



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed July 10, 2017, wherein the Landlord sought monetary compensation from the Tenants for money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement, authority to retain the Tenants' security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on December 4, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, 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 monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord, S.N., testified that the tenancy began September 15, 2016. Monthly rent was payable in the amount of \$800.00. The Tenants paid a security deposit in the amount of \$400.00 and a pet damage deposit in the amount of \$400.00.

In the within action, the Landlords sought compensation for the following:

upholstery cleaning	\$140.00
cleaning	\$320.00
glass repair	\$200.00
screen repair	\$40.00
filing fee	\$100.00
TOTAL CLAIMED	\$800.00

The Tenant, A.T., confirmed the Tenants were agreeable to compensating the Landlord for the upholstery cleaning in the amount of **\$140.00** as well as the screen repair in the amount of **\$40.00**. Pursuant to section 63 of the *Residential Tenancy Act*, I record this as a settlement. The Tenants disputed the balance of the Landlords' claims for cleaning and repair of the balcony glass.

S.N. stated that the husband, G.T., came to the property and agreed that the rental unit required further cleaning. The Landlord stated that she gave the Tenants the opportunity to clean the rental unit until June 9, 2017, and when they did not take the Landlords up on this offer, the Landlord and her daughter in law cleaned the unit. She sought the sum of \$320.00 for their time to clean the rental unit.

S.N. further stated that the Tenants agreed she could hire cleaners; on June 4, 2017 at 5:23 p.m. she received a text message from A.T., as follows:

"you can do what you want with the \$800.00 you hire the cleaners you want the job gets done to your satisfaction".

The Landlords also claimed the cost of replacing a glass panel on the balcony; S.N. stated that the entire glass panel on the deck was "smashed out" during the tenancy. She stated that the Tenant, G.T., called and spoke to her husband when the glass was broken stating that their barbeque slammed into the glass.

In response to the Landlords' claims, the Tenant A.T. confirmed that she sent the text message referenced above but said she sent it in "frustration". She stated that following this she sent a letter to the Landlords asking for their deposit back. She was not able to

say when she sent the letter, only to say it was before the Landlord filed for Dispute Resolution.

In response to the Landlords' claim for cleaning costs, A.T., stated that she is willing to pay half the cleaning costs, in the amount of \$160.00, as she believes this is a reasonable sum. She stated that she hired professional cleaners, but told them not to move the fridge and stove as they were not on wheels and she was worried that they would damage the floors. She admitted that the fans were not cleaned. She also claimed that the Landlord, D.N., told the Tenant, G.T., that it would only take his wife three hours to get it to the state she wanted it to be.

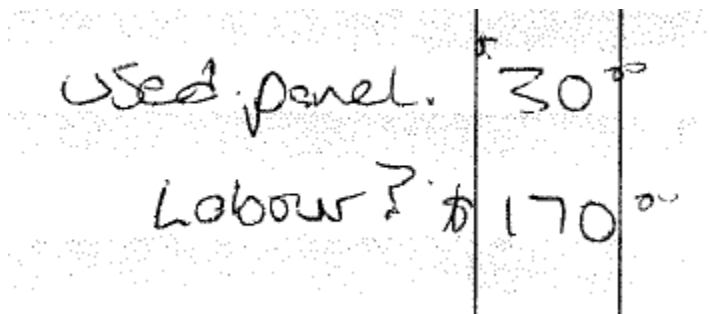
The Tenant confirmed that the Landlord did not do a move in or move out condition inspection report.

In terms of the Landlords' claim for compensation for the broken glass, A.T. stated that there was a bad windstorm and the wind caught the barbeque, and even though the wheels were locked the barbeque was caught by the wind and slammed into the glass. The Tenant stated that D.N., told G.T., not to worry about it because he had an extra pane that he could put into it.

In reply to the Tenants' submissions, the Landlord confirmed that she did not do a proper move in or move out condition.

The Landlord stated that she and her son's girlfriend, C.B., cleaned the rental unit and it took well over 16 hours, which is why she claimed the sum of \$320.00 representing their time at \$20.00 an hour.

