



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 January 28, 2019 (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 was served on the Tenant by registered mail on January 31, 2019. A Canada Post registered mail customer receipt was submitted in support. The Tenant acknowledged receipt. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Application package is deemed to have been received by the Tenant on February 5, 2019. The Tenant 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 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

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the fixed-term tenancy began on November 1, 2018, and was expected to continue to May 1, 2019. Rent in the amount of \$2,500.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$1,250.00, which the Landlord holds. The tenancy agreement specifically prohibits pets other than “1 cat only”.

The Landlord’s claims were set out in the Application. First, the Landlord claimed \$1,250.00 for damage done to the rental unit. Damage claimed by the Landlord included:

- a painted fireplace;
- dog urine and feces on the floor and walls;
- scratches on the walls; and
- damage to laminate flooring.

The only documentary evidence in support of damage consisted of before and after photographs of the fireplace. The images depict a brick coloured fireplace at the beginning of the tenancy and a light grey fireplace at the end of the tenancy. There were no photographs of damage to the walls or floors, or of dog urine and feces. The Landlord testified that the work done personally and that no receipts are available.

In reply, the Tenant submitted there is insufficient proof of the alleged damage, and that the Landlord did not complete the required reports based on move-in and move-out condition inspections. The Tenant did not dispute that the fireplace was painted during the tenancy. In addition, the Tenant acknowledged that 1 or 2 dogs were kept in the rental unit after December 18, 2018.

Second, the Landlord claimed \$623.51 for unpaid utility charges. During the hearing, the Tenant acknowledged the amount claimed.

Third, the Landlord claimed \$2,500.00 in unpaid rent for the month of February 2019. The parties agreed the Tenant moved out of the rental unit on or about January 6, 2019. However, the Landlord relies on a text message in which the tenant agreed to pay rent to March 1, 2019.

In reply, the Tenant acknowledged she agreed to pay rent to March 1, 2019, but subsequently changed her mind. She testified that the agreement was made under duress. Specifically, the Tenant testified she felt harassed because the Landlord would change his mind about what was expected. The Tenant testified she cleaned the rental unit at the end of the tenancy.

Finally, the Landlord sought to recover the filing fee paid to make the Application, and requested that he be permitted to retain the security deposit held 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 Tenant. 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 for \$1,250.00 for damage, I find there is insufficient evidence before me to determine the value of the Landlord's losses. The Landlord did not submit photographic evidence of all the damage for which a claim was made, receipts, or time estimates. Further, as noted by the Tenant, a condition inspection report was not completed. However, Policy Guideline #16 confirms and arbitrator may award nominal damages when there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. In this case, I am satisfied that painting the fireplace, and keeping 1 or 2 dogs in the rental unit contrary to the terms of the tenancy agreement, were breaches of a legal right of the Landlord. Therefore, I find it appropriate in the circumstances to grant the Landlord nominal damages in the amount of \$200.00.

With respect to the Landlord's claim for \$623.51 for unpaid utility charges, the Tenant agreed with this aspect of the Landlord's claim. The Landlord is granted a monetary award in the amount of \$623.51 for unpaid utility charges.

With respect to the Landlord's claim for \$2,500.00 for unpaid rent, I find that the Tenant agreed to pay rent to the end of February, as stated in a text message exchange between the parties. That the Tenant elected to move on January 6, 2019, does not vitiate the agreement. Further, I find there is insufficient evidence of duress that would impact the agreement. Therefore, I find the Landlord is entitled to a monetary award in the amount of \$2,500.00 for unpaid rent.

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 security deposit 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 \$2,173.51, which has been calculated as follows:

Claim	Amount
Damage (nominal damages):	\$200.00
Utility charges:	\$623.51
Unpaid rent:	\$2,500.00
Filing fee:	\$100.00
LESS security deposit:	(\$1,250.00)
TOTAL:	\$2,173.51

Conclusion

The Landlord is granted a monetary order in the amount of \$2,173.51. 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: May 16, 2019

Residential Tenancy Branch