



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on December 11, 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;
- a monetary order for unpaid rent;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlords attended the hearing at the appointed date and time, and provided affirmed testimony.

Preliminary Matters

The Landlords made an amendment to their Application on March 18, 2019 to amend the monetary amount of their claim.

The Landlords testified that they served their Application and documentary evidence package to the Tenant by registered mail on December 13, 2018. The Landlords testified that they served the amendment to their Application to the Tenant by registered mail on March 18, 2019. The Tenant confirmed receipt of both mailings. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant confirmed that she did not submit any documentary evidence in preparation for this hearing.

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.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for damage, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Are the Landlords entitled to retain the security deposit, pursuant to Section 38 of the *Act*?
4. Are the Landlords entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on November 15, 2017. Rent in the amount of \$900.00 was due to the Landlords each month. The Tenant paid a security and pet deposit in the amount of \$900.00, which the Landlords continue to hold. The Tenancy ended on November 30, 2018 once the Tenant moved out of the rental unit.

The Landlords are seeking a monetary award in the amount of \$900.00 for unpaid rent for the month of December 2018. The parties agreed that the Landlords sent the Tenant an email on November 20, 2018 indicating that the parties had entered into a fixed term tenancy and that the tenancy would end on November 30, 2018. The Tenant sent a reply to the Landlords on the same day which stated that fixed term agreements convert to month to month thereafter.

The Tenant stated that on November 21, 2018, she sent the Landlords a follow up email indicating that the Tenant would move out of the rental unit on November 30, 2018 as requested, in exchange for a satisfactory reference from the Landlords, as well as the return of the Tenant's security and pet deposit. The Landlords testified that they agreed to provide the Tenant with a reference; however, due to some damage in the rental unit,

the Landlords did not agree to the full return of the deposits. The Tenant ultimately moved out of the rental unit on November 30, 2018.

The Landlords testified that the Tenant did not provide them with notice to end tenancy and they were under the impression that the Tenant was going to remain in the rental unit on a month to month basis following the end of the fixed term agreement. The Tenant testified that she was under the impression that the Landlords wanted her to vacate the rental unit on November 30, 2018 as indicated in their email, therefore, she moved as a result. The Landlords were unable to re-rent the rental unit in December 2018 and are therefore seeking compensation in the amount of \$900.00.

The Landlords are also seeking a monetary order relating to damage caused to the rental unit. During the hearing, the Tenant agreed to compensate the Landlords in regards to the following claims; rekey the front door \$25.74, weather stripping \$9.70, and painting \$100.00.

Aside from the mutually agreed upon monetary claims, the Landlords are also seeking monetary compensation relating to damage which they set out on a monetary worksheet.

The Landlords are seeking \$105.00 for carpet cleaning in relation to a stain that they removed from the carpet. The Landlords submitted a picture of the stain as well as a receipt for the carpet cleaning in support. In response, the Tenant confirmed that the stain was caused by a candle that had fallen over after the Tenant was startled by a loud noise that occurred upstairs. The Tenant stated that she tried cleaning the stain herself, however, was unable to remove it completely.

The Landlords are claiming \$266.70 to replace some laminate flooring as well as \$635.25 to repair a kitchen cabinet beside the dishwasher as a result of some water damage. The Landlords also indicated that the Tenant had drilled two holes into the bottom of a cupboard. The Landlords were uncertain of the cause of the water damage; however, indicated that the rental unit was new when the Tenant moved in. The Tenant acknowledged drilling two small holes in the bottom of the kitchen cupboard to attach a small radio. The Tenant stated that she is unaware as to what caused the water damage to the flooring but that she did not notice any water on the floor during her tenancy which could have caused the damage.

Lastly, the Landlords are claiming \$18.45 for the replacement of a missing electrical cover. The Tenant stated that she did not notice an electrical cover during her tenancy, nor did she remove a cover. The Landlords provided a copy of a condition inspection report in support.

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*. Pursuant to Residential Tenancy Policy Guideline #16 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 Tenant. 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 loss of rent for the month of December 2018 in the amount of \$900.00, I find that the parties, through an exchange of emails, agreed that the tenancy would end on November 30, 2018. As such, I dismiss the Landlords' claim for loss of rent for December 2018 without leave to reapply.

During the hearing, the Tenant agreed to compensate the Landlords in regards to the following claims; rekey the front door \$25.74, weather stripping \$9.70, and painting \$100.00. As such, I find the Landlords are entitled to a monetary amount of \$135.44.

The Landlords are seeking \$105.00 for carpet cleaning costs in relation to a stain that they removed from the carpet. I accept that the Tenant agreed to causing the stain and that she was unable to clean it herself. As a result, I find that the Landlords have established an entitlement to a monetary amount of \$105.00.

The Landlords are claiming \$266.70 to replace some laminate flooring as well as \$635.25 to repair a kitchen cabinet beside the dishwasher as a result of some water damage. The Landlords also indicated that the Tenant had drilled two holes into the bottom of a cupboard. The Landlords were uncertain of the cause of the water damage. The Tenant acknowledged drilling two small holes in the bottom of the kitchen cupboard but was unaware as to what caused the water damage to the flooring or cabinet.

I find that the Landlords provided insufficient evidence to demonstrate that the Tenant caused the water damage to the flooring and kitchen cabinet. I accept that the Tenant drilled two small holes in the bottom of the kitchen cupboard, therefore, I find that the Landlords are entitled to a nominal amount of compensation in the amount of \$100.00 to repair the holes made by the Tenant. I dismiss the remaining portion of the Landlords claim without leave to reapply.

Lastly, the Landlords are claiming \$18.45 for the replacement of a missing electrical cover. The Tenant stated that she did not see or remove the cover. I find that the Landlord have provided insufficient evidence to demonstrate that the electrical cover had been there at the start of the tenancy and that the Tenant is responsible for the removal of the cover, therefore I dismiss this portion of the Landlords' claim without leave to reapply.

Having been partially successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlords retain a portion of the security deposit held in 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 \$340.44, which has been calculated as follows:

<i>Claim</i>	<i>Amount</i>
<i>Repairs/Cleaning:</i>	<i>\$240.44</i>
<i>Filing fee:</i>	<i>\$100.00</i>
<i>LESS security/pet deposit:</i>	<i>(\$900.00)</i>
<i>TOTAL:</i>	<i>-\$559.56</i>

Conclusion

The Landlord is granted a monetary order in the amount \$340.44 for damage caused by the Tenant to the rental unit. The Landlord currently holds the Tenant's security and pet deposits in the amount of \$900.00. After the offset, the Tenant is awarded a monetary order for the return of the remaining portion of their deposit in the amount of \$559.56. This order must be served on the Landlords as soon as possible. If the Landlords fail to comply the monetary order it 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: April 11, 2019

Residential Tenancy Branch