



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: FFL, MNDCL-S, MNDL-S, MNRL-S
 Tenants: MNDCT, MNSD

Introduction

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

The Landlords’ Application for Dispute Resolution was made on June 3, 2019 (the “Landlord’s Application”). The Landlords applied for the following relief, pursuant to the *Act*:

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

The Tenant’s Application for Dispute Resolution was made on August 22, 2019, (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit; and
- a monetary order for damage or compensation.

The Landlord J.M., the Landlord’s witness C.B., as well as the Tenant and the Tenant’s advocate S.S., attended the hearing at the appointed date and time, and provided affirmed testimony.

At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. The Landlord indicated that she received the Tenant’s Application and documentary evidence beyond the 14 days permitted. The Landlord did however confirm receipt and indicated that she had sufficient time to review the evidence and to respond to it during the hearing. No other issues were raised with respect to service or receipt of these documents during the

hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 of the *Act*?
3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
4. Are the Landlords entitled to retain the Tenant's security deposit pursuant to Section 38 of the *Act*?
5. Is the Tenant entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?
6. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 1, 2018. The Tenant paid rent in the amount of \$1,300.00 excluding utilities to the Landlord each month. The Tenant paid a security deposit in the amount of \$650.00 as well as a pet damage deposit in the amount of \$650.00 which the Landlords continue to hold. The tenancy ended on May 21, 2019 after the tenant vacated the rental unit and returned the key to the Landlords. The Landlords received the Tenant's forwarding address on May 15, 2019 via email.

The Landlords' Claims

The Landlords' monetary claims were set out on a Monetary Worksheet provided in the Application.

The Landlords are seeking a monetary order in relation to unpaid rent in the amount of \$780.00 for the month of May 2019. The Landlord stated that the parties had an agreement that the Tenant would provide childcare in exchange for \$500.00. The Landlord stated that the Tenant did not provide the childcare as agreed and therefore was not entitled to any form of payment. The Landlord stated that the Tenant retained

\$780.00 from her rent for the month of May 2019. As such, the Landlords are seeking the remaining \$780.00 for unpaid rent.

In response, the Tenant stated that she felt as though she was owed \$780.00 rather than \$500.00. As such, she deducted the amount she felt entitled to from the rent and provided the Landlord with a payment of \$565.00 for the month of May 2019.

The Landlords are claiming \$339.98 for unpaid utilities. The Landlord stated that the Tenant was required to pay \$45.00 to the Landlords in addition to the rent each month for utilities. The Landlord stated that this was only meant to be a general estimate of the utility costs and that the Tenant would ultimately be required to pay 33 percent of the overall utility bills to the Landlords once they had confirmation of the actual utility costs. The Landlord confirmed that the Tenant paid \$45.00 towards utilities each month, however, the Landlords are now seeking in additional \$339.98 for the remaining balance of the utilities owed based on the 33 percent agreed upon. The Landlord provided a copy of the utility bills in support.

In response, the Tenant stated that she ever agreed to pay 33 percent of the utility bills. The Tenant stated that it was always her understanding that she was only required to pay \$45.00 to the Landlords each month for utilities. The Tenant stated that she complied with this direction and does not agree with having to pay the remaining balance. Both parties submitted a copy of the tenancy agreement in support.

The Landlords are claiming for lost of wages in the amount of \$100.00 in relation to the Tenant not showing up to the scheduled move out condition inspection. The parties agreed that they did manage to come together to complete the inspection on May 21, 2019.

The Landlords are claiming \$182.75 as they were required to hire a cleaner for 6 hours to clean the rental unit at the end of the tenancy. The Landlord stated that the rental unit was brand new and clean at the start of the tenancy. The Landlord stated that at the end of the tenancy, the Landlord noticed that the rental unit was dirty and required further cleaning. The Landlords provided photographic evidence, as well as a cleaning receipt in support.

In response, the Tenant stated that she left the rental unit reasonably clean and that she suspects that the Landlords' children may have entered the rental unit between the time she moved out and the condition inspection date, causing the rental unit to get dirty. The Tenant stated that she completed the move out inspection with the Landlords'

Agent and that there were no deficiencies noted on the condition inspection report. A copy of the condition inspection report was submitted in support.

The Landlords are claiming \$44.76 in relation to having to replace curtains that were found to be torn at the end of the tenancy. Also, the Landlord stated that that Tenant's dog chewed a garden hose and nozzle which cost \$85.06 to replace. The Tenant stated that the Landlords also have a dog who shares the same backyard and that it would not have been her dog that chewed the garden hose and nozzle.

