



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on November 6, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

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

The Landlord, the Landlord's Agents G.G., S.W., 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. Is the Landlord entitled to a monetary order for damage, compensation, or loss, pursuant to Section 67 of the *Act*?

2. Is the Landlord entitled to a monetary order for unpaid rent and utilities, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
4. Is the Landlord 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 fixed term tenancy began on June 15, 2020 and was meant to end on June 16, 2021. During the tenancy, the Tenants were required to pay rent in the amount of \$6,165.00 to the Landlord on the 15th day of each month. The Tenants paid a security deposit in the amount of \$6,000.00 which the Landlord continues to hold. The tenancy ended on October 16, 2020 and the Landlord received the Tenants' forwarding address on October 23, 2020.

The Landlord set out their monetary claims on a monetary worksheet which included the following:

The Landlord was originally claiming \$1,291.50 to clean the carpet as well as general cleaning of the rental unit. During the hearing, the Landlord wished to amend to the monetary worksheet to reduce this claim as the true cost of cleaning the carpet was \$252.00 and the general cleaning \$420.00. The Landlord provided receipts in support.

The Tenants stated that they cleaned the rental unit at the end of their tenancy and feel as though no further cleaning was required. The Tenants provided several pictures of the condition and cleanliness of the rental unit in support. During the hearing, the Tenant questioned to authenticity of the receipts provided by the Landlord.

The Landlord is claiming \$1,191.75 to repair some walls in the rental unit, as well as for painting costs. The Landlord provided pictures and an estimate for the costs associated with completing this work. During the hearing, the Landlord stated that not all the work has been completed yet.

The Tenants responded by stating that they did not damage the rental unit during the tenancy and stated that the Landlord did not maintain the rental unit, despite several requests for repairs during the tenancy.

The Landlord is claiming \$450.00 for yard maintenance. The parties agreed that the Tenants were responsible for general yard maintenance during the tenancy. The Landlord stated the yard needed further maintenance at the end of the tenancy. The Tenant disagreed and stated that they purchased a lawn mower and mowed the lawn regularly every two weeks. The Landlord provided a receipt and a picture in support.

The Landlord is claiming \$6,195.00 for loss of rent as a result of the Tenants providing their notice to end tenancy. The parties agreed that the Tenants provided their notice to end tenancy to the Landlord via e-mail on October 9, 2020 before vacating the rental unit on October 16, 2020. The Tenants stated that the Landlord's Agent had cautioned the Tenants about a 30 day notice, therefore, the Tenants felt as though the tenancy should end given some issues they were having with the tenancy. During the hearing, the parties agreed that the Landlord did not serve a Notice to End Tenancy to the Tenants.

The Landlord is claiming a further \$30.00 as the Tenants failed to pay the full amount of rent in July and August 2020. During the hearing the Tenants acknowledged that they owed \$30.00 for rent in July and August 2020.

The Landlord is claiming \$452.83 for unpaid utilities. The Landlord provided a copy of the utility bill in support. During the hearing the Tenants acknowledged that they were required to pay the utilities, however, at the time, they did not feel as though they should pay it given the issues they were having with the tenancy.

The Landlord is claiming \$670.00 to replace two candle lights which were removed by the Tenants. The Landlord provided an estimate of what it would cost to replace the candle lights. The Tenants stated that they removed the candle lights during the tenancy and placed them in a dresser drawer which belonged to the Landlord. The Landlord stated that the lights were not found.

The Landlord is claiming \$150.00 for broken sprinklers. The Landlord provided a picture of the sprinkler and a receipt in support. The Tenant stated that the sprinkler worked fine during the tenancy and that they did not touch the sprinklers.

If successful, the Landlord is seeking to retain the Tenants' deposit and are also seeking the return of the filing fee.

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 Tenants. 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.

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 for the cost of cleaning the carpet \$252.00 and the general cleaning \$420.00 of the rental unit. In this case, I find that the Landlord provided insufficient evidence to demonstrate that the rental unit and carpet required further cleaning. I find that the Tenants provided many pictures which demonstrate that the rental unit was reasonably clean at the end of the tenancy. As such, I dismiss these claims without leave to reapply.

The Landlord is claiming \$1,191.75 to repair some walls in the rental unit, as well as for painting costs. During the hearing, the Landlord stated that not all the work has been completed yet. I find that the Landlords have provided insufficient evidence to demonstrate which repairs were completed and how much those repairs cost the Landlord. As such, I find that the Landlord provided insufficient evidence to verify the value of the loss or damage and I therefore dismiss this claim without leave to reapply.

The Landlord is claiming \$450.00 for yard maintenance. The parties agreed that the Tenants were responsible for general yard maintenance during the tenancy. The Landlord stated the yard needed further maintenance at the end of the tenancy. I find that the Landlord provided insufficient evidence to demonstrate that the yard required further maintenance, therefore, I dismiss this claim without leave to reapply.

The Landlord is claiming \$6,195.00 for loss of rent as a result of the Tenant providing their notice to end tenancy. The parties agreed that the Tenants provided their notice to end tenancy to the Landlord via e-mail on October 9, 2020 before vacating the rental unit on October 16, 2020.

According to Section 45 of the *Act*, 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.

The Residential Tenancy Policy Guideline #30 states that during the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. A tenant may end the tenancy if the landlord has breached a material term of the tenancy agreement. The tenant must give proper notice under the Legislation.

Breach of a material term involves a breach which is so serious that it goes to the heart of the tenancy agreement.

In this case, I find that the Tenants provided insufficient evidence to demonstrate that they were entitled to end the fixed term tenancy early. As such, I find that they are in breach of Section 45 of the Act. I find that the Landlord has demonstrated an entitlement to monetary compensation in the amount of **\$6,165.00** for loss of rent.

The Landlord is claiming a further \$30.00 as the Tenants failed to pay the full amount of rent in July and August 2020. During the hearing the Tenants acknowledged that they owed \$30.00 for rent in July and August 2020. As such, I award **\$30.00** to the Landlord.

The Landlord is claiming \$452.83 for unpaid utilities. The Landlord provided a copy of the utility bill in support. During the hearing the Tenants acknowledged that they were required to pay the utilities, however, at the time, they did not feel as though they should pay it given the issues they were having with the tenancy. I find that the Tenants were not entitled to withhold the payment of utilities, therefore, the Landlord is entitled to compensation in the amount **\$452.83**.

The Landlord is claiming \$670.00 to replace two candle lights which were removed by the Tenants. The Landlord provided an estimate of what it would cost to replace the candle lights. As the Landlord has not yet purchased replacement candle lights, I find that they have not suffered a financial loss, therefore, dismiss their claim without leave to reapply.

The Landlord is claiming \$150.00 for broken sprinklers. In this case, I find that the Landlord provided insufficient evidence to demonstrate that the Tenants were responsible for damaging the sprinklers on the rental property. As such, I dismiss this claim without leave to reapply.

Having been partially successful, I find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain the security deposit in the amount of \$6,000.00 in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$747.83, which has been calculated below;

Claim	Amount
Loss of rent:	\$6,165.00
Unpaid rent:	\$30.00
Unpaid utilities:	\$452.83
Filing fee:	\$100.00
<i>LESS</i> security deposit:	<i>-\$6,000.00</i>
TOTAL:	\$747.83

Conclusion

The Landlord has established an entitlement to monetary compensation and has been provided with a monetary order in the amount of **\$747.83**. The order should be served to the Tenants 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: March 5, 2021

Residential Tenancy Branch