



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL, MNDCL, FFL

Introduction

On April 13, 2021, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting a Monetary Order for unpaid utilities, for damages and for compensation, for the security deposit to be applied to the claim, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and the Tenant attended the original hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the Notice of Dispute Resolution Proceedings, the subsequent amendments, and the documentary evidence that I have before me. As such, I find that the submitted evidence is admissible for this hearing.

The hearing involved an extensive claim and there was a lack of time to hear the matter fully. As a result, the original hearing was adjourned. No further evidence was accepted for submission to the Residential Tenancy Branch by either party.

The Landlord and Tenant attended the reconvened hearing and provided affirmed testimony. The issues that were covered during the original hearing were reviewed and the parties were, subsequently, provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid utilities, in accordance with section 67 of the Act?

Should the Landlord receive a Monetary Order for damages, in accordance with section 67 of the Act?

Should the Landlord receive a Monetary Order for compensation, in accordance with section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the monetary claims, in accordance with section 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

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.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on November 1, 2019 and continued as a month-to-month tenancy. The rent was \$1,850.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$925.00 and a pet damage deposit in the amount of \$925.00.

Landlord JM testified that the tenancy ended as a result of the Landlord serving a Two Month Notice to End Tenancy for Landlord's Use to the Tenants on January 6, 2021. The move-out date on the Notice to End Tenancy was for March 31, 2021.

The Landlord submitted a Condition Inspection Report and stated that the move-in inspection was completed by the property manager and one of the Tenants on November 1, 2019.

The Landlord testified that a move-out inspection was scheduled with the Tenants for March 31, 2021; however, the Tenants were still in the process of moving out of the rental unit and did not complete, nor sign the move-out condition report.

The Landlord submitted supporting documents and provided undisputed testimony that the Tenants still owed \$483.75 in outstanding utilities, that were incurred during their tenancy. The Tenant agreed that the Landlord's claim is correct and does not dispute the claim.

The Landlord submitted an amended Monetary Order Worksheet which summarized ten further claims of damages/losses that occurred as a result of the tenancy with the Tenants.

Item #1 – Glass Panel Repair

The Landlord submitted supporting documents and provided undisputed testimony that the Tenants were responsible for a broken panel of glass in one of the interior doors of the rental unit. The Landlord provided a receipt for \$223.23 to have the glass panel repaired. The Tenant agreed that the Landlord's claim is correct and does not dispute the claim.

Item #2 – Screen Repair

The Landlord submitted supporting documents and provided testimony that a total of 3 screens were damaged as a result of the tenancy. The Landlord acknowledged that the damaged third screen was not included on the move-out inspection report and may have been damaged through normal wear and tear. The Landlord offered to reduce the claim to repair the screens, in the amount of \$351.31, by 30%.

The Tenant acknowledged that they were responsible for the damage of the two screens (screen door and dining room window) and did not wish to pay for the repair of the third screen.

Item #3 – TV Cable

The Landlord submitted supporting documents and provided undisputed testimony that the Tenants were responsible for a hole in the living room ceiling and the damage that occurred from taping a cable line to the front of the garage fascia. The Landlord is claiming \$100.00 in labour and supplies to remediate the damage. The Tenant agreed that the Landlord's claim is correct and does not dispute the claim.

Item #4 – Replanting shrubs

The Landlord submitted supporting documents and provided, for the most part, undisputed testimony that the Tenants were responsible for cutting back and/or down the shrubs in front of the rental house. The Landlord is claiming \$360.00 as compensation to dig out the roots, purchase new shrubs and replant.

The Tenant testified that the property manager had provided permission that the shrubs could be cut-back from the windows. The Tenant acknowledged that she cut-back the shrubs too much.

Item #5 – Dog run, holes and burn pile

The Landlord submitted supporting documents and provided testimony that the Tenants placed 62 posts, with cement collars, into the grounds of the residential property to construct a fenced dog run. The Landlord stated that the posts were removed but many of the cement collars and holes remained. The Landlord also provided pictures and testimony in relation to holes on the property caused by the dogs and the damage caused by the Tenants having a burn pile on the residential property.

The Landlord claimed \$832.00 in damages and submitted that a large amount of labour and supplies, including soil and grass seed, were required for the remediation of the site.

The Tenant testified that they did fence in a portion of the yard and although they removed the fencing, did not take all the concrete or fill all the holes. The Tenant stated that the dogs were responsible for some of the holes but that there were also voles on the property and that they were responsible for holes as well. The Tenant admitted to the damage from the burn pile and acknowledged that the damaged patches and holes were not seeded or grassed over.

