



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on September 28, 2020 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Landlords and the Tenant 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 Landlord testified that the tenancy began on March 12, 2020 while the Tenant stated that she moved into the rental unit on March 13, 2020. Regardless, the parties testified and agreed that during the tenancy, the Tenant was required to pay rent in the amount of \$1,100.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$550.00 which the Landlords continue to hold. The tenancy ended on August 31, 2020.

The Landlords are seeking monetary compensation in the amount of \$304.58 in relation to repairing damage caused to the walls in the living room and in the bedroom of the rental unit. The Landlords stated that they had repainted the rental unit prior to the start of the tenancy. At the end of the tenancy, the Landlords viewed the rental unit and found that the Tenant had attempted to patch the damaged walls. The Landlord stated that they have not yet repaired the damage caused by the Tenant, however, based their evaluation of the loss to the cost of painting the rental unit at the start of the tenancy. The Landlords stated that they did not provide a copy of the receipt in support.

The Tenant responded by stating that her cat scratched the walls and that she patched the walls the best she could at the end of the tenancy. The Tenant stated that she asked the Landlords for spare paint, however, the Landlords notified her that they would prefer doing the work themselves. The Landlords confirmed this, however, they stated that they were not aware of the extent of the damage in the rental unit.

The Landlords are also claiming \$275.00 for loss of rental income as a result of the Tenant not providing the Landlords with sufficient notice to end the tenancy. During the hearing, the parties agreed that the Tenant texted the Landlord on August 5, 2020 indicating that she intended to end the tenancy on September 1, 2020 before vacating the rental unit on August 31, 2020. The Landlords stated that they are only seeking compensation equivalent to one week despite the fact that they have not yet re-rented the rental unit.

The Tenant responded by stating that the Landlords made no attempts to re-rent the rental unit. Furthermore, the Tenant stated that the Landlords were not permitted to withhold her security deposit as the parties had not completed a condition inspection report.

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 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 Landlord did what was reasonable to minimize the damage or losses that were incurred.

The Landlords are claiming \$304.58 in relation to repairing damage caused to the wall by the Tenant or her cat. Section 37(2) When a tenant vacates a rental unit, the tenant must;

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

In this case, I find that the Landlords have failed to demonstrate the value of their loss associated with the repair as the Landlords have not yet completed the repairs to know

the true value of the repair, nor did they provide evidence to demonstrate how much the walls cost to paint at the start of the tenancy. Furthermore, I find that the Landlords failed to mitigate their loss by choosing to repaint the walls themselves rather than accepting the Tenant's offer to repair the walls in the rental unit. As such, I dismiss the Landlords' claim for damage without leave to reapply.

The Landlords are claiming for monetary loss in the amount of \$275.00 as the Tenant did not provide them with sufficient notice to end the tenancy.

According to Section 45 (1) of the Act; A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that;

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

In this case, I accept that the parties agreed that the Tenant provided her notice to end tenancy via text on August 5, 2020. I find that this is not sufficient notice in accordance with Section 45 (1) of the Act. Furthermore, I find that the Tenant's notice to end tenancy does not comply with Section 52 for form and content. In light of the above, I find that the Landlords are entitled to compensation in the amount of **\$275.00** which is the amount sought by the Landlords.

During the hearing the Tenant argued that the Landlords extinguished their right to claim against the security deposit as the Landlords did not conduct a move out inspection. I find that this has no effect, as extinguishment under either sections 24 and 36 of the *Act* only relate to claims for damage to the rental unit. In this case, the Landlords have also claimed for loss which does not relate to damage to the rental unit, as a result, whether they extinguished or not has no bearing on the outcome of the current Application.

Having been partially successful, I find the Landlords are entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstance to order that the Landlords retain \$375.00 from the security deposit currently being held by the Landlords.

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$175.00, which represent the remaining balance of the Tenant's security deposit currently being held by the Landlords ($\$550.00 - \$375.00 = \$175.00$).

Conclusion

The Landlords have established an entitlement to monetary compensation in the amount of \$375.00. The Tenant is therefore provided with a monetary order in the amount of \$175.00 which represents the return of the remaining portion of the Tenant's 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: January 18, 2021

Residential Tenancy Branch