



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNR

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on February 15, 2018 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss; and
- a monetary order for unpaid rent or utilities.

The Landlords and the Tenants attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlords testified the Application package was served on the Tenants by courier in February 2018. Although not an authorized method of service under the *Act*, the Tenants acknowledged receipt. Pursuant to section 71 of the *Act*, I find the Application package was sufficiently served for the purposes of the *Act*. The Tenants did not submit documentary evidence in response to the Application.

The parties were given 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.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Landlords entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence by the Landlords. Typographical errors were corrected by the parties. The tenancy agreement and the parties confirmed the fixed-term tenancy was to begin on August 31, 2017. However, the Tenants testified the unit was still occupied by the previous tenant and they were unable to move in until September 7, 2017. The Landlords testified the unit was available for the Tenants on August 31, 2017. In any event, the tenancy ended when the Tenants vacated the rental unit on March 1, 2018. Rent in the amount of \$1,400.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$600.00, which the Landlords hold.

The Landlords' claim was summarized on the Application. First, the Landlords claimed \$1,400.00 for the cost to replace a washer and dryer. According to the Landlords, the Tenants disposed of these appliances without their authorization. The Landlords stated the cost to replace was estimated based on research, and that the machines disposed of by the Tenants were worth \$3,000.00.

In reply, the Tenants testified the Landlords agreed to replace the washer and dryer at the beginning of the tenancy but never did so. The Tenants acknowledged they placed the washer and dryer in the carport because they did not work. The Tenants also testified that the upstairs tenant eventually disposed of the units at the Landlords' request.

Second, the Landlords claimed \$1,350.00 for other losses. Specifically, the Landlords claimed \$400.00 for unpaid rent when the tenancy began. The Landlords claimed this amount was withheld from the first month's rent payment.

In reply, Tenants testified they paid \$1,000.00 toward rent and \$600.00 for the security deposit at the beginning of the tenancy. The Tenants acknowledged that \$400.00 was never paid because they were not able to move into the rental unit until September 7, 2017, for the reasons noted above.

Further, the Landlords claimed \$350.00 for costs claimed by the Tenants, related to the disposal of the washer and dryer, and for the disposal of garbage left at the rental property.

In their reply, the Tenants disagreed with this aspect of the Landlords' claim.

In addition, the Landlords' claimed \$600.00 for unpaid rent at the end of the tenancy. The Landlords testified the Tenants paid her \$800.00 and told her to apply the security deposit to the balance due.

The Tenants acknowledged that rent was paid in this way.

Analysis

Based on the unchallenged and 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.

With respect to the Landlords' claim for \$1,400.00 to replace the washer and dryer, I find there is insufficient evidence before me to conclude the Tenants breached the *Act* by disposing of the washer and dryer without the Landlords' authorization. Further, I find the Landlords have not demonstrated the value of the loss. No documentary evidence was submitted with respect to the cost of replacement. I also note the

Landlords confirmed during the hearing that the washer and dryer have not been replaced, more than six months after the tenancy ended. This aspect of the Application is dismissed.

With respect to the Landlords' claim for \$400.00 for unpaid rent, I find the Landlords are entitled to this amount. Section 26 of the *Act* confirms a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. I note that B.W. testified he could not move into the rental unit until September 7, 2017, due to work obligations. However, the Tenants provided no evidence describing reasons S.R. could not have occupied the rental unit before that date. The Landlords are granted a monetary award of \$400.00 for unpaid rent.

With respect to the Landlords' claim for \$350.00 for costs claimed by the Tenants to dispose of the washer and dryer, and the disposal of garbage, I find the Landlords' evidence and submissions to be insufficient. Accordingly, I find there is insufficient evidence to grant the relief sought. This aspect of the Application is dismissed.

With respect to the Landlords' claim for \$600.00 for unpaid rent in February 2018, I find the Landlords are entitled to this amount. Again, section 26 of the *Act* confirms that rent must be paid when due. Further, section 21 of the *Act* confirms that tenants are not permitted to apply a security deposit as rent. The Landlords are granted a monetary award of \$600.00.

Having been partially successful, I find the Landlords are entitled to recover the filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the security deposit be applied in partial satisfaction of the claim. Pursuant to section 67 of the *Act*, I find the Landlords have established an entitlement to a monetary order in the amount of \$500.00, which has been calculated as follows:

Claim	Amount allowed
Unpaid rent (September 2017)	\$400.00
Unpaid rent (February 2018)	\$600.00
Filing fee:	\$100.00
<i>LESS</i> security deposit held:	(\$600.00)
TOTAL:	\$500.00

Conclusion

The Landlords are granted a monetary order in the amount of \$500.00. 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: September 17, 2018

Residential Tenancy Branch