The Landlord also stated that they purchased a piece of glass to replace the glass on the balcony as they did not have a piece at home as claimed by A.T. Introduced in evidence was an invoice dated June 30, 2017 from D.G. Ltd. The invoice does not indicate to whom the panel was sold or the location. Further, there is a notation of \$30.00 for a glass panel and \$170.00 for labour, however, the notation seems to suggest this is an estimate, or possible cost, as it is not totalled. As well, For greater clarity I reproduce the portion of the document as follows:



Used panel. | \$30
Labour? | \$170

The Landlord confirmed that she received the Tenants' forwarding address in writing on June 29, 2017. The Landlords applied for Dispute Resolution on July 10, 2017 such that they applied within the 15 days required by section 38 of the *Residential Tenancy Act*.

Analysis

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

After consideration of the testimony before me, the evidence submitted by the parties, and on a balance of probabilities, I find as follows.

As noted, the Tenants agreed to compensate the Landlords for the **\$140.00** upholstery leaning and the **\$40.00** screen repair. I therefore award the Landlords compensation for these amounts pursuant to sections 63 and 67 of the *Residential Tenancy Act*.

The Landlords submit that the Tenants agreed they could retain the full \$800.00 of their security and pet damage deposit. I accept the Tenants' evidence that when she sent the text message (which was not before me at the hearing, but read to me by the Landlord and reproduced in this my Decision) that she was frustrated with her dealings with the Landlords and that immediately thereafter she sent a request for return of the funds. I do not find this text message to be a binding agreement between the parties as to the disposition of the Tenants deposits.

The Tenants agreed to compensate the Landlords \$160.00 towards the cost of cleaning the rental unit. The Landlords claim the rental unit was left in such a state that the Landlord, S.N., and a family member spent 16 hours additional hours cleaning; as a result, they claim \$320.00 for their time at \$20.00. Section 37(2)(a) provides that a Tenant must leave "the rental unit reasonably clean, and undamaged except for reasonable wear and tear". It is not unusual for Landlords to have an expectation of a higher standard of cleanliness than that required by the *Act*; however, such additional costs may not be recoverable. Photos submitted by the Landlords indicate some cleaning was required; however, I am unable to find that the rental unit was in such a stated that it required the services of two people cleaning for 16 hours. In all the circumstances I find the sum of **\$160.00** to be reasonable for cleaning costs and I award the Landlords' compensation for this amount.

The Landlords also seek compensation for the cost to replace the glass on the back deck. The Tenants submit that a windstorm caused their barbeque to fall into the glass.

As noted previously, a claiming party must not only prove that the other party breached the *Residential Tenancy Act*, *Regulations* or tenancy agreement, they must prove the actual amount required to compensate them for the claimed loss. In the case before me, I am unable to find that the Landlords paid to replace the glass on the back deck.

The Tenants allege the Landlord, G.T., told them not to worry about the glass as he had a spare piece of glass. The invoice submitted in evidence suggests only an estimate was provided. I find it more likely that the Landlords replaced the glass with spare materials rather than incurring the cost of replacement; I therefore find they have submitted insufficient evidence to support their claim for \$200.00 to replace the glass.

As the Landlords have been partially successful I grant them recovery of one half of the filing fee in the amount of **\$50.00**.

Conclusion

The Landlords are entitled to compensation in the amount of **\$390.00** calculated as follows:

upholstery cleaning (as agreed)	\$140.00
nominal amount for cleaning	\$160.00
screen repair (as agreed)	\$40.00
one half of filing fee	\$50.00
TOTAL	\$390.00

I authorize the Landlords to retain \$390.00 from the Tenants' \$800.00 security and pet damage deposit. The balance of the deposits in the amount of \$410.00 shall be returned to the Tenants; in furtherance of this I grant the Tenants a Monetary Order in the amount of **\$410.00**. They must serve the Order on the Landlords and may, if necessary, file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

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: December 15, 2017

Residential Tenancy Branch