



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed February 16, 2021, in which the Landlords requested monetary compensation from the Tenant, authority to retain the Tenant's security deposit towards any amounts awarded and recovery of the filing fee.

The hearing of the Landlords' Application was scheduled for 1:30 p.m. on July 5, 2021. Only the Landlord, C.M., called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:42 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlords' hearing package. The Landlord testified that they served the Tenant with the Notice of Hearing and the Application on February 26, 2021 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Landlord confirmed the Tenant received the package on March 5, 2021. I accept the Landlord's testimony in this regard and find the Tenant was duly served and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlords' submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord/Tenant and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. Should the Landlords be authorized to retain the Tenant's security deposit?
3. Should the Landlords recover the filing fee?

Background and Evidence

This tenancy began May 1, 2019 and ended on January 10, 2021. Monthly rent was payable in the amount of \$1,750.00 and the Tenant paid a \$875.00 security deposit.

The Tenant vacated the rental unit on January 10, 2021.

The Landlord testified that the Tenant failed to pay the full amount of rent owing for January and February 2021 such that the sum of \$2,850.00 was outstanding.

The Landlord testified that the Tenant also left the rental unit damaged. In support they provided numerous photos of the rental unit.

In the claim before me the Landlords sought monetary compensation for the following:

January and February rent $\$1,750.00 \times 2 = \$3,500.00$ - \$650.00 paid in January	\$2,850.00
Wall repair, counter repair, lightbulb replacement, paint	\$875.00
Filing fee	\$100.00
TOTAL CLAIMED	\$3,825.00

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

After consideration of the Landlord's undisputed testimony and evidence before me, and on a balance of probabilities I find the following.

Pursuant to section 26 a tenant must pay rent when rent is due. I accept the Landlord's testimony that the sum of \$2,850.00 was owing as of February 2021 and I award the Landlord related compensation.

Based on the photos submitted in evidence, as well as the Landlord's testimony, I find the Tenant failed to repair damage to the rental unit when the tenancy ended. I find the amounts paid by the Landlord for wall repair, counter repair, lightbulb replacement and paint to be reasonable considering the condition of the rental unit at the end of the tenancy and I award the Landlord the **\$875.00** claimed.

As the Landlord has been successful in their claim, they are also entitled to recover the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

The Landlord is entitled to monetary compensation in the amount of \$3,825.00 for the following:

January and February rent $\$1,750.00 \times 2 = \$3,500.00$ - \$650.00 paid in January	\$2,850.00
Wall repair, counter repair, lightbulb replacement, paint	\$875.00
Filing fee	\$100.00

TOTAL AWARDED	\$3,825.00
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Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenant's \$875.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$2,950.00**. this Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: July 15, 2021

Residential Tenancy Branch