



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on November 11, 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
- an order to retain the Tenants' security deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenants attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged service and receipt of the respective application package and documentary evidence. The Tenants stated that they were missing some portions of the Landlord's Application package, however, they were able to obtain the necessary information from the Residential Tenancy Branch. The parties confirmed at the start of the hearing that they were prepared and wished to proceed with 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 retaining the Tenants' security deposit, pursuant to Sections 38 and 72 of the *Act*?

3. 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 1, 2018. During the tenancy, the Tenants were required to pay rent in the amount of \$1,400.00 to the Landlord each month. The Tenants paid a security deposit in the amount of \$700.00 which the Landlord continues to hold. The Tenancy ended on November 1, 2019.

The Landlord is seeking a monetary order in the amount of \$1,314.54 in relation to some damage found in the rental unit at the end of the tenancy. The Landlord stated that he noticed that the washing machine was broken and has a leaked on the floor, causing damage to the flooring.

The Landlord stated that he hired an appliance service technician to inspect the washing machine at the end of the tenancy. The Landlord stated that the cost of having the technician attend and provide a diagnostic report was \$141.75. The Landlord is seeking the return of this amount and provided a copy of the receipt in support.

The Landlord stated that the technician determined that the washing machine was broken and needed to be replaced. The Landlord stated that he purchased a replacement washer and dryer for \$1,200.00, however, the Landlord is only seeking to recover half, in the amount of \$600.00, as he feels it was just the washer that the Tenants should be responsible for replacing.

The Landlord is claiming \$400.00 for the replacement of the flooring which was damaged as a result of the washing machine leaking. The Landlord provided photographic evidence of the damaged flooring and that his claim is a self estimate of the cost associated with replacing the floor. The Landlord stated that he has not yet replaced the flooring.

In response, the Tenants responded by stating that they noticed there were problems with the washing machine shortly after moving into the rental unit. The Tenants stated that when they would put a full load of laundry in the washing machine, it would leak. The Tenants stated that they contacted the Landlord sometime in December 2018 to report the issue. The Tenants stated that the Landlord was not available at the time, but that the Tenants reported the issue to the Landlord's wife.

The Tenants stated that they were advised to continue using the washing machine, but to put in smaller loads. The Tenants stated that the Landlord did not come and inspect the washing machine and that the Tenants tried their best to prevent the washing machine from leaking any further by only running small loads of laundry. The Tenants

stated that the Landlord should be responsible for maintaining and repairing the washing machine and they do not agree with having to pay the technician fee or replacement cost of the washing machine.

The Landlord confirmed that the Tenants contacted his wife regarding the problems they were having with the washing machine, however, he wasn't sure that the Tenants mentioned that there had been a leak. The Landlord was unsure if his wife had attended the rental unit to inspect the washing machine after the Tenants had reported the issue.

The Landlord stated that the appliance technician determined that the kitchen faucet was also broken and needed to be replaced. The Landlord stated that he purchased a new kitchen faucet in the amount of \$72.79. The Landlord provided photographic evidence showing the broken kitchen faucet as well as a receipt in support of the replacement cost.

The Tenants stated that they noticed the kitchen faucet was loose at the start of the tenancy and that they were able to tighten the bolt holding the faucet to the counter. The Tenants stated that the faucet is not broken but might require tightening.

If successful, the Landlord is also seeking the return of the \$100.00 filing fee.

Analysis

Based on the 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 Tenants. 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 compensation in the amount of \$141.75 for the cost of the appliance repair technician, \$600.00 for the cost of replacing the washing machine, and \$400.00 for the replacement of the flooring which was damage by the washing machine leak.

In this case, I accept that the parties agreed that the Tenants reported that the washing machine was not working properly to the Landlord once they noticed the washing machine leaked. The Tenants stated that they informed the Landlord's wife while the Landlord was away. The Landlord confirmed having knowledge of the Tenants' concerns regarding the washing machine during the tenancy.

In this case, I find that the Landlord provided insufficient evidence to demonstrate that the Landlord or their Agent took any action to inspect and repair the washing machine during the tenancy, after being notified about the issue from the Tenants. As such, I find that the Landlord did not mitigate their loss and I therefore dismiss the Landlord's claims for the technician inspections, the replacement of the washing machine, and the cost of repairing the flooring as the Landlord could have prevented further damage to the rental unit had the Landlord taken action once they learned about the malfunctioning washing machine.

In relation to the cost associated with the replacement of the kitchen faucet, I find that the Tenants did not advise the Landlord regarding the loose faucet during the tenancy. I find that the Landlord provided sufficient evidence to demonstrate that the kitchen faucet is broken and cost \$72.79 to replace. As such, I find that the Landlord is entitled to a monetary award in the amount of \$72.79.

As the Landlord was partially successful with the Application, I find that they are entitled to the return of the \$100.00 filling fee paid the make the Application. I also find it appropriate in the circumstances to order that the Landlord retain a portion of the security deposit held in satisfaction of the claim.

The Landlord currently holds the Tenants' security deposit in the amount of \$700.00. The Landlord has established a entitlement to a monetary award in the amount of \$172.79 ($\$700.00 - \$172.79 = \527.21). I order that the Landlord return the remaining portion of the Tenant's security deposit in the amount of \$527.21 to the Tenants.

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$527.21, which represents the remaining portion of their security deposit, following the above mentioned deduction.

Conclusion

The Landlord has established a monetary award in the amount of \$172.79. The Tenants are granted a monetary order in the amount of \$527.21 which represents the remaining portion of their security deposit currently being held by the Landlord. 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: April 03, 2020

Residential Tenancy Branch