



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on July 18, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, loss, or compensation;
- an order granting recovery of the filing fee; and
- to retain the security deposit.

The Tenant and the Landlord's Agent attended the hearing at the appointed date and time and provided affirmed testimony.

The Landlord's Agent testified that she served the Application package to the Tenants by registered mail on July 23, 2019 as well as served the documentary evidence by posting it to the Tenants' door on October 4, 2019. The Tenant confirmed receipt of both packages. The Tenant testified that she served the Landlord with the Tenants' documentary evidence by registered mail on October 10, 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. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?
3. Is the Landlord entitled to retain the security deposit, pursuant to Section 38 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 22, 2018. During the tenancy, the Tenants paid rent in the amount of \$4,200.00 to the Landlord which was due on the first day of each month. The Tenants paid a security deposit in the amount of \$2,100.00 as well as a pet damage deposit in the amount of \$2,100.00. The Tenants provided their forwarding address to the Landlord on May 28, 2019, before the tenancy ended on June 30, 2019.

The parties testified and agreed that the Landlord returned \$3,700.00 of deposits held in trust to the Tenants on July 15, 2019. The Landlord's Agent stated that \$500.00 was held by the Landlord due to some deficiencies noted during the move out inspection. The Landlord is seeking monetary compensation for damage or loss which was outlined on the monetary worksheet which was submitted in support of the claims.

The Landlord is seeking monetary award in the amount of \$296.75 for the replacement of laminate flooring which had been damaged during the tenancy. The Tenant agreed that the flooring had been damaged and consented to the Landlord retaining only \$250.00 towards the repair of the flooring. The Landlord is seeking the full amount of the repair. The Landlord submitted a quote for the repairs in support.

The Landlord is seeking \$288.75 to complete yard work as a result of the Tenants failing to maintain the yard which was a condition listed on the addendum to the tenancy agreement. The Landlord's Agent stated that at the end of the tenancy, the lawn needed to be cut, and that bushes had not been trimmed, as well as the side gardens had not been maintained. The Landlord submitted a copy of the tenancy agreement in support.

In response, the Tenant stated that the Tenants maintained the yard to a reasonable standard and the Tenant stated that she doesn't feel as though they should be responsible for the costs associated with further yard maintenance.

The Landlord is seeking monetary compensation relating to damage caused by the Tenants to two walls within the rental unit. The Landlord's Agent stated that the painter was paid \$120.00 to paint two walls which had been scratched by the Tenants. The Landlord submitted photos in support.

In response, the Tenant acknowledged that the Tenants caused minor scratches to two walls and that the Tenant offered to paint the walls with touch up paint that was in the garage. The Tenant stated that the Landlord refused to let the Tenant perform the touch up painting as the Landlord insisted on having the walls completely repainted by a professional. The Landlord's Agent confirmed that she had requested a professional complete the painting instead of the Tenant.

Lastly, the Landlord is seeking monetary compensation in the amount of \$105.00 in relation to having to straighten bent fins on the baseboard heaters and to reinstall the covers on the heaters. The Landlord's Agent stated that at the end of the tenancy, the Landlord had someone attend the rental unit to perform other repairs at which point it was noticed that the covers had been removed from the heaters and that some of the fins were bent. The Landlord's Agent stated that the covers were re installed after the fins were straightened. The Landlord submitted a bill in support.

In response, the Tenant stated that the Tenants had removed the covers to effectively clean under the heaters. The Tenant stated that the Tenants did not bend the fins on the heaters and that the heaters were not inspected during the move in condition inspection at the start of the tenancy. As such, the Tenant stated that she does not feel as though the Tenants should be responsible for this cost.

If successful, the Landlord is also seeking the return of the filling fee.

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 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 seeking monetary award in the amount of \$296.75 for the replacement of laminate flooring which had been damaged during the tenancy. The Tenant agreed that the flooring had been damaged and consented to the Landlord retaining only \$250.00 towards the repair of the flooring.

I accept that the parties agreed that the flooring was damaged by the Tenants during the tenancy. I am satisfied with the documentary evidence provided by the Landlord that the cost of repairing the floor is \$296.75. As such, I find that the Landlord has established an entitlement to \$296.75.

The Landlord is seeking \$288.75 to complete yard work as a result of the Tenants failing to maintain the yard, which was a condition listed on the addendum to the tenancy agreement. In response, the Tenant stated that the Tenants maintained the yard to a reasonable standard.

I find that the Landlord has provided insufficient evidence to demonstrate that the Tenants were required to maintain the yard to a professional standard. I find, based on the evidence submitted by the parties that the yard was reasonably maintained by the Tenants. As such, I dismiss the Landlord's claim for \$288.75.

The Landlord is seeking monetary compensation relating to damage caused by the Tenants to two walls within the rental unit. The Landlord's Agent stated that the painter was paid \$120.00 to paint two walls which had been scratched by the Tenants. In response, the Tenant acknowledged that the Tenants caused minor scratches to two walls and that the Tenant offered to paint the walls with touch up paint that was in the garage. The Tenant stated that the Landlord refused to let the Tenant perform the touch up painting, as the Landlord insisted on having the walls completely repainted by a professional.

In this case, I find that the Landlord failed to mitigate their loss by not allowing the Tenants to touch up the scratches on the wall themselves. Furthermore, I find that the Landlord has provided insufficient evidence to demonstrate the value of the loss. As such, I dismiss the Landlord's claim for \$120.00 without leave to reapply.

Lastly, the Landlord is seeking monetary compensation in the amount of \$105.00 in relation to having to straighten bent fins on the baseboard heaters and to reinstall the covers on the heaters.

In this case, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenants bent the fins on the heaters. While the Tenant stated that the covers had been removed for cleaning, I find that the Landlord has provided insufficient evidence to support the value of their loss. I find that the bill provided by the Landlord does not outline the cost of the repair. As such, I dismiss the Landlord's claim for \$105.00 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.

During the hearing, the parties agreed that the Landlord continues to hold \$500.00 of the Tenants security deposit. The Landlord has established an entitlement to monetary compensation in the amount of \$396.75. I find it appropriate in the circumstances to order that the Landlord retain a portion of the Tenants' security deposit held in satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Tenants are is entitled to a monetary order in the amount of \$103.25, which represents the remaining portion of the Tenants' security deposit following the deductions which have been calculated as follows:

Claim	Amount
Damaged Floor:	\$296.75
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(\$500.00)
TOTAL:	-\$103.25

Conclusion

The Landlord was partially successful with their Application and has been awarded monetary compensation in the amount of \$396.75. As the Landlord continues to hold \$500.00 of the Tenants' security deposit, the Tenants are granted a monetary order in the amount of \$103.25, which represents the remaining balance of their deposit. 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: October 29, 2019

Residential Tenancy Branch