



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNR MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on September 27, 2018, as amended on October 1, 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;
- a monetary order for unpaid rent;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified that the Application package and amendment were served on the Tenant by registered mail on October 1, 2018. A Canada Post registered mail receipt was submitted in support. Pursuant to section 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Application and amendment are deemed to have been received by the Tenant on October 6, 2018.

The Tenant's documentary evidence was submitted to the Residential Tenancy Branch on January 22 and 23, 2019. According to the Tenant, it was served on the Landlord and was received on January 24, 2019. The Landlord acknowledged receipt. Pursuant to section 71 of the *Act*, I find the Tenant's documentary evidence was 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

On October 1, 2018, the Landlord submitted an amendment to the Residential Tenancy Branch. The amendment indicated the Landlord was requesting an order of possession and set out a claim to recover registered mail charges. During the hearing, the Landlord confirmed that an order of possession is not required but reiterated a request to recover the registered mail charges incurred in preparation for the hearing. However, costs incurred in preparation for a dispute resolution hearing, such as registered mail and photocopying charges, are generally not recoverable, particularly when there are less expensive means for accomplishing the same end. Accordingly, the items referred to in the amendment have not been considered further in this decision and are dismissed.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental unit?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to a monetary order for unpaid rent?
4. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

Neither party submitted a copy of the tenancy agreement into evidence. However, the parties agreed the fixed-term tenancy began on November 1, 2017, and was expected to continue to November 1, 2018. Rent was due in the amount of \$850.00 per month. The Tenant paid a security deposit of \$425.00 and a pet damage deposit of \$100.00, which are held by the Landlord.

The Landlord's claim is set out in the Application submitted. First, the Landlord claimed \$930.22 to replace a couch that was included with the rental unit and was damaged by the Tenant's cat, and to replace LED lighting in the rental unit. In support of the claim to replace the couch, the Landlord submitted two quotes the amounts of \$1,006.88 and \$1,342.88. The Landlord also submitted photographic evidence depicting the damaged couch. However, the Landlord confirmed that the couch has not been replaced. The unit has been re-rented.

In addition, as part of the amount claimed, the Landlord claimed \$90.23 to replace LED bulbs removed from the unit during the tenancy. A receipt was submitted in support.

In reply, the Tenant acknowledged that her cat damaged the couch but estimated that the couch was more than 5 years old. With respect to the LED bulbs, the tenant testified they were flickering so she called an electrician. According to the Tenant, the electrician removed and recycled the bulbs.

Second, the Landlord claimed \$1,700.00 in unpaid rent for September and October 2018. The Landlord testified the fixed-term tenancy was supposed to end on November 1, 2018. The Landlord stated he advertised the unit for rent non September 13, 2018, but that he was unable to secure a new tenant until November 1, 2018.

In reply, the Tenant agreed it was a fixed-term tenancy but submitted the agreement provided some leeway with respect to ending the tenancy. In copies of text messages submitted by the Landlord, the Tenant gave notice of her intention to vacate the rental unit on July 29, 2018. A reminder was sent on August 12, 2018.

Third, the Landlord claimed \$38.00 for the cost to advertise the rental unit in the local newspaper.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Application, and requested that he be permitted to retain the security deposit in partial satisfaction of the claim.

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 Tenants. 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 related to a damaged couch, I find the Landlord has provided sufficient evidence to demonstrate he has suffered only a nominal loss. There are several reasons for this finding. First, although roughly 5 months have passed since the tenancy ended, the couch has not been replaced. Second, the Landlord testified that the unit was re-rented without the couch being replaced. Third, the parties' evidence conflicted with respect to the age of the couch. However, the Tenant acknowledged that her cat caused the damage depicted in a photograph submitted into evidence by the Landlord. Accordingly, pursuant to Policy Guideline #16(C), I find the Landlord is entitled to nominal damages for the damage to the couch in the amount of \$250.00.

With respect to the Landlord's claim related to replacement of the LED bulbs, I find the Landlord has demonstrated an entitlement to the amount claimed. The Landlord's claim was supported by a receipt. In addition, the Tenant acknowledged that the bulbs were removed and recycled by the electrician she engaged during the tenancy. Policy Guideline #1 confirms tenants are responsible to replace lightbulbs during a tenancy. Accordingly, I grant the Landlord a monetary award of \$90.23.

With respect to the Landlord's claim for \$1,700.00 in unpaid rent, I find the Landlord received notice of the Tenant's intention to vacate the rental unit on July 29, 2018. However, the Landlord testified that he did not place an advertisement until September 13, 2018, roughly six weeks later. Section 7 of the *Act* requires that a party who cclaims compensation for damage or loss must do whatever is reasonable to minimize the damage or loss. In this case, I find that while the Landlord did not post the advertisement until September 13, 2018, the Tenant did breach the tenancy agreement which resulted in a loss to the Landlord. Therefore, I find it appropriate in the circumstances to grant the Landlord $\frac{1}{2}$ of a month's rent, or \$425.00 is satisfaction of this aspect of the claim.

With respect to the Landlord's claim for \$38.00 for the cost of placing an advertisement to re-rent the unit, I find this is reasonable in the circumstances. Although placed later than it should have been, I find this expense is related directly to the Tenant's breach of the fixed-term tenancy agreement. Therefore, the Landlord is granted a monetary award in the amount of \$38.00.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I order that the deposits held be applied to the Landlord's monetary award in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$378.23, which has been calculated as follows:

Claim	Amount
Replace damaged couch (nominal):	\$250.00
Replace LED bulbs:	\$90.23
Unpaid rent for breach of agreement:	\$425.00
Advertisement:	\$38.00
Filing fee:	\$100.00
<i>LESS</i> deposits:	(\$525.00)
TOTAL:	\$378.23

Conclusion

The Landlord is granted a monetary order in the amount of \$378.23. 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: February 4, 2019

Residential Tenancy Branch