The Landlords are claiming \$336.00 in relation to repairs being made to damaged walls and paint throughout the rental unit. The Landlord stated that at the end of the tenancy, the walls in the bathroom and living room and main bedroom were damaged. The Landlords stated that they hired a labourer for 4 hours as well as 4 gallons of paint to repair the damage. The Landlords provided one photo and a receipt in support. In response, the Tenant stated that the marks on the wall were normal wear and tear and that the Landlord's Agent did not indicate on the move out inspection that there were any issues with the rental unit at the end of the tenancy.

The Landlords are claiming \$35.00 for having to remove garbage, recycling and a mattress that had been left behind by the Tenant following the end of the tenancy. The Landlord are claiming \$29.55 in relation to having to fill 5 holes that the Tenant's dog dug in the backyard. The Landlords are also claiming \$30.00 to repair a fence that the Tenant's dog damaged. The Landlords provided photos in support. Lastly, the Landlords are claiming \$57.50 to replace rocks on the side of the rental property that had been removed by the Tenant while she was picking up dog feces.

In response, the Tenant disagrees with the Landlords claims. The Tenant stated that the Landlords' dog was a puppy and would most likely have been responsible for digging the holes in the backyard as well as damaging the fence. The Tenant stated that the Landlords had given the rocks on the side of the house away and recalls people attending the rental property to collect them.

The Landlords are seeking to retain the Tenants security and pet damage deposits in partial satisfaction of their claims as well as the return of the filing fee.

The Tenant's Claim

The Tenant is seeking the return of her security and pet damage deposit in the amount of \$1,300.00. Furthermore, the Tenant is seeking \$360.00 in relation to unpaid childcare wages during the month of August 2018.

Analysis

Based on the documentary evidence, testimony, 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 Landlords 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 Landlords must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlords did what was reasonable to minimize the damage or losses that were incurred.

The Landlord's Claim

The Landlords are seeking a monetary order in relation to unpaid rent in the amount of \$780.00. The Landlord stated that the parties had an agreement that the Tenant would provide childcare in exchange for \$500.00. The Landlord stated that the Tenant did not provide the childcare as agreed and therefore was not entitled to any form of payment.

In response, the Tenant stated that she felt as though she was owed \$780.00 rather than \$500.00. As such, she deducted the amount she felt entitled to from the rent and provided the Landlord with a payment of \$565.00 for the month of May 2019.

In this case, Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this Act, the Regulations or the Tenancy Agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act. As such, I find that the Landlord is entitled to monetary compensation in the amount of \$780.00 for unpaid May 2019 rent.

The Landlords are claiming \$339.98 for unpaid utilities. The Landlord stated that the Tenant was required to pay \$45.00 to the Landlords in addition to the rent each month for utilities. The Landlord stated that this was only meant to be a general estimate of the utility costs and that the Tenant would ultimately be required to pay 33 percent of the overall utility bills to the Landlord once they had an indication of the actual costs. The Tenant stated that she ever agreed to pay 33 percent of the utility bills.

In this case, I find that the Landlords provided insufficient evidence to demonstrate that the parties agreed to the Tenant paying 33 percent of the utilities, instead of the \$45.00 per month that the Tenant had paid to the Landlord for utilities during the entire tenancy. I find that there is no mention in the tenancy agreement regarding payment of utilities. As such, I dismiss the Landlords' claim for \$339.98 without leave to reapply.

The Landlords are claiming for lost of wages in the amount of \$100.00 in relation to the Tenant not showing up to the scheduled move out condition inspection. It was explained to the Landlord during the hearing that this cost is not recoverable by the Landlords as that is the cost of doing business as a Landlord.

The Landlords are claiming \$182.75 as they were required to hire a cleaner for 6 hours to clean the rental unit as well as dog feces in the yard at the end of the tenancy. The Landlord stated that the rental unit was brand new and clean at the start of the tenancy. The Landlord stated that at the end of the tenancy, the Landlord noticed that the rental unit was dirty and required further cleaning. The Tenant stated that she left the rental unit reasonably clean at the end of the tenancy.

In this case, I accept that the parties completed a move out condition inspection at the end of the tenancy. I find that the parties submitted a copy of the condition inspection

report which did not outline any deficiencies found at the end of the tenancy. I do find however, that the Landlords provided sufficient photographic evidence as well as a bill which outlined the cleaning costs outlining the need to clean the rental unit at the end of the tenancy. As such, I find that the Landlords have established an entitlement to \$182.75 for cleaning.

