



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	MND MNDC MNR MNSD 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 for Dispute Resolution was made on October 12, 2018 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for damage;
- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent;
- an order that the Landlords be permitted to retain the security deposit held in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on October 19, 2018 (the “Tenant’s Application”). The Tenants applied for the following relief, pursuant to the *Act*:

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

The Landlords and the Tenants attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlords testified that the Landlords' Application package and a subsequent documentary evidence package were served on the Tenants by registered mail and by courier, respectively. The Tenants acknowledged receipt of both packages. In addition, the Tenants testified the Tenants' Application package and documentary evidence were served on the Landlords by registered mail. Although L.J. disagreed with the method of service, he acknowledged receipt. J.J. also acknowledged receipt.

No further issues were raised during the hearing with respect to service or receipt of the above documents. Pursuant to section 71 of the *Act*, I find the above 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 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

1. Are the Landlords entitled to a monetary order for damage?
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 retain the security deposit in partial satisfaction of the claim?
5. Are the Landlords entitled to an order granting recovery of the filing fee?
6. Are the Tenants entitled to an order granting the return of all or part of the security deposit?
7. Are the Tenants 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. The parties agreed the tenancy began on September 1, 2018. Although J.J. testified the parties intended to enter into a fixed-term tenancy agreement, he acknowledged that the written agreement confirms a month-to-month tenancy. The tenancy ended pursuant to a notice to end the tenancy given to the Landlords on or about September 12, 2018. The Tenants vacated the rental unit on October 1, 2018. During the tenancy,

rent in the amount of \$1,600.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$800.00 and a pet damage deposit of \$800.00, which the Landlords hold.

The Landlords' Claim

The Landlords claim was set out in the Landlords' Application. First, the Landlords claimed \$800.00 for damage to the rental unit. Specifically, J.J. testified that the rental unit was newly renovated at the beginning of the tenancy. However, J.J. stated that the Tenants caused damage throughout the rental unit during the brief tenancy, including nail holes, scuffs on walls, damage to a door jamb, and that adhesive hooks were applied to painted walls. Photographic images were submitted in support. In addition, J.J. confirmed that although the Landlords obtained an estimate to complete the repairs for \$800.00, the new tenants have agreed to attend to the repairs.

In reply, J.G. acknowledged some minor damage was caused when the Tenants were moving their over-sized couch into the rental unit. However, she testified that any other damage was normal wear and tear.

Second, the Landlords initially claimed \$18,920.00 for 11 months of unpaid rent and utilities. However, J.J. acknowledged during the hearing that they were able to re-rent the unit for \$1,500.00 per month, effective November 1, 2018. A copy of the new tenancy agreement was submitted into evidence. Accordingly, the Landlords modified this aspect of the claim to include \$1,600.00 for unpaid rent for the month of October 2018, and \$100.00 per month for the remaining 10 months of what the Landlords believed to be a fixed-term tenancy.

In reply, the Tenants stated their understanding that the agreement between the parties was a month-to-month tenancy. The Tenants disagree they owe rent for the month of October 2018 because of alleged harassment, repeated unauthorized entries during the brief tenancy, and perceived issues with the furnace. The Tenants claimed they felt unsafe in the rental unit. J.G. also testified they gave notice as soon as they could. In response, L.J. testified that he attended the rental property on September 15, 2018, and that the Tenants did not express these concerns to him at that time.

Third, the Landlords claimed \$800.00 for costs associated with eliminating cat odours in the rental property. J.J. testified that the litter box used by the Tenants' cat was kept in the common area, leaving strong odours in the rental property. In support, the Landlords relied on copies of text messages from an upstairs tenant, which stated: "Are you fine with us going down to mop the common area as it still really smells with the heat going of cat piss and it's rather strong and gross I have to have most vents closed and windows open to even stand it". In another text message, the upstairs tenant wrote: "I swear the cat got into the walls or vent somewhere and left it's marking within the house somewhere". The Landlords also submitted a receipt for the expense paid in the amount of \$641.50.

In reply, J.G. acknowledged the cat's litter box was kept in the common area. However, she testified that the litter box was enclosed and was cleaned regularly. With respect to the suggestion that the Tenants' cat got into the walls, J.G. testified that happened on only one occasion when they first moved into the rental unit.

Finally, the Landlords claimed \$100.00 for the filing fee paid to make the Landlords' Application. The Landlords also applied to retain the security deposit and pet damage deposit in partial satisfaction of the claim.

The Tenants' Claim

The Tenants claim \$3,200.00 for the return of double the amount of the security deposit. The Tenants testified the Landlords were provided with a forwarding address in writing on September 17, 2018. A type-written letter bearing the same date was submitted in support. The Tenants also relied upon an email dated September 20, 2018, in which the Landlords acknowledged receipt of the Tenants' letter on September 17, 2018. As noted above, the Landlords' Application was made on October 12, 2018.

