



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Aquilini Properties Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on October 29, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property; and
- an order granting recovery of the filing fee.

At the beginning of the hearing, the parties acknowledged service and receipt of the respective application package 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 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 to the rental unit, site, or property, pursuant to Section 67 of the *Act*?
2. Is the Landlord 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 started on November 30, 2018. Currently, the Tenant is required to pay rent in the amount of \$2,635.00 to the Landlord each month. The Tenant paid a security deposit in the amount of \$1,317.50 which the Landlord continues to hold.

The Landlord is seeking monetary compensation in the amount of \$157.49. During the hearing, the Landlord's Agent stated that she received a service request from the Tenant on July 14, 2019 in relation to her washing machine not draining. The Landlord's Agent stated that she contacted a service technician on July 15, 2019, who attended the rental unit on July 16, 2019. The Landlord's Agent stated that the service technician discovered there were two clothing items stuck in the washing machine's drain pump which caused the washing machine to malfunction. The Landlord submitted a copy of the invoice in support.

The Landlord's Agent stated that the Tenant had been previously notified by email in November 2018 to place small garments in a laundry bag while washing them. The Landlord submitted a copy of the email in support. The Landlord's Agent stated that this information is also contained in the washing machine's operating manual which is also available to the Tenant. The Landlord's Agent stated that this information was provided to the Tenant to prevent small garments from clogging the drain pump. The Landlord's Agent stated that the Tenant did not follow the suggested washing machine operating instructions, which resulted in the washing machine to malfunction. As such, the Landlord's Agent stated that the Tenant should be responsible for paying the repair bill in the amount of \$157.49.

In response, the Tenant confirmed that she had received the information regarding the use of a laundry bag for small garments. The Tenant stated that she did not feel it was necessary to use a laundry bag to wash such items. The Tenant stated that the washing machine may be poor quality or has a design flaw which contributed to the drain pump to become clogged. The Tenant stated that she was not negligent and was not aware that she may have been responsible to pay the costs associated with the repair and would have called around for different quotes had she known.

If successful, the Landlord is also seeking the return of the filing fee.

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.

According to the Residential Tenancy Policy Guideline #1(the “Policy Guideline”); the landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

The Landlord is seeking monetary compensation in the amount of \$157.49 for the cost of repairing a malfunctioning washing machine. In this case I find that the Landlord provided sufficient evidence to demonstrate that the Tenant was notified that the laundry bag was required to wash smaller garments in. I accept that the Tenant received this information, however, during the hearing the Tenant stated that she did not feel as though it was necessary to use the laundry bag as suggested.

I find that it is more likely than not that the Tenant's decision to not comply with the recommended operating instructions provided to her contributed to the washing machine malfunctioning. As such, I find that the Landlord is entitled to compensation for the expense associated with repairing the washing machine in the amount of \$157.49. As the Landlord was successful with the Application, I find that they are entitled to the return of the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$257.49.

Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$257.49. The order should be served to the Tenant 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: March 12, 2020

Residential Tenancy Branch