



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MND MNSD FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on February 24, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

Y.L. attended the hearing on behalf of the Landlords and provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlords, Y.L. confirmed that the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail on March 6, 2020. Y.L. testified that these documents were served using a forwarding address provided by the Tenant. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received five days later. In the absence of evidence to the contrary, I find the Tenant is deemed to have received these documents on March 11, 2020.

On behalf of the Landlords, Y.L. was 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. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Landlords entitled to a monetary order for damage?
3. Are the Landlords entitled to retain the security deposit held in partial satisfaction of the claim?
4. Are the Landlords entitled to an order granting recovery of the filing fee?

Background and Evidence

The tenancy agreement submitted into evidence confirms that a fixed-term tenancy began on July 1, 2019 and ended on December 31, 2019. However, Y.L. testified that the Landlords did not receive vacant possession until January 2, 2020. During the tenancy, rent in the amount of \$1,700.00 per month was due on the first day of each month. The Tenant paid a security deposit in the amount of \$850.00, which the Landlords hold. Utilities were not included with rent. Y.L. testified that the Tenant was to pay Fortis BC charges based on how many occupants there were in the unit and 48% of BC Hydro charges.

Y.L. testified that the Tenant moved out before the end of the fixed term and rented the unit to other occupants without the Landlords' consent. According to Y.L., the Tenant rented the unit to the occupants for \$2,200.00 per month, \$500.00 more than the Tenant was obligated to pay. Y.L. testified the occupants paid the Landlords \$2,200.00 for December 2019, resulting in what Y.L. referred to as a "credit" to the Tenant.

The Application discloses a claim for \$1,001.15, which is fully particularized in the Application. First, the Landlords claim \$109.68 as pro-rated rent for two days as the Tenant and the occupants that had been allowed to occupy the rental unit did not vacate the rental unit until January 2, 2020. The Landlords provided a calculation showing how this amount was determined.

Second, the Landlords claim Fortis BC and BC Hydro charges totalling \$266.72 for the period from September 12, 2019 to January 2, 2020. The Landlords' claim was supported by documents describing the calculations made. However, the documents were written primarily in another language and were not supported by original Fortis BC and BC Hydro invoices.

Third, the Landlords claim \$231.00 for the cost to clean the rental unit. In support, the Landlords submitted photographs of the inside of the rental unit which depict the condition of the rental unit at the end of the tenancy. The Landlords also submitted an invoice dated January 5, 2020, which indicates a charge of \$220.00 plus 5% GST to remove the Tenant's belongings and to clean the unit.

Fourth, the Landlords claim \$204.75 for garbage disposal. In support, the Landlords submitted photographs of the inside of the rental unit which show the condition of the rental unit at the end of the tenancy and the Tenant's belongings. The Landlords also submitted an invoice dated January 5, 2020, which indicated a charge of \$195.00 plus 5% GST to dispose of mattresses and other items left behind at the end of the tenancy.

Fifth, the Landlords claim \$189.00 for the cost to repair damaged drywall in the master bedroom, clean the carpet, and repair the lawn. In support, the Landlords submitted photographs of the inside of the rental unit which show the poor condition of the rental unit at the end of the tenancy. The Landlords also submitted an invoice dated January 5, 2020, which indicated a charge of \$180.00 plus 5% GST for these claims.

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

The Tenant did not attend the hearing not dispute the Landlords' evidence.

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 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 Tenant. 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.

With respect to the Landlords' claim for \$109.68 as pro-rated rent, I find the Landlords have demonstrated an entitlement to a monetary award in the amount of \$109.68.

With respect to the Landlords' claim for \$266.72 for unpaid utility charges, I find there is insufficient evidence before me to grant the relief sought. The documents describing the calculations were largely written in another language and were not supported by original invoices from Fortis BC and BC Hydro. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim for \$231.00 for the cost to clean the rental unit, I find the Landlords have demonstrated an entitlement to a monetary award in the amount of \$231.00. This aspect of the Landlords' claim was supported by images depicting the interior of the rental unit and an invoice in the amount claimed.

With respect to the Landlords' claim for \$204.75 for garbage disposal, I find the Landlords have demonstrated an entitlement to a monetary award in the amount of \$204.75. This aspect of the Landlords' claim was supported by images depicting the interior of the rental unit and an invoice in the amount claimed.

With respect to the Landlords' claim for \$189.00 for the cost to repair damaged drywall in the master bedroom, clean the carpet, and repair the lawn, find the Landlords have demonstrated an entitlement to a monetary award in the amount of \$189.00. This aspect of the Landlords' claim was supported by images depicting the interior of the rental unit and an invoice in the amount claimed.

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

I also find the overpayment of rent in the amount of \$500.00 is a credit to the Tenant and not a windfall to the Landlords. The Landlords are entitled to receive only what is stipulated in the tenancy agreement.

Policy Guideline #17 stipulates that an arbitrator will order the return of any balance remaining on the deposit, less any deductions permitted under the *Act*, on a landlord's application to retain all or part of the security deposit, whether or not the tenant has applied for dispute resolution for its return. As summarized below, the Landlords have demonstrated an entitlement to a monetary award in the amount of \$834.43. However, the Landlords hold a security deposit and a "credit" totalling \$1,350.00. Therefore, I find it is appropriate to grant the Tenant a monetary order in the amount of \$515.57, which has been calculated as follows:

Claim	Allowed
Unpaid rent (January 1-2, 2020):	\$109.68
Cleaning:	\$231.00
Garbage disposal:	\$204.75
Repairs and carpet cleaning:	\$189.00
Filing fee:	\$100.00
<i>LESS</i> rent overpayment:	(\$500.00)
<i>LESS</i> security deposit:	(\$850.00)
TOTAL:	(\$515.57)

Conclusion

The Tenant is granted a monetary order in the amount of \$515.57. 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: July 6, 2020

Residential Tenancy Branch