



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on November 17, 2019 and amended on March 9, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on her own behalf. The Tenant attended the hearing and was assisted by M.B., a legal advocate. The Landlord and the Tenant provided affirmed testimony.

The parties acknowledged receipt of all documents to be relied upon. No issues were raised during the hearing with respect to service or receipt of the documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the documents relied upon by the parties and submitted to the Residential Tenancy Branch 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?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
4. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
5. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed that a fixed-term tenancy began on January 1, 2019 and was expected to continue to December 31, 2019. However, the Tenant acknowledged she vacated the rental unit on September 18, 2019 and removed her belongings by October 29, 2019. The Tenant asserts that she was justified in ending the tenancy before the end of the fixed term due to potential health concerns for her son as a result of mold discovered in the rental unit. During the tenancy, rent in the amount of \$2,000.00 per month was due on the first day of each month. The Tenant paid a security deposit in the amount of \$1,000.00, which the Landlord holds.

The Landlord's claim is summarised in a Monetary Order Worksheet dated March 9, 2020. The Landlord submitted a Condition Inspection Report in support of her claims. The move-in condition inspection occurred on January 16, 2019. The Tenant signed the document acknowledging that it fairly represented the condition of the rental unit at the start of the tenancy. The move-out condition inspection occurred on November 4, 2019. The Tenant did not attend as she had already moved out.

First, the Landlord claims \$666.75 to repair and paint walls. The Landlord testified there was damage to walls caused by a baby gate, a TV wall mount, and nail holes. The Landlord acknowledged the move-in condition inspection references "chips" in the living room and master bedroom walls but that the damage being claimed is new. Photographs of wall damage were submitted in support. The Landlord also submitted an invoice dated November 23, 2019 in support.

In reply, the Tenant testified that the unit was not freshly painted at the beginning of the tenancy. The Tenant also noted the chips referenced during the move-in condition inspection. The Tenant testified that the previous tenants also used baby gates and could have caused the damage.

Second, the Landlord claims \$1,094.00 for unpaid rent for the month of October 2019 and \$2,000.00 for unpaid rent for the month of November 2019. Although the Landlord testified the unit was not re-rented in December 2019, no claim for rent due on December 1, 2019 was made.

In reply, the Tenant confirmed during the hearing that these amounts were not paid. However, as noted above, the Tenant testified she was justified in ending the tenancy before the end of the fixed term due to potential health concerns caused by mold in the rental unit. The Tenant also testified she gave the Landlord written notice of her intention to vacate the rental unit in a text message dated September 20, 2019. The message states, in part:

Be advised that I have had to vacate the premises immediately on September, 18th due to the results of a toxicology report of mold spores that was conducted on Friday, September 13th...

[Reproduced as written.]

The report was provided to the Tenant in an email dated September 17, 2019, a copy of which was submitted into evidence. The Tenant referred to specific excerpts which indicated there was likely a source producing spores inside the home and that the levels were “much higher” than outside. The report indicated that the species of mold is not necessarily an issue but may present a health risk for those who have respiratory issues.

The author of the report concluded there is a “potential issue” with mold in the rental unit. He recommended that the issue be brought to the attention of the Landlord so the actual cause could be determined. The author also recommended getting a HEPA air filtration device or, alternatively, obtaining advice from the Tenant’s physician.

In addition, the Tenant submitted a letter from M.H., the Tenant’s social worker, dated March 12, 2020. The letter summarizes the involvement of the Ministry of Children and Family Development due to the potential health issue. Specifically, the Tenant was provided with financial support to stay in another location until October 14, 2019.

The Tenant also submitted a copy of a letter from her physician dated September 17, 2019. The letter requests a “different living environment for [the Tenant’s son] based on the recent home inspection” and suggested he may develop respiratory issues.

The Tenant also testified that she lost home nursing services as a result of the mold issue but provided no documentation in support.

Third, the Landlord claims \$225.00 for carpet cleaning. In support, the Landlord submitted photographs of the carpet in the rental unit which show impressions left by furniture. The Landlord also submitted an invoice dated December 1, 2019 in the amount claimed.

In reply, the Tenant did not dispute that the carpet was not cleaned when she vacated the rental unit. However, she submitted that her obligation to clean the carpet did not arise because tenancy ended before the end of the fixed term.

Fourth, the Landlord claims \$1,100.00 for her time spent cleaning the rental unit and \$72.65 for cleaning supplies. The Landlord testified that the claim for cleaning is based on the 44 hours she indicated were spent cleaning at a rate of \$25.00 per hour. The Landlord submitted a type-written summary of the cleaning she performed in the kitchen, bathrooms, bedrooms, and other living areas. The cleaning occurred from November 11 – December 24, 2019. Photographs submitted into evidence included images of a kitchen sink, a fridge, flooring, a toilet, and hair in a drain. The claim for cleaning supplies was supported by receipts for purchases dated November 17 and 26, and December 4, 2019.

In reply, the Tenant acknowledged she did not return to clean the rental unit but testified that she left it in “pristine condition”. The Tenant testified the Landlord only needed to give the unit a wipe down.

Fifth, the Landlord claims \$12.85 to replace a compost bin that was missing after the Tenant vacated. A receipt dated January 25, 2020 was submitted in support. In reply, the Tenant acknowledged that the moving company arranged through the ministry packed it but that it was subsequently returned to the rental unit.

