



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PUPPY HOLDINGS INC and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes LL: MNRL-S, MNDL-S
 TT: MNSD, MNDCT, RPP

Introduction

The Landlords' Application for Dispute Resolution was made on January 8, 2021 (the "Landlord's Application"). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed or compensation for damage or loss;
- a monetary order for unpaid rent;
- an order to retain the security deposit;

The Tenant's Application for Dispute Resolution was made on April 1, 2021 (the "Tenant's Application"). The Tenant applied for the following relief, pursuant to the *Act*:

- an order granting the return of all or part of the security deposit;
- a monetary order for damage and compensation; and
- an order granting the return of personal property.

The Landlord and the Tenant attended the hearing at the appointed date and time. The parties confirmed service and receipt of their respective Application and documentary evidence packages. The Tenant stated that she was missing two pages of the Landlord's Application, which provided the hearing information. The Tenant stated that she received everything else. As the hearing date and time was the same as the Tenant's Application given the Applications were crossed, I find that the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an 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. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss pursuant to Section 67 of the *Act*?
3. Are the Landlords entitled to retain the Tenant's security deposit pursuant to Section 38 of the *Act*?
4. Is the Tenant entitled to an order granting the return of the security deposit, pursuant to Section 38 of the *Act*?
5. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
6. Is the Tenant entitled to an order granting the return of their personal property, pursuant to Section 65 of the *Act*?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. The parties testified that the fixed term tenancy began on December 1, 2019 until November 30, 2020. During the tenancy, the Tenant was required to pay rent in the amount of \$1,550.00 to the Landlords which was due on the first day of each month. The parties also agreed that the Tenant paid a security deposit in the amount of \$775.00 which the Landlords continue to hold. The Tenancy ended on December 17, 2020.

The Landlords' Claims

The Landlords set out their monetary claims on the monetary worksheet provided in their Application. The claims have been outlined below;

The Landlords are claiming \$380.00 to repaint several walls in the rental unit because of the Tenant putting 80 pin holes in the walls. The Landlord stated that the rental unit was freshly painted prior to the start of the tenancy. The Landlord referred to the condition inspection report which captured the condition of the rental unit at the start of the tenancy. The Landlord provided pictures of the rental unit at the end of the tenancy which shows the holes in the walls.

The Tenant responded and stated that there is no condition in the tenancy agreement which prohibits her from mounting pictures in the rental unit. The Tenant stated that this should be considered as reasonable wear and tear.

The Landlords are claiming \$60.00 to rebuff the hardwood floor at the end of the tenancy. The Landlord stated that the hardwood floor had been revarnished prior to the start of the tenancy. The Landlord stated that the Tenant had placed a large rug on the hardwood floor during the tenancy. At the end of the tenancy, the Landlord stated that there was some discolouration on the hardwood floor from where the rug had been placed, which required to be rebuffed. The Tenant stated that the discolouration was due to the Landlord using poor quality varnish and from sun fading.

The Landlords are seeking \$7.00 for the replacement of some burned out light bulbs. The Tenant stated that she was unable to find replacement light bulbs during the tenancy.

The Landlords are claiming \$1,550.00 for loss of rent for December 2020. The Landlord stated that he received the Tenant's notice to end tenancy on October 30, 2020 stating that the Tenant would vacate the rental unit on November 30, 2020. The Tenant stated that she had intended on moving out on November 30, 2020, however, she was unable to find another suitable accommodation, therefore, she remained in the rental unit until December 17, 2020. The Landlord stated that he had another occupant ready to move into the rental unit, however, was unable to do so, as the Tenant was overholding the rental unit. The parties agreed that the Tenant did not pay any rent to the Landlord for December 2020. The Landlord stated that the new occupant moved into the rental unit on January 1, 2021.

The Tenant's Claims

The Tenant is seeking the return of double their security deposit in the amount of \$1,550.00. The parties agreed that the Landlord is holding the Tenant's security deposit in the amount of \$775.00. The parties agreed that the Tenant vacated the rental unit on December 17, 2020. The Tenant stated that she tried to hand her forwarding address to the Landlord in person on December 21, 2020 while conducting the move out inspection. The Tenant stated that the Landlord would not accept it. As such, the Tenant immediately sent the Landlord her forwarding address in writing by registered mail on December 21, 2020. The Tenant provided the registered mail receipt in support.

The Landlord stated that he received the Tenant's forwarding address by email on December 30, 2020. The Landlord denied that the Tenant attempted to serve him in person any earlier and has not yet received the registered mailing.

The Tenant is claiming \$11.74 for the cost associated with sending her forwarding address via registered mail. The Tenant was notified during the hearing that this cost is not recoverable under the *Act*. As such, the Tenant was notified that this claim would be dismissed without leave to reapply.

The Tenant is claiming \$3.25 to replace a padlock that had been removed from her storage locker. The Tenant stated that she had the lock on her storage unit during the tenancy. The Tenant stated that at the end of the tenancy, her lock had been replaced. The Tenant suspects the Landlord changed the lock. The Landlord stated that he is not involved with the locks on storage units and that it is the Tenant's responsibility to maintain their locks on the storage unit. The Landlord stated that he offered to cut the unknown lock on the storage unit for the Tenant, however, she did not accept the offer.