Item #6 – Removal of dog feces

The Landlord submitted supporting documents and provided testimony that the Tenants left a large amount of dog feces scattered on the lawn after the tenancy. The Landlord provided photos of the damage from the dogs' urine and feces, the amount of feces that he collected, and invoices for his time. The Landlord is claiming \$80.00 in compensation.

The Tenant testified that she didn't contest the Landlord's claim and agreed that some compensation was due.

Item #7 – Accommodation 3 nights

The Landlord submitted supporting documents and provided testimony that, as a result of the Tenants failing to move out on time and failing to return the keys to the Landlord

in a timely manner, that the Landlord incurred expenses for three nights in a local hotel. The Landlord submitted a Monetary Order Worksheet with a claim for \$400.95; however, the Landlord stated he had made a mistake and the three nights had added up to \$481.20; receipt submitted.

The Tenant acknowledged that they completed the move-out on the evening of March 31, 2021 and texted the manager that they were out. The Tenant stated she had the keys for the rental unit with her and wasn't sure if they were returned to the manager on April 1 or 2, 2021.

Item #8 – Wall and door refinishing

The Landlord submitted supporting documents and provided testimony that there were two areas that had been damaged by the Tenants and/or their pets, specifically, the interior wall around the back door and an interior corner. The Landlord obtained quotes to fix the damage and ended up doing it himself, and is claiming \$400.00 in time and labour.

The Tenant admitting to the damage but disputed the amount the Landlord was claiming.

Item #9 – Odour sealing

The Landlord submitted supporting documents and provided testimony that the Tenants, although there was a no smoking clause in the Tenancy Agreement, must have smoked in and around the rental unit. The Landlord had collected cigarette butts outside the bedroom window, where the RV was parked, underneath the deck, and in a half-barrel planter.

The Landlord stated that there was such a pervasive smell of cigarettes, or smoke, or leftover from the pets, that they had to have a professional company apply an odour sealing paint to areas throughout the rental unit; especially in the bedroom where the cigarette butts were located outside the window.

The Landlord noted that the odour was documented on the move-out inspection report and stated that the contractor they had hired to paint the interior of the rental unit, confirmed that there had been smokers in the rental unit.

The Landlord, as part of a larger quote for painting the rental unit, provided the cost for the odour sealer and is only claiming this amount, not the rest of the painting, in the amount of \$1,000.00.

The Tenant testified that they never smoked in the house or the property. She does not know where the cigarette butts came from.

Item #10 – Garbage Removal

The Landlord submitted supporting documents and provided testimony that the Tenants left behind garbage that had to be loaded, transported, and dumped. The Landlord is claiming compensation for \$160.11.

The Tenant did not dispute this claim.

Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the burden is on the Landlords to prove that they suffered a loss, that the loss stemmed directly from the Tenants failure to abide by the Tenancy Agreement or the Act, and to establish the actual amount of the loss.

I find that much of this claim balances on whether there was a breach of Section 37 of the Act. Therefore, I refer the parties to that section which states that a tenant must vacate the rental unit by 1:00 p.m. on the day the tenancy ends. When the tenant vacates the rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. The tenant must give the landlord all the keys or other means of access that are in possession or control of the tenant and that allow access to and within the residential property.

The Landlord addressed the first monetary claim by submitting supporting documents and providing undisputed testimony that the Tenants still owed \$483.75 in outstanding utilities, that were incurred during their tenancy. The Tenant agreed that the Landlord's claim is correct and did not dispute the claim. As a result, I find that the Landlord has established a monetary claim and I grant the Landlord the amount claimed.

Item #1 – Glass Panel Repair

The Landlord submitted supporting documents and provided undisputed testimony that the Tenants were responsible for a broken panel of glass in one of the interior doors of the rental unit. The Landlord provided a receipt for \$223.23 to have the glass panel repaired. The Tenant agreed that the Landlord's claim is correct and did not dispute the claim. I find that the Landlord has established a monetary claim and I grant the Landlord the amount claimed.

Item #2 – Screen Repair

The Tenant acknowledged that they were responsible for the damage of two screens (screen door and dining room window). The Landlord claimed \$351.31 for the damage of three screens and recognised that the damage to the third screen may have been due to wear and tear.

As a result, I find that the Landlord has established a monetary claim and I grant the Landlord damages for two screens, in the amount of \$231.86 ($\$351.31 \times 66\%$).

Item #3 – TV Cable

The Landlord is claiming \$100.00 in labour and supplies to address the damage to the ceiling and fascia board due to the stringing of the cable line. The Tenant agreed that the Landlord's claim is correct and does not dispute the claim. I find that the Landlord has established a monetary claim and I grant the Landlord the amount claimed.

