



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on January 27, 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; and
- an order granting recovery of the filing fee.

The Landlord and the Tenants attended the hearing and provided affirmed testimony.

The Landlord testified the Notice of Dispute Resolution Proceeding package and a subsequent evidence package were served on the Tenants by registered mail. The Tenants acknowledged receipt of the packages which they testified they did not include a Monetary Order Worksheet. However, the Tenants agreed the Landlord's claims were sufficiently particularised in the evidence and agreed to proceed. Further, the Tenants testified that the documentary evidence upon which they intended to rely was served on the Landlord by registered mail. The Landlord acknowledged receipt. No further issues were raised during the hearing with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, 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?
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 an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on October 12, 2019. The parties also agreed the Tenants moved out on January 14, 2020. During the tenancy, rent in the amount of \$1,800.00 per month was due on the 15th day of each month. The Tenants paid a security deposit in the amount of \$900.00, which the Landlord holds.

The Landlord's claim was fully particularized in the Application and in the Landlord's evidence. First, the Landlord claimed \$200.00 for snow removal. The Landlord testified the amount claimed was based on telephone estimates she received but the documentary evidence calculates the amount claimed based on a rate of \$50.00 per hour. The addendum to the tenancy agreement states: "Responsible for snow removal of driveway". The Landlord testified there was snow on the stairs and on the driveway when the Tenants vacated which she cleared some of.

In reply, the Tenants testified they cleared some snow at 9:00 a.m. but that it continued to snow throughout the morning. As a result, more snow had accumulated. The Tenants acknowledged the Landlord spent approximately 15 minutes clearing some snow. The Tenants testified they left the rental property at 1:00 p.m.

Second, the Landlord claimed \$210.00 for cleaning at a rate of \$35.00 per hour for six hours. The Landlord testified this claim was based on her time. The Landlord submitted a photograph of a clogged drain which she testified supported her testimony that the Tenants did not clean the unit thoroughly. The Landlord also testified the rental unit appeared to be "tidy" at the end of the tenancy and acknowledged that the move-out condition inspection completed with the Tenants was "not thorough". It was not until later, in the absence of the Tenants, that additional problems came to light.

In reply, the Tenants testified that they spent two days cleaning the rental unit before they left. The Tenants also referred to notations made by the Landlord during the move-out condition inspection which states: "House in good condition."

Third, the Landlord claimed \$85.00 for printer ink that was left empty after the Tenants vacated the rental unit. According to the Landlord, the amount of the claim was based on online research. The Landlord testified that a printer was available for use during the tenancy as part of the agreement and that the Tenants advised during the move-out condition inspection that it had been replaced. A photograph showing that the printer ink was empty was submitted into evidence by the Landlord.

In reply, the tenants testified that although the tenancy agreement specifies that a "Cannon Printer" was included in the tenancy, there was no term in the tenancy agreement that obligated them to replace printer ink. Nevertheless, the Tenants testified they did replace printer ink during the tenancy and submitted receipts dated November 24 and 26, 2019 in support.

Fourth, the Landlord claimed \$45.00 to replace a Brita water filtration attachment. The Landlord testified the amount of the claim was based on online research. The Landlord testified the filter worked at the beginning of the tenancy and did not work at the end of the tenancy.

Inn reply, the Tenants testified that they used it throughout the tenancy and that it worked at the end of the tenancy. Again, the Tenants referred to a notation made during the move-out condition inspection which states: "House in good condition."

Fifth, the Landlord claimed \$200.00 to replace a plant. The Landlord testified that the amount claimed is not what she paid for the plant but was based on telephone estimates she received. The Landlord testified the Tenants were obligated to water the plants during the tenancy. The tenancy agreement states: "Will try to water plants regularly".

In reply, the Tenants testified that they watered the plant occasionally and even added coffee grounds as a "boost". The Tenants also testified that Landlord entered the rental unit frequently and ultimately moved the plant to a cold mudroom.

Sixth, the Landlord claimed \$1800.00 for unpaid rent for the period from December 15 , 2019 to January 14, 2020.

In reply, Tenants acknowledged they did not pay rent for the period referred to. However, they testified that they were entitled to withhold rent because they were served with a Two Month Notice to End Tenancy for Landlord's Use of Property dated November 27, 2019 (the "Two Month Notice"). The Tenants testified that in response they provided the Landlord with written notice to end the tenancy early. The Tenants referred to a text message dated December 14, 2019 which states:

Per your Two Month Notice to End Tenancy for Landlord's Use of Property dated Nov 27 2019, we have provided a letter in your mailbox as written notice that we will be terminating the tenancy at the address listed above. We will be vacating the premises by Jan 14 2020 at 1pm.

