



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S/FFL

Introduction

On April 17, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting a Monetary Order for Damage to the washing machine in the rental unit, and to recover the cost of the Filing Fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they either exchanged or were aware of the documentary evidence that I have before 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

Should the Landlord be able to claim the cost for the damaged washing machine against the Tenants’ security deposit?

Should the Landlord be reimbursed for the Filing Fee for this Application?

Background and Evidence

The Landlord and the Tenant agreed that the fixed-term tenancy began on July 7, 2017 and ended on September 17, 2017. The monthly rent for the furnished rental unit was

\$3,850.00 and the Landlord collected \$1,925.00 for the security deposit and \$1,925.00 for a pet damage deposit on July 6, 2017.

Landlord Evidence

The Landlord provided the following affirmed testimony and corresponding evidence:

The Landlord bought the new rental unit for her own use in April of 2016 and lived there for one year. The washing machine was new and in good working order when she prepared the furnished rental unit one week before the Tenants moved in on July 7, 2017.

The Landlord stated that a move-in inspection was conducted with Tenant MM on July 7, 2018; however, she did not obtain the Tenant's signature on the related document.

On September 4, 2017, the Landlord received an email from the Tenant stating that the washing machine was not working properly and to please make arrangements to get it fixed.

The Landlord obtained several quotes and found an appliance repair that could attend in a timely manner. The repair occurred on September 7, 2017, and the contractor fixed the washing machine by removing a piece of metal that had been stuck in the drain pump. The cost of the repair was \$292.95 and the Landlord advised the Tenants that they would be responsible for this cost.

On September 17, 2017, when the Tenants moved out of the rental unit, the Landlord attended to conduct a move-out inspection. This document showed that the Landlord had collected a total of \$3,850.00 in security deposit and pet damage deposits. The Landlord deducted \$120.00 for carpet cleaning and \$180.00 for general cleaning of the rental unit. Further, the Landlord deducted \$292.50 for the washing machine repair. A note on the document indicated that the remaining balance from the deposits, \$3,252.50, was email transferred to the Tenants on September 18, 2017, and the Landlord confirmed. The Tenant's signature on the document indicated that he agreed that the inspection report fairly represented the condition of the rental unit.

The Landlord did not receive the Tenants' forwarding address until April 13, 2018, during a Residential Tenancy Branch hearing where the Tenants had made a separate Application for Dispute Resolution.

Tenant Evidence

The Tenant provided the following affirmed testimony and corresponding evidence:

The Tenant agreed that the only claim he is disputing is for the deduction of the washing machine repair from the security deposit.

The Tenant referred to emails between himself and the Landlord where there were discussions about what the washing machine repairman had reported to the Landlord. In the emails, the Landlord reported that the repairman, while doing the repair on the washing machine, had spoken to a “lady” about doing laundry that contained bras and that he suggested that the metal he removed from the drain may have been from the Tenant’s laundry. The Tenant argued that there was no “lady” at the rental unit during the repair and did not believe that the information from the repairman was true or accurate.

The Tenant stated that they only used the washing machine in the rental unit to wash sheets as they would go back to their regular home, that was under renovation, to wash their clothes.

The Tenant advised that they slept at the rental unit only 80% of the time and that they didn’t use the washing machine at all, until the beginning of September. It was the first time they used the washing machine that the Tenants discovered that it didn’t work.

Although the Tenant acknowledged signing the move-out inspection report, he doesn’t agree that he should be responsible for the repair of the washing machine and believes that the cost should not have been deducted from the security deposit.

Analysis

In regard to this dispute, I will consider Section 32(3) of the Act that states a tenant of a rental unit must repair damage to the rental unit that is caused by the actions or neglect of the tenant.

Where a Landlord applies to retain a portion of the security deposit for damages, the onus is on the Landlord to prove, on a balance of probabilities, the reasons on which the claim is based. In this case, the Landlord provided testimony and evidence to indicate that the washing machine in the rental unit was working prior to the tenancy; that the cause of repair to the washing machine was a piece of metal located in the drain pump and that the Tenant’s did not report any issues with the washing machine until 2 months into their tenancy.

When I reviewed the testimony and evidence provided by the Tenant, I noted several inconsistencies, specifically:

- The Tenant stated early in the hearing that he and his family only used the washing machine in the rental unit to wash sheets, responding to the concern of washing clothing items that may contain metal. Later in the hearing the Tenant stated that they never used the washing machine until the first time on September 4, 2017, when they discovered it did not work.
- When the Tenant texted the Landlord on September 4, 2017, to explain that the washer was not working properly and requested the Landlord to fix it, there was no mention that this was the first attempt at using the washing machine.

Further, I considered the response of the Landlord after the Tenant testified that it was September 4, 2017, when the Tenants had used the washing machine for the first time. The Landlord was surprised and stated that this was new information and that she had not heard this claim in any of the previous discussions between the Landlord and the Tenants, nor at the previous Dispute Resolution hearing.

After considering the above, I accept the Landlord's evidence and find that the Landlord has met her onus of proof that the washing machine was working at the time the tenancy began. Furthermore, I find that the Tenant failed to provide sufficient evidence that the Tenants were not responsible for the damaged washing machine. As a result, and on a balance of probabilities, I find that the Tenants are responsible for the damage to the washing machine.

I find that the Landlord has established a monetary claim and should be able to claim the cost for the damaged washing machine against the Tenant's security deposit.

The Landlord's Application for Dispute Resolution has merit and I find that the Landlord should be reimbursed for the Filing Fee.

Upon review of the Condition Inspection Report and the testimony regarding the deductions and the subsequent return of the partial security deposit and pet damage deposit, I find that the Landlord made a mistake with her calculations. Below is a table that sets out the accurate calculations for the return of the security deposit and pet damage deposit to the Tenants.

Item	Amount
------	--------

Tenants' Security Deposit	\$1,925.00
Tenants' Pet Damage Deposit	1,925.00
Total Deposits	\$3,850.00
Less Cleaning fees	-300.00
Less Washing Machine Repair	-292.95
Balance of Deposits due to Tenants	\$3,257.05

As the Landlord testified that she sent an email transfer of \$3,252.50 to the Tenants for the return of their deposits, I find that the Landlord still owes the Tenants \$4.55 of the remaining security deposit balance.

Item	Amount
Corrected Balance of Deposits due to Tenants	\$3,257.05
Less amount paid to Tenants by Landlord	-3,252.50
Outstanding Security Deposit owed by Landlord to Tenants	\$4.55

However, as I have found in favour of the Landlord with this Application, I have deducted the \$4.55 from the \$100.00 Filing Fee owed to the Landlord and find that the Tenant must reimburse the Landlord for a total of \$95.45.

Item	Amount
Filing Fee owed to Landlord	\$100.00
Less Outstanding Security Deposit owed to the Tenants	-4.55
Total Monetary Award to the Landlord	\$95.45

In accordance with Section 67 of the Act, I find that the Landlord has established a monetary claim in the amount of \$95.45.

Conclusion

The Landlord has established a monetary claim, in the amount of \$95.45, which includes compensation for the Filing Fee for this Application for Dispute Resolution less the amount owing to the Tenants for the balance of the security deposit. Pursuant to section 72(2) of the *Act*, I authorize the previous actions of the Landlord to apply the cost of the washing machine repair against the Tenant's security deposit.

I grant the Landlord a Monetary Order for \$95.45. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: June 07, 2018

Residential Tenancy Branch