The Landlords are claiming \$44.76 in relation to having to replace curtains that were found to be torn at the end of the tenancy. Also, the Landlord stated that that Tenant's dog chewed a garden hose and nozzle which cost \$85.06 to replace. The Tenant stated that the Landlords also have a dog who shares the same backyard and that it would not have been her dog that chewed the garden hose and nozzle.

In this case, I find that the Landlords have provided insufficient evidence to demonstrate the Tenant or the Tenant's dog caused the damage to the curtains, yard, nozzle or hose. I find that there is no mention of these deficiencies in the condition inspection report as well as the Landlords have provided insufficient evidence to demonstrate that they have suffered a loss or the value of the loss as a result. As such, I dismiss the above-mentioned claims without leave to reapply.

The Landlords are claiming \$336.00 in relation to repairs being made to damaged walls and paint throughout the rental unit. The Landlord stated that at the end of the tenancy, the walls in the bathroom and living room and main bedroom were damaged. The Landlord stated that they hired a labourer for 4 hours as well as 4 gallons of paint to repair the damage.

In this case, I find accept that the Landlord provided a receipt of the cost associated with repairing the walls in the rental unit, however, I find that the Landlord has provided insufficient evidence to demonstrate that the damage was caused by the Tenant during the tenancy. I find that there is no mention of these deficiencies in the condition inspection report as well as insufficient evidence relating to the extent of the damage itself. As such, I dismiss the Landlord's claim for repairing the walls without leave to reapply.

The Landlords are claiming \$35.00 for having to remove garbage, recycling and a mattress that had been left behind by the Tenant following the end of the tenancy. The Landlords are claiming \$29.55 in relation to having to fill 5 holes that the Tenant's dog dug in the backyard. The Landlords are also claiming \$30.00 to repair a fence that the Tenant's dog damaged. Lastly, the Landlords are claiming \$57.50 to replace rocks on

the side of the rental property that had been removed by the Tenant while she was picking up dog feces.

In this case, I find that there is no mention of these deficiencies in the condition inspection report as well as the Landlords have provided insufficient evidence to demonstrate that they have suffered a loss or the value of the loss as a result. As such, I dismiss the above-mentioned claims without leave to reapply.

Having been partially successful with their Application, I find the Landlords are entitled to the recovery of the \$100.00 filling fee.

In summary, I find the Landlords have demonstrated an entitlement to a monetary award of \$1,062.75, which has been calculated as follows:

Claim	Award
Unpaid Rent:	\$780.00
Cleaing costs:	\$182.75
Filling fee	\$100.00
TOTAL:	\$1,062.75

The Tenants' Claim

With respect to the Tenant's claim for \$1,300.00 for recovery of her security deposit and pet damage deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making 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. If a landlord fails to repay deposits or make a claim against them within 15 days, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

I find the Tenants provided the Landlord with their forwarding address via email, which was received by the Landlords on May 15, 2019. I find that the tenancy ended on May 21, 2019, which was later than when the forwarding address was received. Therefore, pursuant to section 38(1) of the *Act*, the Landlords had until June 5, 2019, to repay the deposit or make a claim against it. I find that the Landlords submitted their Application on June 3, 2019 which is within the time limit permitted under the *Act*. Accordingly, I find the Tenant is not entitled to the return of double the amount of the deposit.

The Tenant has also claim for \$360.00 in relation to unpaid child care wages owed from the Landlord to the Tenant during the month of August 2018. It was explained to the Tenant during the hearing that the Act does not apply to employment disputes. As such, I dismiss the Tenant's claim without leave to reapply.

Pursuant to section 67 of the *Act*, I find that the Landlords demonstrated an entitlement to retain a portion of the Tenant's security and pet damage deposit in the amount of \$1,062.75 in satisfaction of the monetary award granted. I find that the Tenant is entitled to the return of the remaining portion of the Tenant's security and pet damage deposit in the amount of \$237.25.

I grant the Tenant with a monetary order in the amount of \$237.25 (\$1,300.00 - \$1,062.75).

Conclusion

Pursuant to section 67 of the *Act*, the Tenant is granted a monetary order in the amount of \$237.25 which represents the remaining portion of the Tenant's security and pet damage deposits after the deduction of the Landlords' monetary award. The monetary order must be served on the Landlords 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: October 2, 2019

Residential Tenancy Branch