



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDC MNR MNSD FF
 Tenants: MNDC 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 for Dispute Resolution was made on September 11, 2019 and was amended on December 3, 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;
- a monetary order for unpaid rent or utilities;
- an order allowing the Landlord to retain the security deposit held in partial satisfaction of the claim; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on October 17, 2019 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing was accompanied by C.A., her sister. C.A. attended to provide support and did not participate in the hearing. The Tenants attended the hearing on their own behalf. The Landlord and the Tenants provided affirmed testimony.

The Landlord testified the Landlord's Application package and an amendment were served on the Tenants by registered mail. The Tenants acknowledged receipt of both packages. The Tenants testified the Landlord was served with the Tenants' Application package by registered mail. The Landlord acknowledged receipt of the documents. No further issues were raised with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the parties were sufficiently served with the above documents for the purposes of the *Act*.

The parties were provided with the 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

1. Is the Landlord entitled to a monetary order for damage?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to an order allowing the Landlord to retain the security deposit held in partial satisfaction of the claim?
4. Is the Landlord entitled to an order granting recovery of the filing fee?
5. Are the Tenants entitled to 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 fixed-term tenancy began on August 1, 2018. The Landlord took over the tenancy when she purchased the rental property on or about December 15, 2018. As originally intended, the tenancy continued to July 31, 2019, at which time the Tenants vacated the unit. During the tenancy, rent in the amount of \$2,100.00 per month was due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,050.00 which was returned to the Tenants.

The Landlord's Claim

The Landlord's claim was summarized in a Monetary Order Worksheet amended on December 3, 2019. First, the Landlord claims \$65.00 for carpet cleaning. The Landlord testified the carpets were "filthy dirty" because the Tenants stored their bikes and tools indoors. An invoice dated July 29, 2019 was submitted in support.

In reply, the Tenants disagreed with this aspect of the claim. They denied storing their bikes and tools on carpeted areas and testified the carpets were "thoroughly vacuumed" at the end of the tenancy.

Second, the Landlord claims \$300.00 for 10 hours of house cleaning. She testified the walls were not washed, the stove top was a mess, the bathtubs were soiled, and the floors were not cleaned. In support, the Landlord submitted numerous black-and-white photographs. These were taken before and after the tenancy ended. According to the Landlord, images depicting a soiled stovetop, a dirty window ledge, a marked kitchen cabinet, the kitchen faucet, food down the side of the oven, and a dirty dishwasher were taken on July 31, 2019 or after. An invoice dated August 1, 2019 was submitted in support.

In reply, the Tenants disagreed with this aspect of the claim. They testified that the unit was "thoroughly cleaned" at the end of the tenancy. The Tenants also testified that all photographs submitted by the Landlord were taken before the Tenants vacated the rental unit, and suggested the Landlord entered the unit without notice to do so.

Third, the Landlord claims \$112.00 to replace a broken crisper drawer. The Landlord testified that it was pointed out by the Tenants during the tenancy. An advertisement indicating a before-tax price of \$101.89 for a replacement was submitted into evidence in support.

In reply, the Tenants disagreed with this aspect of the claim. The Tenants testified the crisper was broken when they moved into the rental unit. The Tenants also noted there is no condition inspection report to establish the condition of the rental unit at the beginning of the tenancy.

Fourth, the Landlord claims \$15.00 to replace a living room blind. In support, the Landlord submitted a photograph of a broken living room blind.

In reply, the Tenants disagreed with this aspect of the claim. They testified the damage to the blinds was present when they moved into the rental unit.

Fifth, the Landlord claims \$240.00 for yard work. The Landlord testified the tenancy agreement provides that the Tenants were responsible for landscaping. She testified that it appears the Tenants did not do any maintenance such as water the grass or do any weeding. The Landlord testified she hired someone to bring dirt in, weed the property, and improve the grass. In support, the Landlord submitted a photograph of dead grass and an unmaintained garden area.

In reply, the Tenants disagreed with this aspect of the claim. They testified that the lawn was returned to the Landlord in the same condition in which it was received. The Tenants testified they watered the grass in accordance with city guidelines and weeded occasionally. They acknowledged it may not have been to the Landlord's standard.

Sixth, the Landlord claims \$50.00 to repair a cupboard door. She testified the cupboard door depicted in a photograph was broken by the Tenants.

In reply, the Tenants acknowledged the door was removed during the tenancy to avoid breaking because their young child was pulling on it and it appeared to be installed incorrectly.

Seventh, the Landlord claims \$333.67 for utilities due for the period from April 1 to July 31, 2019. Considerable time was spent during the hearing attempting to determine how this figure was calculated. The Landlord acknowledged the calculation was a "mess" and was unable to clarify this aspect of the claim.

In reply, the Tenants testified they paid utilities for the period from April 1 to June 30, 2019 but acknowledged they did not pay utilities for the period from July 1-31, 2019.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee. Although the landlord applied to retain the security deposit held, the parties agreed during the hearing that \$1,050.00 was returned to the Tenants.

The Tenants' Claim

The Tenants submit they are entitled to recover a further \$1,050.00 from the Landlord. Specifically, they submit they are entitled to the return of double the amount of the security deposit, less what has already been returned.

