



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: MNSD, MNDCT, FF
 LL: MNDCL MNDL MNRL FF

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 October 3, 2019, (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit;
- a monetary order for compensation; and
- an order granting recovery of the filing fee.

The Landlords’ Application for Dispute Resolution was made on October 18, 2019, (the “Landlords’ Application”). The Landlords 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 utilities;
- an order granting recovery of the filing fee.

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

At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties 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 unpaid utilities, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 of the *Act*?
3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
4. Are the Tenants entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?
5. Are the Tenants entitled to a monetary order for compensation, pursuant to Section 67 of the *Act*?
6. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on December 1, 2018. During the tenancy, the Tenants were required to pay rent in the amount of \$1,600.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$1,000.00 which the Landlords continue to hold. During the tenancy, the Tenants were required to pay 65 percent of the utility bills to the Landlords. The tenancy ended on September 27, 2019 after the Tenants moved out of the rental unit.

The Tenants' Claim

The Tenants have applied for the return of their security deposit. The parties agreed that the tenancy ended on September 27, 2019 after the Tenants move out of the rental unit. The Tenants stated that they provided the Landlords with their forwarding address by text message sometime in the first week of October 2019. The Tenants stated that they did not consent to the Landlords retaining any amount of the deposit. As such, the

Tenants stated that they are entitled to double the amount of their deposit as the Landlords have not returned their deposit within 15 days.

In response, the Landlord stated that she did not receive the Tenants' forwarding address until she received the Tenants' Application. The Landlord stated that she has made attempts at sending the Tenants a portion of their deposit less the amounts owed for utilities, however, the Tenants refused to accept the payments.

The Landlords' Claim

The Landlords' monetary claims were set out on a Monetary Worksheet provided in the Application.

The Landlords are seeking a monetary order in relation to three unpaid utility bills which the Tenants were required to pay 65 percent of. The Landlords provided a copy of each bill in support. The Landlords are seeking \$214.00 for a water utility bill, \$74.24 for a hydro bill, and \$12.30 for a gas bill. During the hearing, the Tenants agreed to paying these costs which amount to \$300.54.

The Landlords are seeking \$175.28 in relation to cleaning an oil stain from the driveway. The Landlords provided a receipt in support. The Landlord stated that near the end of the tenancy, she noticed an oil stain in the driveway where the Tenants typically park their vehicles. The Landlord stated that the stain was caused by the Tenants or their guest.

The Tenants denied responsibility for the oil stain, stating that the driveway is shared with the neighbour and that there are often other vehicles that park in their spot. The Tenants stated that their vehicle doesn't leak oil and don't feel they should have to pay the cleaning costs.

The Landlords are claiming \$900.00 in relation to punishment and harassment. During the hearing, the Landlord stated that she submitted this claim in response to the Tenants' Application for compensation.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

In relation to the Tenants' claim for the return of their security deposit, Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against 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.

The parties agreed that the tenancy ended on September 27, 2019. The Tenants testified that they served the Landlords with their forwarding address by text message, sometime in the first week of October 2019. The Landlord testified that she did not receive the Tenants' forwarding address until she received the Tenants' Application.

Section 88 of the *Act* stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or

(i) as ordered by an Arbitrator

I find that the Tenants did not serve the Landlords their forwarding address in accordance with Section 88 of the *Act*. As such, I accept that the Landlords only learned about the Tenants' forwarding address after receipt of the Tenants' Application. I find that the Landlords submitted their Application within the appropriate timeline outlined in Section 38(1) of the *Act*.

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 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.

In relation to the Landlords' claim for unpaid utilities, I accept that during the hearing, the Tenants agreed to paying the utility costs in the amount of \$300.54. As such, the Landlords are granted a monetary award in the amount of \$300.54.

The Landlords have claimed for \$175.28 for cleaning an oil stain in the driveway which the Landlord stated was caused by the Tenants or their guest. In this case, I find that the Landlords provided insufficient evidence to demonstrate that the oil stain was

caused by the Tenants or their guest. As such, I dismiss the Landlords' claim without leave to reapply.

The Landlords are claiming \$900.00 for punishment and harassment. I find that the Landlords submitted this claim in response to the Tenants' Application and provided insufficient evidence to support a loss of \$900.00. As such, I dismiss the Landlords' claim without leave to reapply.

As the return of the filing fee is discretionary, I decline to award either party the return of their deposit.

I accept that the Landlords currently hold the Tenants' security deposit in the amount of \$1,000.00. During the hearing, the Tenants agreed to compensate the Landlords \$300.54 for unpaid utility bills. As such, I find that the Tenants are entitled to a monetary order in the amount of \$699.46 which represents the remaining portion of their security deposit less the mutually agreed deduction ($\$1,000.00 - \$300.54 = \$699.46$).

Conclusion

Pursuant to section 67 of the Act, the Tenants are granted a monetary order in the amount of \$699.46 which represents the remaining portion of their security deposit less the mutually agreed deduction. The monetary order must be served on the Landlords 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: February 06, 2020

Residential Tenancy Branch