the Landlord's evidence, the Tenants paid rent in the amount of \$748.00 per month. The Tenants also paid a security deposit of \$400.00, which the Landlord holds.

First, the Landlord sought to recover \$328.65 for labour and \$314.18 for materials to replace water damaged laminate flooring in the living room. C.M. testified the flooring was replaced after the Tenants vacated the rental unit and before new tenants moved in. In support, the Landlord submitted a copy of a condition inspection report, signed by

A.A., which described “minor scratches” on March 1, 2016, the date of the move-in condition inspection. The move-out condition inspection took place on February 28, 2017, and was attended by A.A., who did not sign the condition inspection report. However, he did sign a form confirming he did not agree with the move-out condition inspection, which described the living room floor as “water damaged”. In support of this aspect of the Landlord’s claim, photographs of the laminate flooring were submitted into evidence. The photographs depict the laminate floor “lifting” at the seams due to water damage C.M. testified was caused by the Tenants. In a letter from the Tenants to the Landlord, dated March 1, 2017, A.A. acknowledged the floor was washed with water but suggested they always dried it. The Landlord also submitted receipts for the amounts claimed.

Second, the Landlord claimed \$40.00 to clean the rental unit. A photograph submitted by the Landlord depicted the interior of an oven. No notes were made on the condition inspection report at the time of the move-in condition inspection. The move-out condition inspection documented that the oven was “burned/greasy”. In support, the Landlord submitted a receipt for 1.5 hours of labour to clean the oven.

The Landlord also sought to recover the \$100.00 filing fee paid to make the Application, and requested that the Landlord be permitted to apply the security deposit held in partial satisfaction of the claim.

In reply, S.A. advised the Tenants are Syrian refugees and suggested they are being exploited by the Landlord. Further, S.A. stated the floor and oven were in poor condition at the beginning of the tenancy. She suggested the Tenants did not know the significance of signing the tenancy agreement and the condition inspection report. In addition, S.A. questioned the ability of the Landlord to replace the flooring between the time the Tenants vacated the rental unit and the time the new tenants moved in.

Further, S.A. referred to issues with mice, cockroaches, and heating during the tenancy. She also suggested the Landlord was being dishonest and provided examples unrelated to the Landlord’s Application.

Analysis

Based on the 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.

The Landlord's claim was supported by a signed condition inspection report, photographic evidence of the damage, receipts for expenses incurred, and the testimony of C.M. I find the Landlord has demonstrated that the damage was caused by the Tenants during the tenancy, the value of the loss to repair the damaged flooring and for cleaning, and that the Landlord took reasonable steps to minimize losses. For example, the floors were repaired between tenancies, avoiding a potential claim for lost rent. The Tenants' response was that they are being exploited, that the damage existed when the tenancy began (although not reflected in the condition inspection report), and that there were other unrelated issues during the tenancy.

I find the Landlord is entitled to a monetary award of \$682.83 for repairs and cleaning required when the tenancy ended. Further, having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. As requested, I order that the Landlord may keep the \$400.00 security deposit in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$382.83, which has been calculated as follows:

Claim	Amount
Repairs and cleaning:	\$682.83
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$400.00)
TOTAL:	\$382.83

Conclusion

The Landlord is granted a monetary order in the amount of \$382.83. 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: August 18, 2017

Residential Tenancy Branch