



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNR MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on July 11, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent or utilities;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord and the Tenants attended the hearing at the appointed date and time and provided affirmed testimony.

The Landlord testified that the Notice of Dispute Resolution Proceeding package was served on the Tenants by registered mail on July 18, 2019. Canada Post customer receipts and tracking information were submitted in support and the Tenant acknowledged receipt. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Tenants are deemed to have received these documents on July 23, 2019.

The Tenants did not submit documentary evidence in response to the Application.

The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
4. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted into evidence. It confirmed the tenancy began on August 10, 2018. The parties agree the tenancy ended when the Tenants vacated the rental unit on June 15, 2019. At all material times, rent in the amount of \$1,500.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$700.00, which the Landlord holds.

The Landlord's claim is set out in a Monetary Order Worksheet dated July 11, 2019.

First, Landlord claimed \$1,450.00 for carpet replacement. The Landlord submitted the type-written letter of S.S. which describes the condition of the carpet during the move-out condition inspection. The letter described "bleach and ink stains on the carpet in the larger bedroom." The Landlord also submitted 11 photographs depicting what appear to be small ink stains and bleach marks on carpeting. The Landlord also provided an estimate dated June 27, 2019 but acknowledged that the carpet has not yet been replaced.

In reply, A.K. denied she should pay for the replacement. She indicated the ink stain was very small and was made worse by carpet cleaners hired by the Landlord. The Tenant also testified she does not use bleach due to her son's severe allergy.

Second, the Landlord claimed \$110.00 to clean the basement. In support, the Landlord submitted the type-written letter of S.S. which described the condition of the rental unit during the move-out condition inspection. It describes “food splashes/staining on the ceiling...staining on door jams and inside 2 closets...urine stains...hard water stains...cupboards were not cleaned out...food caked onto the stove top and inside the oven...entire unit needed to be mopped and swept...windows and window coverings were uncleaned...landlord was charged \$110.00 for the cleaning services.” The Landlord also submitted 3 photographs depicting the interior of the rental unit. A receipt for cleaning services in the amount claimed was submitted in support.

In reply, A.K. testified the photographs relied upon by the Landlord were taken before the tenancy ended and that the Tenants cleaned the rental unit thoroughly before vacating.

Third, the Landlord claimed \$126.00 to clean the carpet in the 2 bedrooms. The Landlord testified that he had the carpets cleaned to address the stains referred to above, to address food particles left behind, and to prepare the rental unit for incoming tenants. A receipt in the amount claimed was submitted in support.

Fourth, the Landlord claimed \$45.31 to replace a tub stopper. On behalf of the Tenants, A.K. acknowledged this was damaged during the tenancy.

Fifth, the Landlord claimed \$420.00 to replace hardwood flooring. In support, the Landlord submitted the type-written letter of S.S. which describes “damage to the hardwood floor in the entry/living room area.” The Landlord also submitted a photograph depicting a gouge in the hardwood floor which the Landlord testified could not be repaired. An estimate dated June 20, 2019 was submitted in support although the Landlord acknowledged the repair has not been completed.

In reply, A.K. denied responsibility for the damage.

Sixth, the Landlord claimed \$3,000.00 for unpaid rent due on June 1 and July 1, 2019. However, the Landlord modified his claim during the hearing and advised that the unit was re-rented effective July 1, 2019. Accordingly, the Landlord is only seeking rent due on June 1, 2019. The Landlord testified the Tenants did not provide written notice to end the tenancy. Rather, the Landlord confirmed he became aware of the Tenants’ intention to vacate the rental unit when the Tenants advised his mother in early June

2019. As already noted, the Tenants moved out on June 15, 2019. The Landlord testified the Tenants did not pay rent when due on June 1, 2019.

In reply, A.K. testified the Landlord was aware of the Tenants' intentions as early as May 11, 2019. In addition, A.K. testified the Landlord returned the Tenants' post-dated cheque for June 1, 2019 but did not have to do so. However, the Landlord testified that the cheque was returned to the Tenants because they promised to issue a new cheque.

Seventh, the Landlord claimed \$1,200.00 for late payment of rent and cleaning fees. However, during the hearing the Landlord modified the claim to \$1,050.00 for late payment fees only. The tenancy agreement provides for a fee of \$50.00 for the first day rent is late, followed by a fee of \$25.00 for each additional day rent is late.

In reply, A.K. denied an obligation to pay these late fees and suggested the Landlord was rude to the Tenants in person and on social media.

