



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: MNDCL-S, MNDL-S, FFL
 TT: MNSDS-DR, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on October 12, 2020, (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

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

The Tenants’ Application for Dispute Resolution was made on November 22, 2020 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit; and
- an order granting recovery of the filing fee.

The Landlord 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 packages 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*.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
3. Is the Landlord entitled to retain the Tenants’ security deposit pursuant to Section 38 of the *Act*?

4. Are the Tenants entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?
5. Are the Tenants 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 to the following; the tenancy began on June 15, 2019. The Tenants were required to pay rent in the amount of \$2,490.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,245.00 which the Landlord continues to hold. The tenancy ended on September 30, 2020.

The Landlord's monetary claims were set out on a Monetary Worksheet provided in their Application.

The Landlord is claiming \$279.00 for cleaning costs. The Landlord stated that the Tenants did not leave the rental unit clean at the end of the tenancy, which required further cleaning. The Landlord is also claiming \$97.12 for cleaning the blinds in the rental unit. The Landlord provided photographic evidence as well as a cleaning receipts in support.

The Tenants responded by stating that the rental unit was not cleaned at the start of the tenancy. The Tenants stated that they left the rental unit reasonably clean at the end of the tenancy. The Tenants stated that the Landlord showed up at the rental unit with the cleaner for the move out condition inspection of the rental unit. The Tenants feel as though the Landlord had predetermined that they would incur this cost.

The Landlord is claiming \$2,718.61 in relation to repairing the damaged flooring throughout the rental unit. The Landlord stated that the Tenants scratched the floor during their tenancy. The Landlord stated that she has not yet repaired the floor, however, has provided a quote in support of the cost associated with repairing the floor, as well as photographic evidence demonstrating that the floor was scratched.

The Tenants responded by stating that they did not scratch the flooring in the rental unit, but rather it was already scratched at the start of the tenancy. The Tenants referred to the move in condition inspection report which notes the damaged floors at the start of the tenancy. The Landlord stated that the Tenants added more scratches to the floor.

The Landlord is claiming \$329.70 in relation to a scratch found on glass sliding door in the rental unit. The Landlord stated that she has not yet repaired the scratched glass, however, provided a quote and photographic evidence in support. The Tenants responded by stating that they did not scratch the glass and that the Landlord did not note the damaged glass during the move out condition inspection.

The Landlord is claiming \$210.00 for painting touch ups to the rental unit as 8 walls were left with stains and scratches at the end of the tenancy. The Landlord stated that the walls had been painted at the start of the tenancy, however, due to the damage, were required to be repainted. The Landlord provided photographic evidence and a receipt in support.

The Tenants stated that they did not cause damage to the walls in the rental unit but referred to one situation in which they had a damaged wall repaired during the tenancy. The Tenants stated that they would have had other damage repaired at the same time, had there been any further damage. Also, the Tenants stated that the move out condition report did not indicate any damage to the walls in the rental unit.

The Landlord is claiming \$215.62 in relation to fixing the washing machine. The Landlord stated that the washing machine was purchased new in 2013. The Landlord stated that the gasket on the washing machine as a tear in it, which caused a leak and rust to form. The Landlord provided photographic evidence and an invoice in support. The Tenants denied causing any damage to the washer and stated that they did not experience any leaks during the tenancy.

The Landlord is claiming \$78.39 in relation for replacing a fire extinguisher. The Landlord stated that she received notification from the Strata that the Tenant used a fire extinguisher and that the Landlord would be responsible for the costs associated with refilling the extinguisher. The Tenants denied that they used the fire extinguisher. The Landlord stated that she has not yet incurred a charge for the replacement costs.

The Landlord is claiming \$250.00 for repairing a scratch on the front door of the rental unit. The Landlord stated that she found some tape on the door which was covering a scratch. The Tenants denied causing damage to the door and stated that they had issues with the door falling off the hinges during the tenancy, which the Landlord repaired. The Landlord stated that she has not yet repaired the front door, but that it will required to be sanded and repainted.

The Landlord is claiming \$2,490.00 for loss of rent as the rental unit required so much work before it could be re-rented to a different occupant. The Landlord stated that she had some occupants who were interested in moving into the rental unit for October 1, 2020, however, due to a health issue, they were unable to move in. The Tenants disagreed that the rental unit required such extensive work that it prevented others from renting the rental unit.

The Landlord is claiming \$1,100.00 as she signed a new tenancy agreement with new occupants for November 1, 2020 for \$100.00 less rent each month. The Landlord stated that due to the conditions of the flooring and scratched door, she felt that it would be reasonable to charge less rent due to the condition of the rental unit. The Tenants denied that they caused any damage to the rental unit and stated that the rental property is older and not very appealing to potential tenants.

The Landlord was also claiming for lost wages totaling \$5,550.00 as a result of having to deal with the rental unit at the end of the tenancy, which resulted in her missing work. The Landlord is also claiming a total of \$109.31 in relation printing photos and mailing costs associated with preparing for the hearing. During the hearing, the Landlord was notified that these costs are not recoverable under the Act, as it is the cost of doing business as a Landlord. As such, the claims for lost wages, printing photos, and mailing documents are dismissed without leave to reapply.

The Landlord seeking the recovery of their \$100.00 filing fee as well as to retain the Tenants' security deposit towards their claim. The Tenants have applied for the return of their security deposit as well as for the return of their filing fee.

Analysis

Based on all of the above, the evidence and testimony, 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 Tenants. 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.

According to the Residential Tenancy Policy Guideline 1; The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply

with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

The Landlord is claiming \$279.00 for cleaning costs. The Landlord stated that the Tenants did not leave the rental unit clean at the end of the tenancy, which required further cleaning. The Landlord is also claiming \$97.12 for cleaning the blinds in the rental unit. The Tenants stated that they left the unit reasonably clean. In this case, I find that the Landlord has provided sufficient evidence that the rental unit and the blinds required further cleaning. As such, I find that the Landlord is entitled to monetary compensation in the amount of **\$376.12** (\$279.00 + \$97.12 = \$376.12).

