



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 January 4, 2021 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- a monetary order for money owed for compensation, damage or loss;
- a monetary order for utilities for the Landlord;
- 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 January 12, 2021 (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 start of the hearing, the parties acknowledged service and receipt of their respective Application and documentary evidence packages. As such, 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.

Preliminary Matters

During the hearing, the Tenants agreed to compensating the Landlord in the amount of \$43.66 to replace a toilette seat as well as \$157.50 for carpet cleaning, for a total of \$201.16. The Landlord also withdrew their claim for monetary compensation for relating to unpaid utilities as the Tenants have since paid the balance.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for compensation, damage, or loss pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retaining the Tenant's security deposit, pursuant to Section 38 and 67 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 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 agreed that the tenancy began on August 26, 2019. During the tenancy, the Tenants were required to pay rent in the amount of \$1,900.00 to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$950.00 which the Landlord continues to hold. The Landlord stated that the tenancy ended on November 28, 2020, while the Tenants stated they moved out on November 27, 2020.

Landlord's Claims

The Landlord provided a monetary worksheet containing their claims which have been outlined below;

The Landlord is claiming \$2,486.40 in relation to replacing a garage door that was damaged by the Tenants during the tenancy. The Tenants stated that they backed into the garage door which dented one panel. The Tenants stated that they had a garage

door repair company attend and repair the door aside from the dent. The Landlord stated that the garage door is not functional and requires complete replacement as a replacement panel is not available. The Landlord provided a written statement from the garage door company which states that the garage door has been repaired and is functional but still has damage. The Landlord provided a quote for the door replacement as well as pictures of the damaged garage door.

The Landlord is claiming \$55.98 to replace a ripped curtain in the rental unit. The Landlord provided a receipt in support. The Tenant agreed that they damaged the curtain but did not agree with the cost of the replacement curtain.

The Landlord is claiming \$165.00 for the cost associated with cleaning the rental unit. The Tenants stated that they cleaned the rental unit before the end of the tenancy. The Tenant disagreed that further cleaning was required. The Landlord provided some pictures of the rental unit in support.

The Landlord is claiming \$100.00 to repair a broken pantry door in the kitchen. The Landlord stated that she paid cash to have the door fixed and did not obtain a receipt. The Tenants stated that the door was not functioning at the start of the tenancy and ended up falling off during the tenancy. As such, the Tenants do not feel as though they should have to pay for the repair.

If successful, the Landlord is claiming for the return of the filing fee as well as to retain the Tenant's deposit towards their claims.

Tenant's Claim

The Tenants are claiming for the return of their security deposit. The Tenants stated that they sent the Landlord their forwarding address in writing by Registered Mail on December 20, 2020. The Landlord confirmed receipt, however, could not recall when she received the mailing. The Landlord submitted their Application to retain the Tenant's deposit on January 4, 2021.

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

The Landlord's Claim

As previously noted, the Tenants agreed to compensating the Landlord **\$201.16**.

The Landlord is claiming \$2,486.40 in relation to replacing a garage door that was damaged by the Tenants during the tenancy. While the Tenants confirmed that they backed into the door, I accept that the Tenants paid to have the garage door repaired so that the garage door is operational. I accept that the garage door still has a dents due to damage caused by the Tenants which cannot be repaired without replacement. I find that the Landlord is entitled to half the quoted cost of replacement, given the age of the door and the fact that the Landlord has not yet had the door replaced to demonstrate the true cost. I find that the Landlord is entitled to **\$1,243.20**.

The Landlord is claiming \$55.98 to replace a ripped curtain in the rental unit. The Landlord provided a receipt in support. The Tenant agreed that they damaged the

curtain, but did not agree with the cost of the replacement curtain. I find that the Landlord is entitled to compensation in the amount of **\$55.98**.

The Landlord is claiming \$165.00 for the cost associated with cleaning the rental unit. The Tenants stated that they cleaned the rental unit before the end of the tenancy. The Landlord provided some pictures of the rental unit in support. I find that the pictures provided by the Landlord shows that the rental unit was left reasonably clean by the Tenants. As such, I dismiss this claim without leave to reapply.

The Landlord is claiming \$100.00 to repair a broken pantry door in the kitchen. I find that the Landlord provided insufficient evidence to demonstrate the value of their loss. As such, I dismiss this claim without leave to reapply.

Having been partially successful with their Application, I find the Landlord is entitled to the recovery of their \$100.00 filling fee.

In summary, I find the Landlord has demonstrated an entitlement to a monetary award of \$1,600.34, which has been calculated as follows:

Claim	Award
Mutually agreement:	\$201.16
Garage door:	\$1,243.20
Curtain:	\$55.98
Filling fee	\$100.00
TOTAL:	\$1,600.34

The Tenants' Claim

With respect to the Tenants' claim for the recovery of their security deposit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making 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. If a landlord fails to repay deposits or make a claim against them within 15 days, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

In this case, the Tenants stated that they sent their forwarding address in writing to the landlord by Registered Mail on December 20, 2020. The Landlord confirmed receipt but

could not recall when. Pursuant to Section 88 and 90 of the Act, I find the Landlord is deemed to have been served the Tenant's forwarding address on December 25, 2020.

Therefore, pursuant to section 38(1) of the Act, the Landlord had until January 4, 2021, to repay the deposit or make a claim against it. I find that the Landlord submitted their Application on January 4, 2021 which is within the time limit permitted under the Act. Accordingly, I find the Tenants are not entitled to the return of double the amount of the deposit.

Having not been successful in their Application, I find the Tenants are not entitled to the recovery of their filling fee.

Pursuant to section 67 of the Act, I find that the Landlord has demonstrated an entitlement to retain the security deposit in the amount of \$950.00 in partial satisfaction of the monetary award granted. I grant the Landlord with a monetary order in the amount of \$650.34 (\$1,600.34 - \$950.00).

Conclusion

Pursuant to section 67 of the Act, the Landlord is granted a monetary order in the amount of \$650.34. The monetary order must be served on the Tenants 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 11, 2021

Residential Tenancy Branch