



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: MNDCT
 LL: FFL MNDCL-S MNDL-S MNRL-S

Introduction

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

The Tenants’ Application for Dispute Resolution was made on September 13, 2019 (the “Tenants’ Application”). The Tenants applied for a monetary order for compensation, pursuant to the *Act*.

The Landlords’ Application for Dispute Resolution was made on October 29, 2019, (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

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

The hearing was scheduled for 1:30 P.M. on January 10, 2020 as a teleconference hearing. The Landlord and the Landlords’ Counsel, V.V., attended the hearing and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 32 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord, V.V., and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord, V.V., and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 1:30 P.M. on January 10, 2020.

Rule 7.3 of the Rules of Procedure states that if a party fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to reapply. As neither of the Tenants nor a representative acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenants' Application, I therefore dismiss the Tenants' Application in its entirety without leave to reapply.

The Landlord testified that the Application package and documentary evidence was served to the Tenants by registered mail on November 6, 2019. The Landlord submitted a copy of the registered mail receipts in support. Based on the oral and written submissions of the Landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on November 11, 2019, the fifth day after the registered mailing.

The Landlord and V.V. 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. Are the Landlords entitled to a monetary order for damage, compensation and loss, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Are the Landlords entitled to retaining the security deposit, pursuant to Section 38 and 72 of the *Act*?
4. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy started on April 1, 2018. During the tenancy, the Tenants were required to pay rent in the amount of \$1,200.00 to the Landlords on the first day of each month. The Landlord stated that the Tenants did not pay and security or a pet damage deposit. The Landlord stated that the Tenants vacated the rental unit on May 23, 2019.

The Landlord stated that he served the Tenants with a Two Month Notice to End Tenancy on April 1, 2019, with an effective vacancy date of July 1, 2019 as the Landlords intend to use the rental property for his own use. The Landlord stated that the Tenants failed to pay rent in for May 2019, therefore the Landlords served the Tenants with a 10 Day Notice to End Tenancy for unpaid rent dated May 9, 2019 with an effective vacancy date of May 23, 2019. The Landlord stated that the Tenants moved out of the rental property on May 23, 2019 but did not pay any rent to the Landlords. As such, the Landlords are seeking \$1,200.00 in relation to the unpaid rent for May 2019.

The Landlord stated that once he attended the rental property after the Tenants had moved out, it appeared as though the Tenants operated a marijuana grow operation in the rental property. The Landlord stated that the rental property was unliveable due to the extent of the damage and garbage left behind by the Tenants.

The Landlord stated that he was required to replace the flooring, re-painted the entire rental unit, replaced cabinets, repair the walls, clean the rental unit, remove garbage, repair the electrical system after it had been tampered with, and replace the furnace. The Landlord submitted a copy of the condition inspection report that was completed between the parties at the start of the tenancy, as well as photographic evidence of the condition of the rental property at the end of the tenancy.

The Landlords have set out their monetary claims on a Monetary Worksheet provided in the Application. The Landlord testified that the monetary amount sought is \$12,945.47 in relation to repairing damage caused by the Tenants to the rental unit. The Landlords outlined the following expenses associated with the repairs and provided receipts and bank statements confirming payments made in support;