In reply, L.J. acknowledged receipt on behalf of the Landlords.

The Tenants also claimed \$100.00 for the filing fee paid to make the Tenants' Application.

Analysis

Based on all of the above, the evidence and testimony, 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 parties 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 other party. Once that has been established, the parties must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the parties did what was reasonable to minimize the damage or losses that were incurred.

The Landlords' Claim

With respect to the Landlords' claim for \$800.00 for damage to the rental unit, I find there is insufficient evidence before me to grant the relief sought. Based on the photographs submitted by the Landlord, the damage appears to be reasonable wear and tear, despite the brief duration of the tenancy. Further, on behalf of the Landlords, J.J. confirmed that the expense was not incurred and that the new tenants agreed to address the nail holes and scuffs. Therefore, I find I am unable to conclude that the Tenants violated the *Act*, regulation, and/or the tenancy agreement, or determine the

value of the Landlords' loss, if any. This aspect of the Landlords' Application is dismissed.

With respect to the Landlords' claim for unpaid rent in the amount of \$1,600.00, section 26 of the *Act* requires tenants to pay rent when due, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

In this case, I find the Tenants gave notice of their intention to end the month-to-month tenancy on or about September 12, 2018, in accordance with section 45 of the *Act*. However, in accordance with the same provision, the Tenants' notice was effective to end the tenancy on October 31, 2018. In other words, rent became payable when due on October 1, 2018. I find there is insufficient evidence before me to conclude the Tenants had a right under the *Act* to deduct all or a portion of the rent. Therefore, I find the Landlords are entitled to a monetary award of \$1,600.00 for unpaid rent.

With respect to the Landlords' claim for \$1,000.00, which is the difference in the amount of rent received for the 10 months commencing November 1, 2018, I find the Landlords are not entitled to recover this amount. The Tenants were entitled to end the month-to-month tenancy in accordance with section 45 of the *Act*. The Tenants' obligation to pay rent to the Landlords ended on October 31, 2018.

The Tenants' submissions provided as a justification for ending the tenancy early and refusing to pay rent when due on October 1, 2018 – harassment, entries without notice, and issues with the furnace – are rejected. If the Tenants had issues with the Landlord, they were entitled to make an application for dispute resolution and request orders related to the issues. They did not. Rather, they ended the tenancy in accordance with section 45 of the *Act* and did not pay rent when due on October 1, 2018.

With respect to the Landlords' claim for \$800.00 to remove cat odours, I find the Landlords have demonstrated an entitlement to recover \$641.50 from the Tenants. Based on the evidence submitted by both parties – including a receipt for the expense and complaints from an upstairs tenant – I find it is more likely than not that the Tenants' cat was the cause of odours that needed to be addressed professionally.

To summarize, I find the Landlords have demonstrated an entitlement to a monetary award of \$2,341.50, which is comprised of \$1,600.00 for unpaid rent, \$641.50 for the cost to eliminate cat odours, and \$100.00 in recovery of the filing fee. In addition, I find it is appropriate in the circumstances to permit the Landlords to retain the security deposit and pet damage deposit in partial satisfaction of the Landlords' claim. Therefore, pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary award in the amount of \$741.50, which has been calculated as follows:

Claim	Amount allowed
Unpaid rent (October 2018):	\$1,600.00
Cat odour removal:	\$641.50
Filing fee:	\$100.00
<i>LESS</i> deposits held:	(\$1,600.00)
TOTAL:	\$741.50

The Tenants' 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. Section 38(6) of the *Act* confirms that a landlord who fails to do so is obligated to pay the tenant double the amount of the deposits.

In this case, I find the Tenants provided the Landlords with their forwarding address in writing on September 17, 2018. The Landlords' email to the Tenants dated September 20, 2018, confirmed receipt on that date. However, as the tenancy ended on October 1, 2018, the Landlords had until October 16, 2018, to repay the deposits to the Tenants or make a claim against them. The Landlords made a claim against the deposits on time on October 12, 2018. Therefore, I find that the Tenants are not entitled to receive double the amount of the deposits. Further, in light of my findings above, I find the Tenants are not entitled to the return of the security deposit and pet damage deposit, but that these deposits will be applied to the monetary award granted to the Landlords.

The Tenants' Application is dismissed, without leave to reapply.

Conclusion

The Tenants' Application is dismissed, without leave to reapply.

The Landlords are granted a monetary order in the amount of \$741.50. 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: February 8, 2019

Residential Tenancy Branch