[Reproduced as written.]

The Tenants vacated the rental unit on January 14, 2020.

Finally, the Landlord claimed \$100.00 in recovery 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.

With respect to the Landlord's claim for \$200.00 for snow removal, I find there is insufficient evidence before me to grant the relief sought. Specifically, I find Landlord submitted insufficient evidence to support her testimony concerning the cost of snow removal, that she incurred the expense, or that she performed snow removal sufficient to justify the claim. Further, I accept the evidence of the Tenants who testified that they cleared snow at 9:00 a.m. but that it continued to accumulate throughout the morning. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$210.00 for cleaning, I find there is insufficient evidence before me to grant the relief sought. Specifically, I find Landlord submitted insufficient evidence to support her testimony concerning the condition of the rental unit at the end of the tenancy. Indeed, the document created during the move-out condition inspection indicated the house was in "good condition". Further, the only photographic evidence referred to was an image of a clogged drain. I prefer the evidence of the Tenants whose testimony was supported by the notations made during the move-out condition inspection. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$85.00 for printer ink, I find there is insufficient evidence before me to grant the relief sought. While the tenancy agreement does specify that a printer is included as part of the tenancy, I was referred to no term in the tenancy agreement or addendum that required the Tenants to replace the ink cartridge at the end of the tenancy. In addition, the Landlord did not refer me to any documentation – such as the online research she referred to – in support of the amount claimed. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$45.00 to replace a water filter, I find there is insufficient evidence before me to grant the relief sought. Specifically, I find there is insufficient evidence that the filter did not function properly at the end of the tenancy. Rather, I prefer the evidence of the Tenants who testified the filter was used during the tenancy and worked at the end of the tenancy, and who relied on the notations made during the move-out condition inspection which did not refer to the filter. Finally, I note the Landlord did not refer me to any documentation – such as the online research she referred to – in support of the amount claimed. This aspect of the Landlord's claim is dismissed.

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With respect to the Landlord's claim for \$200.00 to replace a plant, I find there is insufficient evidence before me to grant the relief sought. Specifically, I find there is insufficient evidence before me to conclude that the Tenants' actions or inaction caused the plant to die. I also note the Landlord did not refer me to any documentation in support of the amount claimed but was again based on an estimate. This aspect of the Landlord's claim is dismissed.

With respect to the Landlord's claim for \$1800.00 for unpaid rent, section 51(1) of the *Act* confirms that a tenant who receives a notice to end tenancy for landlord's use of property is entitled to receive from the landlord an amount that is the equivalent of one month's rent payable under the tenancy agreement. In this case, there was no dispute

the Landlord issued the Two Month Notice dated November 27, 2019, and that the stated effective date of the Two Month Notice was February 14, 2020. However, section 50(1)(a) of the *Act* confirms that on receipt of a notice to end tenancy for landlord's use of property, a tenant may end the tenancy early by giving the landlord 10 days' written notice. Section 50(1)(b) confirms that a tenant who gives notice under this section must pay the landlord the proportion of rent due to the effective date of the tenant's notice. In this case, I find the Tenants gave notice to end the tenancy early and that the Tenants' notice created a new effective date of January 14, 2020. Therefore, I find the Tenants were obligated to pay rent to January 14, 2020.

Section 50(3) of the *Act* confirms a tenant's notice under section 51 of the *Act* does not affect a tenant's right to compensation. However, I find that a reasonable interpretation of this provision, read together with the sections referred to and the *Act* as a whole, hinges on the effective date of a tenant's notice. For example, if on December 14, 2019 the Tenants provided notice of their intention to end the tenancy effective on December 27, 2019, the Tenants would only be obligated to pay rent to that date. The compensation to which the Tenants would be entitled is the rent otherwise due from December 28, 2019 to January 14, 2020. Further, there would be no obligation to pay rent from January 15, 2020 to the effective date of the Two Month Notice. However, in this case the effective date of the Tenants' notice was January 14, 2020. Accordingly, pursuant to section 50(1)(b) of the *Act*, I find the Tenants were obligated to pay rent for the period from December 15, 2019 to January 14, 2020 and that the Landlord is entitled to a monetary award for unpaid rent in the amount of \$1,800.00.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also find it appropriate to order that the Landlord 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 \$1,000.00, which has been calculated as follows:

Claim	Allowed
Unpaid rent:	\$1,800.00
Filing fee:	\$100.00
LESS security deposit:	(\$900.00)
TOTAL:	\$1,000.00

Conclusion

The Landlord is granted a monetary order in the amount of \$1,000.00. 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: June 19, 2020

Residential Tenancy Branch