Ferry Transportation Costs \$93.05

Ferry Transportation Costs \$76.05

Ferry Transportation Costs \$110.75
Ferry Transportation Costs \$120.30
Ferry Transportation Costs \$114.35
Ferry Transportation Costs \$102.60
Ferry Transportation Costs \$102.60
Smitty Repair Costs \$14.56
Beaver Creek Home Centre \$23.82
Canadian Tire \$8.99
Mid Island Co-op \$50.00
J&D Weaver Holding Ltd. Repair Costs \$59.65
Beaver Creek Home Centre \$176.00
J&D Weaver Holding Ltd. Repair Costs \$63.29
J&D Weaver Holding Ltd. Repair Costs \$23.10
Beaver Creek Home Centre \$23.82
Alberni Co-op \$52.83
Macs Convenience Store Transportation Costs \$50.00
Mobil Transport Costs \$50.00
Macs Convenience Store Transportation Costs \$47.00
J&D Weaver Holding Ltd. Repair Costs \$51.49
Save on Foods Cleaning Costs \$48.19
Ferry Transportation Costs \$97.05
Marvin Eslawa Contractor Repair Costs \$500.00
Beaver Creek Home Centre \$122.62
Beaver Creek Home Centre \$25.26
Beaver Creek Home Centre \$65.88
Beaver Creek Home Centre \$19.53
Dolan's Gas Fitting & Heating LTD. Repair Costs \$2,000.00
Dolan's Gas Fitting & Heating LTD. Repair Costs \$3,784.00
Beaver Creek Home Centre \$30.15
Beaver Creek Home Centre \$1,411.81
Beaver Creek Home Centre \$27.48
Marvin Eslawa Contractor Repair Costs \$2,000.00
Aines & Tyler Electric Co. Ltd. Repair Costs \$149.30
Mobil Transportation Costs \$50.00

The Landlords provided a copy of the condition inspection report. The Landlord stated that at the start of the tenancy, the rental unit was in generally good condition. The Landlords provided photographic evidence of the condition of the rental unit at the end

of the tenancy in support of the claims. If successful, the Landlords are also seeking the return of the filing fee.

Analysis

Based on the uncontested 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*. Pursuant to Residential Tenancy Policy Guideline #16 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 Tenants. 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 Landlords provided a monetary worksheet which outlined 36 monetary claims relating to damage, cleaning, garbage removal, furnace replacement, electrical work, and transportation costs. The Landlords provided receipts and bank statements in support of each of these claims. The Landlords also provided a condition inspection report as well as photographic evidence in support.

The Landlord has claimed for \$1,116.58 relating to transport costs, consisting of Ferry trips and gas used. In this case, I find that the costs associated with the Landlords traveling from their primary residence to the rental property is not recoverable by the Landlord. I find that the Tenants should not be held responsible for paying such costs and dismiss this portion of the Landlords' claim without leave to reapply.

The Landlords are also claiming for the replacement of the furnace in the amount of \$5,784.00. I accept that the Landlords provided a copy of the condition inspection report which indicated that at the start of the tenancy, the; "*condition of the furnace unknown*". In this case, I find that the Landlords have provided insufficient evidence that the furnace was broken, as a result of the Tenants breaching the *Act*. As such, I dismiss the Landlords' claim for the replacement of the furnace without leave to reapply.

The Landlords are claiming \$4,844.94 in relation to a Contractor fees, repair materials, cleaning costs, garbage removal, new flooring, painting, electrical, and plumbing repairs. I find that the Landlords provided sufficient photographic evidence to demonstrate that there was a significant amount of damage caused to the rental unit during the tenancy.

I find that the condition inspection report at the start of the tenancy indicated that the rental unit was in generally good condition. I find that the photographic evidence provided by the Landlords indicated that the rental unit had been significantly damaged and was left dirty with a lot of garbage. As such, I find that it is more likely than not that the Tenants are responsible for the damages noted in the Landlords' evidence. In light of the above, I find that the Landlords have demonstrated an entitlement to a monetary award in the amount of \$4,844.94.

The Landlords are also claiming the loss of rent for the month of May 2019 in the amount of \$1,200.00.

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.

In this case, I find that there is no evidence before me which would indicate that the Tenants were permitted to withhold their rent for the month of May 2019. As such, I find that the Landlords are entitled to monetary compensation in the amount of \$1,200.00 for unpaid rent for the month of May 2019.

Having been partially successful in their Application, I find the Landlords are entitled to the recovery of their \$100.00 filing fee. During the hearing the Landlord stated that the Tenants had not paid a security deposit.

Pursuant to section 67 of the Act, I grant the Landlords with a monetary order in the amount of \$6,144.94 which has been calculated as follows:

Claim	Amount
Repairs:	\$4,844.94
Unpaid Rent:	\$1,200.00
Filing fee:	\$100.00
TOTAL:	\$6,144.94

Conclusion

The Landlords are granted a monetary order in the amount of \$6,144.94. The order should be served on the Tenants as soon as possible 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: January 23, 2020

Residential Tenancy Branch