



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MADISON GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MND FF
 Tenant: MNSD FF

Introduction

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

The Landlords’ Application was made on October 9, 2018 (the “Landlords’ Application”). The Landlords applied for the following relief pursuant to the *Act*:

- a monetary order for damage to the unit, site, or property;
- an order granting recovery of the filing fee.

The Tenant’s Application was made on April 23, 2018 (the “Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- an order that the Landlord return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

R.R. and R.R. attended the hearing on behalf of all Landlords. The Tenant attended the hearing on her own behalf. The Landlords and the Tenant provided affirmed testimony.

The Landlords testified the Landlords’ Application package and a documentary evidence package were served on the Tenant by registered mail. The Tenant acknowledged receipt. In addition, the Tenant testified the Tenant’s Application package and documentary evidence were served on the Landlord by registered mail. However, the Landlords acknowledged it was received in person. No issues were raised with respect to service or receipt of the above documents during the hearing. Pursuant to section 71 of the *Act*, I find these 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. 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 damage to the unit, site, or property?
2. Are the Landlords entitled to recover the filing fee?
3. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
4. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties confirmed the tenancy began on December 1, 2015, and ended on March 31, 2018. During the tenancy, rent was due in the amount of \$1,150.00 per month. The Tenant paid a security deposit of \$575.00, which the Landlords hold.

The Landlords' Claim

The Landlords claimed \$655.00 for damage. Specifically, the Landlords testified that the Tenant damaged hardwood flooring in the rental unit. In support, the Landlords submitted a Condition Inspection Report that indicated the suite was newly renovated and that the hardwood floors were refinished at the beginning of the tenancy. However, the Landlord testified the Tenant caused a 3' gouge and several scratches in the hardwood flooring, which appear to have been caused by furniture being dragged around. An estimate in the amount of \$545.00 to repair the floor was submitted into evidence. According to the Landlords, the work to repair the floor was completed and paid for.

In reply, the Tenant denied significant damage to the flooring. However, she suggested she is not responsible for what movers might have done.

In addition, the Landlords claimed \$110.00 to patch and paint wall damage. According to the Landlords, the Tenant left 14 or more holes in the walls, caused by nails, screws, and inserts. They suggested this was not normal wear and tear, and that the walls were freshly finished at the beginning of the tenancy. In support, the Landlords submitted an invoice for this work, which they indicated was completed and paid for.

In reply, the Tenant acknowledged there were 4 holes made by thumb tacks but that it was normal wear and tear. She also testified that the Landlords suggested the holes were "not an issue" during the move-out condition inspection.

The Tenant's Claim

The Tenant claimed \$575.00 for the return of the security deposit. The parties agreed the Tenant provided her forwarding address in writing to the Landlords during a move-out condition inspection on March 31, 2018, and that the security deposit is being held by the Landlords.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

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

With respect to the Landlords' claim for \$545.00 for damage to the hardwood floor, I find it is more likely than not that the damage was caused during the tenancy. Further, I find that a gouge in the flooring, whether caused by the Tenant or a mover, is not normal wear and tear. I note the Tenant acknowledged the damage but merely suggested it was not as significant as claimed. I find the Landlords are entitled to a monetary award of \$545.00.

With respect to the Landlords' claim for \$110.00 to repair and paint wall damage, Policy Guideline #1 provides assistance when determining responsibility for damage in a rental unit. With respect to nail holes, it states:

Nail Holes:

1. *Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.*
2. *The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.*

3. *The tenant is responsible for all deliberate or negligent damage to the walls.*

[Reproduced as written.]

In this case, there is no dispute that the Tenant put holes in the walls. The Landlords testified there were 14 or more holes. The Tenant suggested there were only 4 thumb tack holes. Given the duration of the tenancy – 2 years, 4 months – I find it is more likely than not that the Tenant put more than 4 thumb tack sized holes in the walls. However, I find there is insufficient evidence before me to determine that the Landlord provided the Tenant with any instructions with respect to hanging and removing pictures/mirrors/wall hangings/ceiling hooks, or that would cause me to conclude the number of holes, even if the Landlords are believed, was excessive. Accordingly, I find that this aspect of the Landlords' Application is dismissed.

The Tenant's Claim

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 tenant is entitled to the return of double the amount of the deposits. The language in the *Act* is mandatory.

In this case, I find the Tenant provided the Landlord with their forwarding address in writing during the move-out condition inspection on March 31, 2018. Accordingly, the Landlord had until April 15, 2018, to repay the security and pet damage deposits to the Tenant or make an application for dispute resolution.

The Landlords have not returned the security and pet damage deposits to the Tenant, and did not make the Landlords' Application until October 9, 2018. Accordingly, I find the Tenant is entitled to recover double the amount of the security deposit held, or \$1,150.00.

Set-off of Claims

The Landlord has demonstrated an entitlement to a monetary award of \$545.00.

The Tenant has demonstrated an entitlement to a monetary award of \$1,150.00.

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 Tenant is entitled to a monetary order in the amount of \$605.00, which has been calculated as follows:

Tenant's monetary award – Landlords' monetary award = Amount of monetary order

$$\$1,150.00 - \$545.00 = \$605.00$$

Conclusion

The Tenant is granted a monetary order in the amount of \$605.00. 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: October 29, 2018

Residential Tenancy Branch