The Landlord is claiming \$2,718.61 in relation to repairing the damaged flooring throughout the rental unit. The Landlord stated that the Tenants scratched the floor during their tenancy. The Tenants responded by stating that they did not scratch the flooring in the rental unit, but rather it was already scratched at the start of the tenancy. The Tenants referred to the move in condition inspection report which notes the damaged floors at the start of the tenancy.

I find that the Landlord provided insufficient evidence to demonstrate that the Tenants were responsible for the scratched floors. I accept that the floors were scratched at the start of the tenancy and that the Landlord provided insufficient evidence to demonstrate that the Tenants added to the scratches. Furthermore, I accept that the Landlord has not completed the repairs to the floor, therefore, has not yet incurred a loss. For these reasons, I dismiss the Landlord's claim for floor repair, without leave to reapply.

The Landlord is claiming \$329.70 in relation to a scratch found on glass sliding door in the rental unit. The Landlord stated that she has not yet repaired the scratched glass. The Tenants responded by stating that they did not scratch the glass and that the Landlord did not note the damaged glass during the move out condition inspection. In this case, I accept that the Landlord has not completed the repair to the scratched glass, therefore has not suffered a loss. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$210.00 for painting touch ups to the rental unit as 8 walls were left with stains and scratches at the end of the tenancy. The Landlord stated that the walls had been painted at the start of the tenancy. In this case, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenants' damage the walls in the rental unit is beyond what would be considered to be reasonable wear and tear. I find that the Landlord did not note any damage to the walls in the move out condition inspection report. As such, I dismiss the Landlord's claim for painting without leave to reapply.

The Landlord is claiming \$215.62 in relation to fixing the washing machine. The Landlord stated that the gasket on the washing machine has a tear in it, which caused a leak and rust to form. The Tenants denied causing any damage to the washer and stated that they did not experience any leaks during the tenancy.

I find that the Landlord provided sufficient evidence to demonstrate that the washing machine required repairs at the end of the tenancy. I find that the Tenants did not indicate that there had been a problem with the washing machine during the tenancy. As such, I find that the Landlord is entitled to monetary compensation in the amount of **\$215.62** for repairing the washing machine.

The Landlord is claiming \$78.39 in relation for replacing a fire extinguisher. The Landlord stated that she received notification from the Strata that the Tenant used a fire extinguisher and that the Landlord would be responsible for the costs associated with refilling the extinguisher. The Tenants denied that they used the fire extinguisher. I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant deployed the fire extinguisher during the tenancy. Furthermore, I find that the Landlord has provided insufficient evidence to demonstrate that she is required to pay this amount to the Strata. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$250.00 for repairing a scratch on the front door of the rental unit. The Landlord stated that she found some tape on the door which was covering a scratch. The Tenants denied causing damage to the door and stated that they had issues with the door falling off the hinges during the tenancy, which the Landlord repaired. I find that the Landlord had provided insufficient evidence to demonstrate that the Tenants damaged the door. I accept that the door had been in poor condition previously. I find that the Landlord has not yet completed the repair to the door, therefore, has not yet incurred a loss as a result. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$2,490.00 for loss of rent as the rental unit required so much work before it could be re-rented to a different occupant. The Landlord stated that she had some occupants who were interested in moving into the rental unit for October 1, 2020, however, due to a health issue, they were unable to move in. The Tenants disagreed that the rental unit required such extensive work that it prevented others from renting the rental unit. I find that the Landlord has provided insufficient evidence to demonstrate that the rental unit was in such poor condition that she was unable to re-rent the rental unit for the month of October 2020 as a result. Instead, I accept that during the hearing, the Landlord stated that she had other occupants interested to move into the rental unit as of October 1, 2020, however, they were unable to due to a health issue. I therefore dismiss this claim without leave to reapply.

The Landlord is claiming \$1,100.00 as she signed a new tenancy agreement with new occupants for November 1, 2020 for \$100.00 less rent each month. The Landlord stated that due to the conditions of the flooring, and scratched door, she felt that it would be

reasonable to charge less rent due to the condition of the rental unit. In this case, I find that the Landlord did not mitigate her loss by agreeing to reduce the rent by \$100.00 per month to the new occupants of the rental unit. I find that the Landlord provided insufficient evidence to demonstrate that the condition of the rental unit merits a rent reduction as a result. As such, I dismiss this claim without leave to reapply.

I find that the Landlord has established an entitlement to the return of \$591.74. Having been partially successful with their Application, I find the Landlord is entitled to the recovery of the **\$100.00** filling fee.

In summary, I find the Landlord has demonstrated an entitlement to a monetary award of \$691.74, which has been calculated as follows:

Claim	Award
Cleaning:	\$376.12
Washing machine repair:	\$215.62
Filling fee:	\$100.00
<i>Less Security Deposit:</i>	<i>(-\$1,245.00)</i>
TOTAL:	-\$553.26

Pursuant to section 67 of the *Act*, I find that the Tenants are entitled to a monetary order in the amount of \$553.26 which represents the remaining portion of their security deposit less the \$691.74 which has been awarded to the Landlord (\$1,245.00 - \$691.74 = \$553.26). As the Tenants' Application was not necessary, I find that they are not entitled to the return of the filing fee.

Conclusion

Pursuant to section 67 of the *Act*, the Tenants are granted a monetary order in the amount of \$553.26 which represents the return of the remaining portion of their security deposit. The monetary order must be served on the Landlord 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: February 02, 2021

Residential Tenancy Branch