



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDC
 Tenants: MNSD

Introduction

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

The Landlord’s Application for Dispute Resolution was made on December 5, 2017 (the “Landlord’s Application”). The Landlord applied for a monetary order for money owed or compensation for damage or loss, pursuant to the *Act*.

The Tenants’ Application for Dispute Resolution was made on November 23, 2017 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss; and
- an order that the Landlord return all or part of the security deposit and/or pet damage deposit.

The Landlord and the Tenants attended the hearing at the appointed date and time. All parties giving oral testimony provided a solemn affirmation at the beginning of the hearing.

The Landlord testified the Landlord’s Application package was served on the Tenants by registered mail on December 7, 2017. The Tenants acknowledged receipt. The Tenants testified the Tenants’ Application package was served on the Landlord in person on December 21, 2017. The Landlord acknowledged receipt. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues

1. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
3. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit and/or pet damage deposit?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on April 1, 2017. The parties confirmed the tenancy ended on November 23, 2017, at which time the Tenants vacated the rental unit. During the tenancy, rent in the amount of \$950.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$475.00, which the Landlord holds pending the outcome of this hearing.

The Landlord's Claim

The Landlord's claim was summarized on the Application. First, the Landlord claimed \$300.00 paid to the new tenant to clean the rental unit. In support, the Landlord provided a hand-written letter, dated December 5, 2017, in which he summarized the issues with the rental unit at the end of the tenancy. Issues included:

- Mold on the vinyl window frames
- Water stains on the window sill in the laundry room
- Food and grease under elements
- Residue from spray cleaner left in oven
- Foot prints on the walls
- Food residue in kitchen cupboard
- Rust on wood burning stove

In further support, the Landlord submitted a hand-written letter from the new tenant, K.C., dated December 5, 2017. It confirmed the Landlord paid her \$300.00 to clean marks on walls, clean a dusty washer and dryer, vacuum floors and staircase, clean the downstairs bathroom and bedroom, clean mold, remove dust from blinds, clean cupboards, and other items.

In reply, the Tenants testified the rental unit was cleaned thoroughly and submitted that the claims made by the Landlord were for normal wear and tear. The Tenants submitted photographic images in support of the condition of the rental unit at the end of the tenancy. However, the Tenants stated that if any cleaning was required, it would only have taken a few hours. The Tenants also noted a condition inspection report was not completed at the beginning or the end of the tenancy.

Second, the Landlord claimed \$175.00 for repairs required at the end of the tenancy. Specifically, the Landlord testified that elements on the stove were broken. Further, the Landlord testified that holes in walls were filled leaving small white spots on the walls. He estimated that the cost of paint alone would be in the \$300.00 – \$400.00 range.

In reply, the Tenants testified they did not cause the alleged damage to the rental unit. The Tenants confirmed the white spots were small pinholes that were filled in and sanded by the Tenants.

The Tenants' Claim

The Tenants claimed \$950.00, which represented double the amount of the security deposit held by the Landlord. The Tenants testified they provided the Landlord with their forwarding address in writing on November 23, 2017. The Landlord acknowledged receipt of the Tenants' forwarding address on that date but testified to his disbelief that the Tenants reside at the address.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

The Landlord's Claim

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

With respect to the Landlord's claim for \$300.00 for cleaning expenses, I accept the Landlord's evidence that some cleaning was required at the end of the tenancy. However, I find that a more reasonable amount for the cleaning referred to in the letters prepared by the Landlord and K.C. to be \$100.00. The Landlord is granted a monetary award of \$100.00 for cleaning.

With respect to the Landlord's claim for \$175.00 for repairs, I find there is insufficient evidence before me to confirm that repairs have been completed by the Landlord or that the Landlord suffered a loss. I note the Landlord did not submit photographic images of the repairs or a copy of a condition inspection report to confirm the condition of the rental unit at the beginning and the end of the tenancy. This aspect of the Landlord's Application is dismissed.

The Tenants' Claim

With respect to the Tenants' claim for the return of the security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the landlord must pay the tenant double the amount of the security deposit. The language is mandatory.

In this case, I find the Tenants provided the Landlord with a forwarding address in writing on November 23, 2017. I also find the Landlord made the Landlord's Application on December 5, 2017, less than 15 days after receiving the Tenants' forwarding address. Accordingly, although the Tenants are entitled to the return of part of the security deposit held, they are not entitled to double the amount of the security deposit.

Set-off of Claims

The Landlord has demonstrated an entitlement to a monetary award in the amount of \$100.00 for cleaning. The Tenants are entitled to the return of the security deposit, less the Landlord's monetary award.

Section 72 of the *Act* empowers me to grant recovery of a filing fee to a successful party. In this case, both parties have had some success. As a result, I decline to grant either party recovery of the filing fee.

In light of the above, and pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$375.00, which has been calculated as follows:

security deposit - Landlord's monetary award = amount of monetary order

$$\$475.00 - \$100.00 = \$375.00$$

Conclusion

The Tenants are granted a monetary order in the amount of \$375.00. 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: July 9, 2018

Residential Tenancy Branch