



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, MNDL-S / MNSDS-DR

Introduction

On April 26, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to request a Monetary Order for unpaid rent, for damages to the rental unit, and to apply the security deposit to his claim, and to be compensated for the filing fee.

On July 20, 2020, the Tenants submitted an Application for Dispute Resolution under the Act to request a Monetary Order for the return of the security deposit. The Tenants' Application was crossed with the Landlord's Application and the matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the monetary claims, in accordance with Section 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Should the Tenant receive a Monetary Order for the return of the security deposit, in accordance with Section 38 and 67 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on July 15, 2017, was renewed in August 2018 and continued as a month-to-month tenancy. The rent at the end of the tenancy was \$2,557.00 and was due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$1,197.50. The tenancy ended on June 30, 2020.

Both parties agreed that there was an outstanding amount of rent still owing to the Landlord in the amount of \$1,731.00.

The Landlord provided testimony and submitted evidence to support his claim of damages to the rental unit as follows:

1. Parking Cleanup

The Landlord testified that the parking spot for the Tenants was not properly cleaned and that he had to sweep, dust and take down spider webs. The Landlord claimed for compensation in the amount of \$50.00

2. Main Floor/Patio Light Fixtures

The Landlord submitted that he had to clean and replace bulbs in the light fixtures on the main floor and the patio. The Landlord claimed for compensation in the amount of \$50.00.

3. Plumbing Repair – Frozen Pipe

The Landlord stated that a pipe burst, due to freezing, in the Tenants' garage. The Landlord stated that the Tenants should have maintained a temperature in the garage to prevent the pipes from bursting. The Landlord had to fix the pipe and claimed for compensation for labour and materials for the amount of \$85.00.

4. Drywall patch and repair

The Landlord testified that the Tenants left 62 roughly patched holes in the drywall throughout the rental unit. The Landlord submitted an estimate to repair the interior drywall damage and is claiming the amount quoted; \$680.00.

5. Baseboard Heater

The Landlord stated that the Tenants damaged a baseboard heater in the 2nd floor bedroom. The Landlord submitted a photo of a dented baseboard heater and an estimate to replace the baseboard in the amount claimed; \$240.00.

6. Garage Door Repair

The Landlord stated that the Tenants were responsible for dents and scrapes on the exterior of the garage door. The Landlord submitted pictures of the garage door, pictures of how the Tenants' vehicles lined up with the dents and an estimate to repair the doors which included disassembling the doors, taking the panels to a body shop, matching the paint, and temporarily providing security for the garage by replacing the panels with plywood sheeting. The Landlord is claiming the amount of \$819.00 for the damage.

7. Washer Service - \$145.95

8. Washer Service – \$178.50

The Landlord testified that the Tenants contacted him in January 2019 to advise of some water stains on the ceiling. The Landlord contacted a plumbing company to attend to the rental unit and advised there were no mechanical or plumbing faults detected. The Landlord submitted an invoice for \$178.50 which stated that the "wash machine needs service makes loud noise".

As a result of not finding the source of the water leak, an appliance repair attended to the rental unit to examine the washing machine, in February 2020 (invoice for \$145.95). The Landlord stated during the hearing that the washing machine was loud and may have required new bearings. The Landlord also submitted email correspondence with the Tenants, dated February 14, 2019 and March 12, 2019, confirming that the washing machine was working properly and that there have been no further leaks.

The Landlord submitted a copy of the Tenancy Agreement that included a clause where "because washer / dryer in suite are high maintenance, renter will maintain these appliances in working order at renter's expense. Washer / dryer are working fine at time of move in." The Landlord is claiming a loss for the above service fees based on the clause in the Tenancy Agreement.

9. Living Room Ceiling Repair

The Landlord submitted that 100 sq/ft of the ceiling (in the room below the washing machine) was damaged because of the leaking washing machine and that the Tenants were aware of the washer requiring service. The Landlord submitted an estimate for the work that included installation of poly dust barriers, removal of

damaged drywall and insulation, and the rebuild with new drywall, insulation and a new application of ceiling texture to match existing ceiling.

The Landlord stated he replaced the washer and dryer and is not claiming for the replacement price of the appliances; however, he is claiming compensation in the amount of \$2,380.00 to repair the damaged ceiling.

The Landlord is claiming \$4,628.45 in damages to the rental unit and \$1,731.00 in unpaid rent for a total monetary claim of \$6,359.45.

The Tenants responded to the Landlord's claim with the following testimony:

1. Parking Cleanup

The Tenants admitted to missing the cobwebs in the parking spot.

2. Main Floor/Patio Light Fixtures

The Tenants acknowledged they might have missed cleaning the light fixtures.

3. Plumbing Repair – Frozen Pipe

The Tenants stated there was no heat in the garage, and it was a very cold winter. The Tenants said the pipe continues on into the Landlord's garage that is right beside theirs and it would be difficult to tell where the freezing started.

4. Drywall patch and repair

The Tenants acknowledged they patched the holes in the walls and indicated that they thought they were helping out.

5. Baseboard Heater

The Tenants testified that they did dent the baseboard heater; however, that the heater still worked, and the damage was minor. The Tenants stated that the baseboard heater could easily be touched-up with paint.

6. Garage Door Repair

The Tenants disagreed with the Landlord's assessment of the garage door and described the damage as "two little dings" that were "miniscule". The Tenants stated that the minor scratches did not line up with their vehicle.

