



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNR FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on December 21, 2018, which was amended by an Amendment to an Application for Dispute Resolution received at the Residential Tenancy Branch on March 18, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- 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 Landlord and the Tenants attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified that the Application package was served on the Tenants by leaving a copy at the door on December 17, 2018. The Landlord testified an amendment was served on the Tenants by courier on March 18, 2019. Although not served in accordance with the *Act*, the Tenants acknowledged receipt. All parties were in attendance and were prepared to proceed. No issues were raised during the hearing with respect to service or receipt of the above documents. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Tenants did not submit documentary evidence in response to the Application.

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. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Landlord entitled to a monetary order for unpaid rent?
3. Is the Landlord 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. It confirmed the month-to-month tenancy began on April 26, 2018. Rent in the amount of \$1,400.00 per month was due on the 26th day of each month. The Tenants paid a security deposit of \$700.00 and a pet damage deposit of \$200.00, which the Landlord holds. The Landlord confirmed she sold the rental property effective December 7, 2018, and that the new owner assumed the tenancy.

The Landlord's claim is set out in the Amendment. First, the Landlord claimed \$724.00 for unpaid utility charges for the period from April 19, 2018 to December 6, 2018, inclusive. The Landlord relies on the tenancy agreement between the parties which confirms electricity is not provided. She testified the agreement was to share this expense equally. The Landlord submitted BC Hydro invoices for the period claimed.

In reply, the Tenants testified that payments were made on July 12, 2018 (\$151.30) and September 12, 2018 (\$161.87), but that the Landlord did not provide receipts. The Tenants acknowledged that \$260.00 was withheld for other reasons, including an allegation that the Landlord sold their personal belongings. The Tenants also testified that they were without power for 48 hours from November 20-22, 2018, due to the Landlord's failure to pay the bills.

Second, the Landlord claimed \$517.00 for unpaid rent from November 26 – December 7, 2018.

In reply, the Tenants acknowledged that rent was withheld because the Landlord failed to address their concerns about black mold. However, the Tenants submitted the correct period should be November 26 – December 6, 2018, as the new owners took possession on December 7, 2018.

Third, the Landlord claimed \$123.15 to replace a carpet cleaner she believes was stolen by the Tenants. An invoice dated July 2, 2009, was submitted to confirm the original purchase amount. The Landlord claimed it was like new because it was rarely used.

In reply, the Tenants denied stealing the carpet cleaner.

Fourth, the Landlord claimed \$753.84 for the cost to replace a natural gas barbeque, a chain, and a padlock. An invoice dated March 1, 2019 – almost 3 months after the property was sold by the Landlord – was submitted in support. The Landlord testified the original barbeque was located on the property before she left but acknowledged she did not make arrangements to take it with her and left it behind.

In reply, the Tenants acknowledged the barbeque was left behind by the Landlord but testified it was “garbage”.

Fifth, the Landlord claimed \$300.00 for storage fees she testified were agreed to between the parties.

In reply, the Tenants denied any such agreement.

Sixth, the Landlord claimed \$418.46 for the cost to replace an 11” x 14” wedding photograph. She testified that thumping and banging from the Tenants below caused the picture to fall. A document suggesting the cost to reframe the photograph was submitted into evidence.

In reply, the Tenants denied any knowledge of the damaged photograph.

Finally, the Landlord claimed \$100.00 in recovery of the 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*.

With respect to the Landlord's claim for \$724.00 for unpaid utility charges, I find the Landlord was entitled to receive half of the BC Hydro expenses from the Tenants. In this case, I am satisfied that the total amount due to the Landlord was \$724.00. However, the Tenants testified with a reasonable degree of detail that payments in the amount of \$151.30 and \$161.87 were made on July 12 and September 12, 2019, respectively. Against their own interest, the Tenants also acknowledged withholding a sum. Therefore, I find the Landlord has demonstrated an entitlement to a monetary award in the amount of \$410.83 ($\$724.00 - \$151.30 - \161.87).

With respect to the Landlord's claim for \$517.00 for unpaid rent, I find there is sufficient evidence before me to grant the relief sought. The Tenants acknowledged withholding rent, which they were not entitled to do pursuant to section 26 of the *Act*. Further, I agree with the Tenants and find that the appropriate period to consider is from November 26 – December 6, 2018. Therefore, I grant the Landlord a monetary award of \$504.16, which has been calculated based on a per diem rate of \$46.67 for each day rent was unpaid in November ($\$46.67/\text{day} \times 5 \text{ days} = \233.20) plus \$45.16 for each day rent was unpaid in December ($\$45.16/\text{day} \times 6 \text{ days} = \270.96).

With respect to the Landlord's claim for \$123.15 for a cost to replace a carpet cleaner the Landlord alleged was stolen, I find there is insufficient evidence before me to conclude that the Tenants stole the carpet cleaner. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$753.84 for the cost to replace a barbeque, a chain, and a padlock, I find there is insufficient evidence before me to grant the relief sought. Indeed, the Landlord testified that she knew the barbeque was on the property but left it behind when she moved. The Landlord's failure to make arrangements to remove her belongings should not be borne by the Tenants. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$300.00 for storage fees, I find there is insufficient evidence of an agreement between the parties to grant the relief sought. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$418.46 for the cost to repair a frame and photograph damaged by the Tenants, I find there is insufficient evidence before me to conclude the Tenants are responsible for the picture falling off the wall and becoming damaged. Further, I am not satisfied this expense has been incurred. This aspect of the Landlord's claim is dismissed.

Having been partially 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 \$114.99, which has been calculated as follows:

Claim	Allowed
Unpaid BC Hydro:	\$410.83
Unpaid rent:	\$504.16
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$700.00)
<i>LESS</i> pet damage deposit:	(\$200.00)
TOTAL:	\$114.99

Conclusion

The Landlord is granted a monetary order in the amount of \$114.99. 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: April 4, 2019

Residential Tenancy Branch