



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNR FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on August 9, 2018 (the "Application"). The Landlords 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;
- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The Landlords were represented at the hearing by R.D. Although B.D. also attended the hearing, he did not participate. The male Tenant attended the hearing on his own behalf. The female Tenant did not attend the hearing. Both R.D. and the male Tenant provided affirmed testimony.

On behalf of the Landlords, R.D. testified the Application packages were served on the Tenants by registered mail on August 13, 2018. Canada Post registered mail receipts and tracking information confirming receipt were submitted in support. According to R.D., subsequent documentary evidence packages were also served on the Tenants by registered mail. D.B. acknowledged receipt of these documents.

The male Tenant submitted documentary evidence in response to the Application. The documentary evidence was submitted to the Residential Tenancy Branch through Service BC on November 25, 2018. Although not served on the Landlords in accordance with the *Act*, R.D. acknowledged receipt of the same documents during the tenancy. I find there is no prejudice to the Landlords if I consider them.

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 the above documents were sufficiently served in accordance with 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 to be Decided

1. Are the Landlords entitled to a monetary order for damage to the rental unit?
2. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss?
3. Are the Landlords entitled to a monetary order for unpaid rent?
4. Are the Landlords entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the fixed-term tenancy began on November 1, 2017, and was expected to continue to October 31, 2019. However, the male Tenant vacated the rental in or about April 2018, ostensibly due to family violence and harassment. The female Tenant remained in the rental unit until June 30, 2018. Rent was due in the amount of \$1,500.00 per month. The Tenants paid a security deposit of \$700.00, which the Landlords hold.

The Landlords' monetary claim was set out in the Application. First, the Landlords claimed \$1,875.00, which is comprised of \$250.00 for bathroom repairs and \$1,625.00 for rug repairs.

With respect to the bathroom repairs, the Landlords submitted 3 photographs depicting paint peeling from the walls and ceiling. According to R.D., the Tenants replaced a shower head which resulted in increased condensation. In support of this aspect of the claim, the Landlords submitted a text message exchange, in which the Landlords were advised the cost to repair the bathroom was \$250.00.

In reply, the male Tenant acknowledged the Tenants changed the shower head but disagreed that it was the cause of the peeling paint. He suggested that all showers cause condensation.

With respect to carpet repairs, the Landlords submitted 2 photographs depicting pink stains on carpet. The Landlords also submitted a text message exchange, in which a “rough quote” of \$1,625.00 was provided to install a 12’ x 24’ area of carpet and underlay. R.D. confirmed the work has not been completed.

In reply, the male Tenant testified he was unaware of the stains and suggested the amount claimed is too high. However, he stated he would not be opposed to paying an amount I deem to be appropriate.

Second, the Landlords claimed \$82.54 for unpaid utilities. In support, the Landlords submitted a statement from the district indicating the amount due for water, sewer, and garbage at the rental property from April 1 – June 30, 2018, was \$82.54.

In reply, the male Tenant agreed with this aspect of the claim.

Third, the Landlords claimed \$3,000.00 for unpaid rent for the months of June and July 2018. Although R.D. testified to her belief the Landlords could have claimed rent to October 31, 2018, she acknowledged the Landlords are only seeking to be reimbursed to July 31, 2018.

In reply, the Tenant acknowledged rent was not paid by the Tenants for June and July 2018. However, he stated he vacated the rental unit in April 2018 and subsequently provided the Landlords with an Ending Fixed-Term Tenancy Confirmation Statement, dated June 11, 2018 (the “Confirmation Statement”). R.D. acknowledged receipt of the Confirmation Statement.

Finally, the Landlords sought to recover the \$100.00 filing fee paid to make the Application.

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 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 \$250.00 for bathroom repairs, I find there is insufficient evidence before me to confirm that the damage was caused by the Tenants. Although the male Tenant acknowledged the shower head was changed during the tenancy, I am not satisfied that this caused the paint to peel. The unsigned and undated document submitted as a condition inspection report was of little assistance. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim for \$1,625.00 for carpet repairs, I find there is insufficient evidence before me to conclude the Landlords are entitled to recover this amount. On behalf of the Landlords, R.D. acknowledged the work has not been completed. In addition, the "rough quote" relied upon does not appear to be based on an inspection of the carpeted area but only on dimensions provided by the Landlords. I also note there is insufficient evidence before me to confirm the Landlords took reasonable steps to minimize their loss by obtaining quotes for cleaning or spot repair, for example. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim for \$82.54 for unpaid utilities, the male Tenant agreed this amount was due. The Landlords are granted a monetary award of \$82.54 for unpaid utilities.

With respect to the Landlords' claim for \$3,000.00 for unpaid rent for the months of June and July 2018, R.D. acknowledged receipt of the Confirmation Statement on June 11, 2018. A copy of the Confirmation Statement submitted into evidence was signed by a medical practitioner, pursuant to section 39(f) of the Residential Tenancy Regulation. Accordingly, I find the male Tenant ended the fixed-term tenancy early, in accordance with section 45.1(2) of the *Act*. Pursuant to section 45.1(3) of the *Act*, the tenancy ended on July 31, 2018. Although the female Tenant vacated the rental unit on June 30, 2018, the Landlords were unable to re-rent the unit. As a result, I find the Landlords are entitled to a monetary award of \$3,000.00 for unpaid rent to July 31, 2018.

Having been 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 Landlords retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$2,482.54, which has been calculated as follows:

Claim	Amount
Utilities:	\$82.54
Unpaid rent:	\$3,000.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$700.00)
TOTAL:	\$2,482.54

Conclusion

The Landlords are granted a monetary order in the amount of \$2,482.54. 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: December 4, 2018

Residential Tenancy Branch