



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlords:	MND MNR MNSD MNDC FF
	Tenants:	MNSD FF

Introduction

The hearing dealt with the Landlords' Application for Dispute Resolution, received at the Residential Tenancy Branch on May 15, 2017 (the "Application"). The Landlords 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 allowing the Landlord to keep all or part of the pet damage deposit or security deposit;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlords attended the hearing on her own behalves. The Tenants were represented at the hearing by M.B., an agent. L.B., who indicated she was also a tenant but was not included as a party to the dispute, was also present and provided oral testimony. All in attendance provided a solemn affirmation.

The Landlords testified their Application package and documentary evidence was served on the Tenants by registered mail on June 1, 2017. M.B. acknowledged receipt on behalf of the Tenants. On behalf of the Tenants, L.B. confirmed the documentary evidence upon which they intended to rely was served on the Landlords by registered mail on October 3, 2017. The Landlords acknowledged receipt. No issues were raised with respect to service or receipt of the above documents. I find the documents referred to above were sufficiently served for the purposes of the *Act*, in accordance with section 71 of the *Act*.

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

After the hearing was concluded, it was discovered that the Tenants had filed an application for dispute resolution, received at the Residential Tenancy Branch on June 1, 2017, requesting the return of double the security deposit. Neither party advised of the Tenants' application during the hearing. The Tenants applied for the return of double the security deposit, and to recover the filing fee paid to make their application.

A landlord's obligation to return a security deposit is triggered by receipt of a tenant's forwarding address in writing. Section 38 of the *Act* confirms that a landlord must repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. Failure to do so may entitle a tenant to the return of double the amount of the security deposit.

In this case, the parties agreed the tenancy ended on April 30, 2017. The Landlords submitted the Application to the Residential Tenancy Branch on May 15, 2017, 15 days after the end of the tenancy. Accordingly, the Landlords applied on time and the Tenants are not entitled to the return of double the amount of the security deposit. Having found the Landlords are entitled to retain part of the security deposit in satisfaction of their Application, I find the Tenants' application is dismissed, without leave to reapply.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for damage to the unit, site or property?
2. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
3. Are the Landlords entitled to an order allowing them to retain all or part of the pet damage deposit or security deposit?
4. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss?
5. Are the Landlords entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on July 2, 2015, and ended when the Tenants vacated the rental unit on April 30, 2017. Rent in the amount of \$1,641.75 per month was due on the first day of each month. The Tenants paid a security deposit of \$797.50, which the Landlord holds.

The Landlords claimed \$741.26 for cleaning and repairs required at the end of the tenancy. First, the Landlords claimed \$300.00 for time they spent cleaning. This was calculated based on 12 hours of cleaning at a rate of \$25.00 per hour. Specifically, the Landlords testified that the kitchen floor, living room floor, window sills, and kitchen cupboards were not adequately cleaned. In support, the Landlord submitted a Condition Inspection Report. In addition, the Landlords submitted photographic evidence depicting dust and grime in various areas of the rental unit.

In reply, M.B. testified that he attended the rental unit at the beginning and the end of the tenancy, but was not present for the condition inspections. However, he stated that the condition of the rental unit was similar at the end of the tenancy as the beginning. He suggested the photographs depict reasonable wear and tear.

Second, the Landlords claimed \$150.00 to mud, sand, and repaint walls in the rental unit. On behalf of the Tenants, M.B. agreed to this aspect of the Landlords claim.

Third, the Landlords claimed \$26.57 to replace missing lightbulbs in the rental unit. On behalf of the Tenants, M.B. agreed to this aspect of the Landlords claim.

Fourth, the Landlords claimed \$117.86 for carpet cleaning required in the rental unit. The Landlords testified the amount was based on a quote but conceded they did not incur this expense. Rather, the new tenants paid to have the carpets cleaned.

Fifth, the Landlords claimed \$43.64 to replace broken blinds. The Landlords testified the cord no longer raised or lowered the blinds. A photographic image depicting the blinds set at an angle was submitted in support.

In reply, L.B. advised she was not aware of any issue with the blinds when the Tenants moved out of the rental unit.

Sixth, the Landlords claimed \$65.69 for an outstanding water bill to April 30, 2017. The Landlords testified they paid it so their property taxes would not be impacted.

In reply, and on behalf of the Tenants, L.B. testified she paid it directly on July 12, 2017, when the invoice was received. M.B. suggested the Landlords may be entitled to receive a credit.

Seventh, the Landlords claimed \$37.50 to remove and dispose of garbage left behind by the Tenants. This amount was based on 1-1/2 hours of labour at a rate of \$25.00 per hour. In support, the Landlord provided a copy of the condition inspection report, as well as photographs of items left behind by the Tenants.

In reply, M.B. advised that he did not observe garbage at the end of the tenancy and suggested the Landlords claims (other than those agreed to) represent normal wear and tear.

Finally, the Landlords sought to recover the \$100.00 filing fee paid to make the Application, and requested that they be permitted to apply the security deposit held in partial satisfaction of the above claims.

Analysis

Based on the 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 Landlords 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 Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlords' claim for \$300.00 for time spent cleaning, I find there is insufficient evidence before me to conclude the Landlords are entitled to the full amount sought. Rather, while I accept that some cleaning of the rental unit was required, as evidenced by the condition inspection report and photographic evidence, I find that a more reasonable amount would be \$100.00 and award the Landlords that amount.

With respect to the Landlords' claim for \$150.00 to mud, sand, and repaint walls, the Tenants agreed to pay this amount. I grant the Landlords a monetary award in that amount.

With respect to the Landlords' claim for \$26.57 to replace lightbulbs, the Tenants agreed to pay this amount. I grant the Tenants a monetary award in that amount.

With respect to the Landlords' claim for \$117.86 for carpet cleaning, the Landlord confirmed they did not incur this expense and that their new tenants paid to have the carpets cleaned. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim for \$43.64 to replace broken blinds, I find there is insufficient evidence before me to conclude the Landlords are entitled to the amount sought. The condition inspection report makes no reference to the condition of the blinds, and the photographic evidence merely shows a blind set at an angle. Further, on behalf of the Tenants, L.B. testified she did not notice any issue with the blinds during the tenancy. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords claim for \$65.69 for a water bill, I find there is insufficient evidence before me to conclude the Landlords are entitled to the amount sought. Although the Landlords claimed to have paid it on the Tenants' behalf, L.B. testified the bill was paid as soon as it was received on July 12, 2017. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim for \$37.50 to remove and dispose of garbage, I find the Landlords are entitled to this amount. The condition inspection report makes clear reference to garbage, and the photographic images depict garbage left at the property. I grant the Landlords a monetary award of \$37.50.

As the Landlord has been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I order that the Landlords may apply the security deposit held in satisfaction of the monetary awards granted. However, Policy Guideline #17 states:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- *a landlord's application to retain all or part of the security deposit...*

[Reproduced as written.]

Accordingly, pursuant to section 67 of the *Act* and Policy Guideline #17, I find the Tenants are entitled to a monetary order in the amount of \$383.43, which has been calculated as follows:

Claim	Amount
Cleaning:	\$100.00
Losses agreed to by the Tenants:	\$176.57
Garbage disposal:	\$37.50

Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$797.50)
TOTAL:	(\$383.43)

I order the Landlord to pay this amount to the Tenants forthwith.

Conclusion

The Landlord is ordered to return the balance of the security deposit, or \$383.43, to the Tenants forthwith. In support, the Tenants are granted a monetary order in the amount of \$383.43, which may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Tenants' application is dismissed, without leave to reapply.

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: October 25, 2017

Residential Tenancy Branch