Sixth, the Landlord claims \$25.00 for a visitor parking pass that was not returned at the end of the tenancy. In reply, the Tenant testified that the “new one” was given to an agent of the Landlord and that the “old one” was left at the rental unit.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee, and an order permitting the Landlord to retain the security deposit held in partial satisfaction of the claim.

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.

With respect to the Landlord's claim for \$666.75 to repair and paint walls, I find there is sufficient evidence before me to grant the relief sought. The Landlord's evidence confirms, and I accept, that the condition inspection report reflects the condition of the walls at the beginning of the tenancy. As noted above, the condition inspection report indicates "chips" in the living room and master bedroom walls but does not reference damage caused by a baby gate, a TV wall mount, or nail holes. The claim was also supported by photographs and an invoice in the amount claimed. I find the Landlord has established an entitlement to a monetary award in the amount of \$666.75.

With respect to the Landlord's claim for \$1,094.00 for unpaid rent for the month of October 2019 and \$2,000.00 for unpaid rent for the month of November 2019, I find there is sufficient evidence to grant the relief sought. Sections 45(2) and (3) of the *Act* confirm a tenant may not end a fixed term tenancy before the end of the fixed term unless the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure.

In this case, the fixed term tenancy was to end on December 31, 2019. However, the Tenant confirmed during the hearing that she moved out on September 18, 2019 and notified the Landlord on September 20, 2019 that she did not intend to return to the rental unit. The Tenant acknowledged the amount claimed were not paid as alleged. However, the Tenant testified she was justified in ending the fixed term tenancy because of the results of the report she received on September 17, 2019. As noted above, the report identified a "potential issue" with increased spore levels in the rental unit. The author of the report recommended that the issue be brought to the attention of the Landlord so that further investigations could be conducted to determine the source, that the Tenant may wish to get a HEPA air filtration device, or that the Tenant could obtain advice from the Tenant's physician.

After careful consideration of the evidence and submissions of the parties, I do not accept that the report provided a justification for ending the tenancy before the end of the fixed term. While I accept the Tenant was concerned about mold levels in the rental unit and how they could impact her son, the report indicated only a potential issue. The report did not recommend that the Tenant vacate the rental unit immediately but suggested further investigations and the use of a HEPA filter. Although the letter from the Tenant's physician recommended a different living environment for the Tenant's son, it did not suggest the report had been reviewed in coming to a recommendation. The letter did not indicate a different living environment was necessary immediately and

merely suggested the Tenant's son may develop respiratory issues. The Tenant did not refer me to any evidence of confirmed risk presented by the mold or of any negative health effects experienced by her son. Further, the Tenant did not provide sufficient evidence to indicate the Landlord breached a material term of the tenancy agreement that was not corrected within a reasonable period after the Tenant gave written notice of the failure. Rather, the evidence suggests other short-term solutions that did not involve an immediate end to the tenancy were likely available. Accordingly, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$3,094.00.

With respect to the Landlord's claim for \$225.00 for carpet cleaning, section 37(2) confirms that a tenant must leave a rental unit reasonably clean, and undamaged except for reasonable wear and tear. In this case, I find there is insufficient evidence before me to grant the relief sought. The Tenant acknowledged she did not clean the carpets when she vacated the rental unit and the Landlord provided an invoice to confirm the cost was incurred. However, the photographic evidence to which I was referred reveals little more than depressions in the carpet caused by furniture. I find there is insufficient evidence to confirm the carpets were not reasonably clean at the end of the tenancy. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$1,100.00 to clean the rental unit and \$72.65 for cleaning supplies, section 37(2) confirms that a tenant must leave a rental unit reasonably clean, and undamaged except for reasonable wear and tear. In this case, the Tenant acknowledged she did not clean the rental unit at the end of the tenancy but testified that she left it in "pristine condition". The photographic evidence submitted by the Landlord suggest otherwise. I find the images of the kitchen sink, a fridge, flooring, a toilet, and hair in a drain confirm the Tenant did not leave the rental unit reasonably clean at the end of the tenancy. However, I am not satisfied the hours spent cleaning were appropriate in the circumstances and that the Landlord suffered the loss as claimed. 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 rental unit was not left reasonably clean at the end of the tenancy and that the Landlord suffered a loss. Therefore, I find it appropriate in the circumstances to grant the Landlord nominal damages for general cleaning and supplies in the amount of \$200.00.

With respect to the Landlord's claim for \$12.85 to replace a compost bin that was missing after the Tenant vacated, I find there is sufficient evidence before me to grant the relief sought. The Tenant acknowledged the compost bin was removed at the end of the tenancy and I find it is more likely than not that it was not returned to the rental unit when discovered. The Landlord is granted a monetary award in the amount of \$12.85.

With respect to the Landlord's claim for \$25.00 for a visitor parking pass, I find there is insufficient evidence before me to grant the relief sought. The parties provided contradictory testimony that was unsupported by further evidence. This aspect of the Landlord's claim is dismissed.

Having been partially successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$3,073.60, which has been calculated as follows:

Claim	Allowed
Wall repairs and painting:	\$666.75
Unpaid rent:	\$3,094.00
General cleaning and supplies (nominal damages):	\$200.00
Compost bin:	\$12.85
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,000.00)
TOTAL:	\$3,073.60

Conclusion

The Landlord is granted a monetary order in the amount of \$3,073.60. 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 22, 2020

Residential Tenancy Branch