



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT MNSD (tenants); MNDL-S FFL (landlord)**

Introduction

This hearing dealt with an application by the tenants for a monetary order under the *Residential Tenancy Act* (the *Act*) for the following:

- A return of the security deposit under section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*; and
- Reimbursement of the filing fee under section 72.

This hearing also dealt with an application by the landlord for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Both tenants and the landlord attended the hearing. Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions. Each party acknowledged receipt of the other party’s

Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find each party was served in accordance with the *Act*.

Issue(s) to be Decided

- Are the tenants entitled to a monetary award equivalent to double the value of the security deposit because of the landlord's failure to comply with the provisions of section 38;
- Are the tenants entitled to reimbursement of the filing fee under section 72;
- Is the landlord entitled to a monetary award for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- Is the landlord entitled authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 72; and
- Is the landlord entitled authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agree on the following facts. They entered into a tenancy agreement beginning on August 1, 2016 and ending on November 30, 2017. Rent was \$7,000.00 a month payable on the first of the month. The tenants provided a security deposit of \$3,500.00 at the start of the tenancy which the landlord holds. The tenants have not provided authorization to the landlord to retain any amount of the security deposit. On the day of vacating the unit, the tenants provided the landlord with their forwarding address; the landlord acknowledged receipt. A copy of the tenancy agreement was submitted in evidence. The agreement contains a clause that the tenants will have a professional cleaning done on moving out. The agreement is silent regarding gardening obligations of the tenants.

The tenants vacated the unit after the landlord issued a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") effective November 30, 2017. The landlord acknowledged owing the tenants \$7,000.00 for compensation payable under section 51 the *Act*. A copy of the Two Month Notice was submitted in evidence.

The landlord filed the Application for Dispute Resolution within 15 days of the date of the end of the tenancy at which time the tenants provided their forwarding address.

The landlord did not file a monetary order worksheet for damages claimed of \$14,000.00 set out in the Application. At the hearing, the landlord testified her claim for damages was as follows:

ITEM	AMOUNT
Carpet cleaning	\$360.00
Cleaning	\$140.00
Dishwasher repairs	\$300.00
Lock replacement	\$2,131.00
Repairs for damage to unit	\$1,271.50
Replacement of plants	\$2,400.00
Monetary Award Requested by Landlord	\$6,602.50

The tenants denied the landlord was entitled to any of the amounts claimed. The tenants requested a return of their security deposit and payment of one month's compensation pursuant to the landlord's issuance of a Two Month Notice. The tenants' claims are as follows:

ITEM	AMOUNT
Security deposit - return	\$3,500.00
Compensation in amount of one month's rent	\$7,000.00
Monetary Award Requested by tenants	\$10,500.00

The landlord submitted a 34-page "Visual Home Inspection Report" dated April 2, 2016. The purpose of the report is stated to be, "to assist you in understanding the condition of the property to assist in making an informed purchase decision". The form used is not a standard RTA form. The landlord seeks to rely on comments and observations in the report in support of her application for compensation from the tenants. The tenants testified they did not participate in the inspection as they rented the unit about 5 months later. They deny the report is relevant to the landlord's claims.

The landlord also submitted a "Home Inspection Report" dated November 30, 2017 of 74 pages. The form used is not a form under the RTA. The landlord seeks to rely on comments and observations in the report. The tenants testified they did not attend the inspection and they object to the consideration of the report as evidence for the landlord's claims.

The landlord submitted receipts for cleaning (\$140.00) and carpet cleaning (\$360.00). The tenants deny responsibility for these expenses, saying they left the unit reasonably clean. The landlord states that the level of cleaning did not meet the requirement for professional cleaning set out in the agreement.

The tenants also state they had the carpets professionally cleaned prior to vacating the unit and left the receipt in the unit. The tenants did not submit a copy of the receipt. The landlord testified the carpets needed cleaning after the tenants vacated and she accordingly arranged for a professional carpet cleaning company to do the job. The tenants deny there was any need for the landlord to do this.

The landlord did not submit a receipt for dishwasher repairs which she estimated at \$300.00. The landlord stated her claim was based on her personal knowledge that the dishwasher was working when the tenancy began and that it did not work when the tenants vacated. The tenants deny the dishwasher was not working when they vacated and stated that it is the landlord's obligation under the terms of the agreement to provide a working dishwasher.

The landlord submitted a receipt dated February 24, 2018 for \$2,131.15 for replacement of locks. The tenants deny any responsibility for this expense. The tenants stated they incurred the expense of changing the locks at the beginning of the tenancy to assure greater security. They testified that when they vacated the unit, they left the keys in the unit. The landlord acknowledged receipt of the keys but stated she was concerned copies of the keys could be elsewhere; accordingly, she had the locks replaced and seeks compensation for that expense from the tenants.

The landlord did not submit a ledger of expenses or a monetary order worksheet. The landlord submitted 60 or more receipts in support of her claim for damages to the unit. During the hearing, the landlord spent considerable time attempting to describe the damage and the applicable repairs as may be reflected in the receipts. The landlord acknowledged that some of the submitted receipts were duplicates and did not relate to damages to the unit but were included in error, such as receipts for recliners, garden plants, groceries, unidentified purchases and other unrelated items. During the hearing, the landlord could not provide an itemized list with corresponding cost for repairs substantiated by receipts. The landlord estimated the cost of repairs was about \$1,271.50.

