



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC FF

Introduction

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

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

The Landlord was represented at the hearing by J.M., an agent. The Tenant attended the hearing. Both J.M. and the Tenant provided affirmed testimony.

On behalf of the Landlord, J.M. testified the Application package and a subsequent documentary evidence package were served of the Tenant by registered mail. The Tenant acknowledged receipt of both packages.

The Tenant testified that the documentary evidence to be relied upon was served on the Landlord by leaving a copy in the mailbox. J.M. acknowledged receipt.

Neither J.M. nor the Tenant raised any issue with respect to service or receipt of the above documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Both J.M. and the Tenant 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 to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental property?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed that a fixed-term tenancy began on September 1, 2017, and was expected to continue to August 31, 2018. According to J.M., the Tenant gave notice of his intention to vacate the rental unit on or about October 20, 2017. The Tenant vacated the rental property in accordance with the notice on or about February 25, 2018. During the tenancy, rent in the amount of \$2,600.00 per month was due on the 1st day of each month. The Tenant paid a security deposit of \$1,300.00 and a pet damage deposit of \$1,300.00, which the Landlord holds. The rental property was re-rented as of March 1, 2018.

The Landlord's monetary claim was summarized in a Monetary Order Worksheet dated September 12, 2018. First, the Landlord claimed \$2,475.00 for lawn repairs. J.M. testified the Tenant agreed to maintain the lawn during the tenancy but allowed it to fall into poor condition. J.M. stated this agreement was set out in an email that was not submitted into evidence.

In support of this aspect of the Landlord's claim, a letter from the City of Burnaby, dated May 20, 2016, was submitted. The letter advised that an inspection on May 19, 2016 "revealed that the property was untidy or unsightly" and asked the owner to "bring the property into compliance" with the local bylaw. Specifically, the concerns expressed in the letter included tall grass and weeds in the front and rear yards.

In addition, the Landlord submitted a photograph depicting the front of the rental property in 2015, which depicts the front of the rental property on a sunny day with the lawn freshly mowed. The Landlord submitted 3 additional photographs, taken in February 2018, which depict moss and leaves on the lawn.

Further, a hand-written invoice dated March 17, 2018, was submitted into evidence. It confirmed work such as pruning, trimming, weeding, mowing, raking, moss control, and the application of top soil. J.M. testified the invoice was paid by the Landlord.

In reply, the Tenant acknowledged his agreement to maintain the lawn but submitted this was limited to cutting the grass and basic care. The Tenant suggested that he was not responsible for regular weeding. Further, the Tenant acknowledged receipt of the letter from the City of Burnaby and confirmed the long grass and weeds were addressed at that time.

Second, the Landlord claimed \$322.60 to repair and paint wall damage caused during the tenancy. The Landlord submitted a receipt for paint dated March 1, 2018, and several photographs depicting cracks in living room and kitchen walls.

In reply, the Tenant testified the cracks were caused when the Tenant kept the heat turned up in the rental unit. He had a new baby and wanted the unit to be warm.

Third, the Landlord claimed \$2,600.00 in recovery of costs associated with re-renting the property and participating in the hearing. J.M. testified that \$1,300.00 was claimed for the Landlord's cost for him to re-rent the unit, and \$1,300.00 was claimed for the cost for him to prepare for and attend the hearing.

In reply, the Tenant submitted that there is no liquidated damages clause in the tenancy agreement and that he was not given an opportunity to help find a new tenant.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee.

Analysis

Based on the 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 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 on the part of the Tenant. 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 \$2,475.00 for lawn repair, Policy Guideline #1 elaborates on the rights and obligations of landlords and tenants with respect to lawn maintenance. It states:

Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

[Reproduced as written.]

In this case, the Tenant acknowledged an obligation to perform routine yard maintenance such as cutting the grass and minor weeding. Despite an issue on or about May 20, 2016, I find there is insufficient evidence before me to conclude the Tenant did not meet this obligation. Further, I find there is insufficient evidence before me to conclude the Tenant had a further obligation maintain a weed- or moss-free lawn, prune trees, apply top soil, or pay for the disposal of yard waste generated by these activities. I also note there is insufficient evidence before me to conclude the condition

of the yard had any impact on the Landlord's ability to re-rent the property. Indeed, the parties confirmed the property was re-rented on March 1, 2018, within weeks of the Tenant vacating the rental unit. This aspect of the Application is dismissed.

With respect to the Landlord's claim for \$322.60 to repair and paint wall damage, the Tenant acknowledged during the hearing that the damage was caused by turning up the heat in the rental unit during the tenancy. Based on the Tenant's admission, I grant the Landlord a monetary award of \$322.60.

With respect to the Landlord's claim for \$2,600.00 in recovery of the cost for J.M. re-rent the unit and attend the hearing as the Landlord's agent, I find there is insufficient evidence before me to grant the relief sought. As noted by the Tenant, the tenancy agreement did not include a liquidated damages clause. In addition, although J.M. testified about the time involved for multiple showings of the property, paperwork, and coordination of trades, the property was rented within weeks after the Tenant vacated. No evidence was put before me to suggest the Landlord suffered any loss of rent. Further, I find the amounts claimed by the Landlord to have J.M. prepare for and attend the hearing are generally not recoverable. Hearings are intended to facilitate the resolution of disputes between landlords and tenants. Parties who incur costs to prepare for hearings or to have an agent or legal counsel attend on their behalf generally do so at their own expense. This aspect of the Application is dismissed.

Based on the above, I grant the Landlord a monetary award in the amount of \$422.60, which consists of \$322.60 for paint costs and \$100.00 in recovery of the filing fee.

Policy Guideline 17(C)(1) addresses how an arbitrator should deal with deposits at the conclusion of dispute resolution proceedings. It states:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- *a landlord's application to retain all or part of the security deposit; or*
- *a tenant's application for the return of the deposit.*

unless the tenant's right to the return of the deposit has been extinguished under the Act¹⁴. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

[Reproduced as written.]

Pursuant to section 67 of the *Act* and Policy Guideline #17(C)(1), I grant the Tenant a monetary order in the amount of \$2,177.40, which has been calculated as follows:

Item	Amount
Security and pet damage deposits:	\$2,600.00
<i>LESS</i> Landlord's monetary award:	(\$422.60)
TOTAL:	\$2,177.40

Conclusion

The Tenant is granted a monetary order in the amount of \$2,177.40. The 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 11, 2018

Residential Tenancy Branch