The Tenants testified the Landlord was provided with their forwarding address in writing on July 31, 2019. The Landlord acknowledged receipt of the Tenants' forwarding address on that date. A type-written letter dated July 31, 2019, was submitted into evidence. In addition, the Tenants submitted a Transfer Details document indicating the security deposit was sent to them via e-transfer on August 19, 2019. The Tenants submit the Landlord did not return the security deposit to them in the required time and that they are entitled to receive double the amount of the security deposit.

In reply, the Landlord testified she returned the security deposit to the Tenants on August 14, 2019 but offered no documentary evidence in support. The Landlord questioned the Tenants' claim because the security deposit was returned.

Analysis

Based on all of the above, the evidence and unchallenged 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 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 on the part of the Tenant. Once that has been established, each party must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that each 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 \$65.00 for carpet cleaning, I find there is insufficient evidence before me to grant the relief sought. The Landlord did not provide any evidence to establish the condition of the carpet at the beginning of the tenancy or any photographic evidence depicting the carpeting. On the other hand, the Tenants testified the carpet was vacuumed at the end of the tenancy and was returned to the Landlord in the same condition as it was found at the beginning of the tenancy. Therefore, this aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$300.00 for house cleaning, section 37 of the *Act* confirms that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. In this case, I find it is more likely than not that the photographic evidence submitted by the Landlord represents the condition of the rental unit at the end of the tenancy and that it was not reasonably clean. The Landlord's claim was further supported by an invoice. Therefore, the Landlord is granted a monetary award in the amount of \$300.00.

With respect to the Landlord's claim for \$112.00 to replace a broken crisper drawer, I find there is insufficient evidence before me to grant the relief sought. The Landlord did not provide evidence of the condition of the rental unit at the beginning of the tenancy, or that the cost was incurred. Further, the Tenants testified the damage was pre-existing. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$15.00 to repair/replace a living room blind, I find there is insufficient evidence before me to grant the relief sought. The Landlord did not provide evidence of the condition of the rental unit at the beginning of the tenancy, or documentary evidence to confirm that the cost was actually incurred. Further, the Tenants testified the damage was pre-existing. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$240.00 for yard work, I find there is sufficient evidence before me to grant the relief sought. I find that the tenancy agreement placed an obligation upon the Tenants to perform basic maintenance of the yard, including cutting and watering grass, and weeding. The Landlord did not submit documentary evidence to support the amount of the claim. 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 Tenants were responsible to maintain the lawn under the terms of the tenancy agreement but did not do so. As a result, I accept that the Landlord suffered a loss. Therefore, I grant the Landlord nominal damages in the amount of \$75.00.

With respect to the Landlord's claim for \$50.00 to repair a cupboard door, I find there is insufficient evidence before me to grant the relief sought. While the Tenants acknowledged removing the door, the Landlord did not submit documentary evidence to support the amount claimed. However, as noted above, 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 Tenants removed the cupboard door and did not replace it without authorization. As a result, I accept that the Landlord suffered a loss. Therefore, I grant the Landlord nominal damages in the amount of \$15.00.

With respect to the Landlord's claim for \$333.67 for utilities due for the period from April 1 to July 31, 2019, the Landlord was unable to articulate this aspect of the claim with any certainty during the hearing. Several opportunities were provided to the Landlord to do so. Therefore, despite the Tenants' admission that utilities were not paid from July 1 to 31, 2019, I find that the amount of the Landlord's loss is uncertain. This aspect of the Landlord's claim is dismissed.

I find the Landlord has demonstrated an entitlement to a monetary award in the amount of \$390.00 (\$300.00 + \$75.00 + \$15.00).

The Tenants' Claim

With respect to the Tenants' request for the return of the security deposit, section 38(1) of the *Act* requires a landlord to 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. The language in the *Act* is mandatory.

In this case, I find the Tenants' forwarding address was provided to the Landlord on July 31, 2019. Therefore, pursuant to section 38(1) of the *Act*, the Landlord had until August 15, 2019, to repay the security deposit to the Tenants or make a claim against it by filing an application for dispute resolution. The Landlord's Application was not made until September 11, 2019. Further, it appears to be more likely than not that the security deposit was not returned to the Tenants until August 19, 2019, as indicated in the Transfer Details document submitted into evidence by the Tenants. As a result, pursuant to section 38(6) of the *Act*, I find the security deposit was not returned to the Tenants within 15 days after receipt of the Tenants' forwarding address in writing in accordance with section 38(1) of the *Act*. Therefore, I find the Tenants are entitled to recover double the amount of the security deposit held by the Landlord, or \$2,100.00.

In this case, the Landlord has returned \$1,050.00 to the Tenants. The Tenants are therefore entitled to receive a further \$1,050.00 from the Landlord, in accordance with section 38(6) of the *Act*. Therefore, I find the Tenants have established an entitlement to a monetary award in the amount of \$1,050.00.

Set-off of Claims

The Landlord has demonstrated an entitlement to a monetary award in the amount of \$390.00. The Tenants have demonstrated an entitlement to a monetary award in the amount of \$1,050.00. Setting off these awards, I find the Tenants are entitled to a monetary order in the amount of \$660.00 (\$1,050.00 - \$390.00). As both parties had some success, I decline to grant recovery of the filing fee to either party.

Conclusion

The Tenants are granted a monetary order in the amount of \$660.00. The monetary 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: January 24, 2020

Residential Tenancy Branch