7. Washer Service - \$145.95

8. Washer Service – \$178.50

The Tenants provided undisputed testimony that the washer was at least 10-12 years old. The Tenants stated that they communicated with the Landlord that the washer was going to fail. Although they acknowledged that the repair to the washer and dryer was their responsibility, they disagreed that they would have to keep fixing

an old washing machine that was going to have a major failure; referring to the bearing that required replacement. The Tenants also restated that the appliance repair person could not find the source of the leak.

9. Living Room Ceiling Repair

The Tenants testified that they called the Landlord when they noticed the small amount of damage to the ceiling. Plumbers and appliance repair attended and could not find the source of the leak. The Tenants stated that the Landlord was responsible for the washing machine and that they should not be held responsible for the damage from a defective appliance.

Although the Tenants applied for dispute resolution with a request for the return of their security deposit, they acknowledged that the Landlord could put the security deposit towards any outstanding rent.

Analysis

Section 7(1) of the Act establishes that a party who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the other party for damage or loss that results from that failure to comply.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party.

Policy Guideline 16 outlines the test to be applied in compensation claims and states:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Both parties agreed that the Tenants owed the Landlord \$1,731.00 in unpaid rent. As a result, I find the Landlord has established a monetary claim regarding the unpaid rent.

1. Parking Cleanup

Based on the undisputed testimony of the Landlord, I find that he has established a monetary claim of \$50.00 in compensation for the time and effort he took to clean the Tenants' parking spot.

2. Main Floor/Patio Light Fixtures

Based on the undisputed testimony of the Landlord, I find that he has established a monetary claim of \$50.00 in compensation for the time and effort he took to clean the light fixtures and replace light bulbs.

3. Plumbing Repair – Frozen Pipe

Although the parties agreed that a pipe in the Tenants' garage burst as a result of freezing, there was no consensus on whether there was heat in the garage so the Tenants could prevent such a burst. I don't accept the Landlord's testimony that the Tenants were negligent, and did not hear from the Landlord how he might have prevented the uninsulated pipe from freezing. I find that the Landlord failed to provide sufficient evidence that the Tenants were responsible for the damaged pipe and the associated repair costs. As a result, I dismiss this part of the Landlord's claim.

4. Drywall patch and repair

The Landlord provided many pictures of the roughly patched holes in the walls of the rental unit. The Landlord obtained an estimate for the repair work and the Tenants didn't dispute any of the claim. As a result, I find the Landlord has established a monetary claim in the amount of \$680.00, as requested.

5. Baseboard Heater

The Landlord submitted a claim for the replacement of the baseboard heater. Upon review of the testimony and evidence provided from both parties, I have to agree with the Tenants that the dent on the baseboard heater was minor and to ask for the full replacement cost is excessive. The Tenants took responsibility for the dent in the heater and for that reason, I award the Landlord nominal damages of \$50.00.

6. Garage Door Repair

The parties disagreed on the extent of damage to the garage door. I found that the pictures that the Landlord submitted portrayed only minor damage and also accept that the move-in condition inspection report indicated that there was no damage on the garage doors. I find, based on the balance of probabilities, that the Tenants

were responsible for the minor damage; however, want to acknowledge that the Tenants were in the rental unit for 3 years and the Landlord has to accept that there will be a certain amount of natural wear and tear. I find that the Landlord's quote for the repair is excessive for the damage that was portrayed; therefore, I award the Landlord nominal damages for the garage door in the amount of \$200.00.

7. Washer Service - \$145.95

8. Washer Service – \$178.50

The Residential Tenancy Policy Guideline #1 states that Tenancy Agreements must not include terms that contradict the Legislation. For example, the tenant cannot be required as a condition of tenancy to paint the premises or to maintain and repair appliances provided by the landlord. Such a term of the tenancy agreement would not be enforceable.

In this case, the Landlord depended on the clause in the Tenancy Agreement to hold the Tenants accountable for the repairs of an old washing machine. After reviewing the testimony and evidence of both parties, I find that the Tenants showed diligence by keeping the Landlord informed of the minor leaks and deteriorating condition of the washing machine. After considering the above, I find that the Landlord has failed to provide sufficient evidence to justify the two claims of damages for the washer service and I dismiss this part of the Landlord's claim for damages.

9. Living Room Ceiling Repair

The Landlord blamed the damage to the ceiling on the leaking washer that he held the Tenants responsible to repair. Based on the correspondence submitted and the testimony of the parties, I find that the Landlord was aware of the age of the washing machine, that it may need major repair and, that it was leaking and causing damage. Furthermore, I find that the Landlord did not attempt to mitigate the damage and waited too long to replace the aging appliances.

As a result, I dismiss this part of the Landlord's claim for damages.

I issue a Monetary Order in the Landlord's favour under the following terms, which allows the Landlord to recover unpaid rent, damages and the filing fee for this Application, and to retain the Tenants' security deposit:

Item	Amount
Unpaid Rent	\$1,731.00
Parking Cleanup	50.00

Main Floor/Patio Light Fixtures	50.00
Drywall Patch Repair	680.00
Baseboard Heater	50.00
Garage Door Repair	200.00
Less Security Deposit	-1,197.50
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1,663.50

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$1,663.50. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: September 2, 2020

Residential Tenancy Branch