



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNSD OPN FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, dated June 3, 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;
- an order allowing the Landlords to retain all or part of the security deposit or pet damage deposit;
- an order of possession based on the Tenants' written notice to end the tenancy; and
- an order granting recovery of the filing fee.

The Landlords attended the hearing on their own behalves. The Tenants attended the hearing and were assisted by Y.B., an advocate. Both the Landlords and the Tenants provided a solemn affirmation at the beginning of the hearing.

The Landlords testified the Application package and documentary evidence was served on the Tenants by registered mail on June 7, 2017. Canada Post tracking information confirmed the Application package was received by both Tenants on June 8, 2017. I find the Landlords' Application package and documentary evidence was received by the Tenants on that date.

The Tenants submitted three packages of documentary evidence to the Residential Tenancy Branch in response to the Application. According to the Tenants, these packages were served on the Landlords in person. The Landlords confirmed receipt of the Tenants' documentary evidence packages on November 1, 3, and 7, respectively. I find the Landlords were served with the Tenants' documentary evidence packages on those dates, in accordance with 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

The parties confirmed the tenancy ended when the Tenants vacated the rental unit on May 31, 2017. Accordingly, it was not necessary for me to consider the Landlords' request for an order of possession. This aspect of the Application has not been considered further in this Decision.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for damage to the rental unit?
2. Are the Landlords entitled to retain all or part of the security deposit or pet damage deposit?
3. Are the Landlords entitled to an order granting recovery of the filing fee?

Background and Evidence

The Landlords submitted a copy of the tenancy agreement between the parties into evidence. It confirmed the tenancy began on April 1, 2015. As noted above, the tenancy ended on May 31, 2017. Rent in the amount of \$1,070.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$525.00, which the Landlords hold. The Tenants also paid a pet damage deposit of \$525.00, which was returned to the Tenants.

The Landlords' monetary claim was set out in a Monetary Order Worksheet, dated June 5, 2017. First, the Landlords claimed \$105.00 for cleaning required at the end of the tenancy. The Landlords testified that three individuals spent half a day cleaning the rental unit after the Tenants moved out. In support, the Landlords submitted a copy of the Condition Inspection Report, which indicated dirty areas throughout the rental unit. Although the Tenants participated in the move-out condition inspection with the Landlords, they declined to sign the Condition Inspection Report. In addition, the Landlords submitted a number of greyscale photographic images that included depictions of dirt and marks on the den and living room floors, scuff marks on the baseboards in the den, an unidentified substance on the bedroom wall (which, when removed, damaged the drywall), mold on the shower floor, foodstuffs in the oven, and dirt and stains on the kitchen floor. The Landlords also submitted what appeared to be a screen print from a cleaning company website in support of the amount claimed.

In reply, the Tenants testified they did their best to clean before they left, referring me to photographic images of cleaning products used. In addition, the Tenants testified they hired a professional cleaner that attended on May 31, 2017. In support, the Tenants submitted into evidence a signed letter, dated June 4, 2017, describing the work completed by the cleaner over several hours. The Tenants advised that the cleaner was prepared to return to the rental unit to address the Landlords' concerns but that they were denied entry.

Second, the Landlords claimed \$5,000.00 to replace the seven-year-old hardwood floors in the rental unit. The Landlords testified the Tenants caused deep scratches in the living room floor, which is a hand-scraped hardwood. Some of the scratches went against the grain of the wood.

A number of greyscale photographic images were submitted in support, confirming the presence of scratches. Also submitted was an email exchange between D.G. and a representative of a flooring company, dated June 2, 2017. In it, D.G. advised of his desire to replace approximately 374 square feet of flooring with "regular (not too high end) hardwood." Attached to the email were four photographic images. Based on the parameters set out in Landlords' email request, it was suggested that full replacement would be in the \$4,000.00 - \$5,000.00 range, plus the cost of removing existing flooring and resetting baseboards. The Landlords confirmed the unit was re-rented for \$1,100.00 for a few months after the Tenants vacated the rental unit, and that the flooring has not yet been repaired or replaced.

In reply, the Tenants submitted two estimates to repair the hardwood flooring. According to the Tenants, the individuals providing the estimates were shown photographs of the hardwood floor and were advised that repair was possible. The first estimate was for \$300.00; the second estimate was for \$840.00. In addition, the Tenants submitted that the Landlords' estimate was based on four photographs and suggested an accurate estimate would require on-site inspection. In support of this assertion, the Tenants indicated they phoned several flooring companies to confirm their position.

On behalf of the Tenants, Y.B. submitted it is problematic that the estimate provided by the Landlords is based on photographs only, rather than an on-site visit. She also suggested that the amount of the Landlords' alleged loss is too vague to quantify, that the Landlords has not incurred any losses, and that the Landlords may be unjustly enriched if the actual work performed costs less than the amount sought.

Finally, the Landlords sought to recover the filing fee paid to make the Application, and requested that the security deposit and pet damage deposit be applied in partial satisfaction of their claim.

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 Tenants. 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.

In this case, I find the Landlords are entitled to the cleaning costs claimed. Although I accept that the Tenants hired cleaners at the end of the tenancy, a number of items were not addressed, as depicted in the photographic images submitted by the Landlords and reflected on the Condition Inspection Report. I also find the amount claimed by the Landlords to be

reasonable in the circumstances. Accordingly, I find the Landlords are entitled to a monetary award in the amount of \$105.00.

Further, I find there is insufficient evidence before me to conclude the Landlords are entitled to the full replacement value of the hardwood floors, as claimed by the Landlords. While I accept the Tenants caused some damage to the hardwood flooring, the Landlords were able to re-rent the unit for a higher monthly rent after the Tenants vacated, and have not yet replaced or repaired the flooring more than five months after the tenancy ended. Further, the hardwood floors are seven years old. Accordingly, based on the higher of the estimates submitted by the Tenants, I find it appropriate and reasonable in the circumstances to award the Landlords \$840.00 for the cost to repair the hardwood floors.

Having been successful, I also grant the Landlords recovery of the \$100.00 filing fee paid to make the Application, and order that the Landlords may apply the security deposit held in partial satisfaction of the claim. Pursuant to section 67 of the *Act*, I grant the Landlords a monetary order in the amount of \$520.00, which has been calculated as follows:

Item claimed	Amount awarded
Cleaning:	\$105.00
Flooring repair:	\$840.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$525.00)
TOTAL:	\$520.00

Conclusion

The Landlords are granted a monetary order in the amount of \$520.00. The monetary 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: November 15, 2017

Residential Tenancy Branch