



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on November 29, 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;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord 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*.

Preliminary Matters

The Landlord has applied for an order to retain the Tenant's security deposit. At the start of the hearing, the parties confirmed that the Tenant's security deposit has been dealt with in a previous Dispute Resolution Decision. As such, the Landlord's claim to retain the Tenant's security deposit is therefore dismissed without leave to reapply.

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 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 April 1, 2020. During the tenancy, the Tenant was required to pay rent in the amount of \$3,000.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,500.00 which has been dealt with during a previous dispute resolution hearing. The parties also agreed that the tenancy ended on October 5, 2020.

The Landlord provided a monetary worksheet which contains a list of monetary claims that have been outlined below;

The Landlord is seeking \$120.00 to replace a gate opener as the Tenant only returned one of two gate openers that were provided to the Tenant at the start of the tenancy. The Tenant stated that he was only provided one gate opener and has returned it to the Landlord at the end of the tenancy.

The Landlord is claiming \$200.00 for cleaning. The Landlord stated that the rental unit required further cleaning, especially in the kitchen. The Tenant confirmed that the kitchen required further cleaning, however, the Tenant did not agree with the cost of \$200.00 for cleaning. The Landlord provided pictures and a receipt in support.

The Landlord is claiming \$361.01 in relation to an unpaid water bill. The Landlord stated that the Tenant was required to pay for water at the rental unit and has failed to do so. The Landlord provided a copy of the tenancy agreement as well as the water bill in support. The Tenant stated that he could not remember if he paid the water bill.

The Landlord is claiming \$966.00 to repair the walls in the rental unit. The Landlord stated that the Tenant was the first to occupy the newly renovated rental unit. As such, the Landlord stated that the rental unit was in good condition. The Landlord stated that at the end of the tenancy, he found some damage to the walls that had been painted over by the Tenant. The Landlord stated that the paint was still wet to touch. The Landlord provided pictures and a quote to repaint the walls in support. The Tenant

denied damaging the walls in the rental unit and denied that he was responsible for painting the patches on the walls.

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.

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 seeking \$120.00 to replace a gate opener. I find that the Landlord has provided insufficient evidence to demonstrate that two gate openers were provided to the Tenant rather than one as indicated by the Tenant. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$200.00 for cleaning the kitchen of the rental unit. I accept that the Tenant confirmed the kitchen required further cleaning. I find that the Landlord provided sufficient evidence to demonstrate that the cost of cleaning the kitchen was \$200.00. I find that the Landlord is entitled to monetary compensation in the amount of **\$200.00** for cleaning.

The Landlord is claiming \$361.01 in relation to an unpaid water bill. I accept based on the tenancy agreement that the Tenant was responsible for paying for water at the rental unit. I find that the Landlord provided sufficient evidence to demonstrate that the Tenant failed to pay the water bill. As such, I find that the Landlord is entitled to compensation in the amount of **\$361.01** for the unpaid water bill.

The Landlord is claiming \$966.00 to repair the walls in the rental unit. According to Section 23(1) of the Act; The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
 - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

I find that without a condition inspection report being provided, it is difficult to compare the condition of the rental unit prior to the commencement of the tenancy, to the condition at the end of the tenancy. As such, I find that the Landlord has provided insufficient evidence to demonstrate that the damage to the rental unit was caused by the Tenant.

Furthermore, I accept that the Landlord has not yet repainted the rental unit. As such, I find that the Landlord has provided insufficient evidence to demonstrate that they have suffered a loss. In light of the above, I dismiss the Landlord's claim for painting 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

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$661.01.

Conclusion

The Landlord has established an entitlement to monetary compensation and has been provided with a monetary order in the amount of **\$661.01**. The order should be served to the Landlord 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: May 18, 2021

Residential Tenancy Branch