The tenants denied they damaged the unit in any way or that they are responsible for compensating the landlord in the amount claimed or at all.

Analysis

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

The best evidence of the condition of a rental unit is a condition inspection completed by the parties at the beginning and at the end of the tenancy in accordance with the *Act* and regulations. The documents submitted by the landlord as “condition inspection reports” were not such documents. The tenants did not participate in the inspections or sign the inspections. I therefore will not consider the two reports in reaching my decision.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I will consider each of the landlord’s claims in turn.

Cleaning Expenses

Under section 37(2) of the *Act*, the tenants must leave a rental unit *reasonably clean*. However, the tenancy agreement between the parties included a provision that the tenants would have the unit “professionally cleaned”, a higher standard than “reasonably clean”. The tenants agree they did not have the unit professionally cleaned but left it merely “reasonably clean”. The landlord submitted an invoice for \$140.00 as the expense necessary to clean the unit to the higher standard.

In consideration of the evidence of the landlord and the burden of proof required, I find on a balance of probabilities that the landlord has established the tenants did not leave the unit to the standard of “professionally clean”. I accept the amount requested as compensation for the cleaning expenses to have been incurred by the landlord. I therefore find the landlord is entitled to a monetary award against the tenants in the amount of \$140.00.

Carpet Cleaning

Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises discusses the responsibility of the tenant at the end of a tenancy. The section with respect to carpets states as follows:

3. *The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.*

After listening to the testimony of the landlord and viewing the evidence, including the receipt for carpet cleaning expenses, I accept the landlord’s evidence the tenants did not leave the carpets reasonably clean. Based on this finding, the landlord took reasonable and necessary steps to have the carpets cleaned. I find the landlord is entitled to a monetary award in the amount claimed for carpet cleaning, \$360.00.

Dishwasher Repairs

The landlord did not submit any evidence in support of her claim that she incurred an expense of \$300.00 for repairs to the dishwasher as a result of damage caused by the tenants.

I find the landlord has not met the burden of proof with respect to this aspect of her claim which I dismiss without leave to reapply.

Lock Replacement

The landlord seeks reimbursement for the cost of replacing the locks in the unit, \$2,131.00, for which the landlord submitted a receipt.

In *Policy # 1*, the obligation of the landlord with respect to locks in a unit is discussed as follows:

The landlord is responsible for providing and maintaining adequate locks or locking devices on all exterior doors and windows of a residential premises provided however that where such locks or locking devices are damaged by the actions of the tenant or a person permitted on the premises by the tenant, then the tenant shall be responsible for the cost of repairs.

The landlord has provided no evidence that the tenants damaged the locks because of which the landlord incurred the expense for their replacement. I find the landlord has not met the burden of proof with respect to this aspect of her claim which I dismiss without leave to reapply.

Repairs

The landlord submitted about 60 receipts, only some of which related to her claim. The remainder were not organized to provide specific information of the nature of the damage in the unit and the cost of repairs for which compensation was requested. The landlord attempted to organize the receipts and to quantify her claim during the hearing. This result is an “estimate” of the compensation claimed of \$1,271.50.

Rule 3.7 of the *Rules of Procedure* states that evidence must be organized, clear and legible. The Rule states as follows:

3.7 All documents to be relied on as evidence must be clear and legible. To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office. For

example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2". To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

I find the landlord's evidence with respect to her claim for compensation for the cost of repairs is "not readily identifiable, organized, clear and legible". Accordingly, I decline to consider the receipts the landlord provided. As the landlord submitted no other evidence, I find she has failed to meet the burden of proof with respect to this aspect of her claim which I dismiss without leave to reapply.

Plants

Policy # 1 provides guidance with respect to a tenant's obligation to maintain a landscape as follows:

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.

As the unit was a single-family dwelling, the tenants were obliged to perform routine yard maintenance. The tenants asserted they maintained the yard and garden. However, the landlord claims the tenants neglected six significant landscaping plants which died and were replaced at a cost of \$2,400.00. The tenants claim they are bewildered by the landlord's claim in this regard and have no knowledge of any such special plants which expired during the tenancy. The landlord did not provide a copy of the receipt or any evidence that the tenants agreed to any special care for particular plants.

I find the landlord has not met the burden of proof with respect to this aspect of her claim which I dismiss without leave to reapply.

Summary

The tenants are entitled to reimbursement of the filing fee as they were primarily successful in their claim.

I award the tenants the following:

ITEM	AMOUNT
Security deposit return	\$3,500.00
Compensation in amount of one month's rent	\$7,000.00
Reimbursement of filing fee	\$100.00
Monetary Award Tenants	\$10,600.00

I award the landlord the following:

ITEM	AMOUNT
Cleaning expenses	\$140.00
Carpet cleaning	\$360.00
Monetary Award Landlord	\$500.00

The tenants are therefore entitled to a monetary order against the landlord in the amount of **\$10,100.00** calculated as follows:

ITEM	AMOUNT
Award to tenants (above)	\$10,600.00
Less award to landlord (above)	(\$500.00)
Monetary Order – Tenants	\$10,100.00

Conclusion

The tenants are awarded a monetary order against the landlord in the amount of **\$10,100.00**. The landlord is ordered to pay this sum forthwith. This order must be served on the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims division of the Provincial 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: December 4, 2018

Residential Tenancy Branch