



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on June 16, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation, and loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlords and the Tenants attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. 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. Are the Landlords entitled to a monetary order for damage, compensation, or loss, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
3. Are the Landlords entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed that the tenancy began on October 1, 2016. During the tenancy, the Tenants were required to pay rent in the amount of \$1,750.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$875.00 which the Landlords continues to hold. The parties agreed that the tenancy ended on May 31, 2020 and the Landlords confirmed having received the Tenants' forwarding address on June 2, 2020.

The Landlords stated that a bear attended the rental property on April 26, 2020 and attempted to gain entry to garage, causing damage to the garage door and window screen in the process. The Landlords stated that the bear must have been attracted to some food or garbage that was left in the garage by the Tenants. As such, the Landlords feel as though the Tenants should be responsible for the cost of replacing the garage door in the amount of \$1,835.75. The Landlords provided a copy of the receipt in support. If successful, the Landlord are seeking the return of the filing fee, as well as to retain the Tenants' security deposit towards their claim.

In response, the Tenants stated that they were in the middle of moving out of the rental property and had left a bag of garbage in the garage. The Tenants stated that the rental property is located in a rural area which is known to have bear activity. The Tenants stated that their vehicle door had also been opened by the bear. The Tenants acknowledged that the garage door was damaged, however, they do not accept responsibility for the bear's actions. The Tenants are seeking the return of their deposit.

Analysis

Based on the 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.

The Landlords are seeking monetary compensation in the amount of \$1,835.75 for the replacement of a garage door which had been damaged by a bear who was attempting to gain entry in the garage. The Tenants acknowledged that there was a bag of garbage in the garage but denying responsibility with causing the damage.

In this case, I find that the Landlords have provided insufficient evidence to demonstrate that the Tenants have violated the *Act*, regulations, or tenancy agreement. I find that it is reasonable to expect that a bag of garbage can be left in the garage. I find that the Tenants are not responsible for the damage to the garage door and therefore dismiss the Landlords' claim without leave to reapply. As the Landlords were not successful, I find that they are not entitled to the return of the filing fee.

Pursuant to section 67 of the *Act*, I find the Tenants are entitled to the full return of their security deposit. As such the Tenants are provided with a monetary order in the amount of \$875.00 which represents the full balance of their security deposit currently being held by the Landlords.

Conclusion

The Landlords' Application is dismissed without leave to reapply. The Tenants are granted a monetary order in the amount of \$875.00 which represents the return of the Tenants' security deposit currently being held by the Landlords. The order should be served to the Landlords as soon as possible and 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: October 08, 2020

Residential Tenancy Branch