



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTWYND REAL ESTATE SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>	Landlord:	MND MNSD FF
	Tenants:	MNDC 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 September 23, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for compensation for damage to the unit, site or property;
- 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.

During the hearing, the parties agreed the tenancy agreement confirms the Landlord is the party indicated in the style of cause. The parties agreed to amend the applications accordingly, pursuant to section 64(3) of the *Act*.

The Tenants’ Application was made on October 22, 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;
- 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 was represented at the hearing by J.B., an agent. A.P., the owner of the rental unit, also attended the hearing as a witness. The Tenants were represented at the hearing by H.H. J.B., A.P., and H.H. all provided affirmed testimony.

On behalf of the Landlord, J.B. testified that the Landlord's Application package was served on the Tenants by registered mail. H.H. acknowledged receipt on behalf of the Tenants. In addition, H.H. testified the Tenants' Application package was served on the Landlord by registered mail. J.B. acknowledged receipt on behalf of the Landlord. No issues were raised with respect to service or receipt of the above documents and evidence during the hearing. The parties were in attendance or were represented at the hearing 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.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for compensation for damage to the unit, site or property?
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 a monetary order for money owed or compensation for damage or loss?
5. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?
6. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on September 1, 2018 when the previous tenancy agreement was assigned to the Tenants. The parties agreed the tenancy ended on September 10, 2019. During the tenancy, rent in the amount of \$1,793.00 per month was due on the first day of each month. The Tenants paid a security deposit in the amount of \$875.00 which the Landlord holds.

The Landlord's Claim

The Landlord's monetary claim is set out in a Monetary Order Worksheet dated September 23, 2019. First, the Landlord claims \$227.00 to clean the rental unit at the end of the tenancy. A.P. testified the rental unit was almost new when the Tenants moved into the rental unit. He testified it was not cleaned at the end of the tenancy. In support, the Landlord relied on photographs depicting a stove top and oven. A.P. testified the owners tried to clean mold in the kitchen and bathroom but could not. Photographs of the counters were submitted in support. The Landlord also submitted a receipt dated September 15, 2019.

In reply, H.H. testified the rental unit was "completely clean" at the end of the tenancy. The Tenants relied on the move-out condition inspection which only identifies cleaning required in the bedroom, kitchen, and living room. The Tenants also relied on the photographs of the rental unit submitted with the Tenants' Application.

Second, the Landlord claims \$262.50 to clean upholstery. J.B. and A.P. testified that the murphy bed (which acts as a couch when not being used as a bed) and the main couch were stained. Photographs were submitted in support. The Landlord also submitted a receipt dated September 14, 2019 for the amount claimed.

In reply, H.H. testified the move-in condition inspection indicates the murphy bed was already dirty at the beginning of the tenancy. With respect to the couch, the Tenant denies there were stains on it. The Tenants relied on the photographs of the rental unit submitted with the Tenants' Application.

Third, the Landlord claims \$330.75 to re-caulk the kitchen and bathrooms. A.P. testified that the caulking in the kitchen and bathroom shower stall had black mold which presented a health risk. Although A.P. tried to clean it off, he was unsuccessful.

In reply, H.H. indicated that the move-out condition inspection shows the countertops were “satisfactory” and do not reference mold. The Tenants relied on the photographs of the rental unit submitted with the Tenants’ Application.

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

The Tenants’ Claim

The Tenants’ claim is set out in a Monetary Order Worksheet dated November 4, 2019, which reduced the Tenants’ claim to \$1,975.00.

First, the Tenants claimed \$875.00 for the return of the security deposit. The Tenants submitted a letter dated September 26, 2019, which included a forwarding address in writing. Canada Post documents confirmed delivery of the letter on September 30, 2019, which was acknowledged by J.B.

Second, the Tenants claimed \$800.00 for a clothes dryer that did not function properly. Specifically, H.H. testified the moisture sensor function did not work and the Tenants had to rely on the timer function. H.H. testified the moisture sensor function was not repaired by the Landlord despite requests to do so. H.H. also testified the master bedroom door lock did not work properly during the tenancy but acknowledged she has no evidence of this.