The claims relating to damage and cleaning were also supported by a Condition Inspection Report. The Condition Inspection Report confirms the move-in condition inspection occurred on August 9, 2018; the move-out condition inspection took place on June 15, 2019. A.K. attended the move-in and move-out condition inspections and signed to indicate her agreement. The move-out condition inspection describes "cleaning, carpet cleaning, carpet replacement if ink stains and bleach stains cannot be fixed, tub stopper, hardwood floor panel replacement, painting and fixing of all scratches." A.K. signed agreement and confirmed that the Condition Inspection Report fairly represented the condition of the rental unit.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee, and an order permitting the Landlord to retain the security deposit held in partial satisfaction of the claim.

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.

With respect to the Landlord's claim for \$1,450.00 for carpet replacement, I find there is insufficient evidence to establish that the Landlord suffered a loss or of the value of the loss. Even though the Tenants acknowledged the damage in the Condition Inspection Report, the Landlord confirmed during the hearing that the carpet has not been replaced and that the unit was re-rented soon after the Tenants vacated. Therefore, I find the Landlord has not suffered the loss claimed. However, Policy Guideline #16 confirms an arbitrator may award nominal damages when there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. In this case, I am satisfied that the carpets were damaged during the tenancy and that the Landlord suffered a loss. Therefore, I find it appropriate in the circumstances to grant the Landlord nominal damages for damage to the countertops in the amount of \$200.00.

With respect to the Landlord's claim for \$110.00 to clean the basement, section 37(2)(a) confirms a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. In this case, I find there is sufficient evidence before me to grant the relief sought. The photographic evidence, the Condition

Inspection Report, and the receipt submitted into evidence support the Landlord's claim. I find the Landlord is entitled to a monetary award in the amount of \$110.00.

With respect to the Landlord's claim for \$126.00 for carpet cleaning, I find there is sufficient evidence before me to grant the relief sought. The Landlord's claim was supported by photographic evidence, the Condition Inspection Report, and a receipt in the amount claimed. I find the Landlord is entitled to a monetary award in the amount of \$126.00.

With respect to the Landlord's claim for \$45.31 to replace a tub stopper, A.K. acknowledged the Tenants' responsibility for this loss. I find the Landlord is entitled to a monetary award in the amount of \$45.31.

With respect to the Landlord's claim for \$420.00 to repair hardwood flooring, I find there is insufficient evidence before me to grant the relief sought. While I accept that the damage occurred during the tenancy, the Landlord confirmed the hardwood has not been replaced and that the unit was re-rented soon after the Tenants vacated. Accordingly, pursuant to Policy Guideline #16, described above, I am satisfied that the hardwood flooring was damaged during the tenancy and that the Landlord has suffered a loss. Therefore, I find it appropriate in the circumstances to grant the Landlord nominal damages in the amount of \$100.00.

With respect to the Landlord's claim for \$1,500.00 for unpaid rent due on June 1, 2019, I find the Tenants did not give written notice to end the tenancy in accordance with section 45(1) of the Act. Further, I find the Tenants did not pay rent when due on June 1, 2019 but remained in the rental unit until June 15, 2019. I also accept that the Landlord returned the tenants' cheque to them in reliance on their promise to issue a new cheque. Rent was not due on July 1, 2019 because the Landlord took steps to minimize his losses and re-rent the unit. I find the Landlord is entitled to a monetary award in the amount of \$1,500.00.

With respect to the Landlord's claim for \$1,050.00 for fees related to the late payment of rent, section 7 of the *Residential Tenancy Regulation* confirms a landlord may charge an administration fee of not more than \$25.00 for late payment of rent if the tenancy agreement provides for the fee. In this case, the fees provided for in the tenancy agreement do not comply with the Residential Tenancy Regulation and are unenforceable. Therefore, this aspect of the Landlord's claim is dismissed.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also order that the Landlord is entitled to retain the security deposit in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$1,481.31, which has been calculated as follows:

Claim	Allowed
Carpet replacement (nominal):	\$200.00
General cleaning:	\$110.00
Carpet cleaning:	\$126.00
Tub stopper:	\$45.31
Hardwood repair (nominal):	\$100.00
Unpaid rent (June 2019):	\$1,500.00
Filing fee:	\$100.00
LESS security deposit:	(\$700.00)
TOTAL:	\$1,481.31

Conclusion

The Landlord is granted a monetary order in the amount of \$1,481.31. 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 22, 2019

Residential Tenancy Branch