Item #4 – Replanting shrubs

The Landlord submitted supporting documents and provided, for the most part, undisputed testimony that the Tenants were responsible for cutting back and/or down the shrubs in front of the rental house. The Landlord is claiming \$360.00 as compensation to dig out the roots, purchase new shrubs and replant. Although the Tenant stated that she had been given permission to prune the shrubs, she did acknowledge that it was excessive.

Based on the evidence from both parties, I find that the Tenants did damage the shrubs, contrary to section 37 of the Act, and that the Landlord should be compensated in the amount claimed.

Item #5 – Dog run, holes and burn pile

The Landlord claimed \$832.00 in damages and submitted that a large amount of labour and supplies, including soil and grass seed, were required for the remediation of the site on the residential property. I note that the Tenant acknowledged much of this damage and did not dispute the Landlord's claim. As a result, I find the Landlord has established a monetary claim and I grant the Landlord the amount claimed.

Item #6 – Removal of dog feces

The Landlord is claiming \$80.00 in compensation for the labour to pick up a large amount of dog feces left behind by the Tenants. The Tenant testified that she didn't contest the Landlord's claim and agreed that some compensation was due. After reviewing the evidence of both parties, I find that the Landlord has established a reasonable monetary claim and I grant the Landlord the amount claimed.

Item #7 – Accommodation 3 nights

The Landlord has made a claim that, as a result of the Tenants not moving out on time and failing to return the keys, the Landlord was required to stay in a hotel for three nights.

I accept that the Tenant admitted that they moved out of the rental unit sometime during the evening of March 31, 2021. Based on this, I find that the Tenants breached section 37 of the Act by not moving out by 1:00 p.m., and therefore, left the Landlord in a position of having to take a hotel room for the night.

The Landlord claimed that the Tenants failed to return the keys to the manager of the rental unit until mid-day of April 2, 2021. However, I find that the Landlord failed to provide sufficient evidence to demonstrate that the delayed return of the keys was the fault of the Tenants versus the managers. As such, I only award the Landlords compensation for one night in the hotel, in the amount of \$160.40 (\$481.20 divided by 3).

Item #8 – Wall and door refinishing

The Landlord obtained quotes to fix the damage to the wall and corner, ended up doing it himself, and claimed \$400.00 in time and labour. The Tenant admitted to the damage but disputed the amount the Landlord was claiming.

Based on the evidence submitted, I find that if the Landlord had hired a professional painter to complete the work, the final bill would have been substantially higher. I find

that the Landlord's claim of \$400.00 is reasonable, given the amount of damage. As such, I grant the Landlord the amount claimed.

Item #9 – Odour sealing

The Landlord claimed that there was a substantial odour that required remediation by applying odour sealing paint to the interior of the rental unit. The Tenant stated they did not smoke inside or outside of the rental unit and could not explain why the Landlord found cigarette butts on the residential property.

I accept that the Landlord could not specifically identify the source of the odour and that the Tenant denied smoking in the rental unit. When considering this claim, I note that the Landlord provided photographs of cigarette butts that were collected around the residential property, a move-out inspection report that noted the odour in two rooms and a quote to address the odour by applying a sealant.

Upon review of the evidence presented for this claim, and on a balance of probabilities, I find that there was an odour present, that the rental unit required the sealant to mitigate the odour, and that the odour was not there at the beginning of the tenancy. As such, I find the Landlord has established a monetary claim and I grant the Landlord the amount claimed, in the amount of \$1,000.00.

Item #10 – Garbage Removal

The Landlord submitted supporting documents and provided testimony that the Tenants left behind garbage that had to be loaded, transported, and dumped. The Landlord is claiming compensation for \$160.11. The Tenant did not dispute this claim. As such, I grant the Landlord the amount claimed.

The Landlord has established a monetary claim, in the amount of \$4,131.35, which includes \$483.75 in unpaid utilities, \$3,547.60 in damages and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenants' security deposit and pet damage deposit in the amount of \$1,850.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a Monetary Order for the balance of \$2,281.35, in accordance with section 67 of the Act.

Item	Amount
Unpaid Utilities	\$483.75
Glass Panel Repair	223.23
Screen Repair	231.86
TV Cable	100.00
Replanting Shrubs	360.00
Dog run, holes and burn pile	832.00
Removal of dog feces	80.00
Accommodation	160.40
Wall and door refinishing	400.00
Odour sealing	1,000.00
Garbage Removal	160.11
Less Security and Pet Damage Deposit	-1,850.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$2,281.35

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$2,281.35. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: October 13, 2021

Residential Tenancy Branch