The Tenant is also claiming for the return of her personal property which had been in the storage locker. The Tenant stated that as a result of lock being replaced, she was unable to retrieve her rug, glass table, lounge chair, and a box containing a back rest. The Landlord denied that any of these belongings were left behind aside from the box. The Landlord stated that he does not have access to the storage unit and that it was the Tenant's responsibility to remove all of her belongings.

The Tenant is claiming \$410.00 for extra moving costs. The Tenant stated that the Landlord disabled the elevator while she had movers in attendance to help her move. The Tenant stated that the movers were required to move her items down the stairs instead, which took twice as long, resulting in her moving costs doubling. The Tenant provided her moving bill in support.

The Landlord stated that he was not in attendance, however, he did receive a notification for his caretaker that the elevator had stopped working. The Landlord stated that this could have been a result of the movers holding the door open during the move. The Landlord stated that despite the elevator receiving regular servicing, it is an older elevator that breaks down from time to time. The Landlord stated that he was happy to hear that the Tenant was moving and that he would not want to impede this progress.

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 Applicant 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 Respondent. Once that has been established, the Applicant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Applicant 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 Landlords' Claims

The Landlords are claiming \$380.00 to repaint several walls in the rental unit as a result of the Tenant putting 80 holes in the walls. I find that the Landlords provided sufficient evidence to demonstrate that the holes were caused by the Tenant during the tenancy. While I accept that there was no specific term in the tenancy agreement preventing the Tenant from mounting pictures on the wall, I find that the number of holes in the walls noted by the Landlord is beyond what could be considered reasonable. I accept that the Landlord was required to repaint the rental unit and I find that the Landlords are entitled to monetary compensation in the amount of **\$380.00**.

The Landlords are claiming \$60.00 to rebuff the hardwood floor at the end of the tenancy. In this case, I find that the Landlords provided insufficient evidence to demonstrate that the Tenant or her rug caused damage to the hardwood floor in the rental unit. I accept that over time the sun faded the hardwood that was not being covered by the rug. I find that this would be considered reasonable wear and tear. As such, I dismiss this claim without leave to reapply.

The Landlords are seeking \$7.00 for the replacement of some burnt out light bulbs. The Tenant stated that she was unable to find replacement light bulbs during the tenancy. I find that the Tenant would have been responsible for replacing burned out light bulbs at the end of the tenancy. As such, I find that the Landlords are entitled to **\$7.00**.

The Landlord are claiming \$1,550.00 for loss of rent for December 2020. I find that the Tenant, after provided her notice to end tenancy to the Landlord with an effective date of November 30, 2020, should have moved out on November 30, 2020. I find that the Tenant overheld the rental unit, preventing the Landlord from re-renting the rental unit to the new occupant until January 1, 2021. As the Tenant did not pay any rent to the Landlords for December 2020, I award the Landlords **\$1,550.00**.

In summary, I find the Landlords have demonstrated an entitlement to a monetary award of \$1,937.00, which has been calculated as follows:

Claim	Award
Painting:	\$380.00
Light Bulbs	\$7.00
Loss of Rent:	\$1,550.00
TOTAL:	\$1,937.00

The Tenants' Claim

The Tenant is seeking the return of double their security deposit in the amount of \$1,550.00. Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

I find that the Tenant provided insufficient evidence to demonstrate that she served the Landlord her forwarding address in person on December 21, 2020. I do however find that the Tenant provided sufficient evidence to demonstrate that she sent the Landlord her forwarding address in writing by registered mail on December 21, 2020. In accordance with Section 90 of the *Act*, I find that the Landlords are deemed to have been served with the Tenant's forwarding address on December 26, 2020, the fifth day after the registered mailing

I find pursuant to section 38(1) of the *Act*, that the Landlords had until January 10, 2021 to repay the deposit or make an application for dispute resolution. The Landlords submitted their Application on January 8, 2021 which is before the 15-day deadline. I find that the Landlords have complied with Section 38 of the *Act*. Therefore, I dismiss the Tenant's Application for double the return of the security deposit without leave to reapply.

The Tenant is claiming \$3.25 to replace a padlock that had been removed from her storage locker. I find that the Tenant provided insufficient evidence to demonstrate that the Landlord was responsible for changing the lock to the storage unit. As such, I dismiss this claim without leave to reapply.

The Tenant is also claiming for the return of her personal property which had been in the storage locker. I accept that the Landlord offered to cut the lock for the Tenant in order for her to collect her belongings. The Tenant did not accept the offer and has since not made any arrangements to collect her belongings. I find that the Tenant has not mitigated her loss. Therefore, I dismiss this claim without leave to reapply.

The Tenant is claiming \$410.00 for extra moving costs. The Tenant stated that the Landlord disabled the elevator while she had movers in attendance to help her move. I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord was responsible for disabling the elevator. Furthermore, I accept that the Landlord was unaware that the Tenant was moving and was motivated to see the Tenant move out as he had another occupant wishing to occupy the rental unit. As such I find that it is unlikely that the Landlord would have tampered with the elevator during the Tenant's move out. I dismiss this claim without leave to reapply.

The Landlords have established an entitlement to a monetary award in the amount of \$1,937.00. I find it appropriate in the circumstances to order that the Landlords retain the security deposit in the amount of \$775.00 in partial satisfaction of the claim ($\$1,937.00 - \$775.00 = \$1,162.00$).

Conclusion

Pursuant to section 67 of the Act, the Landlords are granted a monetary order in the amount of \$1,162.00. The monetary order must be served on the Tenant 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: May 17, 2021

Residential Tenancy Branch