



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	MND MNDC MNSD MNR FF
	Tenant:	MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application is dated April 22, 2017 (the “Landlords’ Application”). The Landlords applied for the following relief pursuant to the *Act*:

- a monetary order for compensation for damage to the unit, site or property;
- a monetary order for money owed or compensation for damage or loss;
- an order allowing the Landlords to retain all or part of the security deposit or pet damage deposit in partial satisfaction of the Landlords’ claim;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenant’s Application was received at the Residential Tenancy Branch on April 3, 2017 (the “Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- an order that the Landlords return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlords attended the hearing on their own behalves. The Tenant attended the hearing on her own behalf. All parties in attendance provided a solemn affirmation.

The Landlords testified the Landlords’ Application package was served on the Tenant by registered mail on April 24, 2017. The Tenant acknowledged receipt.

The Tenant testified that the Tenant’s Application package was served on the Landlords by registered mail on April 6, 2017. The Landlords acknowledged receipt. The Tenant

served a further evidence package on the Landlords by posting a copy on the door at the address provided on the Landlords' Application. The Landlords advised that they have since moved and did not receive the evidence. However, the Landlords did not wish to have the matter adjourned and confirmed their desire to proceed with the hearing.

No further issues were raised with respect to service or receipt of the above documents. The parties were provided the opportunity to present their 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 Landlords entitled to a monetary order for compensation for damage to the unit, site or property?
2. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss?
3. Are the Landlords entitled to an order allowing them to retain all or part of the security deposit or pet damage deposit in partial satisfaction of the Landlords' claim?
4. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
5. Are the Landlords entitled to an order granting recovery of the filing fee?
6. Is the Tenant entitled to an order that the Landlords return all or part of the security deposit or pet damage deposit?
7. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on November 1, 2015 and ended when the Tenant vacated the rental unit on February 1, 2017. During the tenancy, rent in the amount of \$1,750.00 per month was due on the first day of each month. The Tenant paid a security deposit in the amount of \$875.00, which the Landlords hold.

The Landlords' Claim

The Landlords' monetary claim was summarized on a Monetary Order Worksheet, dated April 21, 2017. First, the Landlords claimed \$419.68 for the cost of paint and supplies to repaint the rental unit. The Landlords testified the Tenant painted a wall

pink, and had agreed to paint the unit when she left. The Landlords submitted photographic images in support. The Landlords testified the Tenant was provided with paint codes so the walls could be returned to the original colour and condition. R.W. also testified that he had a conversation with the Tenant confirming how to obtain a paint colour match at a local hardware store. The Tenant did not paint the rental unit as promised.

In addition, the Landlords testified the Tenant used the wrong cleaning fluids to clean walls, which left marks on the walls. Again, photographic images depicting the walls were submitted in support.

In reply, the Tenant acknowledged she agreed to repaint the rental unit. However, she testified she did not remember the conversation with R.W. The Tenant testified she did the best she could with the limited supplies and information provided by the Landlords.

Second, the Landlords claimed \$355.01 for carpet cleaning. They testified the stairs and bedrooms needed to be cleaned. The stairs in particular were soiled and required extra attention. A photograph of the stairs was submitted in support.

In reply, the Tenant testified she had a professional cleaner address the carpets but acknowledged the staircase did not get clean. The Tenant also submitted photographic images depicting the carpet in the rental unit.

Third, the Landlords sought \$300.00 for labour to clean the rental unit after the Tenant vacated. This amount was calculated based on 15 hours x \$20.00 per hour = \$300.00. She testified that the floor under the fridge had not been cleaned, the grout between tiles in the kitchen had to be replaced, garbage left behind had to be removed, the bannister had to be wiped down, and a butcher block counter had to be sanded and re-stained. Photographic images were submitted in support.

In reply, the Tenant acknowledged she did not clean behind the fridge but testified that she otherwise left the unit in good condition. She stated that the garbage on the deck was there when she moved in, and that she did not dispose of it because she assumed it belonged to the Landlord.

Fourth, the Landlords claimed \$450.00 for labour to make repairs and paint the rental unit. This amount was calculated on the basis of 15 hours x \$30.00 per hour = \$450.00.

