



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDC MNSD FF
 Tenant: MNSD FF

Introduction

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

The Landlord’s Application was made on August 8, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Tenants’ Application was made on July 1, 2019 (the Tenants’ Application”). The Tenants applied for the following relief pursuant to the *Act*:

- an order that the Landlord return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenants attended the hearing and provided affirmed testimony.

The Landlord testified that the Landlord’s Application package was served on the Tenants by registered mail. The Tenants acknowledged receipt. Further, the Tenants testified that the Tenants’ Application package and a subsequent documentary evidence package were served on the Landlord by registered mail and at the Landlord’s mailbox, respectively. The Landlord acknowledged receipt of both packages.

No issues with respect to service or receipt of the above documents and evidence during the hearing. The parties were in attendance and were prepared to proceed. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided the opportunity to present their 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.

Preliminary and Procedural Matters

The Tenants' Application did not specifically request a monetary order for money owed or compensation for damage or loss. However, the amount claimed, and the summary provided with the Tenants' Application made it clear that monetary relief was being claimed. Therefore, pursuant to section 64(3) of the *Act*, I find it appropriate in the circumstances to amend the Tenants' Application to include request a monetary order for money owed or compensation for damage or loss.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Landlord entitled to an order allowing the Landlord to retain all or part of the security deposit or pet damage deposit in partial satisfaction of the Landlord's claim?
3. Is the Landlord entitled to an order granting recovery of the filing fee?
4. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
5. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
6. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the month-to-month tenancy began on June 1, 2018 and that the Tenants vacated the rental unit on or about April 30, 2019. During the tenancy, rent in the amount of \$2,250.00 per month was due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,125.00, which the Landlord holds.

The Landlord's Claim

The Landlord's monetary claim was summarized in a Monetary Order Worksheet dated August 8, 2019. First, the Landlord claimed \$343.77 for repairs to the heating system which is accessed through the rental unit. The Landlord testified that the Tenants tampered with it. In support, the Landlord submitted letter from repair company dated July 12, 2019. In it, R.C. describes a "faulty zone valve" that was discovered during a service call on March 4, 2019. The letter also indicated that "the valve on the heating pipework was noticeably leaking" on March 25, 2019, although it had been "fine" during the previous service call. The letter also states that the Landlord was advised to place a lock on the mechanical room door because the incidents "were caused by human interference." The Landlord also submitted an invoice dated April 1, 2019 in the amount claimed.

In reply, J.C. denied that the valve was tampered with as alleged. He testified that a number of issues arose with the plumbing and heating systems during the tenancy. J.C. also testified that the Landlord suffers from severe anxiety.

Second, the Landlord claimed \$2,250.00 for unpaid rent due on May 1, 2019. The parties agreed the Tenants gave the Landlord written notice to end the tenancy in a letter dated April 19, 2019. The notice was to be effective April 30, 2019. The Landlord submitted that the Tenants did not give notice in accordance with the *Act* and that rent remained due on May 1, 2019. A copy of the letter was submitted into evidence by the Tenants.

In reply, J.C. agreed rent was not paid on May 1, 2019. However, he submitted that rent was not due because "she wanted us out". J.C. testified the Tenants had been asked to leave numerous times. Indeed, the Tenants thought the Landlord would be happy to learn the Tenants intended to vacate the rental unit. The Landlord denied the Tenants were asked to leave or were given a notice to end tenancy.

Finally, the Landlord sought to recover the \$100.00 filing fee paid to make the Landlord's Application, and requested an order permitting her to retain the security deposit held in partial satisfaction of the claim.

The Tenants' Claim

The Tenants' claim was summarized in the Tenants' Application. First, the Tenants claimed \$2,250.00 for the return of double the amount of the security deposit. The Tenants testified they provided the Landlord with a forwarding address in writing on April 30, 2019. In support, the Tenants submitted a text message exchange which confirms the Landlord requested and the Tenants provided a forwarding address on that date. The Tenants testified they have not received the security deposit held.

In reply, the Landlord acknowledged receipt of the Tenants' forwarding address and confirmed the security deposit has not been returned to the Tenants.

Second, the Tenants claimed one month's rent for being given "verbal notice to leave and forcing us to move out". Specifically, J.C. testified that the Tenants were told to leave on March 25, 2019.

In reply, the Landlord denied the Tenants were asked to leave or were given a notice to end tenancy.

Finally, the Tenants sought to recover the \$100.00 filing fee paid to make the Tenants' Application.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

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 because 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 each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

The Landlord's Claim

With respect to the Landlord's claim for \$343.77 for heater repairs, I find there is sufficient evidence before me to grant the relief sought. The Tenants denied tampering with the heating system. However, I am persuaded by the letter from R.C. which indicates the damage was caused by human interference, and because access to the mechanical room is through the Tenants' rental unit. Therefore, I find the Landlord is entitled to a monetary award in the amount of \$343.77.

With respect to the Landlord's claim for \$2,250.00 for unpaid rent, section 45 of the *Act* confirms a tenant may end a periodic tenancy by giving notice that is effective on a date that is not earlier than one month after the date the landlord received the notice and is the day before the day in the month that rent is payable. Accordingly, the Tenants' notice, received by the Landlord on April 19, 2019, was effective to end the tenancy on May 31, 2019. As a result, rent came due on May 1, 2019. I do not accept the Tenants' submissions that the Landlord's requests were sufficient to cause the tenancy to end. I note that if the Landlord's requests were sufficient to cause the Tenants to question whether or not the tenancy was ending, they could have obtained a decision from the Residential Tenancy Branch concerning the effectiveness of the Landlord's requests by

making an application for dispute resolution. Therefore, the I find rent was not paid when due on May 1, 2019 and the Landlord has demonstrated an entitlement to a monetary award for unpaid rent in the amount of \$2,250.00.

In light of the above, I find the Landlord has demonstrated an entitlement to a to a total monetary award in the amount of \$2,593.77.

The Tenants' Claim

With respect to the Tenants' claim for \$2,250.00 for the return of double the security deposit, section 38(1) confirms that a landlord must repay deposits or make an application to keep 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 do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, I find the Tenants provided the Landlord with a forwarding address in writing on April 30, 2019. Therefore, pursuant to section 38(1) of the *Act*, the Landlord had 15 days – until May 15, 2019 – to pay the security deposit to the Tenants or make a claim against it. The Landlord did not submit the Landlord's Application until August 8, 2019 and confirmed the security deposit has been retained. Therefore, pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to a monetary award in the amount of \$2,250.00, which is double the amount of the security deposit held by the Landlord.

With respect to the Tenants claim for compensation for being given “verbal notice to leave and forcing us to move out”, I find there is insufficient evidence before me to grant the relief sought. Indeed, the tenancy ended because the Tenants provided the Landlord with written notice to end the tenancy on April 19, 2019. Any pressure to move from the rental unit placed on the Tenants by the Landlord was insufficient to supersede the Tenants' notice. This aspect of the Tenants' Application is dismissed without leave to reapply.

In light of the above, I find the Tenants have demonstrated an entitlement to a total monetary award in the amount of \$2,250.00.

Set-off of Claims

The Landlord has demonstrated an entitlement to a total monetary award in the amount of \$2,593.77. The Tenants have demonstrated an entitlement to a total monetary award in the amount of \$2,250.00. Setting off the claims, I find the Landlord has demonstrated an entitlement to a monetary order in the amount of \$343.77 (\$2,593.77 - \$2,250.00).

As both parties have had some success, I decline to grant recovery of the filing fee to either party.

Conclusion

The Landlord is granted a monetary order in the amount of \$343.77. 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 15, 2019

Residential Tenancy Branch