In reply, J.B. testified that the timer function continued to work properly but acknowledged that the moisture sensor function is unreliable in clothes dryers installed in the rental property.

Third, the Tenants claim \$300.00 for a bathroom door that would stick when locked. H.H. testified the main door to the bathroom would stick if locked and that the Tenants had to use the entrance through the en suite. H.H. testified the Landlord was asked to repair the door but did not.

In reply, J.B. testified to his understanding that the bathroom door handle was “sticky” but could be turned with some effort. He testified that nothing more than a sticky door handle was reported to the Landlord.

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 \$227.00 to clean the rental unit at the end of the tenancy, section 37 of the *Act* confirms that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Despite the Tenants' assertion that the rental unit was thoroughly cleaned at the end of the tenancy I find that mold remained in the kitchen and bathroom, and that the stove top and oven were not left reasonably clean at the end of the tenancy. Therefore, I find the Landlord has demonstrated an entitlement to a monetary award in the amount of \$227.00.

With respect to the Landlord's claim for \$262.50 to clean upholstery, I find there is insufficient evidence before me to grant the relief sought. As noted by the Tenant, the move-in condition inspection completed when the previous tenant moved into the rental unit indicated the murphy bed was already dirty. Further, I find there is insufficient evidence that the main couch was stained by Tenants. There was no move-in condition inspection completed when the Tenants moved into the rental unit on September 1, 2018, and the move-out condition inspection does not specifically reference the couch. The photographs submitted into evidence also do not support this aspect of the Landlord's claim. This aspect of the Landlord's Application is dismissed.

With respect to the Landlord's claim for \$330.75 to re-caulk the kitchen and bathrooms, I find there is insufficient evidence before me to grant the relief sought. While some black staining is visible in the photographs submitted into evidence, I find it is more likely than not that it was addressed by the cleaning performed at the end of the tenancy. I also find there is insufficient evidence of any health risk presented. It is also significant that the condition of the rental unit at the beginning of this tenancy on September 1, 2018 was not recorded in a condition inspection report. This aspect of the Landlord's Application is dismissed.

Considering the above, I find the Landlord has demonstrated an entitlement to a monetary award in the amount of \$227.00.

The Tenants' Claim

With respect to the Tenants' claim for \$875.00 for the return of the security deposit, section 38(1) of the *Act* 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 Tenants' 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 and that it was received on September 30, 2019. However, I find that the Landlord had already made the Landlord's Application on September 23, 2019, before receipt of the Tenants' forwarding address. As a result, I find that although the Tenants are not entitled to double the amount of the security deposit, they are entitled to the return of the security deposit subject to any deductions for monetary awards granted to the Landlord.

With respect to the Tenants' claim for \$800.00 for a clothes dryer that did not function properly, I find there is insufficient evidence before me to grant the relief sought. The undisputed testimony is that the moisture sensor function did not work properly but that the dryer continued to operate with the timer function. I find that this difference in the operation of the dryer is insignificant and is not sufficient to ground a claim for any loss by the Tenants. At all material times the Tenants had full use of a functional dryer. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants' claim for \$300.00 for a bathroom door that would stick when locked, I find there is insufficient evidence before me to grant the relief sought. While I accept that the bathroom door would stick, I find it is more likely than not that the door could be opened. I also note there was an alternate entrance to the bathroom and the Tenants had full use of the bathroom at all material times. This aspect of the Tenants' claim is dismissed.

I find the Tenants have demonstrated an entitlement to a monetary award in the amount of \$875.00 for return of the security deposit subject to any deductions for monetary awards granted to the Landlord.

Set-off of Claims

The Landlord has demonstrated an entitlement to a monetary award in the amount of \$227.00 for cleaning costs. The Tenants have demonstrated an entitlement to a monetary award in the amount of \$875.00 for the return of the security deposit. Setting off these monetary awards, I find the Tenants are entitled to a monetary order in the amount of \$648.00 (\$875.00 - \$227.00). As both parties have 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 \$648.00. 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: February 6, 2020

Residential Tenancy Branch