



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNSD FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on March 11, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- a monetary order for money owed or compensation for damage or loss;
- 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.

The Landlords were represented at the hearing by K.G. The Tenant attended the hearing on his own behalf. K.G. and the Tenant provided affirmed testimony.

On behalf of the Landlords, K.G. testified that the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail. The Tenant acknowledged receipt. No issues were raised during the hearing with respect to service or receipt of these 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 Tenant testified that the documentary evidence upon which he intended to rely was not served on the Landlords. Rule of Procedure 3.15 provides that copies of a respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. The language is mandatory. As the Tenant's evidence was not served on the Landlords in accordance with Rule of Procedure 3.15 or at all, I find it is excluded from consideration.

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. Are the Landlords entitled to a monetary order for damage?
2. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss?
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 parties agreed the tenancy began on July 1, 2018 and ended on February 29, 2020. During the tenancy, rent in the amount of \$1,500.00 per month was due on the first day of each month. The Tenant paid a security deposit in the amount of \$750.00, which the Landlords hold.

The Application discloses a claim for \$620.00 which was sufficiently set out in the Application. First, the Landlords claimed \$100.00 to repair a chipped kitchen floor tile and to a laminate countertop. On behalf of the Landlords, K.G. testified the amount claimed was based on the Landlords' estimate of the cost to complete the repairs. K.G. confirmed a condition inspection report was not completed. However, K.G. referred to one photograph depicting damaged laminate on the kitchen countertop and two photographs depicting chipped floor tile. K.G. testified the damage was caused during the tenancy.

In reply, the Tenant testified the damage was present when he moved into the rental unit.

Second, the Landlords claimed \$420.00 to clean the rental unit. This is based on 14 hours of cleaning at \$30.00 per hour, and an undated quote in the amount of \$478.20. The Landlords relied on photographs depicting the baseboards, cabinets, countertops, kitchen sink, microwave, oven, stove, and toilet.

In reply, the Tenant testified the rental unit was “cleaned thoroughly” when he vacated.

Finally, the Landlords claim \$100.00 in recovery of the filing fee and requested an order permitting them to retain the security deposit.

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.

Further, section 37 of the *Act* obligates tenants to leave a rental unit reasonably clean, and undamaged except for reasonable wear and tear.

With respect to the Landlords' claim for \$100.00 to repair a chipped kitchen tile and a laminate countertop, I find there is insufficient evidence before me to grant the relief sought. Specifically, I find there is insufficient evidence before me to conclude the tile and laminate damage depicted in the photographs submitted occurred during the tenancy, or that the Landlords incurred any cost to repair the damage. This aspect of the Landlords' claim is dismissed.

With respect to the Landlords' claim for \$420.00 to clean the rental unit, I find there is insufficient evidence before me to grant the relief sought. The photographs submitted by the Landlords suggest some cleaning was required on the stove and the oven, microwave, and kitchen sink. The photographs appear to depict superficial cleaning only and do not support the Landlords' claim in full. However, Policy Guideline #16 confirms that nominal damages may be awarded where 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. Although I find the Landlords have not established an entitlement to the full amount claimed, I accept the rental unit was not left reasonably clean at the end of the tenancy, which amounted to an infraction of a legal right or entitlement. Therefore, I find it appropriate in the circumstances to order that the Landlords are entitled to nominal damages in the amount of \$100.00.

Having been successful, I find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. I also find it appropriate to order that the Landlords are entitled to retain \$200.00 of the security deposit held in satisfaction of the claim. Further, Policy Guideline #17 states:

The arbitrator will order the return of a security deposit, or 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; or*
- *a tenant's application for the return of the deposit*

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

[Reproduced as written.]

Pursuant to section 67 of the *Act* and Policy Guideline #17, I find the Tenant is entitled to a monetary order in the amount of \$550.00, which has been calculated as follows:

Claim	Allowed
Cleaning (nominal damages):	\$100.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$750.00)
TOTAL:	(\$550.00)

Conclusion

The Tenant is granted a monetary order in the amount of \$550.00. 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: July 21, 2020

Residential Tenancy Branch