



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on April 15, 2019, (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for damage;
- an order permitting the Landlord to retain the security and pet damage deposits; and
- an order granting recovery of the filing fee.

The Landlord as well as the Tenant and the Tenant's witness, M.C., attended the hearing at the appointed date and time, and provided affirmed testimony.

The Landlord testified that he served his Application and documentary evidence package to the Tenant by registered mail on April 22, 2019. The Tenant confirmed receipt. The Tenant testified that she served the Landlord with her documentary evidence by registered mail on July 9, 2019. The Landlord 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. Is the Landlord entitled to a monetary order for damage, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security and pet damage deposits against their claim, in accordance with Section 72 of the *Act*?
3. Is the Landlord 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 July 1, 2014. By the end of the tenancy, the Tenant was paying rent in the amount of \$835.83 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$387.50, as well as a pet damage deposit in the amount of \$200.00. The tenancy ended on March 31, 2019.

The Landlord is claiming \$370.00 in relation to further cleaning required in the rental unit following the end of the tenancy. The parties agreed that they came together on March 31, 2019 to complete a move out condition inspection report. The Landlord stated that during the inspection, he ran the appliances to see if they were still in proper working order. The Landlord stated that he noticed that the dishwasher was leaking water onto the floor while in operation.

The Landlord stated that he sought the assistance of his co-worker who is a licensed gas and plumbing inspector. During the inspection of the dishwasher, it was discovered that the door heat vent and pump were completely clogged with dried food which prevented the dishwasher from draining properly, causing it to flood. The Landlord stated that the Tenant had not mentioned any issues with the dishwasher throughout her tenancy.

The Landlord stated that this was a result of the Tenant misusing the dishwasher by not rinsing off her dishes prior to putting them in the dishwasher. The Landlord stated that it took him and his co-worker four hours to clean out and repair the dishwasher to ensure it would function properly. The Landlord is seeking monetary compensation in the amount of \$250.00. The Landlord submitted a report from his co-worker in support which contains an assessment of the issues which caused the dishwasher to malfunction as confirming the cost of repairing the dishwasher.

In response, the Tenant stated that the Landlord required tools to access the vent and pump; therefore, this should not be her responsibility to maintain the dishwasher during the tenancy. The Tenant stated that the Landlord had acknowledge that the dishwasher appeared clean during the condition inspection report, and that it wasn't until after the inspection that the parties noticed the dishwasher leaking. Lastly, the Tenant stated that the Landlord has not provided proof of the actual costs associated with fixing the dishwasher and that it was his friend who fixed the dishwasher.

The Landlord is also claiming monetary compensation in the amount of \$120.00 in relation to further cleaning required throughout the rental unit. The Landlord stated that it took him four hours to clean under the fridge, in the stove, drawers, as well as kitty litter which was left behind in the corners of the rental unit. The Landlord stated that he cleaned the rental unit on his own and is seeking \$30.00 per hour in compensation. The Landlord submitted photos in support.

In response, the Tenant stated that she hired professional cleaners to clean the rental unit, as well as a professional carpet cleaner to ensure the carpets were clean at the end of the tenancy. The Tenant stated that the Landlord had asked her not to move any appliances as they were not on rollers and may scratch the floor. The Tenant stated that the rental unit was left clean following the end of the tenancy. The Tenant's witness, M.C., also stated that the rental unit was left clean. The Tenant submitted receipts for the professional cleaning in support.

The parties agreed that the Landlord has retained \$370.00 of the Tenants security and pet damage deposits which amount to \$587.50. The parties agreed that the Landlord sent the remaining \$217.50 to the Tenant on April 15, 2019.

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.

In relation to the Landlord's claim in the amount of \$250.00 to repair a clogged dishwasher, I find that on a balance of probabilities that it is more likely than not that the dishwasher was not clogged and malfunctioning at the start of the tenancy. As such, I find that the clogged vent and pump was most likely caused by the Tenant during the tenancy. I accept that the parties agreed that the Tenant did not notify the Landlord about the issues with her dishwasher; therefore, I find that the Tenant is responsible for bearing the cost of cleaning and repairing the dishwasher in the amount of \$250.00.

The Landlord is also claiming \$120.00 in relation to four hours of cleaning at the end of the tenancy. I find that the Landlord provided insufficient evidence that the rental unit required further cleaning. I find that the Tenant employed professional cleaners as well as carpet cleaners at the end of the tenancy. As such, I find it is reasonable to expect that the rental unit was left reasonably clean by the Tenant. In light of the above, I dismiss this portion of the Landlord's claim without leave to reapply.

Having been partially successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. The Landlord has established an entitlement to monetary compensation in the amount of \$350.00. I accept that the parties agreed that the Landlord has retained \$370.00 from the Tenant's security deposit. As such, I find that the Tenant is entitled to the return of \$20.00.

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$20.00.

Conclusion

The Landlord was partially successful in his Application. The Tenant is granted a monetary order in the amount of \$20.00, which represents the remaining balance of the Tenant's security deposit held by the Landlord. 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: July 24, 2019

Residential Tenancy Branch