



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNSD, FFT
Landlord: MNDL, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Tenants’ Application for Dispute Resolution was made on February 11, 2019, (the “Tenants’ 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
- an order granting recovery of the filing fee.

The Landlord’s Application for Dispute Resolution was made on May 1, 2019, (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for damage or loss;
- an order granting recovery of the filing fee.

The Tenants as well as the Landlord and the Landlord’s Agent K.M. attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenants testified that they served their Application and documentary evidence package to the Landlord by registered mail on February 11, 2019. The Landlord confirmed receipt. The Landlord testified that she served the Tenants with her documentary evidence by registered mail on May 6, 2019. The Tenants confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an 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. 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 Tenants entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?
2. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. Is the Landlord entitled to a monetary order for damage or loss pursuant to Section 67 of the *Act*?
4. Is the Landlord entitled to an order granting recovery of 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 March 1, 2017. Rent in the amount of \$3,780.00 was due to the Landlord on the first day of each month. The Tenants paid a security deposit to the Landlord in the amount of \$1,940.00. The tenancy ended on December 31, 2018.

Tenants' Claim

The Tenants have applied for the return of their security deposit. The parties agreed that the Tenants paid a security deposit to the Landlord at the start of the tenancy in the amount of \$1,940.00. The parties agreed that the Tenants provided their forwarding address to the Landlord in writing on December 28, 2019 before the tenancy ended on December 31, 2018.

The parties agreed that the Landlord paid the Tenants one payment of \$2,727.12 on January 14, 2019. The parties agreed that this amount was comprised of \$1,756.96 from a previous Arbitrator's decision which the Landlord was ordered to repay to the Tenants. The remaining \$970.16 was the amount of security deposit returned to the Tenants from the \$1,940.00 they had paid. The Landlord stated that she retained

\$969.84 from the security deposit in relation to missing towels and bedding that had been included at the start of the tenancy. The Landlord stated that the Tenants agreed to the items being missing.

The Tenants stated that they did not agree to any deductions to their security deposit. The Tenants stated that the parties did not take part in a condition inspection report at the start of the tenancy, therefore feel as though the Landlord has extinguished her right to retaining any amount of the security deposit.

If successful, the Tenants are also claiming for the return of the \$100.00 filing fee paid for to make the Application.

Landlord's Claim

The Landlord's monetary claims were set out on a Monetary Worksheet provided in the Application. Specifically the Landlord is seeking a monetary order in the amount of \$1,793.00

The Landlord stated that at the end of the tenancy, she noticed that a bathroom sink was cracked and had holes. The Landlord stated that she had not noticed the damage during the move out condition inspection; however, following the inspection decided to replace the sink at a cost of \$95.37. The Landlord stated that the cost to install the sink was \$714.00 for a total expense of \$809.37.

In response, the Tenants stated that the sink was already damaged at the start of the tenancy and that in absence of a move in condition inspection, the Landlord has extinguished her right to claiming for damage. Furthermore, the Tenant stated that the parties conducted a thorough condition inspection at the end of the tenancy, during which the Landlord indicated on the condition inspection report that the sink was in fair condition.

The Landlord is claiming \$600.00 for cleaning costs as a result of the Tenants leaving the rental unit dirty. The Landlord stated that it took her and two others 10 hours each over three days to clean the rental unit. The Landlord is claiming 30 hours of cleaning at a rate of \$20.00 per hour to have the rental unit cleaned in time for the next occupants to take possession of the rental unit. The Landlord submitted several pictures of the rental unit in support of her claim. In response, the Tenants stated that they left the rental unit reasonably clean.

The Landlord is claiming \$264.51 for loss of rent for two days, as the new occupants that were supposed to move into the rental unit on January 2, 2019 were unable to take possession of the rental unit until January 5, 2019. The Landlord stated that the delay was a result of the Tenants leaving the rental unit in poor condition which required deep cleaning.

The Landlord is also claiming \$20.00 for the cost of the registered mailings associated with making her Application as well as \$100.00 for the return of the filing fee.

Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Tenants Claim

Section 38(1) of the *Act* requires a landlord to repay deposits or make 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. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit.

In this case, the parties agreed that the Tenants provided their forwarding address to the Landlord in writing by mail on December 28, 2018. The parties agreed that the Tenants vacated the rental unit on December 31, 2018.

I accept that the parties agreed that the tenancy ended on December 31, 2018, which was after the Landlord received the Tenants' forwarding address. I find that the Landlord has provided insufficient evidence to demonstrate that the Tenants agreed to the Landlord deducting \$969.84 from the security deposit. As there is no evidence before me that the Landlord was entitled to retain all or a portion of the security deposit under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlord had until January 15, 2019, to repay the deposit in full or make an application for dispute resolution.

The parties agreed that the Landlord only returned \$970.16 of the Tenants' security deposit on January 14, 2019 as the Landlord withheld \$969.84.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to an award of double the amount of the security deposit paid to the Landlords, less any amounts already received.

In this case, the Residential Tenancy Branch Policy Guideline #17 requires the Arbitrator to double the amount paid as a security deposit ($\$1,940.00 \times 2 = \$3,880.00$), then deduct the amount already returned to the Tenants ($\$3,880.00 - \$970.16 = \$2,909.84$), to determine the amount of the monetary order.

Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$3,009.84, subject to any set off from the Landlord's claims.

Landlord's Claims

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.

The Landlord is claiming \$809.37 for the purchase and installation of a new sink to replace the sink in a bathroom which the Landlord is claiming that the Tenant's damaged during the course of the tenancy. The Tenants stated that the sink was damaged when they took possession of the rental unit. Furthermore, the Tenants stated that the Landlord did not complete a move in condition inspection. The parties submitted a copy of the move out condition inspection report which indicated that the sink in the bathroom was in fair condition at the end of the tenancy.

I find that the Landlord has provided insufficient evidence to demonstrate that the damaged sink was caused by the Tenants during the course of their tenancy. In absence of a move in condition inspection report, I find that there is no evidence confirming the condition of the sink prior to the commencement of the tenancy. As such, I dismiss the Landlord's claim in the amount of \$809.37 for the new sink and installation without leave to reapply.

The Landlord is seeking cleaning costs in the amount of \$600.00. The Landlord testified that the Tenants left the rental unit filthy. The Landlord stated that the main areas of concern were the stove, cupboards, fridge, balcony, floors, laundry room, walls, furniture and bedding. I find that the Landlord has provided sufficient photographic evidence to demonstrate that the rental unit was left uncleaned. I find it more likely than not that the Tenants did not leave the rental unit reasonably cleaned and therefore I find that the Landlord has established an entitlement to a monetary award in the amount of \$600.00 for cleaning.

The Landlord has also claimed for loss of rent for two days in the amount of \$264.51 as a result of the Landlord having to clean the rental unit, delaying the new occupants from taking possession of the rental unit until January 5, 2019. After having made my finding that the Tenants left the rental unit unclean, which required the Landlord to clean the rental unit for 30 hours, I find that it is reasonable to award the Landlord a monetary order in the amount of \$264.51 for loss of rent from January 2nd to the 5th, 2019 at which point the new occupants took possession of the rental unit.

Lastly, the Landlord is seeking compensation in the amount of \$20.00 to cover the cost of the registered mail required to serve the Tenants with the Landlord's Application. I find that this cost is not recoverable as it is the cost of service which the Landlord's responsibility.

As the Landlord was partially successful with her Application, I find that the Landlord is entitled to the recovery of their filing fee in the amount of \$100.00

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$964.51, subject to the set off below.

Set Off Claims

The Tenants have demonstrated an entitlement to a monetary award of \$3,009.84. The Landlord has demonstrated an entitlement to a monetary award of \$964.51.

Setting of the parties' claims, and pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$2,045.33 (\$3,009.84- \$964.51).

Conclusion

The Tenants are granted a monetary order in the amount of \$2,045.33. The monetary order should be served to the Landlord as soon as possible and 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: June 7, 2019

Residential Tenancy Branch