Fifth, the Landlords claimed \$1,814.00 for unpaid rent for the month of February 2017. However, during the hearing she confirmed she was seeking only \$62.50 for the additional day the Tenant occupied the rental unit. She confirmed she took no steps to re-rent the unit after receiving the Tenant's notice to end her tenancy at the end of December 2016.

In reply, the Tenant testified the Landlords allowed her to remain an extra day to clean and paint.

Finally, the Landlords sought to recover the filing fee paid to make the Application, and applied for an order that the security deposit held be applied to any monetary award made.

The Tenant's Claim

The Tenant testified she provided the Landlords with her forwarding address in writing on or about December 28, 2016. A copy of a letter, dated December 28, 2016, was submitted into evidence by both parties. She testified that a copy of the letter was also left on the countertop in the rental unit on February 1, 2017. A photograph was provided in support.

In reply, the Landlords acknowledged receiving the Tenant's forwarding address, although R.W. testified that the Landlords asked for this to be signed. The Landlords suggested the notice was invalid because it was not signed.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

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 each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

The Landlords' Claim

With respect to the Landlords' claim for \$419.68 for the cost of paint and supplies to repaint the rental unit, I find the Landlords are entitled to recover this amount from the Tenant. The Tenant acknowledged an agreement to repaint the rental unit and that she did not do so. The photographic evidence submitted by the Landlords also confirmed the condition of the walls at the end of the tenancy.

With respect to the Landlords' claim for \$355.01 for carpet cleaning, I find the Landlords are entitled to recover this amount from the Tenant. Photographic images of the rental unit depicted very soiled stairs, which the Tenant acknowledged were left in that condition.

With respect to the Landlords' claim for \$300.00 for labour to clean the rental unit after the Tenant vacated, I am not satisfied on a balance of probabilities that the Landlords are entitled to this amount. Although the Landlords' photographic evidence depicted some garbage left behind, the Tenant's photographic evidence depicted an otherwise clean suite. I find a more reasonable amount to clean the suite at the end of the tenancy to be \$150.00.

With respect to the Landlords' claim for \$450.00 for labour to make repairs and paint the rental unit, I find there is insufficient evidence before me the Landlords are entitled to recover this amount. Although the Tenant acknowledged an agreement to paint the rental unit, I am not satisfied the rate charged is appropriate. I find a more reasonable amount to be \$300.00, and award this amount to the Landlords.

With respect to the Landlords' claim for \$62.50 for the additional day the Tenant occupied the rental unit, I am satisfied the Landlords are entitled to recover this amount from the Tenant. The Tenant testified the Landlords allowed her to remain an extra day to clean and paint; however, she did not do so.

I find the Landlords are entitled to a monetary award of \$1,287.19, which has been calculated as follows:

Claim	Amount allowed
Paint and supplies:	\$419.68
Carpet cleaning:	\$355.01
Labour (cleaning):	\$150.00
Labour (repairs/paint):	\$300.00
Rent:	\$62.50
TOTAL:	\$1,287.19

The Tenant's Claim

Section 38 of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after the latter of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the Landlords acknowledged receipt of the Tenant's forwarding address at the end of December 2016. In addition, the parties confirmed the tenancy ended on February 1, 2017, at which time the Tenant vacated the rental unit. Accordingly, the Landlords had until February 16, 2017, to either return the security deposit or make an application for dispute resolution. However, the Landlords' Application was not filed until April 22, 2017. Accordingly, I find the Tenant is entitled to receive double the amount of the security deposit, or \$1,750.00, pursuant to section 38 of the *Act*.

Set Off of Claims

I have found the Tenant owes the Landlords \$1,287.19 for losses incurred. In addition, I have found the Landlords owe the Tenant \$1,750.00, pursuant to section 38 of the *Act*. Setting off the amounts owed ($\$1,750.00 - \$1,287.19 = \$462.81$), I order, pursuant to section 67 of the *Act*, that the Landlords pay to the Tenant the sum of \$462.81.

As to the filing fees the parties paid for the cost of these Applications, I find that both parties have had some success and decline to award recovery of the filing fees.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$462.81. 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: September 18, 2017

Residential Tenancy Branch